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COBBS TRUST  
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7 **UNITED STATES BANKRUPTCY COURT FOR THE**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

<p>9 In re:</p> <p>10 MARY CUMMINS-COBB,</p> <p style="text-align: right;">Debtor</p> <hr/> <p>11 KONSTANTIN KHIONIDI, as Trustee of the</p> <p>12 COBBS TRUST,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>13 MARY CUMMINS-COBB,</p> <p style="text-align: right;">Defendant.</p> <hr/>	<p>) Case No. 2:17-bk-24993-RK</p> <p>) Chapter 7</p> <p>) Adv. Proc. No. 2:18-ap-01066-RK</p> <p>) MOTION FOR PARTIAL SUMMARY</p> <p>) JUDGMENT ON THE FOURTH CAUSE OF</p> <p>) ACTION</p> <p>) Date: January 8, 2019</p> <p>) Time: 2:30 p.m.</p> <p>) Judge: Honorable Robert N. Kwan</p> <p>) Courtroom: 1675</p> <p>) Edward R. Roybal Federal Building</p> <p>) 255 E. Temple Street, Suite 1682</p> <p>) Los Angeles, CA 90012</p>
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1 PLEASE TAKE NOTICE that Plaintiff KONSTANTIN KHIONIDI, as Trustee of the  
2 COBBS TRUST hereby moves for Partial Summary Judgment on the Fourth Cause of Action of  
3 the Adversary Complaint to determine the non-dischargeability of Plaintiff's judgment against the  
4 debtor and defendant Mary Katherine Cummins-Cobb pursuant to 11 U.S.C. § 523(a)(6).

5 The Motion is based upon 11 U.S.C. § 523(a)(6), and Rule 56 of the Federal Rules of Civil  
6 Procedure ("FRCP") as incorporated by Rule 7056 of the Federal Rules of Bankruptcy  
7 Procedure ("FRBP"), the accompanying Motion, Memorandum of Points and Authorities, the  
8 Declaration of Philip H. Stillman, the Separate Statement of Uncontroverted Facts, the Proposed  
9 Separate Statement of Uncontroverted Facts and Conclusions of Law and  
10 all papers and pleadings on file herein, and such other evidence that may be presented to the  
11 Court at or prior to the hearing.

12 As grounds therefor, Plaintiff states that the Texas courts have conclusively determined in  
13 a final judgment that debtor and defendant Mary Cummins-Cobb acted willfully and maliciously in  
14 defaming Amanda Lollar, which findings establish that the Texas judgment and the California  
15 Sister State Judgment based thereon are nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

16 Respectfully Submitted,

17 STILLMAN & ASSOCIATES

18 

19 Dated: November 26, 2018

20 By: \_\_\_\_\_

Philip H. Stillman, Esq.

*Attorneys for KONSTANTIN KHIONIDI, as Trustee of  
the COBBS TRUST*

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*Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998). . . . . 2

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*Mitre v. Brooks Fashion Stores, Inc.*, 840 S.W.2d 612, 623-24 (Tex. App. 1992). . . . . 9

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 A. The Underlying Texas Judgment.

4 After a repeated campaign of harassment online against Bat World Sanctuary, a rescue  
5 rehabilitation and teaching facility in Texas operated by Amanda Lollar,<sup>1</sup> Bat World and Lollar sued  
6 debtor and defendant Mary Cummins-Cobb for Defamation and Breach of Contract. A copy of the  
7 operative Second Amended Petition filed on October 4, 2011 in *Bat World Sanctuary et al. v.*  
8 *Cummins*, Tarrant County District Court Case No. 352-248169-10 is attached to the Stillman  
9 Declaration as Exhibit 1. After a bench trial, the court gave its oral ruling that “the plaintiff has  
10 clearly proven that a defamation in this case was egregious as well as malicious as well as  
11 intentional.”<sup>2</sup> See June 14, 2012 Trial Transcript, 4:8-11, attached to the Stillman Declaration as  
12 Exhibit 2 (emphasis added). Based thereon, the Texas Court awarded \$3 million in damages on the  
13 defamation claim and \$3 million in exemplary damages. A copy of the Texas Judgment is  
14 attached to the Stillman Declaration as Exhibit 3. Cummins appealed that judgment and the  
15 judgment was affirmed as to the Defamation cause of action and as to the award of exemplary  
16 damages. A true and correct copy of the Texas Court of Appeals opinion is attached to the Stillman  
17 Declaration as Exhibit 4. Her petition for review to the Texas Supreme Court was denied. *Id.* The  
18 Texas judgment is therefore final.

