

**02-12-00285-CV**

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IN THE COURT OF APPEALS  
FOR THE SECOND DISTRICT OF TEXAS  
Fort Worth, Texas

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MARY CUMMINS,  
Defendant-Appellant,  
v.

AMANDA LOLLAR, BAT WORLD SANCTUARY,  
Plaintiffs-Appellees

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On Appeal From the 352nd Judicial District Court  
Tarrant County, Texas  
Trial Court Cause No. 352-248169-10  
Honorable William Brigham Presiding

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**APPELLANT'S RESPONSE TO APPELLEES' MOTION TO STRIKE  
APPELLANT, MARY CUMMINS' BRIEF**

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Appellees Bat World Sanctuary and Amanda Lollar filed a motion to strike Appellant's brief April 8, 2013. Appellees stated Appellant's brief fails to comply with Tex. R. App. P. 38.1 and this Court's Local Rule 1.

**BACKGROUND**

Appellees, Bat World Sanctuary and Amanda Lollar, sued Appellant, Mary Cummins, for defamation and breach of contract. After a bench trial,

the trial court entered judgment for Appellees in the amount of \$6.1 million dollars. Appellant then appealed.

### **ARGUMENT AND AUTHORITIES**

Appellant's brief complies with Tex. R. App. P. 38.1 and this Court's Local Rule 1. Tex. R. App. P. 38 states that an appellate brief must contain all points or issues relied upon, argument and authorities under each point or issue, and all facts relied upon for the appeal with references to the pages in the record where those facts can be found. Appellant's brief complies with this rule.

Appellant refers to the court record and to legal authorities. Every quotation from the court record has a citation to the specific volume, page and line(s). Appellant cites specific legal authorities.

Appellees state Appellant's appendix fails to include the trial court's findings of fact and conclusions of law as per Rule 38.1(k)(1)(B). Appellant included the final court order and refers to the oral order from the court record. If the Court desires Appellant would be willing to amend the brief to include the trial court's "Facts and Findings" though Appellant's brief does not refer to or rely upon this document. This document was requested by

Appellant after the trial. It was not written by the Court but by Appellees' attorney Randy Turner.

Appellant's brief does not refer to items not contained within the appellate record. Appellant submitted into evidence Exhibit 36 which was a disc of many photos and videos taken at BWS. This was submitted at C.R. Volume 4, pg 126, lines 14-25, pg 127 lines 1-3. Plaintiffs did not object. Court admitted it into evidence. Appellant played this specific video of Appellee Amanda Lollar holding a rabid bat in her bare hand C.R. Volume 4, pg 71 lines 18-25, pg 72 lines 1-6.

Exhibit 36 in the court record states "Defendant's Exhibit 36 - 189 Images - Part007 Video." Only the photos were included. The videos did not make it onto the disc Appellant received from this Court. Appellant assumed they were not included in the disc merely because the video files were too large just like Plaintiffs original exhibits which were submitted, e.g. Exhibits 1, 3. The only videos included in the disc Appellant received are Plaintiffs' exhibits. Appellant was not able to refer to the specific video from Exhibit 36 so Appellant referred to the exact same video file which is posted online. The video is contained in the appellate record. It just was not on the disc Appellant received.

This video is important because Appellees have accused Appellant of making a supposedly defamatory statement item 37, “She's the one who handles rabid bats with her bare hands.” Appellant needs to show the court this video which shows Appellee holding a bat which she states is exhibiting the signs of rabies in her bare hand to prove that this item is the truth.

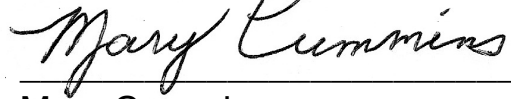
Appellees state that Appellant’s brief violates Local Rule 1(G) in that it is longer than 50 pages. The Texas Supreme Court approved the new word count requirement effective December 1, 2012. As per Texas Rules of Appellate Procedure 9.4(i)(2)(B) “A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not.” Appellant’s brief was computer generated. It contains 14,960 words and therefore complies with the rule. Page 73 in Appellant’s brief contains a certificate of compliance with this new rule.

Appellant’s brief needed to be 14,960 words because Appellees accused Appellant of making 47 supposedly defamatory statements. Appellant needed to address each statement in her brief. The 14,960 words were needed to clarify the points on appeal.

**PRAYER**

Appellant respectfully requests that this Court denies Appellees' Motion to Strike Appellant's brief.

Respectfully submitted

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink and is positioned above a horizontal line.

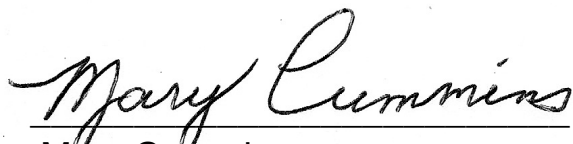
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Mary Cummins  
Appellant In Pro Per

## CERTIFICATE OF SERVICE

On April 9, 2013 in compliance with Texas Rules of Civil Procedure 21a I served a copy of this reply upon all other parties to the trial court's judgment by electronic filing, fax, email and first-class United States mail, properly posted and deliverable as follows:

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Mary Cummins  
Appellant In Pro Per