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6

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

9 In re:)
10 MARY CUMMINS-COBB,)
Debtor)
11 _____)
12 KONSTANTIN KHIONIDI, as Trustee of the)
COBBS TRUST,)
13 Plaintiff,)
14 vs.)
15 MARY CUMMINS-COBB,)
Defendant.)
16 _____)

Case No. 2:17-bk-24993-RK
Chapter 7
Adv. Proc. No. 2:18-ap-01066-RK

OPPOSITION TO DEFENDANT'S
PURPORTED "MOTION TO DISMISS
ADVERSARY PROCEEDING DUE TO
UNCLEAN 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

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2 **Cases:**

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5 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p.73 (Tex. App. Apr. 9, 2015)

6 [2-4, 6](#)

7 *Cummins v. Lollar*, Case No. 07-16-00337-CV, 2018 Tex. App. LEXIS 3155 (Tex. App. May 3,

8 2018) [8](#)

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10 *Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 380 (9th Cir. 1988) [3, 4](#)

11 *In re Estate of Wiechers* (1926) 199 Cal. 523, 530 [12](#)

12 *In re Uwimana*, 274 F.3d 806, 810-11 (4th Cir. 2001) [10](#)

13 *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245, 54 S. Ct. 146, 147-48 (1933) . . [9](#)

14 *Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex. 1986). [7](#)

15 *Silberg v. Anderson* (1990) 50 Cal.3d 205, 216 [266 Cal. Rptr. 638, 786 P.2d 365] [11](#)

16 *Wetzler v. Cantor*, 202 B.R. 573 (D. Md. 1996) [10](#)

17 *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983). [3](#)

18 **Statutes:**

19 11 U.S.C. § 523(a)(6) [1, 1, 4](#)

20 11 U.S.C. § 727 [2](#)

21 Civil Code § 47(b) [11, 12](#)

22 Code Civ. P. § 673(a) [7](#)

1 **INTRODUCTION**

2 Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust, does not even know what to
3 make of defendant Mary Cummins-Cobb’s latest frivolous filing. Although she seeks to “dismiss”
4 the adversary proceeding, the Court and counsel are left to guess what rule of procedure she is
5 relying upon. Is Cummins moving to dismiss pursuant to Fed. R. Civ. P. 12(b), as an “inherent
6 powers” sanction for some unspecified litigation abuse in this case, or, as it appears, is yet
7 another unsupported laundry list of gripes that Cummins has with the judgment assignor,
8 Amanda Lollar, the Texas Courts of Appeals, the Texas Supreme Court, the Los Angeles
9 Superior Court, Ms. Lollar’s counsel, and Mr. Khionidi’s deceased prior counsel who represented
10 him after receiving a filed assignment of Lollar’s judgment against Cummins. Whatever
11 Cummins’ gripes are, one thing is inescapably clear: the Texas courts have conclusively
12 determined in a final judgment that debtor and defendant Mary Cummins-Cobb acted willfully and
13 maliciously in defaming Amanda Lollar, which findings establish that the Texas judgment and the
14 California Sister State Judgment based thereon are nondischargeable pursuant to 11 U.S.C. §
15 523(a)(6). Whether Cummins is entitled to a discharge in general under 11 U.S.C. § 727 or as to
16 the Texas judgment are the *only* two issues presented.

17 If Cummins has complaints about Ms. Lollar, Mr. Turner (Lollar’s counsel in the Texas
18 action) or Mr. Little , she can take it up with the courts in which she claims that alleged
19 misconduct occurred. However, from Cummins’ rambling menu of gripes, Plaintiff can only
20 discern one thing that she claims was done by counsel in *this* case that she is upset with, and
21 that is the service of a deposition subpoena on her roommate, Jennifer Charnofsky, who was
22 served by a process server with a deposition subpoena in this case and refused to appear for her
23 deposition. Although Cummins now contends that there was some sort of “fraud” in serving Ms.
24 Charnofsky, this Court has already denied Cummins’ Motion for a Protective Order to prevent the
25 deposition of Charnofsky – a woman who Cummins claimed had a secured interest in Cummins’
26 car, which Plaintiff has now discovered is a lie. Cummins’ “car” that she lists on her Bankruptcy
27 schedules as hers, is actually registered to Animal Advocates, a non-profit corporation that
28 Cummins uses to park money and take money out when she needs it. Charnofsky has no