19 B. The California Judgment.

20 Lollar then commenced an action in the Los Angeles Superior Court pursuant to the  
21 California Sister-State Judgment Act, Code Civ. P. § 1710.25, *Lollar v. Cummins*, Los Angeles  
22 Superior Court Case No BS140207, to domesticate the Texas Judgment, which judgment was

23 \_\_\_\_\_  
24 <sup>1</sup> The trial court, in its ruling after trial, stated that Ms. Lollar “I think that Amanda Lollar, the  
25 plaintiff in this case, had a worldwide reputation in the proper care of bats similar to that of Jan  
26 Goodall in the care of primates.” June 14, 2012 Transcript, p. 4, lines 11-15, Stillman Decl., Exhibit  
2.

27 <sup>2</sup> Cummins bizarrely states in her Opposition to Plaintiff’s Motion to Amend Scheduling  
28 Order, p. 5 that the underlying judgment in the Texas case does not mention “defamation,” or  
“malice.”

1 entered as a California Judgment on November 9, 2012 in the amount of \$6,121,039.42. A copy of  
2 the California Judgment is attached to the Stillman Decl. as Exhibit 5. On April 10, 2017, Ms. Lollar  
3 assigned the judgment to the current plaintiff, Konstantin Khionidi, as Trustee of the Cobbs Trust,  
4 pursuant to Code Civ. P. § 673. A copy of the filed Acknowledgment of Assignment is attached to  
5 the Stillman Decl. As Exhibit 6. Although Cummins admitted in her Answer to the Adversary  
6 Complaint that the assignment was valid, Answer, ¶ 2 [Dkt. 9], she disputed it at oral argument on  
7 Plaintiff's Motion for Judgment on the Pleadings. However, when directly asked in an interrogatory  
8 what facts she relied upon in disputing the assignment of the judgment, she was unable to identify  
9 any reason why the Assignment of the California Judgment was improper. A copy of the  
10 interrogatory No. 9 and her interrogatory response thereto are attached to the Stillman Decl. As  
11 Exhibit 7. With interest accruing at \$1,676.99 per day, as of March 9, 2018, the amount of the Sister  
12 State Judgment is \$9,385,842.81. Complaint, ¶ 36; Answer, ¶ 2 (admitting ¶ 36).

13 Accordingly, it has been finally adjudicated that the Debtor's defamation of Ms. Lollar was  
14 both "willful and malicious" as those terms are defined in *In re Sicroff*, 401 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
15 2005)(judgment for defamation is nondischargeable pursuant to § 523(a)(6)). The debt  
16 represented by the Defamation Judgment and the Sister State Judgment is therefore  
17 nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

## 18 ARGUMENT

### 19 I.

#### 20 THE JUDGMENT AGAINST THE DEBTOR IS NONDISCHARGEABLE PURSUANT TO 21 §523(a)(6)

22 A discharge under 11 U.S.C. § 727 does not discharge an individual debtor from "any debt  
23 for willful and malicious injury by the debtor to another entity or to the property of another entity."  
24 11 U.S.C. § 523(a)(6).

