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7 Attorneys for plaintiff KONSTANTIN KHIONIDI, as Trustee of the
8 COBBS TRUST

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

11 In re:
12 MARY CUMMINS-COBB,
13 Debtor

14 KONSTANTIN KHIONIDI, as Trustee of the
15 COBBS TRUST,

16 vs. Plaintiff,

17 MARY CUMMINS-COBB,
18 Defendant.

) Case No. 2:17-bk-24993-RK

) Chapter 7

) Adv. Proc. No. 2:18-ap-01066-RK

) DECLARATION OF PHILIP H. STILLMAN IN
) SUPPORT OF PLAINTIFF'S OPPOSITION TO
) DEFENDANT'S MOTION TO DISMISS
) ADVERSARY PROCEEDING BASED ON
) UNCLEAR HANDS

) Date: March 27, 2019
) Time: 2:30 p.m.

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

DECLARATION OF PHILIP H. STILLMAN

I, Philip H. Stillman, hereby declare:

1. I am a member of the California State Bar in good standing and counsel of record for Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust. I have personal knowledge of the facts stated herein and if called as a witness, I could and would testify competently to them.

2. First, Cummins claims that I did not actually have Jennifer Charnofsky served. That is false. I had a process server serve the Subpoena and Proof of Service are attached to the hereto as Exhibit 1.

3. Moreover, it is beyond question that the subpoena was actually served. On October 15, 2018, I sent a copy of the deposition subpoena for Jennifer Charnofsky's deposition on October 30. However, the copy of the subpoena sent to Cummins did not have Charnofsky's address filled in, while the one served on Charnofsky did. A copy of the Subpoena that I sent to Cummins on October 15, 2018 is attached hereto as Exhibit 2.

4. In Cummins' *ex parte* motion to quash, filed on October 23, 2018 in this case [Docket 24], Cummins attaches *both* the subpoena sent to her on October 15, 2018 and the executed Subpoena Duces Tecum served on Charnofsky, with the Proof of Service filled out. Dkt. 24, pp. 19-28. Since Cummins could only have obtained the executed Subpoena with Charnofsky's address from Charnofsky, it is clear that despite Cummins' claims, the subpoena was correctly served by a process server.

5. Moreover, it is indeed ironic that *Cummins* is alleging that the plaintiff has "unclean cleans." Cummins failed to produce a single document in response to Plaintiff's document requests, although she did not seek a protective order until months later. After that motion was denied, she failed to produce *any* documents. Cummins was also ordered by this Court to produce her tax returns and the Court, with the stipulation of counsel, imposed a protective order on those limited documents. Despite that, none were produced.

6. In fact, this not the first time that Cummins has played such discovery shenanigans. As shown in the transcript of a post-judgment hearing in *Lollar v. Cummins* dated September 18, 2015, Cummins admitted to shredding documents that had been previously requested in

1 discovery, 4:12-6:13. A copy of the September 18, 2015 Hearing Transcript is attached to the
2 Stillman Declaration as Exhibit 3.

3 7. Cummins has also failed to produce a single bank record and without copying
4 counsel, attempted to prevent banking institutions from producing bank records to Plaintiff
5 pursuant to valid and timely subpoenas – something that Cummins first disclosed at the hearing
6 in this Court on February 26, 2019.

7 8. Finally, Cummins has claimed that she has a Petition for Certiorari pending in the
8 U.S. Supreme Court on the *original* Texas judgment. That is a flat-out lie. The Texas Judgment
9 that is the subject of this case was entered on August 27, 2012. [ECF 35-2, Exhibit 3]. The Court
10 of Appeals affirmed that judgment on April 9, 2015. *Cummins v. Bat World Sanctuary*, Case No.
11 **02-12-00285-CV**, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015). Cummins' Petition for
12 Review to the Texas Supreme Court was denied on August 28, 2015. Denial of Petition for
13 Review, attached to Stillman Declaration as Exhibit 4.

14 9. The U.S. Supreme Court docket shows that the Petition was filed on February 5,
15 2019, seeking certiorari on the Texas Court of Appeals' affirmance of the trial court's denial of
16 Cummins' Motion to Dismiss dated May 3, 2018, Texas Court of Appeals Case No.
17 **07-16-00337-CV**, *i.e.*, the appeal from the trial court's denial of Cummins' Motion to Dismiss the
18 *second* action filed by Ms. Lollar, *not* the final judgment at issue in this case, which was Texas
19 Court of Appeals Case No. **02-12-00285-CV**. A copy of the U.S. Supreme Court Docket is
20 attached to the Stillman Declaration as Exhibit 5.

21 10. Cummins also makes her usual claims about Amanda Lollar posting various
22 comments on the internet concerning Cummins. Motion, p. 4, lines 11-14. What Cummins
23 conveniently omitted is that in 2011, she sued Lollar in federal court in the Central District for
24 allegedly posting defamatory statements about her online. *Cummins v. Lollar*, Central District of
25 California Case No. 11-cv-08081-DMG-MAN. The District Court (Gee, J.) granted summary
26 judgment against Cummins. A copy of the Order Granting Summary Judgment is attached to the
27 Stillman Decl. as Exhibit 6.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that the foregoing is true and correct. Signed this 13th day of March, 2019 at Miami Beach,
3 California.

4 

5
6 By: _____
Philip H. Stillman, Esq.
7 *Attorneys for KONSTANTIN KHIONIDI, as Trustee of*
8 *the COBBS TRUST*

Exhibit 1

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

CENTRAL District of CALIFORNIA

In re MARY CUMMINS-COBB
Debtor

Case No. 2:17-bk-24993-RK

(Complete if issued in an adversary proceeding)

KONSTANTIN KHIONIDI, Trustee
Plaintiff

Chapter 7

v.
MARY CUMMINS-COBB
Defendant

Adv. Proc. No. 2:18-ap-01066-RK

SUBPOENA TO TESTIFY AT A DEPOSITION
IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Jennifer Charnofsky, 2657 Van Buren Place, Los Angeles, California 90007
(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	DATE AND TIME
9171 Wilshire Blvd, Suite 500, Beverly Hills, California, 90210	October 30, 2018 at 10 a.m.

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:
Documents listed on Exhibit A attached hereto.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: October 12, 2018

CLERK OF COURT

OR 

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
Konstantin Khionidi, Trustee, who issues or requests this subpoena, are: Philip Stillman, 3015 North Bay Road, Suite B, Miami Beach, FL 33140, tel. no. (888) 235-4279, pstillman@stillmanassociates.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Exhibit 2

EXHIBIT A

DEFINITIONS

1. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. The term “DOCUMENT” or “DOCUMENTATION” is defined to be synonymous in meaning and equal in scope to the usage of the term “DOCUMENTS or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.
3. When referring to DOCUMENTS, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).
4. When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
5. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the

litigation.

6. The term “CONCERNING,” as used herein, means, in the broadest sense, constituting, referring to, relating to, reflecting, mentioning, discussing, summarizing, analyzing, depicting, describing, arising out of, in connection with or involving a transaction or course of dealing with or about the subject, or evidencing in any way.

7. “Person” refers to any individual, corporation, general partnership, limited partnership, joint venture, association, joint-stock company, trust, incorporated organization, government or political subdivision thereof, and other non-natural persons of whatever nature.

8. “Communication” means any contact between two or more persons and shall include, without limitation, written contact by means such as letters, memoranda, telegrams, or telexes, or by any document, and any oral contact such as face-to-face meetings and telephone conversations.

9. The requested documents include all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the documents requested.

10. If any document requested herein has been lost, destroyed or is otherwise unavailable for inspection, identify the author(s), address(es), the last custodian thereof, and the circumstances of its loss, destruction or unavailability.

11. “You”, “Your” or “Yourself” means, unless otherwise stated, Jennifer Charnofsky.

12. “Bankruptcy Petition” or “Petition” means the Petition, Schedules, Statement of Financial Affairs and all other DOCUMENTS submitted by Mary Cummins-Cobb in connection with the commencement of *In re Mary Cummins-Cobb*, Case No.

2:17-bk-24993-RK, where Jennifer Charnofsky is listed as a secured creditor.

