

BAT WORLD SANCTUARY and  
AMANDA LOLLAR,

Plaintiffs,

vs.

MARY CUMMINS,

Defendant Pro se

§ IN THE DISTRICT COURT

§ TARRANT COUNTY, TEXAS

§ 352nd JUDICIAL DISTRICT

**DEFENDANT'S AMENDED MOTION FOR NEW TRIAL AND TO VACATE  
JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Pro se Mary Cummins moves this Court to vacate judgment and grant Defendant a new trial in this case. This Motion is presented within the time limits prescribed by the Texas Rules of Civil Procedure for a Motion for a New Trial and is requested for good cause. In support of this motion, Movant will show the Court the following:

**Introduction**

Texas Rule of Civil Procedure 320 states that a judge may set aside a judgment and order a new trial "for good cause." The specific grounds mentioned are the damages being "manifestly" too large. The Texas Supreme Court has held that as long as the trial judge finds that a new trial is "in the interest of justice and fairness" there is no recourse other than to set aside the judgment and proceed with a new trial. The \$6,176,000 judgment is manifestly too large. A new trial is in the interest of justice and fairness.

Notwithstanding the ends of "justice and fairness" set out in Rule 320, five trial errors are named in Texas Rule 324 that must be the subject of a motion to vacate the first trial, or they cannot be appealed. The first is any complaint that will require new

1 evidence to be heard, such as a claim of jury misconduct or newly discovered evidence.  
2 The second is any claim that the evidence was insufficient to support the finding. Third,  
3 if the evidence was overwhelmingly contrary to the court's finding there must be a  
4 motion under Rule 324. Fourth, any claim that the court's damages are either  
5 inadequate or excessive must first be heard on a motion to vacate. And finally, any  
6 claim that a party incorrectly argued to the court and the Court did not correct that error  
7 at a first trial must be the basis for a motion for a new trial.

8 The final judgment was excessive. The evidence was insufficient to support the  
9 finding. The evidence was overwhelmingly contrary to the court's findings. Defendant  
10 pro se may have incorrectly argued to the court and the court did not correct that error.

11 **Plaintiffs failed to prove that Defendant defamed Plaintiffs**

12 The essential elements of a defamation cause of action that must be proven in Texas  
13 are, (1) The defendant published a statement of fact, (2) The statement was defamatory,  
14 (3) The statement was false, (4) The defendant acted negligently in publishing the false  
15 and defamatory statement, and (5) The Plaintiffs suffered damages as a result. Plaintiffs  
16 failed to prove all five elements of defamation at trial. None of the items in the court's  
17 final order are defamatory (Exhibit 1).

18 (1) Plaintiffs failed to prove that Defendant posted all of the items in question. Plaintiffs'

19 expert clearly stated that the articles in question were anonymous and untraceable.

20 Defendant only admitted to posting what was in Defendant's own website, blog,  
21 YouTube, Facebook, MySpace and Flickr accounts. Plaintiffs failed to prove that the  
22 items were "statements of fact." Some comments were question. Others were definitely  
23 not statements of fact.

24 (2) Plaintiffs failed to prove that the items posted by Defendant were defamatory.

25 (3) Plaintiffs failed to prove that the items posted by Defendant were false.

1 (4) Plaintiffs failed to prove that Defendant acted negligently in publishing the items.

2 (5) Plaintiffs failed to prove damages. Plaintiffs' own financials produced in discovery  
3 show increased revenue and not decreased revenue.

4 (6) Plaintiffs failed to prove they are not a limited public figure.

5 **Plaintiffs failed to prove that Defendant breached a contract.**

6 The essential elements of a breach of contract cause of action that must be proven  
7 are, (1) There is a valid contract; (2) The Plaintiffs performed or tendered performance  
8 according to the terms of the contract; (3) The Defendant breached the contract; and (4)  
9 The Plaintiffs sustained damages as a result of the breach. Plaintiffs failed to prove all  
10 four elements of breach of contract.

11 (1) Plaintiffs failed to prove there was a valid contract. Plaintiffs' own expert stated in  
12 writing that it was only "probable" that Defendant signed the contract. Expert stated it  
13 was not "strong probable" or "definite identification."

14 (2) Plaintiffs failed to prove that Plaintiffs performed according to the terms of the  
15 contract. Defendant did not receive training as promised.