#### 25 A. Cummins' Defamation Was "Willful".

26 An injury is "willful" if acts are done with the actual intent to cause injury. *Kawaauhau v.*  
27 *Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998); *In re Youngchul Park*, 2017 Bankr. LEXIS  
28 1939, at 35 (Bankr. C.D. Cal. July 13, 2017)("an injury is 'willful' 'when it is shown either that the

1 debtor had a subjective motive to inflict the injury or that the debtor believed that injury was  
2 substantially certain to occur as a result of his conduct.”) That Cummins’ defamation was “willful”  
3 is established in four places.

4 1. **The Trial Court Held That Cummins’ Defamation of Lollar was “Egregious,  
5 Malicious As Well As Intentional.”**

6 First, after the bench trial, in making his oral ruling from the bench at the conclusion of the  
7 trial and before the written form of judgment had been prepared, the trial court ruled that “the  
8 plaintiff has clearly proven that a defamation in this case was *egregious* as well as *malicious* as well  
9 as *intentional*.” June 14, 2012 Trial Transcript, 4:8-11, Stillman Decl., Exhibit 2. In addition, the trial  
10 court included a list of all of the defamatory statements that, as part of the Final Judgment, Cummins  
11 was ordered to take down. Final Judgment, pp. 1-5.

12 2. **The Texas Court Of Appeal Found The Evidence “Left No Doubt” That  
13 Cummins Had A Specific Intent To Cause Substantial Injury.**

14 Second, after reviewing the trial record, the Texas Court of Appeals held that “The  
15 comments she made about Lollar leave no doubt that she had a specific intent to cause  
16 substantial injury or harm to Lollar.” *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS  
17 3472, at p.73 (Tex. App. Apr. 9, 2015). In reviewing the issue of whether sufficient evidence  
18 supported that finding, the Texas Court of Appeals stated “Clear and convincing evidence also  
19 supports a finding that Cummins published statements on the internet with actual malice.”  
20 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 73 (Tex. App. Apr. 9, 2015).  
The Texas Court of Appeals further stated:

21 Cummins posted a flood of statements about Lollar accusing her of all manner of  
22 serious wrongdoings, including crimes, and she published her statements to as  
23 wide of an audience as she could, including to numerous law enforcement  
24 agencies. The statements were designed to ruin Lollar’s professional and personal  
25 reputation locally and nationally. . . . Lollar showed by clear and convincing  
26 evidence that Cummins acted with malice as that term is used in chapter 41 and  
27 with the actual malice required under the First Amendment. The evidence supports  
28 a conclusion that Cummins engaged in a ***persistent, calculated*** attack on Lollar with  
***the intention to ruin both Lollar’s life’s work and her credibility and standing  
in the animal rehabilitation community.*** Cummins posted innumerable derogatory  
statements about Lollar impugning her honesty and her competency, and she  
repeatedly and relentlessly reported Lollar to multiple government agencies. The  
comments she made about Lollar leave no doubt that she had a specific intent to  
cause substantial injury or harm to Lollar.



1 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015), p. 71. A  
2 “persistent, calculated attack on Lollar with the intention to ruin both Lollar's life's work and her  
3 credibility and standing in the animal rehabilitation community” made with actual malice can *only*  
4 be consistent with “the actual intent to cause injury” sufficient to establish the “willfulness” prong of  
5 § 523(a)(6).

6 **3. Exemplary Damages In A Defamation Case Establishes “Actual Malice.”**

7 Third, the trial court awarded \$3 million in “exemplary damages.” Texas Judgment, Exhibit  
8 3. As the Court of Appeals held, “We hold that the record supports a finding of malice—both of  
9 the malice required for an award of exemplary damages under Texas law and of actual malice as  
10 required for an award of exemplary damages in defamation actions.” *Cummins v. Bat World*  
11 *Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 75 (Tex. App. Apr. 9, 2015). “Malice” in this context  
12 means “a specific *intent* by the defendant to cause substantial injury or harm to the claimant.”  
13 *Id.* at p. 70, citing Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7)(defining malice).