13. Except where otherwise stated, the document requests are for the time period from January 1, 2013 to the present.

14. "Mary Cummins" or "Mary Cummins-Cobb" means the defendant and Debtor in this bankruptcy case and the alleged borrower on a purported automobile loan by you for the purchase of a 2005 Toyota Prius, as well as her agents, employees, servants, representatives and all other persons or entities acting on her behalf.

INSTRUCTIONS

1. The DOCUMENTS requested include all that are in your actual or constructive possession, custody, or control, including possession, custody, or control of your attorney.

2. You are instructed that possession, custody, or control, includes constructive possession in that you need not have actual physical possession. As long as you have a superior right to compel the production from the third party (including any agency, authority or representative), you have possession, custody, or control.

3. Notwithstanding any other language implying to the contrary, Plaintiffs are not requesting production of any materials which constitute the work product of any attorney.

4. You are requested to produce the documents responsive to this request as they are kept in the usual course of business, or to organize and label them to correspond with the categories specified below.

5. All documents shall be produced that respond to any part or clause of any paragraph of this request. Any document requested that cannot be produced in full,

produce such document to the extent possible and indicate specifically in your response to this request your inability to produce the remainder and sufficient information concerning the un-produced document or portion thereof so that the court and counsel can determine if a motion to compel is appropriate and determine if *in camera* inspection is needed to test the validity of any claim, privilege of other reason for non-production.

6. Selection of documents from the files and other sources shall be performed in such a manner as to ensure that the source of each document may be determined.

7. Documents attached to each other should not be separated unless sufficient records are kept to permit reconstruction of such grouping.

DOCUMENTS TO BE PRODUCED

1. All Documents Concerning a security interest in a Toyota Prius purportedly owned by debtor Mary Cummins-Cobb, including, without limitation, loan documents, checks received or paid, any records of title, any credit checks performed by YOU prior to purportedly making the automobile loan or any checks showing the purchase of the Toyota Prius for Mary Cummins-Cobb.

2. All Documents Concerning payments to you by Mary Cummins-Cobb for any purpose, from January 1, 2013 through the present.

3. All Documents Concerning payments to You by any person or entity on behalf of Mary Cummins-Cobb.

4. All Documents Concerning any lien filed with the California Department of Motor Vehicles to perfect a security interest in any vehicle owned or purportedly owned by

Mary Cummins-Cobb.

5. All Documents Concerning payments to You by Mary Cummins-Cobb or on her behalf as payments for an alleged automobile loan incurred on or about December 23, 2013.

6. All Documents Concerning Your payment of any money to Mary Cummins-Cobb.

7. All Documents Concerning Your payment of any money to anyone on behalf of Mary Cummins-Cobb.

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (Page 2)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): October 18, 2018 Jimmy Chang
on (date) 10/18/19

I served the subpoena by delivering a copy to the named person as follows: I met her in person
of her house on (date) 10/20/18; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ 10 for travel and \$ 30 for services, for a total of \$ 40.

I declare under penalty of perjury that this information is true and correct.

Date: 10/20/18



Server's signature
STEPHEN SEKRETAN

Printed name and title

1824 S FAIRFAX AVE, LOS ANGELES, CA

Server's address
90019

Additional information concerning attempted service, etc.:

UNITED STATES BANKRUPTCY COURT

CENTRAL District of CALIFORNIA

In re MARY CUMMINS-COBB Debtor

Case No. 2:17-bk-24993-RK

(Complete if issued in an adversary proceeding)

Chapter 7

KONSTANTIN KHIONIDI, Trustee Plaintiff

Adv. Proc. No. 2:18-ap-01066-RK

MARY CUMMINS-COBB v. Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Jennifer Charnofsky, 2657 Van Buren Place, Los Angeles, California 90007 (Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (9171 Wilshire Blvd, Suite 500, Beverly Hills, California, 90210) and DATE AND TIME (October 30, 2018 at 10 a.m.)

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Documents listed on Exhibit A attached hereto.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: October 12, 2018

CLERK OF COURT

OR [Handwritten signature]

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Konstantin Khionidi, Trustee, who issues or requests this subpoena, are: Philip Stillman, 3015 North Bay Road, Suite B, Miami Beach, FL 33140, tel. no. (888) 235-4279, pstillman@stillmanassociates.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

2. The term “DOCUMENT” or “DOCUMENTATION” is defined to be synonymous in meaning and equal in scope to the usage of the term “DOCUMENTS or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

3. When referring to DOCUMENTS, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

4. When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

5. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the

litigation.

6. The term “CONCERNING,” as used herein, means, in the broadest sense, constituting, referring to, relating to, reflecting, mentioning, discussing, summarizing, analyzing, depicting, describing, arising out of, in connection with or involving a transaction or course of dealing with or about the subject, or evidencing in any way.

7. “Person” refers to any individual, corporation, general partnership, limited partnership, joint venture, association, joint-stock company, trust, incorporated organization, government or political subdivision thereof, and other non-natural persons of whatever nature.

8. “Communication” means any contact between two or more persons and shall include, without limitation, written contact by means such as letters, memoranda, telegrams, or telexes, or by any document, and any oral contact such as face-to-face meetings and telephone conversations.

9. The requested documents include all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the documents requested.

10. If any document requested herein has been lost, destroyed or is otherwise unavailable for inspection, identify the author(s), address(es), the last custodian thereof, and the circumstances of its loss, destruction or unavailability.

11. “You”, “Your” or “Yourself” means, unless otherwise stated, Jennifer Charnofsky.

12. “Bankruptcy Petition” or “Petition” means the Petition, Schedules, Statement of Financial Affairs and all other DOCUMENTS submitted by Mary Cummins-Cobb in connection with the commencement of *In re Mary Cummins-Cobb*, Case No.

2:17-bk-24993-RK, where Jennifer Charnofsky is listed as a secured creditor.

13. Except where otherwise stated, the document requests are for the time period from January 1, 2013 to the present.

14. "Mary Cummins" or "Mary Cummins-Cobb" means the defendant and Debtor in this bankruptcy case and the alleged borrower on a purported automobile loan by you for the purchase of a 2005 Toyota Prius, as well as her agents, employees, servants, representatives and all other persons or entities acting on her behalf.

INSTRUCTIONS

1. The DOCUMENTS requested include all that are in your actual or constructive possession, custody, or control, including possession, custody, or control of your attorney.

2. You are instructed that possession, custody, or control, includes constructive possession in that you need not have actual physical possession. As long as you have a superior right to compel the production from the third party (including any agency, authority or representative), you have possession, custody, or control.

3. Notwithstanding any other language implying to the contrary, Plaintiffs are not requesting production of any materials which constitute the work product of any attorney.

4. You are requested to produce the documents responsive to this request as they are kept in the usual course of business, or to organize and label them to correspond with the categories specified below.

5. All documents shall be produced that respond to any part or clause of any paragraph of this request. Any document requested that cannot be produced in full,

produce such document to the extent possible and indicate specifically in your response to this request your inability to produce the remainder and sufficient information concerning the un-produced document or portion thereof so that the court and counsel can determine if a motion to compel is appropriate and determine if *in camera* inspection is needed to test the validity of any claim, privilege or other reason for non-production.

6. Selection of documents from the files and other sources shall be performed in such a manner as to ensure that the source of each document may be determined.

7. Documents attached to each other should not be separated unless sufficient records are kept to permit reconstruction of such grouping.

DOCUMENTS TO BE PRODUCED

1. All Documents Concerning a security interest in a Toyota Prius purportedly owned by debtor Mary Cummins-Cobb, including, without limitation, loan documents, checks received or paid, any records of title, any credit checks performed by YOU prior to purportedly making the automobile loan or any checks showing the purchase of the Toyota Prius for Mary Cummins-Cobb.

2. All Documents Concerning payments to you by Mary Cummins-Cobb for any purpose, from January 1, 2013 through the present.

3. All Documents Concerning payments to You by any person or entity on behalf of Mary Cummins-Cobb.

4. All Documents Concerning any lien filed with the California Department of Motor Vehicles to perfect a security interest in any vehicle owned or purportedly owned by

Mary Cummins-Cobb.

5. All Documents Concerning payments to You by Mary Cummins-Cobb or on her behalf as payments for an alleged automobile loan incurred on or about December 23, 2013.