16 (3) Plaintiffs failed to prove that Defendant's behavior would have been considered a  
17 breach of contract. Plaintiffs stated in court that Defendant's photos and videos did  
18 not defame Plaintiffs, did not share proprietary or copyrighted data. The contract  
19 states that breach of contract would have occurred only if Defendant stated she was  
20 trained by Bat World when she did not have a certificate. Defendant has never  
21 stated she was trained by Bat World to others because she wasn't. From the  
22 contract (Exhibit 2):

23  
24 "In the event that Trainee is notified in writing that Trainee's Certificate of Completion  
25 has been revoked by BWS and Trainee thereafter publishes, advertises or  
communicates to any person the fact that Trainee was trained by BWS or is certified by

1 BWS, then Trainee agrees to pay BWS liquidated damages in the amount of \$10,000,  
2 and all attorney's fees incurred by BWS in enforcing this contract."

3 Defendant never received a certificate of completion as Defendant did not complete  
4 the full two week internship as she left early. No certificate of completion was revoked.  
5 Defendant has never published, advertised or communicated to any person that Trainee  
6 was trained by BWS or is certified by BWS.

7 (4) Plaintiffs failed to prove that Plaintiffs suffered damages. Plaintiffs' own financials  
8 produced in discovery show increased revenue and not decreased revenue.

9 **Plaintiffs did not show causation**

10 Plaintiffs admitted in court that they had no proof of damages or that Defendant  
11 caused any damages.

12 **Pre-trial motion was not heard**

13 Defendant's Motion for Contempt against Plaintiffs was set to have been heard at  
14 9:00 a.m. on June 11, 2012 before the trial started. The Motion for Contempt was not  
15 heard. Defendant never received all items which the Court ordered Plaintiff to produce.

16 **Witness failed to respond to subpoena**

17 Defendant served a legal subpoena to show for trial to Kate Rugroden. Rugroden did  
18 not appear at trial as demanded. This witness was vital to Defendant's case.

19 **The order as signed by Judge William Brigham is overly broad**

20 (1) The order demands Defendant to remove items she did not write or make. These  
21 are items "amanda\_lollar\_bat\_world\_sanctuary\_breeding\_bats.pdf,"  
22 amanda\_lollar\_1994\_manual\_original.pdf," and "mmmm.jpg." The first is a copy of  
23 Plaintiff's 1994 manual which is not copyright protected. The second is emails from  
24 Texas Parks & Wildlife about Plaintiffs. The third is a photoshopped image of  
25 Defendant's face. These items can never legally be defamation against Plaintiff because  
Defendant didn't write or make them.

1 (2) The order demands Defendant never post a video Defendant owns of Plaintiff  
2 performing an episiotomy. That would be prior restraint. Copyright and ownership of  
3 video rights were not a part of this case.

4 (3) The order demands Defendant to remove items which were not shown to be  
5 defamatory. Every statement in the order is the truth. For example item 1 reads "They  
6 breed animals in the facility." Plaintiff states in her website, manuals, online that the bats  
7 are breeding in the facility. Every item Defendant posted is the truth. (Exhibit 1)

### 8 **The monetary award is excessive**

9 The order includes \$3,000,000 in compensatory damages. Compensatory damages  
10 provide a plaintiff with the monetary amount necessary to replace what was lost, and  
11 nothing more. Plaintiffs did not show any financial damages. They did not prove that  
12 anything was lost. In fact Plaintiffs are making more money than ever before.

13 \$3,000,000 is excessive.

14 The order includes \$3,000,000 in exemplary damages. Exemplary damages are  
15 damages requested and/or awarded in a lawsuit when the defendant's willful acts were  
16 malicious, violent, oppressive, fraudulent, wanton, or grossly reckless. Defendant  
17 posted truthful items about Plaintiffs in order to protect animals and the public. Plaintiffs  
18 proved no malice. Defendant did not act with malice toward Plaintiff but with concern for  
19 the protection of animals and the public. Exemplary damages are only awarded only  
20 when compensatory damages do not cover all actual damages. There were no actual  
21 damages. Exemplary damages are based on the individual's net worth. As per  
22 Defendant's affidavit of indigence, Defendant has a negative net worth.

23 Texas law provides that an award for exemplary damages is justified only upon  
24 proving fraud, malice, or gross negligence by clear and convincing evidence. Tex. Civ.  
25 Prac. & Rem. Code Ann. § 41.003. "Because fraud is often difficult to prove, courts