14 Under Texas law, “Texas courts have long recognized that exemplary damages are  
15 recoverable when the injury is tainted with fraud, malice, or willful wrong. [citation omitted] The  
16 rule allowing exemplary damages when it is shown that a defendant committed a willful,  
17 malicious or fraudulent wrong is one of general application.” *InterFirst Bank Dall., N.A. v. Risser*,  
18 739 S.W.2d 882, 907 (Tex. App. 1987). “Additionally, in a defamation action, the Texas  
19 Supreme Court has stated that ‘recovery of exemplary damages are appropriately within the  
20 guarantees of the First Amendment if the plaintiff proves by clear and convincing evidence that  
21 the defendant published the defamatory statement with actual malice.’” *Id.* Since the Final  
22 Judgment – affirmed on appeal – determined that Cummins made the defamatory statements  
23 with “actual malice,” Plaintiff has established that Cummins’ defamation was intentional and  
24 establishes the “willfulness” prong of a § 523(a)(6) nondischargeability action.

25 **4. Cummins Made Knowingly False Statements About Lollar.**

26 The Court of Appeals’ Opinion exhaustively recounts the intentional smear campaign by  
27 Cummins against Lollar, grouping Cummins’ defamatory *per se* statements into several  
28 categories. “Most of statements fall into one of three categories: allegations that Lollar

1 committed animal cruelty, allegations that Lollar committed fraud, and allegations that Lollar  
2 violated a law, rule, standard, or regulation.” *Cummins v. Bat World Sanctuary*, 2015 Tex. App.  
3 LEXIS 3472, at pp. 33-34 (Tex. App. Apr. 9, 2015). As to each of the statements, the Court  
4 determined that the evidence established that the statements Cummins made and published on  
5 the internet were false. *Id.* at pp. 34-69.<sup>3</sup>

6 Moreover, under Texas law, in the Court of Appeals’ “review of an exemplary damages  
7 award, we must state our reasons for upholding or disturbing the award, and we must ‘address  
8 the evidence or lack of evidence with specificity, as it relates to the liability for or amount of  
9 exemplary damages, in light of the requirements of’ chapter 41.” *Cummins v. Bat World  
10 Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 71 (Tex. App. Apr. 9, 2015). As set forth above,  
11 after reviewing the evidence with specificity, the Court of Appeals concluded that “The evidence  
12 supports a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with the  
13 intention to ruin both Lollar’s life’s work and her credibility and standing in the animal  
14 rehabilitation community.” *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp.  
15 71-73 (Tex. App. Apr. 9, 2015).

16 The trial court also found that Cummins repeatedly lied at trial. “For example, with regard  
17 to Cummins’s statements about Lollar’s dogs, the evidence supported a finding that Cummins  
18 was not telling the truth.” *Id.* at 73-74; regarding a video she posted, Cummins “had no basis for  
19 asserting as fact what was at best speculation and at worst total fabrication. But she posted her  
20 version as fact, not speculation, and then she spread her version as far and wide as she possibly  
21 could,” *Id.* at p. 74; regarding Lollar’s allegedly illegal use of an anaesthetic, “the trial court’s  
22 determination that Cummins was not credible was a reasonable one . . . Based on these  
23 credibility determinations, clear and convincing evidence supports the trial court’s finding that  
24 Cummins made statements on these matters with actual malice.”

25 “Not telling the truth,” “asserting as fact what is at best speculation and at worst a total  
26 fabrication,” and Cummins telling “as many people as she could that Lollar was illegally obtaining

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27  
28 <sup>3</sup> Cummins used her non-profit, Animal Advocates, to publish many of the defamatory  
statements. Texas Judgment, pp. 4-5.

1 and administering Isoflurane and rabies vaccines and that she made these representations as  
2 facts,” when the trial court found her not credible, all demonstrates beyond any burden of proof  
3 that Cummins acted “willfully.”