6. All Documents Concerning Your payment of any money to Mary Cummins-Cobb.

7. All Documents Concerning Your payment of any money to anyone on behalf of Mary Cummins-Cobb.

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REPORTER'S RECORD

VOLUME 1 OF 1

Cause No. 352-248169-10

BAT WORLD SANCTUARY	X	IN THE DISTRICT COURT
and AMANDA LOLLAR,	X	
	X	
Plaintiffs,	X	
	X	
VS.	X	141ST JUDICIAL DISTRICT
	X	
MARY CUMMINS,	X	
	X	
Defendant.	X	TARRANT COUNTY, TEXAS

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HEARING

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BE IT REMEMBERED that on the 18th day of September, 2015, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable John P. Chupp, judge presiding, held in Fort Worth, Tarrant County, Texas.

The proceedings were reported by machine shorthand.

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A P P E A R A N C E S

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P R O C E E D I N G S

(Friday, September 18, 2015, 11:00 a.m.)

--*-*-*

THE COURT: Okay. You are on speaker
phone.

Let me see here. We're here on your
motion to seal, and then what is your motion?

MR. TURNER: Motion to compel
postjudgment discovery responses.

THE COURT: And a motion to compel
postjudgment discovery responses, apparently.

We talked on the phone, didn't we, that
time, and I told you to try and give him the
documents?

MS. CUMMINS: Yes, Your Honor, and I
attempted to, and I gave him everything that I had.

THE COURT: Okay.

MR. TURNER: Well, I disagree.

THE COURT: What do you think she has
that she hasn't given you?

MR. TURNER: Well, she hasn't answered
interrogatories. Interrogatory Number 4 asks for each
financial institution where you have an account of
kept funds from August 27th of 2010 until the present.
I asked for names of institutions, account numbers,

1 you know, name on the account, the date it was opened.

2 The response was: One West Bank First
3 Bank, you have the account numbers, I no longer have a
4 bank account or bank records, I put unused checks
5 through the shredder and threw them away.

6 Well, it didn't answer my question as
7 far as --

8 THE COURT: If she doesn't have the
9 account number, how is she supposed to give it to you?

10 MR. TURNER: She can get it from the
11 bank, and I think the rules -- the discovery rules
12 require her to get this information.

13 THE COURT: Okay. Can you get the
14 account numbers from your bank?

15 MS. CUMMINS: I would have to -- I
16 don't know, I'd have to check -- two months ago I
17 pulled all of my records and I -- all of my paper
18 records --

19 THE COURT: But you knew -- you knew he
20 was asking you questions about this, why would you
21 destroy all of those records?

22 MS. CUMMINS: Well, I don't have the
23 bank account. Why do I need bank records. This is
24 before he requested it.

25 THE COURT: Okay. So you just --how

1 did you destroy them?

2 MS. CUMMINS: I put them through the
3 shredder and put it in the recycling bin.

4 THE COURT: You have enough money for a
5 shredder?

6 MS. CUMMINS: A shredder is like \$20, I
7 have a used shredder.

8 THE COURT: Okay.

9 MR. TURNER: She was asked for this
10 information three years ago. I mean, this isn't
11 something new.

12 THE COURT: He has asked for this in the
13 past, hasn't he, and then you decided to shred it all.

14 MS CUMMINS: Well, I have no need for --
15 I --

16 THE COURT: He does, though. You may
17 not have a need for it, but he has a need for it, and
18 he asked you for it. And you decided to shred it?

19 MS. CUMMINS: Before he asked me.
20 Before the last request.

21 THE COURT: But he has asked you in the
22 past, hasn't he? Have you ever given it to him?

23 MS. CUMMINS: No, he ever asked for my
24 bank records. He never did.

25 MR. TURNER: Well, in any event, Your

1 Honor, I think the proper answer to this interrogatory
2 would be I went to the bank, they don't have it.

3 There has to be some effort to get this
4 information. I can't get it without her.

5 THE COURT: Okay. I'm going to order
6 you to go to the bank and get that information, and if
7 you --

8 MS. CUMMINS: What information is it?

9 THE COURT: The stuff that is asked in
10 the question.

11 MS. CUMMINS: Which number?

12 THE COURT: Read the question and
13 answer it.

14 MR. TURNER: It's Number 4.

15 MS. CUMMINS: What is he requesting?
16 He's only requesting the bank account number.

17 THE COURT: Number 4. Do you have
18 number 4 in front of you?

19 MS. CUMMINS: I have my response.

20 THE COURT: Or did you shred it?

21 MS. CUMMINS: No, I just gave it to him
22 as a PDF. I had -- my past two bank accounts, one at
23 One West Bank and one at First Bank.

24 THE COURT: Okay. Well, get the
25 account numbers.

1 MS. CUMMINS: Okay. I'll give him the
2 account numbers.

3 THE COURT: By next Friday.

4 MR. TURNER: Well, the interrogatory
5 also asks for the address of the bank --

6 THE COURT: And the address. Read the
7 interrogatory and answer it.

8 MS. CUMMINS: Okay. I will -- I'll
9 call the bank and see if they'll give me the bank
10 account numbers, and I have their address.

11 THE COURT: Okay.

12 MR. TURNER: And dates opened,
13 etcetera.

14 MS. CUMMINS: What?

15 THE COURT: He said -- answer the
16 question fully. Read the whole question and answer
17 the whole thing.

18 MR. TURNER: The next number, Your
19 Honor, is interrogatory Number 6. It's just like
20 interrogatory Number 4, it's --

21 MS. CUMMINS: What was the last one,
22 the previous one you just said?

23 THE COURT: 4 was the first one.
24 Answer it. Now he's on 6.

25 MS. CUMMINS: Okay.

1 MR. TURNER: Your Honor, 6 asks for
2 basically the same information during the same time
3 period with regard to charge cards, credit cards, and
4 debit cards.

5 The answer was: I had a debit card in
6 my now closed banking account -- with my now closed
7 bank account. I no longer have a debit or credit
8 card. I cut them up and threw them in the trash.

9 Well, once again I think she can get
10 this information from the banks that issued those
11 cards, and we are asking that she answer Number 6.

12 THE COURT: Okay. You need to answer
13 Number 6 and get that information.

14 MS. CUMMINS: I will have to call the
15 bank and see if they'll give me the information.

16 THE COURT: Okay. Call the bank and
17 get the information.

18 MR. TURNER: Your Honor, Number 7 of
19 plaintiff's interrogatory asks the defendant: Please
20 state your monthly gross income, include in your
21 answer income from all sources, etcetera.

22 The answer was: My monthly income is
23 zero.

24 THE COURT: Okay.

25 MR. TURNER: Well, I don't -- I mean, I

1 don't know anybody, other than people who live in the
2 penitentiary, who don't have monthly expenses. So I
3 would ask the Court to compel her to tell us how much
4 she spends each month.

5 THE COURT: You didn't ask her that.

6 MS. CUMMINS: The question was what is
7 my gross income per month. It's zero. I'm not making
8 a dime right now.

9 MR. TURNER: Well, I'm sorry. I
10 referenced the wrong -- it was actually number 10,
11 sorry about that. 10 says, Please itemize your
12 monthly living expenses. And she says I have no
13 monthly living expenses.

14 MS. CUMMINS: That's the truth.

15 THE COURT: How do you eat?

16 MS. CUMMINS: My friends every once in
17 a while give me a Ralph's card.

18 THE COURT: How do you pay rent or --

19 MS. CUMMINS: I don't pay rent. I
20 don't pay utilities. I don't pay anything.

21 THE COURT: Who pays it all?

22 MS. CUMMINS: Well, Animal Advocates
23 owns the farm, and they pay the farm bills, and Animal
24 Advocates pays the utilities on it.

25 THE COURT: So do you live on Animal

1 Advocates' property?

2 MS. CUMMINS: Yes.

3 MR. TURNER: Well, along those lines,
4 let me point out that a year or so ago our California
5 lawyer seized \$4,300 that was in Ms. Cummins' bank
6 account, and she filed papers saying, well, this
7 was -- that was for -- that was rent money.

