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9 TRUST

10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 In re:) Case No. 2:17-bk-24993-RK
13)
14 MARY CUMMINS-COBB,) Chapter 7
15)
16 Debtor) Adv. Proc. No. 2:18-ap-01066-RK
17)

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KONSTANTIN KHIONIDI, as Trustee of the
19 COBBS TRUST,

20 Plaintiff,

21 vs.

22 MARY CUMMINS-COBB,

23 Defendant.
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**JOINT STIPULATION OF THE PARTIES
RE MOTION TO COMPEL DEPOSITION
OF DEFENDANT MARY CUMMINS-
COBB**

Judge: Honorable Robert N. Kwan
Courtroom: 1675
Edward R. Roybal Federal Bldg
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

1 **MOVING PARTY’S INTRODUCTION**

2 This is a motion that should never have needed to be made. Plaintiff’s dispositive
3 Motion for Summary Judgment was set for a hearing on January 8. When this Court
4 continued the hearing on that Motion for approximately two months due to Cummins’
5 failure to submit any evidence in response to Plaintiff’s proposed Statement of
6 Undisputed Facts and Conclusions of Law, it then became necessary to finish discovery
7 that Plaintiff had hoped to avoid. Accordingly, after requesting convenient dates for
8 her deposition on Friday, January 4 and again on January 8, *see* January 8, 2019 email
9 to Cummins, attached to the Stillman Decl. as Exhibit 1, defendant and debtor Mary
10 Cummins-Cobb (“Cummins”) refused to provide any dates for her deposition. When
11 informed by counsel that if she refused to provide convenient dates, counsel would
12 unilaterally set a date, Cummins refused to respond, and counsel duly noticed her
13 deposition on January 10, 2019 for January 28, 2019. A copy of the Notice of Taking
14 Deposition is attached to the Stillman Declaration as Exhibit 2.

15 After receiving the Notice of Taking Deposition, on January 13, 2019 Cummins
16 responded as follows:

17 I will not be at that deposition. Don’t schedule anything. I must depose
18 Lollar at the same time I am deposed. I must depose her first so you don't
19 just run away after my depo. I don't allow video. I also don't allow you to
20 edit the transcript like JJ did. I want the original rough draft of any
21 transcript straight from the reporter. JJ edited out 25% of the last transcript.

22 A copy of Cummins’ email is attached to the Stillman Declaration as Exhibit 3. Thus,
23 for the second time, Cummins has simply refused to be deposed without any legal basis
24 whatsoever. This Court has given Cummins every benefit of the doubt as a *pro per*
25 defendant. However, Cummins is an experienced litigant who has represented herself
26 in at least two trials, numerous court proceedings, and at least two appeals. She was
27 quoted the Federal Rules by counsel and knows her obligations. She should not be
28 given any more consideration at this point than any litigant represented by counsel.

1 Accordingly, the deposition should be compelled and Cummins sanctioned for her
2 abject refusal to cooperate.

3 **I.**

4 **CUMMINS' DEPOSITION MUST BE COMPELLED**

5 **Plaintiff's Position:**

6 Fed. R. Civ. P. 30(a)(1) provides that "A party may, by oral questions, depose
7 any person, including a party, without leave of court" Fed. R. Civ. P. 30(b)(1)
8 requires that a party seeking a deposition give "reasonable notice" of the deposition.
9 Courts construe "reasonable notice" to be five days, if the deposition notice does not
10 require production of documents at the deposition. *Guzman v. Bridgepoint Educ., Inc.*,
11 2014 U.S. Dist. LEXIS 58806, at *4 (S.D. Cal. Apr. 28, 2014); *Millennium Labs, Inc.*
12 *v. Allied World Assur. Co.*, 2014 U.S. Dist. LEXIS 8158, at *2, n. 1 (S.D. Cal. 2014),
13 *Pac. Mar. Freight, Inc. v. Foster*, 2013 U.S. Dist. LEXIS 165275, at *2, n. 2 (S.D. Cal.
14 2013). In this case, the Notice of Taking Deposition did not require the production of
15 documents at the deposition, and thus, although five days is presumptively reasonable,
16 Cummins received *18 days' notice*. Cummins does not claim that she did not receive
17 proper notice and she does not contend that she cannot be deposed. Instead, she has
18 simply refused for the second time to appear for her deposition, offering three meritless
19 contentions. *See Email from Cummins dated Janaury 13, 2019*, attached as Exhibit 3
20 to the Stillman Declaration.