4 B. The Injury Was “Malicious.”

5 An injury is “malicious,” as that term is used in § 523(a)(6), when it is: “(1) a wrongful act,  
6 (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or  
7 excuse.” [citation omitted]. Within the plain meaning of this definition, it is the wrongful act that  
8 must be committed intentionally rather than the injury itself. *In re Sicroff*, 401 F.3d 1101, 1106 (9<sup>th</sup>  
9 Cir. 2005). In *Sicroff*, the Ninth Circuit held that libelous statements meet at least the first three  
10 elements of a nondischargeable debt under 11 U.S.C. § 523(a)(6):

11 Because we are persuaded that at least some of Sicroff's statements were libelous,  
12 we also conclude that the first two criteria of “malicious injury” are met. A libelous  
13 act, by its nature, is self-evidently wrongful and is committed by an intentional act of  
14 publication--in this case, by Sicroff's dissemination of his letter. The third  
15 criterion--that the action necessarily cause injury--is also met because Sicroff's  
16 statements were directed at Jett's professional reputation and, therefore, will  
17 necessarily harm him in his occupation.

18 *Id.* at 1106.

19 The trial court and the Court of Appeals in affirming the defamation and exemplary  
20 damages portions of the judgment, held that (1) the Debtor defamed Amanda Lollar, (2) clear  
21 and convincing evidence established that the libelous statements were made by the Debtor with  
22 actual malice, (3) “the statements were designed to ruin Lollar’s professional and personal  
23 reputation locally and nationally” and (4) Cummins-Cobb “had a specific intent to cause  
24 substantial injury or harm to Lollar.” *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS  
25 3472, at pp. 69-70 (Tex. App. Apr. 9, 2015).

26 The fourth element, that the libelous statements were made without “just cause” is  
27 addressed by the specific finding by the trial court that Cummins acted with actual malice and an  
28 intent to injure Ms. Lollar’s professional reputation. *Id.* Moreover, the statements could not be  
made with “just cause” when the trial court awarded exemplary damages against Cummins and  
found that she published the defamatory statements with actual malice. *InterFirst Bank Dall.*, 739  
S.W.2d at 907. As in *Sicroff*, “libelous statements were not made with just cause and excuse.”

1 *Id.* at 1107.

2 **II.**  
3 **COLLATERAL ESTOPPEL ESTABLISHES NON-DISCHARGEABILITY AS A MATTER OF**  
4 **LAW**

5 This court must give full faith and credit to the Texas Judgment. Under the federal full faith  
6 and credit statute, 28 U.S.C. § 1738, federal courts must give state court judgments the same  
7 preclusive effect that those judgments would receive from another court of the same state. *Far*  
8 *Out Productions, Inc. v. Oskar*, 247 F.3d 986, 993 (9<sup>th</sup> Cir. 2001). The state where the judgment  
9 was rendered determines any preclusive effect of the default judgment entered in this case. *In re*  
10 *Nourbakhsh*, 67 F.3d 798, 800 (9<sup>th</sup> Cir. 1995). The bankruptcy court has an obligation to afford  
11 “full faith and credit” to state judicial proceedings. 28 U.S.C. § 1738.

12 The Full Faith and Credit Act requires federal courts to give the same preclusive effect to  
13 state court judgments that those judgments would be given in the courts of the state from which  
14 the judgments emerged. 28 U.S.C. § 1738. State law governs the preclusive effect given to state  
15 court judgments in federal court. See *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222,  
16 232-233 (1998)(citations omitted); *Diruzza v. Cnty. of Tehama*, 323 F.3d 1147, 1152 (9<sup>th</sup> Cir.  
17 2003), citing *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 84 L. Ed. 2d  
18 274, 105 S. Ct. 1327 (1985). In determining the preclusive effect of a state-court judgment, this  
19 court must “refer to the preclusion law of the State in which judgment was rendered.” *Id.* Here,  
20 the applicable state law is Texas law since that would have been the law applied by the federal  
21 district court in the Texas Case on Lollar’s Defamation claim against Cummins in that case. See  
22 Second Amended Petition in Texas Case, Stillman Decl., Exhibit 1. Principles of collateral  
23 estoppel apply to proceedings seeking exceptions from discharge brought under 11 U.S.C. §  
24 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n.11, 112 L. Ed. 2d 755, 111 S. Ct. 654 (1991); *In*  
*re Harmon*, 250 F.3d 1240, 1245 (9<sup>th</sup> Cir. 2001).