8 THE COURT: Who owns Animal Advocates?

9 MS. CUMMINS: No one. It's a nonprofit
10 organization.

11 THE COURT: Who writes the checks for
12 your utility bill?

13 MS. CUMMINS: There is no check.

14 THE COURT: How is your utility bill
15 paid?

16 MS. CUMMINS: It's paid automatically
17 from Animal Advocates.

18 THE COURT: Okay. So it comes out
19 of -- who has control over Animal Advocates' bank
20 account.

21 MS. CUMMINS: (Inaudible.)

22 THE COURT: Huh?

23 MS. CUMMINS: Well, there are five
24 people that control Animal Advocates.

25 THE COURT: Who are they?

1 MS. CUMMINS: The board members.

2 THE COURT: Who are they?

3 MS. CUMMINS: Mary Ellen Shellman,
4 David Hurst, myself.

5 THE COURT: Who else?

6 MS. CUMMINS: Pardon me?

7 THE COURT: Who else? That was three.
8 You said five.

9 MS. CUMMINS: Actually, the other two
10 are no longer legally board members, they're no longer
11 active.

12 THE COURT: Who were they?

13 MS. CUMMINS: What do you mean who were
14 they?

15 THE COURT: Yeah, who were they?

16 MS. CUMMINS: Pete Waddington.

17 THE COURT: This is -- what's the name
18 of the nonprofit?

19 MS. CUMMINS: Animal Advocates Society
20 for the Prevention of Cruelty to Animals.

21 MR. TURNER: Well, she also routinely
22 posts on the internet about restaurants that she is
23 going to. Are these also paid by -- I guess my
24 question would be, are -- who pays for the restaurant
25 bills? Who was going to pay for the trip to Costa

1 Rica that she posted about on the internet that she
2 was going to go on after the Court of Appeals
3 affirmed -- or in her words reversed this case?

4 MS. CUMMINS: Can I answer?

5 THE COURT: Yes, sure.

6 MS. CUMMINS: There was no trip to Costa
7 Rica. I haven't paid to go to a restaurant in years.

8 THE COURT: Okay. I want you to itemize
9 everything that's in -- was it 10?

10 MR. TURNER: Yes.

11 THE COURT: 10.

12 MS. TURNER: It's just monthly living
13 expenses. If she wants to --

14 THE COURT: I want --

15 MR. TURNER: If something else is paying
16 your living expenses, that's fine, but I want to know
17 what they are.

18 THE COURT: Yes. He wants to know your
19 monthly living expenses, regardless of who pays for
20 them.

21 MS. CUMMINS: My current living
22 expenses, okay. Okay.

23 MR. TURNER: Let's see, the last
24 interrogatory, Your Honor, is Number 12. It asks: If
25 you furnished any financial statements during the past

1 three years, then give the name, address of each
2 person or institution to whom you furnished the
3 statements, the dates you furnished them, the amounts
4 of net worth shown on the statements, etcetera.

5 And the response that was filed by the
6 defendant is: I furnished financial statements to be
7 declared indigent for legal cases in Texas and
8 California.

9 That wasn't my question. I wanted the
10 name and address of each person or institution to whom
11 these statements were furnished.

12 MS. CUMMINS: Okay. That would be
13 the --

14 THE COURT: Just answer -- I'm going to
15 order you to answer these questions, and so you can
16 send them in writing to him. And when I order you to
17 do something, that means you have to do it.

18 MS. CUMMINS: Okay.

19 MR. TURNER: That's all the --

20 MS. CUMMINS: But he already has it.

21 THE COURT: Okay. And so you are
22 saying there's a nonprofit organization called Animal
23 Advocates Society for the Prevention of Cruelty of
24 Animals?

25 MS. CUMMINS: Yes.

1 THE COURT: Is it registered with the
2 IRS?

3 MS. CUMMINS: Yes.

4 THE COURT: Because I don't see that
5 anywhere, is it --

6 MS. CUMMINS: Where are you looking?

7 THE COURT: I just typed it in on the
8 internet.

9 MS. CUMMINS: Oh, if you go to the
10 IRS.gov and look at charities, it's under the name of
11 Animal Advocates.

12 THE COURT: Okay. I assume they file
13 tax returns, which you probably have access to.

14 MS. CUMMINS: No, if you don't -- if
15 the nonprofit doesn't make over 20,000 a year, you
16 don't have to file a tax return. You just file
17 the card.

18 THE COURT: And so they make less than
19 20,000 a year, but they're able to pay your rent, pay
20 your food, pay your electric bill, your car --

21 MS. CUMMINS: They're not paying my
22 food.

23 THE COURT: Okay. Well, he's going to
24 ask for all your expenses, so you can give him that,
25 and we'll get to the bottom of it.

1 MS. CUMMINS: Okay.

2 THE COURT: But less than 20,000 a year
3 is what you're telling the Court that that nonprofit
4 makes?

5 MS. CUMMINS: Not always, not always,
6 one or two years it was like 22,000.

7 THE COURT: All right. What else do
8 you have?

9 MR. TURNER: Then we have -- that takes
10 care of the interrogatories. And then there are about
11 six or seven requests for productions we don't
12 think -- Number 1 of the request for production: Any
13 and all bank statements -- before we were asking where
14 were the banks, and here we are asking for the actual
15 statements from 2010 to the present, and --

16 MS. CUMMINS: And I would object to
17 that.

18 MR. TURNER: -- and the response was:
19 I have no bank records. I shredded and threw them
20 into the trash.

21 Once again, I think she has better
22 access to them than I do. She can go to the bank and
23 get the requested documents.

24 THE COURT: Okay. Go get the
25 documents.

1 MS. CUMMINS: I would like to object --

2 THE COURT: You should have objected
3 when you answered it. You just said you shredded
4 them, you didn't object then.

5 MS. CUMMINS: Okay.

6 MR. TURNER: The next one is Number 2
7 where we asked for all statements and records
8 pertaining to any accounts you've had at any financial
9 institutions. So it's not just banks, it's any
10 financial institution during that same period.

11 The answer was: See above.

12 In other words, everything has been
13 shredded. And we think she should be compelled to go
14 to any financial institutions where she had accounts
15 and get the statements and records pertaining to those
16 accounts.

17 MS. CUMMINS: I only had those two
18 accounts.

19 THE COURT: Okay.

20 MS. CUMMINS: And I would like to
21 request more time, at least two weeks, because I don't
22 know how long it will take the bank to try and
23 retrieve all those documents.

24 THE COURT: Well, you shouldn't have
25 shredded everything.

1 MS. CUMMINS: Well, why would I need
2 bank statements when I have no bank account or money?

3 MR. TURNER: Because we asked for them
4 in 2012.

5 THE COURT: Because he asked for them
6 in 2012, and you shredded them since then.

7 MS. CUMMINS: Well, there was no order
8 for me to keep all the records. It's a lot of paper.

9 THE COURT: Okay. Well, go get them.
10 I'll give you --

11 MS. CUMMINS: He never asked for the
12 bank statements before.

13 THE COURT: Okay. I'm telling -- I'm
14 ordering you to get them now.

15 MS. CUMMINS: I need at least two
16 weeks.

17 THE COURT: Okay. I'll give you two
18 weeks.

19 MS. CUMMINS: I don't know how long --

20 THE COURT: I'll give you two weeks.

21 MS. CUMMINS: Okay.

22 MR. TURNER: Your Honor, the next is
23 Request Number 11. We asked for any application you
24 have filed during the last five years for Medi-Cal
25 benefits or any other government assistance or

1 financial assistance.

2 The response was: I have no
3 application. I filed -- I have no application I filed
4 during the preceding five years for Medi-Cal benefits.
5 Well, once again, she can get that application --

6 MS. CUMMINS: No.

7 MR. TURNER: -- from Medi-Cal --

8 THE COURT: You didn't ever file one?

9 MS. CUMMINS: I applied for Obamacare
10 online, and it says you don't qualify for Obamacare,
11 but you get Medi-Cal. It automatically sends it in.
12 I never filed or signed any application. There is no
13 application. I'm on Medi-Cal. That means the
14 government checks everything, and they realized I had
15 no money or assets.