21 **A. Cummins' Claim That She Will Not Be Deposed On Videotape Is Meritless.**

22 As counsel explained to Cummins, Plaintiff has an absolute right to videotape
23 her deposition pursuant to Fed. R. Civ. P. 30(b)(3)(A). In this case it is particularly
24 important to videotape the proceedings as counsel has recently discovered that
25 Cummins has previously accused former counsel of staring at her breasts during the
26 deposition, which ultimately caused her own counsel to withdraw from her case because
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1 of the false accusation. *See Exhibits 4-7* to the Declaration of Philip Stillman herewith.
2 Counsel for Plaintiff wants *no* such problems from Cummins in this case, and
3 videotaping the deposition will make it difficult for Cummins to level unwarranted and
4 false charges against Plaintiff’s counsel *that she has already done in the past*.

5 B. Cummins Cannot Condition Her Deposition On Deposing Amanda Lollar First.

6 As explained to Cummins in one of the parties’ efforts to confer, her demand that
7 she be able to depose former judgment creditor Amanda Lollar before Cummins will be
8 deposited is frivolous for at least three reasons.

9 First, under Fed. R. Civ. P. 26(d)(3)(B), “discovery by one party does not require
10 any other party to delay its discovery.” Thus, Cummins demand for a deposition as a
11 condition precedent to her deposition violates Rule 26(d).

12 Second, her demand that Amanda Lollar be deposed by Cummins before
13 Cummins must sit for her duly noticed deposition is meritless because (1) Cummins has
14 not served third party Ms. Lollar with a deposition subpoena as required by Rule 45, (2)
15 Ms. Lollar is a resident of Texas, and therefore cannot be compelled to appear in Los
16 Angeles, California for her deposition pursuant to Fed. R. Civ. P. 45(c)(1), and (3) even
17 ignoring the first two problems, Lollar’s testimony is completely irrelevant in this case,
18 given that the Texas Judgment obtained by Lollar is a final judgment and is not subject
19 to collateral attack by Cummins. Cummins has refused to address any of the three
20 points raised by counsel in an attempt to confer on these issues and has refused to
21 identify how Lollar (who is not the plaintiff, despite Cummins’ repeated reference to
22 her as such and who has not attended even one hearing in this case) has any relevant
23 testimony in this Adversary Proceeding.

24 C. Cummins’ Condition That She Be Provided With A “Rough Draft” Of Any
25 Transcript As A Condition For Her Deposition Is Meritless.

1 Cummins' third condition that "I want the original rough draft of any transcript
2 straight from the reporter" has no basis in any statute or rule of civil procedure. If
3 Cummins wants to order a copy of the transcript of the deposition, she is free to do so
4 directly from the court reporter. Counsel for plaintiff has nothing to do with whether or
5 not Cummins purchases a copy of the transcript from the Court Reporter and it is
6 certainly no excuse for refusing to appear for her duly-noticed deposition.

7 D. Cummins Now Claims That She Did Not Refuse To Appear For Her Deposition
8 And Merely Wants A "Protective Order Over All Discovery."

9 For the first time, Cummins claims that she did not refuse to appear for her duly
10 noticed deposition. To the contrary, Cummins clearly and unequivocally stated on
11 January 13, 2019 that "I will not be at that deposition." Now, Cummins states she just
12 wants a protective order over all discovery. However, as painstakingly explained in
13 several emails to Cummins, a blanket protective order over any discovery is improper
14 under Ninth Circuit law, citing

15 Defendant's Position:

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17 **DEFENDANT'S INTRODUCTION**

18 Plaintiff requested an extension of discovery which was granted November 27,
19 2018. From that date up until January 6th Plaintiff did no discovery. Clearly the
20 motion was not made for discovery but to have enough time to file a second Motion
21 for Summary Judgment after Plaintiff lost the first one.

22 Defendant sent a meet and confer email January 3, 2019 about Defendant's motion
23 to compel discovery, contempt of court order, violation of redaction rule, request for
24 protective order over discovery items, quash subpoena for non-party's PayPal data and
25 quash any deposition of non-party Jennifer Charnofsky.

26 At that time Defendant noted that Plaintiff had not done any discovery. Plaintiff
27 replied stating they haven't done any discovery because they didn't feel it would be

1 necessary as they felt they would win the second Motion for Summary Judgement
2 (Def Exhibit 1). The real reason for the extension of discovery was for Plaintiff to be
3 able to file a second Motion for Summary Judgment on the Fourth Cause. Plaintiff
4 lied to the Court.