25 “[C]ollateral estoppel precludes relitigation of issues argued and decided in prior  
26 proceedings.” *In re Harmon*, 250 F.3d at 1245. The Texas Judgment is entitled to collateral  
27 estoppel on the issue of “willful and malicious injury” as does the California judgment based  
28 thereon.

1 Under Texas law, there are three elements to collateral estoppel:(1) the facts sought to be  
2 litigated in the second action were fully and fairly litigated in the first action; (2) those facts were  
3 essential to the judgment in the first action; and (3) the parties were cast as adversaries in the  
4 first action. *Welch v. Hrabar*, 110 S.W.3d 601, 606 (Tex. App. 2003), *pet. denied*. “Strict mutuality  
5 of parties is no longer required.” *Zea v. Valley Feed & Supply, Inc.*, 354 S.W.3d 873, 877 (Tex.  
6 App. 2011). “The doctrine is designed to promote judicial efficiency and to prevent inconsistent  
7 judgments by preventing any relitigation of an ultimate issue of fact. *Id.* It is only necessary that  
8 the party against whom collateral estoppel is being asserted had a full and fair opportunity to  
9 litigate the issue.” *Id.* Under a plea of collateral estoppel, essential issues of fact previously  
10 determined and adjudged by a court of competent jurisdiction are binding in a subsequent action  
11 between the same parties. *See Bonniwell v. Beech Aircraft Corp.*, 663 S.W.2d 816, 822 (Tex.  
12 1984). All three elements of collateral estoppel are present here.

13 A. The Ultimate Facts Sought To Be Litigated In This Action Were Fully And Fairly Litigated  
14 In *Bat World Sanctuary v. Cummins*.

15 The first element of collateral estoppel under Texas law is easily established, as Cummins  
16 fully and fairly litigated whether she had defamed Lollar and whether she was liable to Lollar for  
17 exemplary damages in the course of a four day bench trial, which established that Cummins’  
18 actions were both willful and malicious, the two elements forming the basis of a §523(a)(6)  
19 determination of nondischargeability.

20 1. **The Elements Of Defamation Under Texas Law.**

21 The elements of a defamation action include (1) the publication of a false statement of fact  
22 to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of  
23 fault, and (4) damages. *Van Der Linden v. Khan*, 535 S.W.3d 179, 198 (Tex. App. 2017). By  
24 entering final judgment against Cummins on Lollar’s Second Amended Petition for defamation  
25 and exemplary damages in the Texas action, the trial court therefore necessarily found that the  
26 statements listed in the Final Judgment were false statements of fact, (2) were defamatory to  
27 Lollar, (3) by awarding exemplary damages, found that Cummins had acted intentionally and with  
28

1 actual malice<sup>4</sup> and (4) held that Lollar had established entitlement to damages of \$3,000,000 and  
2 \$3,000,000 in exemplary damages.

3           **2. The Ultimate Facts Relevant To This Nondischargeability Action Have All**  
4           **Been Established.**

5           As discussed above, there are only two elements to a §523(a)(6) nondischargeability  
6 claim: (1) that it was done willfully, and (2) with actual malice. Since the Texas Judgment  
7 establishes that Cummins defamed Lollar and that in defaming her, Cummins acted with “actual  
8 malice,” the ultimate facts establishing that the Texas Judgment is nondischargeable pursuant to  
9 § 523(a)(6) have been finally and conclusively litigated. As held by the Texas Court of Appeals,  
10 “malice” sufficient to establish exemplary damages in a defamation action means “a specific  
11 *intent* by the defendant to cause substantial injury or harm to the claimant.” *Cummins v. Bat*  
12 *World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 69-70 (Tex. App. Apr. 9, 2015) citing Tex.  
13 Civ. Prac. & Rem. Code Ann. § 41.001(7).