16 MR. TURNER: Well, we've asked for any
17 application that was filed, and she just said she
18 filed an application.

19 THE COURT: I think she probably filed
20 it online, so it probably wasn't --

21 MS. CUMMINS: Yes, I did.

22 THE COURT: It wasn't a paper
23 application.

24 MR. TURNER: Well, if there was no copy
25 made and she doesn't have a copy of it.

1 MS. CUMMINS: They never gave me --
2 they never emailed me anything.

3 THE COURT: So she doesn't have
4 anything.

5 MR. TURNER: Okay. The next one was
6 Number 31. This -- the next few interrogatories are
7 duplicative -- excuse me -- requests for production,
8 31, 32, 33, and 34 ask for the documents that contain
9 the information in interrogatories 2, 3, 4, and 6,
10 which the Court has ordered her to answer.

11 In other words, the interrogatories ask
12 for information. This asks for the documents that
13 contain that information.

14 MS. CUMMINS: I answered it saying that
15 2, 3, 4, and 6 -- well, I'm going to try to find the
16 debit card number, but 2 and 3 I have nothing.

17 MR. TURNER: Well, once again it's "I
18 have no documents," and we are asking her to go get
19 the documents.

20 MS. CUMMINS: They don't exist. Number
21 2 is -- loan (inaudible) since 2012. No. So, of
22 course, I have no documents.

23 THE COURT: What documents do you think
24 she can go get?

25 MS. CUMMINS: There is no loan. There

1 is no loan documents.

2 MR. TURNER: Okay. If there's no
3 documents, then we'll -- I'll withdraw my motion to
4 compel with regard to that request for production.

5 MS. CUMMINS: Isn't this the motion to
6 compel hearing?

7 MR. TURNER: Yes, and I'm saying I'll
8 withdraw that here on the record.

9 THE COURT: That one. Not all of them.

10 MR. TURNER: Right, that --and that
11 would be request for production Number 31, we'll
12 withdraw since she --

13 THE COURT: Let's do the next one.
14 What else do you have?

15 MR. TURNER: 32 asks for documents
16 pertaining to interrogatory Number 3, and, once again,
17 that's -- that's information concerning accounts where
18 she had -- at financial institutions where she had
19 accounts.

20 MS. CUMMINS: No, Number 3 -- that's
21 not Number 3.

22 MR. TURNER: I'm sorry. Okay. I'm
23 sorry, Your Honor. Number 3 was I asked: From what
24 sources have you received income payments or revenue.

25 MS. CUMMINS: I responded.

1 MR. TURNER: The response was: I have
2 not received any income payments or revenue.

3 But obviously she is getting some
4 payments, income, or revenue, because she is alive.

5 THE COURT: I don't know that that's
6 true.

7 MS. CUMMINS: What was the last --

8 THE COURT: He said you are obviously
9 getting payments of some sort, or revenue, because
10 you're alive, but I think churches and stuff will give
11 you free food, won't they?

12 MS. CUMMINS: Yes.

13 THE COURT: I know the government
14 won't, but the government actually probably wants to
15 take a record of you, but the churches will give it to
16 you without doing that.

17 MR. TURNER: So that was Number 32.

18 Well, now the rest. Number 33 and 34.
19 33 asks for the documents containing the information
20 in interrogatory Number 4, which the Court has ordered
21 her to get from the bank, in other words, documents.

22 THE COURT: Yes, she is going to
23 attempt to get those documents from the bank, I've
24 ordered her to do that.

25 MR. TURNER: Okay. And then same thing

1 with 34 --

2 MS. CUMMINS: Your Honor, I think he
3 has requested this a couple of years ago and I
4 objected --

5 THE COURT: Okay. But then you
6 shredded them. So if you knew he requested them and
7 then you shredded them, you're going to have a real
8 problem now. So you did know he requested them and
9 you shredded them?

10 MS. CUMMINS: I objected.

11 THE COURT: But you shredded them after
12 you knew he requested them, so you destroyed the
13 evidence.

14 MS. CUMMINS: No, I was just cleaning
15 house.

16 THE COURT: No, that is called
17 destroying evidence.

18 I'll tell you what, next time you are
19 coming here for his hearing, because you may not be
20 going home if you're destroying evidence.

21 MS. CUMMINS: I was just getting rid of
22 paper, and I can't afford to go to -- I can't afford
23 to fly to Texas because I'm penniless, and also I have
24 a bad back injury.

25 THE COURT: Well, we'll probably find a

1 way to get you here, then.

2 Now you have knowingly destroyed
3 evidence, is what you're telling the Court.

4 MS. CUMMINS: I did not knowingly
5 destroy evidence. I was -- I got rid of all the
6 paper. I had to get rid of the filing cabinet.

7 THE COURT: Yeah. Okay. So you need
8 to go find those documents and produce them to him.

9 MR. TURNER: That's all I have, Your
10 Honor, and I have a proposed order that I've scratched
11 out the two requests for production that we talked
12 about, and I would also ask that the Court award \$500
13 in attorney's fees.

14 MS. CUMMINS: I don't have a penny. I
15 don't have a bank account. He knows that.

16 THE COURT: Okay. These need to be
17 produced by October 9th. I'm giving you three weeks.

18 MS. CUMMINS: Okay. I have written
19 down everything that you requested me to do. I need
20 to see the order first, because he's probably going to
21 request things that you didn't order me to do.

22 THE COURT: Okay.

23 MR. TURNER: If she was here she could
24 see the order.

25 MS. CUMMINS: Can you write the order,

1 Your Honor?

2 THE COURT: I have the order right
3 here.

4 MS. CUMMINS: I'm willing to produce
5 what you told me to produce today, but most likely the
6 order contains other things.

7 THE COURT: Okay. I'm not asking if
8 you are willing to produce anything. I'm ordering you
9 to produce it, so I'm glad you are willing to do it.

10 Yeah, we can find a way to get you here
11 if we need to, if that will make things easier for
12 you, if you don't decide to comply with the order.

13 Now, you have a motion also today, I
14 think, right?

15 MS. CUMMINS: Yes, I have two motions,
16 Your Honor.

17 THE COURT: Okay. You're saying --
18 let's see, amended motion with order to strike void
19 trial, is that one of them here?

20 MS. CUMMINS: Yes, and the other one is
21 to strike my passport being contained in the public
22 file.

23 MR. TURNER: In response to the first
24 motion she mentioned, this Court doesn't have
25 jurisdiction to rule on it. The case has gone to the

1 Fort Worth Court of Appeals. The petition has been
2 denied by the Supreme Court. This Court only has
3 jurisdiction to hear matters pertaining to enforcement
4 of this order.

5 THE COURT: You are saying Judge
6 Brigham wasn't competent?

7 MS. CUMMINS: Yes, that is included in
8 the exhibits.

9 MR. TURNER: -- and died of
10 Alzheimer's.

11 MS. CUMMINS: And that's not the main
12 issue. He didn't sign -- he didn't sign -- oath of
13 office before he took this assignment. He didn't have
14 to do that. He also didn't file an application for
15 eligibility for judicial assignment, and that's done
16 every two years.

17 THE COURT: Did you bring this up to
18 the Appellate Court?

19 MS. CUMMINS: No, I just found out
20 his -- (inaudible)

21 THE COURT: Yes, he died recently.

22 MS. CUMMINS: Yes.

23 MR. TURNER: She has been blogging all
24 about it --

25 THE COURT: Oh, yeah.

1 MR. TURNER: -- how he died of
2 Alzheimer's. It was actually cancer, Ms. Cummins.

3 THE COURT: Okay. So I'm going to deny
4 your motion to strike the void trial. So you can
5 appeal that.

6 MS. CUMMINS: I will appeal that.

7 And then there's one more motion, which
8 is to strike having my passport in the record.

9 THE COURT: Where is your passport?

10 MR. TURNER: Your Honor, in my motion
11 to compel I attached exhibits, which were her
12 responses to my discovery. One of the exhibits had
13 the redacted -- had the passport with the number
14 redacted. I'm willing to seal -- I mean, I don't
15 object to sealing the passport. I don't think it
16 needs to be stricken from the record.

17 MS. CUMMINS: There is no reason to
18 have my passport in the record. It's completely
19 irrelevant, and Mr. Turner is abusing discovery again
20 just for harassment purposes.