5 Defendant agrees that this motion should not have been necessary. Defendant has
6 not refused to be deposed. Defendant merely wants a protective order over discovery
7 before any deposition. Defendant requested that Defendant be able to depose Plaintiff
8 and their representatives on the same day as Defendant's deposition. Defendant also
9 does not want the deposition videotaped. A transcript is sufficient. The Judge in the
10 debtor hearing case agreed with these requests. Plaintiff would give the video to others
11 to post on the public internet as Plaintiff Lollar did the last depositions. There are over
12 100 videos of Defendant's depositions where Defendant states confidential
13 information and data. Plaintiff's attorney Philip Stillman already agreed in writing not
14 to videotape any deposition (Def Exhibit 2). Stillman makes the current request to
15 videotape merely to harass Defendant.

16 Defendant asked Plaintiff for a protective order over discovery and Plaintiff
17 refused. Defendant asked that there be no video of the deposition and Plaintiff agreed.
18 This motion was unnecessary. Plaintiff could have agreed to the items without
19 involving the Court. Defendant did not refuse to be deposed. This motion was
20 unnecessary.

21 Defendant agrees to be deposed.

22 A. Cummins' Claim That She Will Not Be Deposed on Videotape is not Meritless.

23 Plaintiff previously agreed not to videotape the deposition. This request now is
24 only for harassment purposes. A transcript is sufficient. Plaintiff is again lying to the
25 Court. Cummins did state that former counsel of Plaintiff Lollar was staring at her
26 breasts during a deposition. Here is the video of Plaintiff Lollar's Texas attorney
27

1 Randy Turner staring at Defendant's breast during deposition and falling dead asleep¹.
2 Turner denied both acts and Defendant sent Turner the video to prove it. This did not
3 cause Defendant's Counsel to withdraw at Defendant was a pro se party at the
4 deposition. Defendant requests that Plaintiff be sanctioned for lying in court
5 documents to try to smear Defendant to the Court.

6 B. Cummins' Request to Depose Amanda Lollar is reasonable.

7 Defendant's request is a mere scheduling request. Defendant must depose
8 Amanda Lollar. Defendant is filing a motion to compel discovery which includes a
9 deposition of Amanda Lollar. Lollar in every hearing and court appearance flies from
10 Texas to Los Angeles, sits next to Plaintiff's attorney and tells him what to say and
11 do. Lollar states Lollar still owns the judgment. Clearly Lollar is in control of this
12 litigation and judgment. Defendant believes Plaintiff added a strawman in Russia just
13 to make discovery impossible as Russia is over 100 miles away. Plaintiff refused to
14 provide any discovery requested. This Court signed Defendant's subpoena duces
15 tecum for a deposition of Amanda Lollar on October 18, 2018. Defendant served
16 Lollar via Plaintiff's lawyer October 19, 2018. While Lollar is over 100 miles away,
17 Lollar will be at Defendant's deposition mere feet away. This is the best time to
18 depose both Defendant and Lollar. The deposition is relevant because Lollar has been
19 actively involved in every part of this litigation while Lollar and the Russian entity
20 owned the judgment.

21 I did request the original rough draft or draft of any transcript. With this same
22 Plaintiff the previous attorney James Little edited the rough draft removing at least
23 25% of what was said. Little did not state "off the record" but once. Defendant took
24 detailed notes of the debtor hearing. Many of the word for word items written down
25

26 ¹ Randy Turner stares, falls asleep in depo <https://www.youtube.com/watch?v=9Cp87LtmGxc>
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1 were not in the transcript. Little at the hearing requested a first draft to edit. Defendant
2 deserves the complete transcript. Plaintiff should not be allowed to destroy evidence

3 **II.**

4 **SANCTIONS SHOULD BE IMPOSED ON CUMMINS DOE HER DILATORY AND**
5 **BAD FAITH REFUSAL TO BE DEPOSED**

6 Plaintiff's Position:

7 Rule 37(d) specifically addresses the failure of a party to attend his or her deposition.

8 Rule 37(d)(1)(A)(i) states:

9 The court where the action is pending may, on motion, order sanctions if:

10 (i) a party . . . fails, after being served with proper notice, to appear for that
11 person's deposition;

12 Here, Cummins has refused to appear for her deposition after being properly served with
13 notice. Accordingly, Plaintiff is entitled to any of the orders included in Rule 37(b)(2)(A)(i)-
14 (vi). Fed. R. Civ. P. 37(d)(3). Those orders are:

15 (i) directing that the matters embraced in the order or other designated facts be
16 taken as established for purposes of the action, as the prevailing party claims;

17 (ii) prohibiting the disobedient party from supporting or opposing designated
18 claims or defenses, or from introducing designated matters in evidence;

19 (iii) striking pleadings in whole or in part;

20 (iv) staying further proceedings until the order is obeyed;

21 (v) dismissing the action or proceeding in whole or in part;

22 (vi) rendering a default judgment against the disobedient party;

23 Given Cummins' completely unjustified refusal to be deposed, first in October and now here,
24 and given the pending Motion for Summary Judgment, this Court would be justified in
25 rendering a default judgment or striking Defendant's Answer. Another reasonable order would
26 be to prohibit Cummins from introducing any evidence not already produced in response to
27 Plaintiff's Interrogatories and Requests for Production of Documents. At a minimum,
28

1 however, this Court should stay all further proceedings (other than the pending Motion for
2 Partial Summary Judgment) until such time as Cummins submits to her deposition.