14           **B. The Facts Were Essential To The Texas Judgment.**

15           Obviously, the trial court’s holding that Cummins had made defamatory statements about  
16 Lollar is an essential finding to the trial court’s award of damages for defamation against  
17 Cummins. Without a finding that Cummins published defamatory statements to third parties,  
18 there could obviously be no liability for defamation. In addition, the trial court’s mandatory  
19 injunction requiring that Cummins remove the list of defamatory statements from her various  
20 blogs and websites is based on the fact that the identified statements were false and

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23           <sup>4</sup> Under Texas law, the *minimum* requisite degree of fault in a defamation case involving a  
24 private individual is negligence. *Foster v. Laredo Newspapers, Inc.*, 541 S.W.2d 809, 819 (Tex.  
25 1976), *cert. denied*, 429 U.S. 1123, 51 L. Ed. 2d 573, 97 S. Ct. 1160 (1977). Although it is clear that  
26 the trial court found that Cummins acted intentionally and with the specific intent to injure Lollar, *not*  
27 negligently, it is irrelevant, given that within the context of a defamation cause of action, “actual  
28 malice” is the standard for awarding exemplary damages. *Leyendecker & Associates, Inc. v.*  
*Wechter*, 683 S.W.2d 369, 375 (Tex. 1984). In other words, even if the defamation is characterized  
in terms of a negligent breach of duty, an award of exemplary damages would still require a  
showing of actual malice. *Mitre v. Brooks Fashion Stores, Inc.*, 840 S.W.2d 612, 623-24 (Tex. App.  
1992).

1 defamatory.<sup>5</sup>

2 Similarly, the finding that Cummins acted with “actual malice” is essential to the trial court’s  
3 award of exemplary damages as a showing of “actual malice” is required in order to award  
4 exemplary damages in Texas for defamation. *Hancock v. Variyam*, 400 S.W.3d 59, 66 (Tex. 2013)  
5 (“recovery of exemplary damages are appropriately within the guarantees of the First Amendment if  
6 the plaintiff proves by clear and convincing evidence that the defendant published the defamatory  
7 statement with actual malice”).

8 C. Cummins Was Obviously The Judgment Debtor in *Bat World Sanctuary v. Cummins*.

9 The final element establishing collateral estoppel is easily met, since Cummins was the party  
10 against whom the judgment was entered, and the party who defended the case. Thus, the Texas  
11 Court’s determination of the issues cannot be re-litigated in this Court and summary judgment is  
12 proper.

13 D. The Sister State Judgment Is Also Non-Dischargeable.

14 As discussed above, the Texas Judgment was domesticated as a California judgment.  
15 Thus, to the extent that collateral estoppel bars relitigation of the issues determined in the Texas  
16 Judgment, the California Judgment is also non-dischargeable. However, applying the same  
17 rationale above under California law results in the same conclusion. There are five threshold  
18 requirements for application of collateral estoppel in California:

19 First, the issue sought to be precluded from relitigation must be identical to that  
20 decided in a former proceeding. Second, this issue must have been actually  
21 litigated in the former proceeding. Third, it must have been necessarily decided in  
22 the former proceeding. Fourth, the decision in the former proceeding must be final  
23 and on the merits. Finally, the party against whom preclusion is sought must be the  
24 same as, or in privity with, the party to the former proceeding.

25 *In re Harmon*, 250 F.3d at 1245 (applying California law). All of the elements of collateral  
26 estoppel are obviously met here. The issues are identical, in that the court found that the Debtor  
27 acted willfully and with actual malice and with a specific intent to injure Ms. Lollar. Those issues

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28 <sup>5</sup> The Texas Court of Appeals held that to the extent that the injunction prohibited Cummins  
from making statements in the future, that was “prior restraint.” Cummins in fact did repost the  
defamatory statements and was sued again.