1 justify awarding exemplary damages upon a showing of malice." 326 B.R. at 392 (citing  
2 Roth v. Mims, 298 B.R. 272, 297 (N.D. Tex. 2003)). The clear and convincing standard  
3 has been described as falling between the "preponderance of the evidence" standard  
4 used in civil proceedings and the "beyond a reasonable doubt" standard used in  
5 criminal proceedings. Tex. Civ. Prac. & Rem. Code Ann. § 41.008. "The amount  
6 awarded must be reasonably proportional to actual damages, though no set ratio exists  
7 for measuring reasonableness." In re Amberjack Interests, 326 B.R. at 393 (citing Alamo  
8 Nat'l Bank v. Kraus, 616 S.W.2d 908, 910 (Tex. 1981)). The Court weighs the following  
9 six factors in determining the reasonableness of an award: (1) the nature of the wrong;  
10 (2) the character of the conduct involved; (3) the degree of culpability of the wrongdoer;  
11 (4) the situation and sensibilities of the parties concerned; (5) the extent to which such  
12 conduct offends a public sense of justice and propriety; and (6) the net worth of the  
13 defendant. \$3,000,000 in exemplary damages is excessive. It would arbitrary deprive  
14 defendant of property in violation of due process.

15 The order includes \$10,000 liquidated damages per the contract. Again, Plaintiffs did  
16 not prove the elements of breach of contract. Defendant's actions would never have  
17 been a breach of the supposed contract. The contract clearly states (Exhibit 2);

18 "In the event that Trainee is notified in writing that Trainee's Certificate of Completion  
19 has been revoked by BWS and Trainee thereafter publishes, advertises or  
20 communicates to any person the fact that Trainee was trained by BWS or is certified by  
21 BWS, then Trainee agrees to pay BWS liquidated damages in the amount of \$10,000,  
22 and all attorney's fees incurred by BWS in enforcing this contract."

23 Defendant never received a certificate of completion as Defendant did not complete  
24 the full two week internship as she left early. No certificate of completion was revoked.  
25 Defendant has never published, advertised or communicated to any person that Trainee  
was trained by BWS or is certified by BWS. This is the only mention of liquidated

1 damages and breach in the contract which Defendant still states she did not sign.  
2 Therefore, there can be no liquidated damages or attorney's fees as per the supposed  
3 contract.

4 The order includes attorney fees in the amount of \$176,700. Again, Plaintiffs did not  
5 prove breach of contract as noted in item 9. Attorney fees can only be awarded if there  
6 was a breach of contract.

7 **Conclusion**

8 The granting of a new trial will not prejudice the other parties to this cause.

9 Movant is ready, able and willing to go to trial immediately and no delay, harm, or  
10 prejudice will occur to the other parties as a result of Movant's motion.


11 **Prayer**

12 Movant Defendant Mary Cummins prays that the judgment be reversed. In the  
13 alternative Defendant prays that after notice and hearing the judgment rendered in this  
14 cause be set aside and that Movant be granted a new trial.

15 Respectfully submitted,

16  
17 Mary Cummins, Defendant Pro se  
18 645 W 9<sup>th</sup> St, #110-140  
19 Los Angeles, CA 90015-1640  
20 Phone 310-877-4770  
21 Email: [mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)

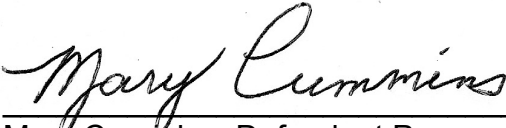
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Mary Cummins, Defendant Pro Se

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**CERTIFICATE OF SERVICE**

I, Mary Cummins, hereby certify that a TRUE COPY of the above **DEFENDANT'S AMENDED MOTION FOR NEW TRIAL AND TO VACATE JUDGMENT** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at  
Randy Turner  
Bailey & Galyen  
1901 W. Airport Freeway  
Bedford, TX 76021  
Fax: 817-545-3677  
this 13<sup>th</sup> Day of November, 2012



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Mary Cummins, Defendant Pro se  
645 W 9<sup>th</sup> St, #110-140  
Los Angeles, CA 90015-1640  
Phone 310-877-4770  
Email: [mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)








1 WHEREFORE, Defendant respectfully requests that the Court grant this Motion for  
2 Telephonic Hearing.

3 Respectfully submitted,

4  
5 Mary Cummins, Defendant Pro se  
6 645 W 9<sup>th</sup> St, #110-140  
7 Los Angeles, CA 90015-1640  
8 Phone 310-877-4770  
9 Email: [mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)  
10 November 13, 2012

11 By:

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13 Mary Cummins  
14 Mary Cummins, Defendant Pro Se  
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**CERTIFICATE OF SERVICE**

I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR TELEPHONIC HEARING** was served on the Appellees' Attorney of record by FAX and by FIRST CLASS MAIL at

**RANDY TURNER**  
Bailey & Galyen  
1901 W. Airport Fwy  
Bedford, Texas 76021  
this 13<sup>th</sup> Day of November, 2012



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