21 THE COURT: Okay. I'm reading your --
22 what's this with the You Tube videos?

23 MS. CUMMINS: Ms. Lollar, she made 300
24 videos of my deposition, and in the 300 videos I tell
25 about my finances --

1 THE COURT: Who is Ms. Lollar?

2 MR. TURNER: The plaintiff.

3 THE COURT: Okay. She made -- okay.

4 Who posted this on Facebook -- I mean, on You Tube?

5 MS. CUMMINS: Amanda Lollar. She

6 posted 300 videos of my deposition on --

7 THE COURT: Why is your client posting

8 stuff on Facebook -- I mean, I'm sorry, on You Tube?

9 MR. TURNER: Well, these are --

10 THE COURT: I'm not asking what they

11 are. Why is your client posting these on You Tube?

12 MR. TURNER: In response to the --

13 everything that's been posted on You Tube and the

14 internet by Ms. Cummins. Bat World almost went under,

15 they almost went bankrupt. These were posted as a

16 defensive action because their funding was drying up,

17 their foundations weren't funding money, so these were

18 posted --

19 THE COURT: Did you advise your client

20 to post these on You Tube?

21 MR. TURNER: I'm not saying I advised

22 her.

23 THE COURT: Well, did you advise her

24 not to.

25 MR. TURNER: Well, I can't answer that,

1 Your Honor.

2 THE COURT: Okay.

3 MS. CUMMINS: I requested him and
4 Ms. Lollar to take them down many times. They
5 refused. Mr. Turner is lying --

6 MR. TURNER: We're actually not here on
7 the You Tube videos.

8 THE COURT: It says on here amended
9 opposed motion to strike and seal filed exhibits, and
10 it talks about the extremely abusive discovery in this
11 case, and over 100 videos --

12 MS. CUMMINS: Mr. Turner is not telling
13 the truth that -- Bat World was nowhere near going
14 bankrupt, they have made so much more money since I
15 was --

16 MR. TURNER: That's --

17 MS. CUMMINS: -- (inaudible) they never
18 lost money, they're making more money.

19 THE COURT: Okay. So you want me to
20 seal the -- your passport?

21 MS. CUMMINS: Yes.

22 MR. TURNER: Your Honor, I have no
23 objection to sealing the passport.

24 THE COURT: I think that you have to
25 actually post it and do all that. I can do a

1 temporary sealing, but I think you are going to have
2 to post it, right?

3 MR. TURNER: Right.

4 THE COURT: So I'll temporarily seal
5 it -- I'll seal it for 30 days, and you can try to
6 figure out how to get it permanently sealed.

7 MS. CUMMINS: I don't know HOW -- how
8 do I get it permanently sealed? I don't know.

9 THE COURT: I know. You're going to
10 have to figure that out, I guess.

11 MS. CUMMINS: I just filed a motion to
12 strike seal.

13 THE COURT: Okay. I'm going to seal it
14 for 30 days, a temporary order sealing it for 30 days,
15 and then if you can figure out how to get a -- figure
16 out how to get it sealed permanently, then we can have
17 that hearing at some point in time.

18 MS. CUMMINS: Then I'll file another
19 motion to seal.

20 THE COURT: That may be right, but that
21 may not be right. And when you set the hearing, get
22 you a plane flight.

23 MS. CUMMINS: I can't get a plane
24 flight. I don't have a penny. I don't have a dime.
25 I don't have a credit card.

1 THE COURT: Okay. Well, set your
2 hearing on your permanent motion to seal, and we'll
3 see what we can do with that. But it's temporarily
4 sealed for 30 days.

5 MS. CUMMINS: Okay.

6 THE COURT: Just that portion of it.

7 All right. Anything else?

8 MS. CUMMINS: No.

9 THE COURT: You might want to submit me
10 an order temporarily sealing it.

11 MS. CUMMINS: Okay. I'll send an
12 order.

13 THE COURT: Okay. Then I guess we are
14 done. Have a good weekend.

15 MS. CUMMINS: Okay. Thank you.

16 (End of hearing)

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C E R T I F I C A T E

THE STATE OF TEXAS X

COUNTY OF TARRANT X

I, Christina Fett, Official Court Reporter in and for the 141st District Court, State of Texas, County of Tarrant, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the reporter's record in the aforementioned cause, all of which occurred in open court or in chambers and were reported by me.

I FURTHER CERTIFY that this reporter's record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I FURTHER CERTIFY that I have no financial interest in the matters shown herein, and that I am not related to any of the parties or their counsel.

I FURTHER CERTIFY that the total cost for the preparation of this reporter's record of the proceedings is \$200.00, and was paid by Plaintiff.

WITNESS MY OFFICIAL HAND this the 25th day of September, 2015.

/s/Christina Fett
Christina Fett, Texas CSR 4590
CSR Expires 12-31-15
Official Court Reporter, 141st District Court
Tom Vandergriff Civil Courts Building
100 N. Calhoun, 3rd Floor
Fort Worth, Texas 76196-0402
Telephone 817-884-1423
Facsimile 817-850-2944

IN THE SUPREME COURT OF TEXAS

-- -- -- --

NO. 15-0459

MARY CUMMINS
v.
AMANDA LOLLAR AND BAT
WORLD SANCTUARY

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Tarrant County,

2nd District.

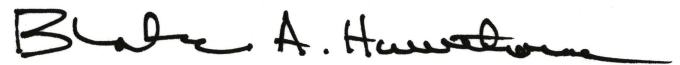
August 28, 2015

Petitioner's petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above and attached is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 8th day of October, 2015.



Blake A. Hawthorne, Clerk

By Monica Zamarripa, Deputy Clerk



Search documents in this case: Search

No. 18-7758

Title: **Mary Cummins, Petitioner
v.
Amanda Lollar**

Docketed: February 5, 2019

Lower Ct: Court of Appeals of Texas, Seventh District

Case Numbers: (07-16-00337-CV)

Decision Date: May 3, 2018

Rehearing Denied: May 29, 2018

Discretionary Court Decision Date: August 24, 2018

DATE

PROCEEDINGS AND ORDERS

Nov 20 2018 Petition for a writ of certiorari and motion for leave to forma pauperis filed. (Response due March 7, 2019)

[Motion for Leave to Proceed in Forma Pauperis](#)
[PetitionAppendixProof of Service](#)

Feb 15 2019 Waiver of right of respondent Amanda Lollar to resp

[Main Document](#)

Feb 28 2019

DISTRIBUTED for Conference of 3/15/2019.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARY CUMMINS,	Plaintiff,	} Case No. CV 11-8081-DMG (MANx)
v.		
AMANDA LOLLAR aka BAT WORLD SANCTUARY an individual person, et al.	Defendants.	} ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On July 10, 2012, Defendants Amanda Lollar and Bat World Sanctuary filed a motion for summary judgment/partial summary judgment (“the Motion”) noticed for hearing on August 10, 2012. [Docs. ## 41, 42, 43, 44, 45, 46, 47.] On July 25, 2012, Plaintiff filed her response. [Doc. # 59.] On July 27, 2012, Defendants replied. [Docs. 60, 61, 62.] On July 30, 2012, Plaintiff filed a reply to Defendants’ response. [Doc. # 64.] At the August 10, 2012 hearing, the Court orally granted Plaintiff’s request for leave to file a supplemental brief and, thereafter, allowed Defendants to file a supplemental reply. On September 12, 2012, Plaintiff filed her supplemental brief. [Docs. ## 86, 87, 88.] On September 21, 2012, Defendants filed their supplemental reply. [Docs. ## 90, 91, 92, 93.] The Motion was then submitted for decision. Having duly considered the parties’ submissions in favor of and in opposition to the Motion, the Court now renders its decision. For the reasons set forth below, the Motion is GRANTED.

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I.