1 security interest in the car either. So if anyone has “unclean hands” in this matter, it is Cummins
2 – who has lied under oath in her bankruptcy schedules, refused to be deposed, has failed to
3 produce a single document in responses to discovery, has failed to produce her tax returns
4 despite having been ordered to do so by this Court and has falsely claimed that there is a
5 currently-pending Petition for Certiorari to the U.S. Supreme Court on the Texas Judgment that
6 was entered years ago. This motion is both frivolous and vexatious, unsupported by any
7 admissible evidence and should be treated as the type of harassing litigation that Cummins has
8 specialized in since she was sued for defamation by Ms. Lollar in 2010.

9 ARGUMENT

10 I.

11 **THERE IS NO PROCEDURAL BASIS FOR DISMISSING THIS ADVERSARY PROCEEDING**

12 Assuming that Cummins is seeking to dismiss this action as a sanction for something done
13 by either Mr. Khionidi or Mr. Stillman in this case, that is frivolous. Cummins’ sole claims
14 concerning Mr. Stillman or Mr. Khionidi in this action are (1) some sort of misrepresentation
15 concerning the service of a subpoena on Jennifer Charnofsky, Motion, p. 3, lines 21-27, and (2)
16 “During the course of this adversary proceeding Plaintiff has made many, many false statements
17 about the facts in court and in legal filings to this Court,” p. 6, lines 12-13. However, Cummins
18 fails to either identify what “many, many false statements” she is referring to or to support her
19 claim that Mr. Stillman made “many, many false statements” with *any* evidence that would
20 establish, by clear and convincing evidence, that there were any such “false statements” or that
21 any such statements have a close nexus to the whether or not the Texas Judgment is
22 nondischargeable. Since Cummins bears the burden of establishing by “clear and convincing”
23 proof that Mr. Khionidi has “unclean hands,” she cannot even get to square one on her motion.¹

24 Moreover, for a court to dismiss a case based on alleged misconduct pursuant to its
25

26 ¹ The “clear and convincing standard is met “only if the material it offered instantly tilted the
27 evidentiary scales in the affirmative when weighed against the evidence . . . offered in opposition.”
28 *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984). Even assuming that any of Cummins’ gripes
were relevant, there is *no* evidentiary support for those gripes under any standard of proof.

1 inherent powers, the moving party must prove (1) the existence of certain extraordinary
2 circumstances, (2) the presence of willfulness, bad faith, or fault by the offending party, (3) the
3 efficacy of lesser sanctions, (4) the relationship or nexus between the misconduct drawing the
4 dismissal sanction and the matters in controversy in the case, and finally, as optional
5 considerations where appropriate, (5) the prejudice to the party victim of the misconduct, and (6)
6 the government interests at stake. *Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 380 (9th Cir. 1988).
7 Even accepting Cummins' unsupported claims as true, there is absolutely no legal basis for an
8 "inherent powers" dismissal.

9 A. There Are No Extraordinary Circumstances.

10 Dismissal under a court's inherent powers is justified in extreme circumstances. *Wyle v.*
11 *R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983). At best, Cummins claims that Mr.
12 Stillman did not actually have Jennifer Charnofsky served. That is false, and the Subpoena and
13 Proof of Service are attached to the Declaration of Philip Stillman as Exhibit 1. Moreover, it is
14 beyond question that the subpoena was actually served. The copy sent to Cummins did not have
15 Charnofsky's address filled in, while the one served on Charnofsky did. Thus, it is clear that
16 despite Cummins' claims, the subpoena was correctly served by a process server. Stillman
17 Decl., ¶ 2-4.

