

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-4902-GHK (MRWx)	Date	August 8, 2012
Title	<i>Mary Cummins v. Amanda Lollar, et al.</i>		

Presiding: The Honorable **GEORGE H. KING, U. S. DISTRICT JUDGE**

Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

None

Attorneys Present for Defendants:

None

Proceedings: (In Chambers) Order to Show Cause

On September 29, 2011, Plaintiff Mary Cummins (“Plaintiff”) filed an action against Amanda Lollar and Bat World Sanctuary. CV 11-8081-DMG (MANx) (“11-8081 Action”). Plaintiff’s First Amended Complaint in the 11-8081 Action alleges that:

Defendants knowingly published false statements of fact such as but not limited to[:] Plaintiff “has a criminal record,” Plaintiff was “convicted” of “theft of property, forged name on credit card,” Plaintiff is a “cyberstalker,” “cybersquatter,” Plaintiff was “picked up by police,” Plaintiff “hacked into our website” and “email list,” Plaintiff was “picked up by the LAPD anti-terrorism task force,” Plaintiff “posts pornography in children’s chat rooms,” Plaintiff “commits animal cruelty,” Plaintiff “tortures animals,” and Plaintiff is a “whore.” Defendants knew or should have known that the statements of fact made against Plaintiff were false.

11-8081 Action, FAC 8; *accord id.* at 9.

On June 5, 2012, Plaintiff filed a Complaint in the above-captioned action (“12-4902 Action”) asserting claims for negligence, negligent interference with prospective economic advantage, and negligent infliction of emotional distress against Defendants Amanda Lollar (“Lollar”) and Bat World Sanctuary (“Bat World” and, collectively, “Defendants”). These claims were based on Plaintiff’s allegations that while an intern at Bat World in Mineral Wells, Texas, Plaintiff hit her head on a piece of wood, fell, and injured her head and back. On July 6, 2012, we issued an Order to Show Cause why this action should not be dismissed or transferred for improper venue.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-4902-GHK (MRWx)	Date	August 8, 2012
Title	<i>Mary Cummins v. Amanda Lollar, et al.</i>		

On July 9, 2012, Plaintiff filed a First Amended Complaint (“FAC”).¹ In addition to the claims asserted in the first Complaint, Plaintiff’s FAC now also asserts claims for negligent infliction of emotional distress, defamation, defamation per se, intentional interference with business relations, intentional interference with prospective economic advantage, and harassment. These additional claims are based on a different factual predicate – Plaintiff’s allegations that after she returned to California, Defendants harassed and ridiculed her on the internet. The FAC also now asserts that venue is proper because “Plaintiff has been harassed, defamed and financially damages in California.” (FAC ¶ 22).

On July 30, 2012, we issued another Order to Show Cause (“OSC”), this time as to why the new claims and factual allegations asserted in the FAC should not be dismissed, because it appeared that Plaintiff filed her FAC in a bad faith effort to establish venue in this action over Plaintiff’s claims arising out of her injuries that occurred at Bat World in Mineral Wells, Texas. We noted that the claims Plaintiff adds in the FAC – the only claims in the FAC that appear to be tethered to this venue – and the factual predicate for those claims appear to be identical to claims already pending in this district before Judge Dolly M. Gee in the 11-8081 Action. We warned Plaintiff that her failure to timely and adequately show cause will be deemed her admission that these claims were improperly added and that in that event, we would dismiss these claims, without prejudice, and transfer this action to the U.S. District Court for the Northern District of Texas.

I. Plaintiff’s Bad Faith Amendment of the Complaint

On August 2, 2012, Plaintiff filed a Response to our OSC. Plaintiff states that “[t]he factual issues for each of the defendants and each of the claims is actually quite different” from the 11-8081 Action because “[t]he defamation claims in this current suit are all related to the main personal injury action. Plaintiff also states that since the 11-8081 Action was filed, “[t]here have . . . been intervening developments.” In other words, the Defendants have made further defamatory statements about her on the internet since the time that action was filed, and these defamatory statements are included in the FAC in the action before us but not in the 11-8081 Action.

Having reviewed the dockets in the 11-8081 Action and the 12-4902 Action, it is clear that, contrary to Plaintiff’s assertion, the factual issues presented in her defamation cases are not “actually quite different.” As noted above, in the 11-8081 Action, Plaintiff alleges:

Defendants knowingly published false statements of fact such as but not limited to[:]
Plaintiff “has a criminal record,” Plaintiff was “convicted” of “theft of property, forged name on credit card,” Plaintiff is a “cyberstalker,” “cybersquatter,” Plaintiff was “picked up by police,” Plaintiff “hacked into our website” and “email list,” Plaintiff was “picked up by the LAPD anti-terrorism task force,” Plaintiff “posts pornography in children’s chat rooms,”

¹ Plaintiff’s FAC was filed as a matter of course under Federal Rule of Civil Procedure 15(a)(1)(B), because it was filed within twenty-one days of Defendants’ Motion to Dismiss or Transfer for Improper Venue.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-4902-GHK (MRWx)	Date	August 8, 2012
Title	<i>Mary Cummins v. Amanda Lollar, et al.</i>		

Plaintiff “commits animal cruelty,” Plaintiff “tortures animals,” and Plaintiff is a “whore.” Defendants knew or should have known that the statements of fact made against Plaintiff were false.