3 Rule 37(d)(3) further provides:

4 Instead of or in addition to these sanctions, the court *must* require the party
5 failing to act, the attorney advising that party, or both to pay the reasonable
6 expenses, including attorney's fees, caused by the failure, unless the failure was
7 substantially justified or other circumstances make an award of expenses unjust.

8 Since Cummins refusal to be deposed was completely unjustified, Plaintiff is entitled to
9 reasonable attorney's fees incurred in preparing this Motion of \$2,000, calculated at \$400 per
10 her for five hours of time.

11 Defendant's Position:

12 Defendant did not refuse to be deposed. Defendant merely wants a protective
13 order in place before deposition, no videotape and to depose Lollar at the same time.
14 Defendant did not go to the initial deposition as Defendant was busy that day.
15 Defendant told Plaintiff that when Defendant received the subpoena via email. The
16 deposition was scheduled for October 30, 2018. The last day of discovery was
17 October 31, 2018. Plaintiff had months to schedule the deposition yet waited until the
18 last two weeks of months long discovery. This motion was not needed. Defendant has
19 no assets, bank accounts, credit cards. Defendant is legally homeless and can't afford
20 rent because of Plaintiff's actions. Plaintiff has posted false, defamatory blogs and
21 websites about Defendant on the Internet. The sites state Defendant is a "convicted
22 criminal," "wanted by the law" and other false things to harm Defendant.

23 For the foregoing reasons, Defendant requests that this Court deny Plaintiff's
24 requests. Defendant sent a meet and confer about filing motion to compel discovery,
25 contempt of court order, violation of redaction rule, request for protective order over
26 discovery items, quash subpoena for non-party's PayPal data and quash any
27 deposition of non-party Jennifer Charnofsky. Defendant gave Plaintiff a Joint
28 Stipulation for those motions yesterday.

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CONCLUSION

For the foregoing reasons, plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust, requests that this Court grant Plaintiff's motion to compel the deposition of Cary Cummins-Cobb, order the payment of reasonable attorney's fees of \$2,000 and at a minimum, stay all proceedings in this case other than the hearing on Plaintiff's Motion for Summary Judgment set for March 12, 2019 until such time as Cummins submits to her deposition.

Respectfully Submitted,

STILLMAN & ASSOCIATES



Dated: January 18, 2019

By:

Philip H. Stillman, Esq.

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



MARY CUMMINS-COBB, *in pro per.*

1 Case Name: Khionidi v. Cummins-Cobb
2 Adv. Proc. No.: 2:18-ap-01066-RK

3 PROOF OF SERVICE

4 I, the undersigned, declare that I am over the age of 18 years and not a party to the within
5 action or proceeding. I have an office in Miami Beach, Florida where the mailing occurred.

6 On January 14, 2019, I caused to be served the following document(s):

7 Proposed Joint Stipulation re Motion to Compel Deposition of Defendant

8 on the interested parties in this action by email to:

9 Mary Katherine Cummins-Cobb
10 645 West 9th Street, #110-140
11 Los Angeles, CA 90015

12 at mmmarycummins@gmail.com, the email address on file with this Court by agreement of the parties.
13 I did not receive any notice that the documents were not deliverable to the foregoing email address.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed on January 14, 2019 at Miami Beach, Florida.

16 By: *Philip H. Stillman*
17 Philip H. Stillman, Esq.
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Stillman & Associates
3015 North Bay Road, Suite B
Miami Beach, Florida 33140

A true and correct copy of the foregoing document entitled (*specify*):

NOTICE OF MOTION; AND JOINT STIPULATION TO COMPEL DEPOSITION OF DEFENDANT DECLARATION OF PHILIP H. STILLMAN

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) January 22, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Debtor and Defendant *in pro per*, Mary Cummins-Cobb, mmmarycummins@gmail.com (via email by stipulation of the parties)

Hon. Robert Kwan
US Bankruptcy Court, Central District of California, Room 303
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/22/2019 <i>Date</i>	Philip H. Stillman <i>Printed Name</i>	/s/ Philip H. Stillman <i>Signature</i>
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