18 Even if true – which it is not – Charnofsky refused to appear for her duly noticed
19 deposition. Therefore, that would not be an "extreme circumstance" in any event. Second, as
20 this Court already ruled in denying Cummins' Motion for a Protective Order, there is no reason to
21 preclude Charnofsky's deposition. Thus, that is not an "extreme circumstance" that would
22 support an inherent powers dismissal.

23 As for Cummins' claim of "many, many false statements," that cannot even be responded
24 to as she fails to identify or support any of the "many, many false statements" that she claims
25 were made or what "close nexus" any of those alleged "many, many false statements" have to
26 this case. Thus, it is impossible to respond to and it is impossible to determine whether any of
27 those "many, many false statements" have anything to do with the substance of the adversary
28 proceeding.

1 B. Willfulness, Bad Faith Or Fault Is Nonexistent.

2 In cases where the drastic sanctions of dismissal or default are ordered, the range of
3 discretion for a district court is narrowed and the losing party's non-compliance must be due to
4 willfulness, fault, or bad faith. *Halaco Eng'g Co. v. Costle*, 843 F.2d 376, 380 (9th Cir. 1988).
5 Once again, there is zero evidence of any willful misconduct by either Mr. Khionidi or Mr. Stillman
6 in this case.

7 C. The Court Must Consider Lesser Sanctions.

8 The consideration of less severe penalties must be a reasonable explanation of possible
9 and meaningful alternatives. *Anderson v. Air West, Inc.*, 542 F.2d 522, 525 (9th Cir. 1976). Even
10 if Cummins could have supported her unsupported arguments, she must show that only the
11 drastic sanction of dismissal is appropriate. For example, to the extent that she claims that Mr.
12 Stillman misrepresented whether or not Charnofsky was served – which is denied – the remedy
13 would be to quash the Chanofsky deposition subpoena, not dismiss the case.

14 D. There Is No Nexus Between Any Misconduct And the Issues In This Case.

15 “The most critical criterion for the imposition of a dismissal sanction is that the misconduct
16 penalized must relate to matters in controversy in such a way as to interfere with the rightful
17 decision of the case.” *Halaco Eng'g Co.*, 843 F.2d at 381. This rule is rooted in general due
18 process concerns. *Id.* “There must be a nexus between the party's actionable conduct and the
19 merits of his case.” *Id.* Here, even believing Cummins' unsupported and wild accusations, there
20 is no nexus between any alleged “misconduct” and the matters in controversy in this case.

21 Cummins was held to have knowingly and intentionally defamed Amanda Lollar with
22 malice and a specific intent to injure Ms. Lollar, as set forth fully in Plaintiff's Motion for Summary
23 Judgment. That judgment is clearly nondischargeable pursuant to 11 U.S.C. § 523(a)(6), as set
24 forth therein. Similarly, the Sister State Judgment is non-dischargeable. This Adversary
25 Proceeding seeks a determination from this Court – which this Court has continued for almost
26 three months – what the law plainly provides; the Texas Judgment is nondischargeable as a
27 willful and malicious injury. Nothing that Cummins complains about – even those actions
28 unrelated to this case – have any bearing on whether or not the Texas Judgment is

1 nondischargeable. Whether Charnofsky was served or not, or whether Mr. Stillman made the
2 ubiquitous “many, many false statements” does not alter the plain fact that there is a judgment
3 and that judgment is nondischargeable.

4 E. Cummins Has Identified No Prejudice.

5 A final consideration is the existence and degree of prejudice to the wronged party. This
6 factor is purely optional. *Id.* Other than the fact that Cummins will not be able to discharge the
7 defamation judgment, she has identified no prejudice that she has suffered as a result of any
8 alleged misconduct in this case. The fact that a defamation judgment is nondischargeable is a
9 matter of law and statute and is not the type of prejudice that can cognizably support a dismissal
10 sanction. Accordingly, there is no basis for an inherent powers dismissal.