PROCEDURAL BACKGROUND

On September 29, 2011, Plaintiff Cummins filed a complaint against Defendants Amanda Lollar and Bat World Sanctuary. On December 22, 2011, Plaintiff filed a first amended complaint (“FAC”) against the same Defendants and alleging the same causes of action, providing more specificity than the original complaint. [Doc. # 21.] In the FAC, Cummins alleges five causes of action (defamation, defamation per se, intentional interference with business relations, intentional interference with prospective economic advantage and intentional infliction of emotional distress) all based on allegedly defamatory statements about Cummins posted on the Internet by Defendants. The allegedly defamatory statements that Cummins challenges include statements that Cummins “has a criminal record,” was “convicted” of “theft of property, forged name on a credit card,” is a “cyberstalker,” “cybersquatter,” “hacked into our website” and “email list,” “was picked up by the LAPD Anti-Terrorism Task Force,” “posts pornography in children’s chat rooms,” “commits animal cruelty,” “tortures animals,” has made “false complaints to govt agencies about deft,” has a “history of stalking and harassment,” was “charged with criminal contempt,” and Plaintiff’s deposition was “court ordered.”

Defendants seek summary judgment contending that Cummins is a limited public figure and, therefore, summary judgment is warranted because the allegedly defamatory statements were either true, constituted opinions, or were made without malice.

II.

FACTUAL BACKGROUND

Cummins is the founder of a non-profit organization, Animal Advocates, located in California and is licensed by the United States Department of Agriculture and the California Department of Fish & Game (“CADFG”) to possess, rescue and rehabilitate ill, injured and orphaned native wildlife for release back to the wild. (FAC ¶ 9 [Doc. # 21].) According to Cummins’ declaration filed in opposition to the summary judgment

1 motion, Cummins also serves as the president of Animal Advocates. (Plaintiff’s Opp’n,
2 Exh 1.) [Doc. # 59.]

3 Cummins alleges she is trained to care for coyotes, bobcats, foxes, raccoons,
4 opossums, skunks and all other small mammals including bats; has published CADFG
5 approved manuals on wildlife rehabilitation and instructs CADFG accredited classes to
6 wildlife rehabilitators, veterinarians and animal care professionals. (FAC ¶¶ 9-10.)
7 Plaintiff further alleges that she has been trained at the Rio Hondo Police Academy and
8 the California State Humane Association Animal Law Enforcement Academy to
9 investigate animal cruelty and neglect. (*Id.* at ¶ 11.)

10 It is undisputed that Defendant Amanda Lollar operates a bat sanctuary in Texas,
11 Defendant Bat World Sanctuary. In June 2010, Cummins attended an internship at Bat
12 World Sanctuary, but left early after injuring her head. According to Cummins, during
13 her internship, she “witnessed Defendant Lollar commit animal cruelty, animal neglect,
14 [and] violations of the health code,” and after returning to California “reported
15 Defendants for the violations she witnessed.” (Plaintiff’s Opp’n at 7.) Cummins also
16 posted comments about Lollar’s activities on the Internet. (*Id.* at 8.) Numerous postings
17 about Plaintiff and Defendants have appeared on the Internet. Plaintiff and Defendants
18 each blame the other for the postings. In September 2012, Lollar sued Cummins in Texas
19 for defamation. (Plaintiff’s Opp’n at 5.) In September 2011, while Lollar’s action was
20 pending, Cummins filed the instant defamation action in the Central District of California
21 against Lollar and Bat World Sanctuary. After a court trial in the Texas action, Lollar
22 was awarded a \$6.1 million judgment against Cummins.

23 According to Cummins’ opposition to the summary judgment motion,
24 Plaintiff with written and oral permission from defendant
25 posted videos and photos online. Plaintiff made honest
26 comments on the photos such as “she (Defendant) debarked her
27 dogs,” “she has rabies vaccinations,” “I found a dead bat with
28 one wing under her desk” In retaliation for reporting

1 Defendant to authorities and posting the truth about her
2 activities online, Defendant started defaming Plaintiff

3 Plaintiff's Opp'n at 8.

4 At her deposition, Plaintiff stated the following:

5 She [Amanda Lollar] states that I have harassed and
6 defamed her and that she states that I posted on the Internet
7 false statements of fact.

8 Everything I have posted about the woman and her
9 organization is the absolute truth.

10 And she states I've made wild accusations containing
11 false and defamatory statements about her and Bat World to
12 numerous government agencies.

13 Again that's completely false. Everything that I have
14 complained about her was the absolute truth.

15 (MacPhail Decl., Exh. A (Plaintiff's Depo., 64:25-65:9).) [Doc. # 42.]

16 Cummins has maintained a YouTube website with various downloadable videos
17 concerning rescue and rehabilitation of squirrels, raccoons, skunks, bats and other
18 wildlife (<http://www.youtube.com/user/marycummins>). (MacPhail Decl., Exh. B.) She
19 also maintains a website for her non-profit organization, Animal Advocates, which
20 provides links to her biography and four-page curriculum vitae, as well as several online
21 articles about her (<http://www.animaladvocates.us>). (*Id.*, Exh. D.)

22 III.

23 LEGAL STANDARD

24 Summary judgment should be granted "if the pleadings, the discovery and
25 disclosure materials on file, and any affidavits show that there is no genuine issue as to
26 any material fact and that the movant is entitled to a judgment as a matter of law." Fed.
27 R. Civ. P. 56(c)(2); *accord Mattos v. Agarano*, 590 F.3d 1082, 1085 (9th Cir. 2010).
28 Material facts are those that may affect the outcome of the case. *Anderson v. Liberty*

1 *Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). An issue is
2 genuine “if the evidence is such that a reasonable jury could return a verdict for the
3 nonmoving party.” *Id.*

4 The moving party bears the initial burden of establishing the absence of a genuine
5 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L.
6 Ed. 2d 265 (1986). Where the moving party does not have the ultimate burden of
7 persuasion at trial, the moving party meets its burden of production and persuasion by
8 either producing evidence negating an essential element of the nonmoving party’s claim
9 or defense or showing that the nonmoving party does not have enough evidence of an
10 essential element to carry its ultimate burden of persuasion at trial. *Id.* at 325; *see also*
11 *Nissan Fire & Marine Ins. Co.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving
12 party has met its initial burden, Rule 56(e) requires the nonmoving party to “go beyond
13 the pleadings and by her own affidavits, or by the ‘depositions, answers to
14 interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a
15 genuine issue for trial.’” *Id.* at 324; *see also Bias v. Moynihan*, 508 F.3d 1212, 1218 (9th
16 Cir. 2007). “[T]he inferences to be drawn from the underlying facts . . . must be viewed
17 in the light most favorable to the party opposing the motion.” *Matsushita Elec. Indus.*
18 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).
19 However, “an opposing party may not rely merely on allegations or denials in its own
20 pleading.” Fed. R. Civ. P. 56(e).

21 IV.

22 DISCUSSION

23 A. DEFENSE OF TRUTH AS TO CUMMINS’ DEPOSITION

24 It is not entirely clear why the statement that Cummins’ “deposition was court
25 ordered” would be defamatory. Nonetheless, Cummins complains that contrary to
26 Lollar’s post on the Internet that Cummins’ “deposition was court ordered,” it was,
27 instead, pursuant to notice. Cummins concedes in her deposition, however, that the
28 Texas court granted a motion to compel her deposition and ordered the deposition to

1 1984) 741 F.2d 193, 195-198), or “crooked politician”
2 (*Fletcher v. San Jose Mercury News, supra*, 216 Cal.App.3d at
3 pp. 190-191). Similarly, in *Moyer v. Amador Valley J. Union*
4 *High School Dist., supra*, 225 Cal.App.3d at page 725, this
5 court found no cause of action for statements in a high school
6 newspaper that the Plaintiff was “the worst teacher at FHS” and
7 “a babbler.” The former was clearly “an expression of
8 subjective judgment.” (*Ibid.*) And the epithet “babbling” could
9 be reasonably understood only “as a form of exaggerated
10 expression conveying the student-speaker’s disapproval of
11 Plaintiff’s teaching or speaking style.” (*Id.* at p. 726.)

12 *Copp v. Paxton*, 45 Cal. App. 4th 829, 837-38, 52 Cal. Rptr. 2d 831 (1996). One of the
13 statements on which the *Copp* court focused was a statement in a letter that referred to the
14 plaintiff as a “booby.” Finding such expression to be opinion, the court stated, “[t]he
15 epithet ‘booby,’ like the expression ‘babbling,’ can be understood only as a vague
16 expression of low esteem.” *Id.* at 838.