1 were actually litigated and necessarily decided by the Texas Judgment as required elements of  
2 the defamation claim. The Texas Judgment is obviously final and on the merits, and was entered  
3 as a Sister State Judgment in California. Finally, Cummins was the defendant in the Texas  
4 Judgment. Thus, collateral estoppel establishes the nondischargeability of the Texas Judgment  
5 and the Sister State Judgment as a matter of law and Plaintiff is entitled to summary judgment on  
6 the Fourth Cause of Action.

7  
8 **III.**  
**THERE IS NO GENUINE ISSUE OF FACT REGARDING THE VALIDITY OF THE**  
**ASSIGNMENT OF THE TEXAS JUDGMENT TO KHIONIDI**

9 Cummins admitted in her Answer, ¶ 2 [Dkt. 9] that the assignment to Mr. Khionidi was  
10 valid. However, at the hearing on Plaintiff's Motion for Judgment on the Pleadings, she  
11 contended that she contested the validity of the assignment of the judgment. Code Civ. P. §  
12 673(a) provides a method for validly assigning a judgment: "An assignee of a right represented  
13 by a judgment may become an assignee of record by filing with the clerk of the court which  
14 entered the judgment an acknowledgment of assignment of judgment." Code Civ. P. § 673(b)  
15 sets forth the requirements for the acknowledgment of assignment of a judgment – all of which  
16 have been met by the Acknowledgment of Assignment of Judgment filed with the Los Angeles  
17 Superior Court and attached to the Stillman Declaration as Exhibit 6.

18 **The title of the court where the judgment is entered and the cause and number of**  
19 **the action.** The Acknowledgment has the proper caption, cause and case number, and was filed  
20 with the Los Angeles Superior Court.

21 **The date of entry of the judgment and of any renewals of the judgment and where**  
22 **entered in the records of the court.** The Acknowledgment contains the date of entry of the  
23 judgment and its entry in the records of the Court.

24 **The name and address of the judgment creditor and name and last known address**  
25 **of the judgment debtor.** The Acknowledgment contains the name and address of the judgment  
26 creditor and the last known address of the judgment debtor (Cummins).

27 **A statement describing the right represented by the judgment that is assigned to the**  
28 **assignee.** The Acknowledgment lists the rights assigned to Mr. Khionidi.



1 **The name and address of the assignee.** The acknowledgment lists the address for Mr.  
2 Khionidi.

3 Pursuant to Code Civ. P. § 673(c), the acknowledgment of assignment of judgment is  
4 executed by Ms. Lollar and notarized. Accordingly, the Acknowledgment exactly complies with  
5 California law regarding assignments of judgment and is therefore a valid assignment.

6 As further icing on the cake, Cummins could not identify even one alleged defect in the  
7 assignment of the judgment in her response to Interrogatory No. 9. Thus, to the extent that  
8 Cummins had any *bona fide* contention that the judgment was validly assigned, she failed to  
9 identify any facts in her interrogatory response to support it and she cannot now contest the  
10 assignment – to the extent that she had any basis to do so.

11 **CONCLUSION**

12 For the foregoing reasons, plaintiff Konstantin Kionidhi, as Trustee of the Cobbs Trust,  
13 requests that this Court enter Partial Summary Judgment on the Fourth Cause of Action in the  
14 Adversary Complaint, determining that the Defamation Judgment and the Sister State Judgment  
15 based thereon, are non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

16 Respectfully Submitted,

17 STILLMAN & ASSOCIATES

18 

19 Dated: November 26, 2018

By: \_\_\_\_\_

20 Philip H. Stillman, Esq.  
21 *Attorneys for KONSTANTIN KHIONIDI, as Trustee of*  
22 *the COBBS TRUST*