11-8081 Action, FAC 8; *accord id.* at 9. In the 12-4902 Action before us, Plaintiff identically alleges:

Defendants knowingly published false statements of fact such as but not limited to[:] Plaintiff “has a criminal record,” Plaintiff was “convicted” of “theft of property, forged name on credit card,” Plaintiff is a “cyberstalker,” “cybersquatter,” Plaintiff was “picked up by police,” Plaintiff “hacked into our website” and “email list,” Plaintiff was “picked up by the LAPD anti-terrorism task force,” Plaintiff “posts pornography in children’s chat rooms,” Plaintiff “commits animal cruelty,” Plaintiff “tortures animals,” and Plaintiff is a “whore.” Defendants knew or should have known that the statements of fact made against Plaintiff were false.

11-4091 Action, FAC 8; *accord id.* at 9. As the factual predicate for Plaintiff’s newly added claims is identical to the factual predicate for 11-8081 Action, Plaintiff has failed to show good cause why the claims newly asserted in the FAC should not be dismissed because they were added in bad faith to circumvent venue requirements.² Accordingly, we hereby **DISMISS** Claims 7-9 and Plaintiff’s request for a permanent injunction. These claims and this request, which were newly asserted in Plaintiff’s FAC, are premised on Defendants’ purported harassment and defamation, rather than the injury Plaintiff purportedly suffered while an intern at Bat World Sanctuary in Mineral Wells, Texas.

II. Improper Venue

The claims that remain are premised only on the injury that Plaintiff suffered at Bat World Sanctuary in Mineral Wells, Texas. The FAC fails to establish that venue is proper in this district as to these claims. Under 28 U.S.C. § 1391(b), a civil action may only be brought in “(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . ; or (3) if there is no district in which an action may otherwise be brought as provided in

² Additionally, insofar as Plaintiff argues that in the 12-4902 Action before us, she has asserted claims for harassment and defamation that has occurred since the 11-8081 Action was filed, this explanation fails to establish good cause as required by our July 30, 2012 Order. If Plaintiff is of the view that events subsequent to the filing of the 11-8081 Action warrant additional claims for harassment or defamation, these events can be included in the 11-8081 Action in a supplemental pleading filed pursuant to Federal Rule of Civil Procedure 15(d), which provides: “On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Including these harassment claims in this action, which is nothing more than a personal injury action, again appears to be Plaintiff’s efforts to amend this action in an effort to circumvent venue requirements.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-4902-GHK (MRWx)	Date	August 8, 2012
Title	<i>Mary Cummins v. Amanda Lollar, et al.</i>		

this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” Venue is not proper in this district under § 1391(b)(1) because the FAC alleges that the Defendants named therein are not all residents of California. (*See, e.g.*, FAC ¶ 11 (“Bat World Sanctuary President Amanda Lollar is a resident of Palo Pinto County, Texas.”)). Venue is not proper in this district under § 1391(b)(2) because it does not appear that “a substantial part of the events or omissions giving rise to the claim occurred” in this district. Indeed, the FAC demonstrates all of the events that gave rise to Plaintiff’s injury occurred at the location of that injury – at Bat World Sanctuary in Mineral Wells, Texas. (FAC ¶ 4).³

Finally, venue is not proper in this district under § 1391(b)(3) because the FAC does not demonstrate that this action could not have been brought in any other district under § 1391(a)(1) or (2). Indeed, it would appear that this action could have been brought in the U.S. District Court for the Northern District of Texas, where the events giving rise to this action occurred. Because venue is improper in this judicial district but is proper in the Northern District of Texas, we hereby **TRANSFER** this action to the U.S. District Court for the Northern District of Texas, Fort Worth Divison.⁴

IT IS SO ORDERED.

 :

 Initials of Deputy Clerk Bea

³ Plaintiff has argued that “a substantial part of the events or omissions giving rise to the claim occurred” in this district because “[w]hile Plaintiff suffered the initial injury in Texas, Plaintiff’s witnesses and doctors are located in California” and it “would be overly burdensome to Plaintiff in light of her medical and financial condition” to litigate this action in Texas. (*See, e.g.*, Dkt. No. 11, at 2). Such considerations may be relevant to a motion to transfer venue pursuant to 28 U.S.C. § 1404. They are not, however, relevant considerations to determining whether venue is proper in this district to begin with under 28 U.S.C. § 1391(b). Additionally, we note that even a motion to transfer venue pursuant to § 1404 requires that a party must be seeking to transfer the action to a venue where it originally may have been brought; fairness concerns are not themselves sufficient to warrant such a transfer.

⁴ Defendants’ Motion to Dismiss or Transfer for Improper Venue is hereby **DENIED** as moot.