17 Like “booby” and “babbling,” labels such as “cyberstalker,” “crackpot,” “psycho,”
18 and “crackpot stalker” are expressions of subjective judgment conveying an opinion of
19 low esteem. As such, they are not actionable.

20 Moreover, at her deposition, when confronted with the exhibits containing these
21 allegedly defamatory statements, Cummins admitted that she did not have evidence that
22 Lollar was the author. When asked about a document, marked as Exhibit 9 during her
23 deposition, Cummins claimed that the exhibit falsely stated that she was a cyberstalker
24 and . . . they call me a crackpot. I’m psycho.” (MacPhail Decl., Exh. A (Plaintiff’s
25 Depo., 84:16-20).) Cummins admitted, however, that she did not know who posted
26 Exhibit 9 to the Internet. (*Id.* (Plaintiff’s Depo., 84:2-4).) Similarly, Cummins claimed
27 that a document marked as Exhibit 20 was defamatory because it said, “I’m a
28 quote/unquote morbid cyberstalker who should be in jail for her crimes.” (*Id.* (Plaintiff’s

1 into a particular public controversy and thereby becomes a
2 public figure for a limited range of issues.”

3 *Copp*, 45 Cal. App. 4th at 843-44 (quoting *Gertz*, 418 U.S. at 315).

4 “*Copp* . . . sets forth the elements that must be present in
5 order to characterize a Plaintiff as a limited purpose public
6 figure. First, there must be a public controversy, which means
7 the issue was debated publicly and had foreseeable and
8 substantial ramifications for nonparticipants. Second, the
9 Plaintiff must have undertaken some voluntary act through
10 which he or she sought to influence resolution of the public
11 issue. In this regard it is sufficient that the Plaintiff attempts to
12 thrust him or herself into the public eye. And finally, the
13 alleged defamation must be germane to the Plaintiff’s
14 participation in the controversy.”

15 *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 24, 53 Cal. Rptr. 3d 752 (2007) (quoting *Ampex*
16 *Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1577, 27 Cal. Rptr. 3d 863 (2005)).

17 “A person *becomes* a limited public figure by injecting himself into the public
18 debate about a topic that concerns a substantial number of people. Once he places
19 himself in the spotlight on a topic of public interest, his private words and conduct
20 relating to that topic become fair game.” *Gilbert*, 147 Cal. App. 4th at 25 (emphasis in
21 original).

22 In this case, Cummins has made herself a limited public figure in the field of
23 animal welfare – rescue, rehabilitation, and care. There is public interest in the protection
24 of wildlife and Cummins has voluntarily and publicly involved herself in that issue. Her
25 postings on the Internet evidence her voluntary acts seeking to involve herself in
26 promoting animal welfare to the public and to influence the public debate concerning
27 animal rescue and rehabilitation. Moreover, Cummins has voluntarily thrust herself into
28 the public eye concerning the personal attacks between herself and Lollar by posting on

1 the Internet comments regarding her own experience as an intern at Batworld and
2 Lollar’s conduct and activities. Because Cummins has publicly aired on the Internet her
3 personal dispute with Lollar, the alleged defamatory comments by Lollar are germane to
4 Cummins’ participation in the public controversy.

5 As a result, Cummins is a limited public figure with respect to the field of animal
6 welfare as well as the personal attacks between herself and Lollar. Therefore, Cummins
7 is required to show actual malice to prevail on her defamation claims.

8 Cummins contends that when Lollar posted on the Internet that Cummins was
9 convicted of crimes, she acted with reckless disregard for the statement’s truth or falsity.
10 Cummins argues that “[t]he original post made by another stated Mary Cummins ‘was
11 charged with credit card forery (sic) and theft!’ . . . That was posted by an anonymous
12 person on an anonymous blog . . . It was not a credible source and it said ‘charged with,’
13 not ‘convicted.’” (Plaintiff’s Supp. Brief at 4 [Doc. # 86].) Plaintiff provides no
14 evidence to support her assertion that the source was not credible or that Lollar was more
15 than negligent.

16 Cummins’ burden of proving “reckless disregard” is not an easy one:

17 The reckless disregard standard requires a high degree of
18 awareness of . . . probable falsity . . . There must be sufficient
19 evidence to permit the conclusion that the defendant in fact
20 entertained serious doubts as to the truth of his publication. . . .
21 Gross or even extreme negligence will not suffice to establish
22 actual malice; the defendant must have made the statement with
23 knowledge that the statement was false or with actual doubt
24 concerning the truth of the publication.

25 *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1167, 15 Cal. Rptr. 3d 100 (2004)
26 (quotation marks and citations omitted). Given this high standard for finding reckless
27 disregard, Cummins’ personal belief that Lollar’s source was not credible is not sufficient
28 to meet it.

1 As further argument for finding malice, Cummins contends that Lollar continued
2 to post the defamatory statements that Cummins was convicted of crimes even after
3 having been notified of their falsity. Cummins asserts that she sent two cease and desist
4 email messages to Lollar, which Lollar admits receiving. (Plaintiff’s Opp., Exh. 3 [Doc.
5 # 59].) Cummins contends that Lollar’s receipt of these email messages is evidence that
6 she was on notice of the falsity of her Internet posting. In her deposition, however, Lollar
7 explains that “I deleted the post because we received a cease and desist. I deleted every
8 post on World Bat Line where you [Plaintiff] were a part of the comment thread.” (*Id.*)
9 Because Cummins neither disputes this deposition testimony nor provides any evidence
10 to controvert the testimony, her evidence of Lollar’s receipt of her cease and desist
11 emails, without evidence that Lollar continued to post the statements thereafter, is not
12 sufficient to foreclose summary judgment on the issue of malice.¹

13 Cummins does not address the issue of malice with respect to the false statement
14 that she was charged with criminal contempt. In fact, apparently, even Defendants’
15 counsel herein believed that Cummins was found in criminal contempt as he was arguing
16 such as recently as May 11, 2012, in Defendants’ opposition to Plaintiff’s preliminary
17 injunction motion. In said opposition, Defendants’ counsel asserted that the statement of
18 criminal contempt was true but nevertheless, Defendants would delete the word,
19 “criminal.” [Doc. # 31.] In the Order denying Plaintiff’s preliminary injunction motion,
20 this Court explained that Plaintiff was found in civil contempt, not criminal contempt.
21 (Order Denying Mot. for Prelim. Inj., filed July 17, 2012 [Doc. # 49].) Cummins,
22 however, provides no evidence that Lollar knew of the falsity of the statement before this
23 Court’s order denying preliminary injunction, and provides no evidence that Lollar
24 continued to post that statement after this Court’s July 17, 2012 Order. Having failed to
25

26 ¹ Even if Cummins could prove malice for Defendants’ Internet posting of statements that she
27 was convicted of crimes, to the extent such posting was the republication of information posted by
28 another person, Defendants would be immune from liability. 47 U.S.C. § 230(c)(1); *Barrett v.*
Rosenthal, 40 Cal. 4th 33, 63, 51 Cal. Rptr. 3d 55 (2006).

1 produce any evidence of malice (i.e., that Defendants acted with knowledge of falsity or
2 reckless disregard of truth or falsity of a statement when posting such statement on the
3 Internet), Cummins fails to show that a genuine issue of material fact remains.

4 **V.**

5 **CONCLUSION**

6 Based on the foregoing, Defendants are entitled to summary judgment on
7 Cummins' defamation claims. Furthermore, because Cummins' other claims (intentional
8 interference with business relations, intentional interference with prospective economic
9 advantage, and intentional infliction of emotional distress) are all premised on the alleged
10 defamation, summary judgment is warranted as to all of Cummins' claims.

11 Accordingly, Defendants Lollar and Bat World Sanctuary's motion for summary
12 judgment is GRANTED. By no later than November 30, 2012, Plaintiff Cummins shall
13 file a status report regarding her efforts to serve her Second Amended Complaint on all
14 remaining defendants.

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16 DATED: November 16, 2012

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18 DOLLY M. GEE
19 UNITED STATES DISTRICT JUDGE
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