11 II.

12 **CUMMINS IS THE ONLY PARTY WITH SO-CALLED ‘UNCLEAN HANDS’**

13 A. Cummins’ Refusal To Produce Documents.

14 It is indeed ironic that *Cummins* is alleging that the plaintiff has “unclean cleans.” Let’s
15 review *Cummins’* conduct *in this case*. First, Cummins failed to produce a single document in
16 response to Plaintiff’s document requests, although she did not seek a protective order until
17 months later. After that motion was denied, she failed to produce *any* documents. Cummins was
18 ordered by this Court to produce her tax returns and the Court, with the stipulation of counsel,
19 imposed a protective order on those limited documents. Despite that, none were produced.
20 Stillman Decl., ¶ 5. Cummins also sought to obtain a protective order preventing the production
21 of records of Animal Advocates, a California nonprofit that Cummins uses as her personal piggy-
22 bank, which was denied.

23 In fact, this not the first time that Cummins has played such discovery shenanigans. As
24 shown in the transcript of a post-judgment hearing in *Lollar v. Cummins* dated September 18,
25 2015, Cummins admitted to shredding documents that had been previously requested in
26 discovery, 4:12-6:13. A copy of the September 18, 2015 Hearing Transcript is attached to the
27 Stillman Declaration as Exhibit 3. In that same hearing, she claimed that Animal Advocates paid
28 all of her living expenses, and she lived on Animal Advocates property. Transcript, 10:9-11:17.

1 Compare those representations to Cummins' representations in her Motion for a Protective Order
2 to prevent the production of Animal Advocates records, Docket 48, pp. 11-12.²

3 B. Cummins' Refusal To Be Deposed.

4 Cummins refused to appear for her deposition in October, and after agreeing in writing to
5 continue the discovery cutoff, then refused to execute a stipulation, forcing Plaintiff to file a
6 motion, which was granted. During that time period in October 2018, Cummins contended that
7 she did not have to cooperate in the preparation of any Joint Stipulations regarding the discovery
8 because the motions would be heard after the discovery-cutoff. Despite that contention, she has
9 now served invalid subpoenas in *March 2019*, months after the January 31, 2019 discovery
10 cutoff. She again refused to appear for her deposition in January 2019, forcing Plaintiff to file a
11 Motion to Compel, which this Court granted. She filed a Motion to Quash the deposition of third
12 party Jennifer Charnofsky, taking the frivolous position that Charnofsky was irrelevant, when
13 Cummins herself claimed that Charnofsky was a secured creditor on an asset that Cummins
14 falsely claimed was her own on her bankruptcy schedules. Thus, Cummins has provably and
15 overtly lied on her schedules regarding Ms. Charnofsky's security interest and Cummins'
16 ownership of a car.

17 C. Cummins' Improper Attempt To Prevent Banks From Producing Records That She
18 Refused To Produce Without Notifying Counsel.

19 Cummins has also failed to produce a single bank record and without copying counsel,
20 attempted to prevent banking institutions from producing bank records to Plaintiff pursuant to
21 valid and timely subpoenas – something that Cummins first disclosed at the hearing on February
22 26. Stillman Decl., ¶ 7.

24 ² Cummins again raises the claim that Lollar posting her passport is some sort of violation of
25 a "protection order" [sic]. Motion, p. 4, lines 11-12, contending that it has some relevance because
26 Lollar was acting as a legal assistant to Mr. Little, Plaintiff's deceased counsel in the Los Angeles
27 Superior Court Judgment Debtor proceedings against Cummins. However, as the September 18,
28 2015 hearing transcript makes clear, Cummins' passport was subject to a *temporary* sealing order
from September 18, 2015 to October 18, **2015**. Transcript, 29:8 - 31:6. Cummins never obtained a
permanent order, and thus, the sealing order expired on October 18, 2015 – another of Cummins'
lies to this Court.

1 D. Cummins' Own Inequitable Conduct Is Established By Two Final Judgments Of The Texas
2 Courts Of Appeal.

3 Two Texas Courts of Appeal, on *de novo* review of the trial court's finding that Cummins
4 intentionally and maliciously defamed Amanda Lollar, affirmed that judgment. Although that
5 Texas Judgment was entered in California as a Sister State judgment, Cummins never appealed
6 that judgment or challenged it in any way. Although one would logically have thought that having
7 a \$6 million judgment against her would have given her pause, Cummins republished statements
8 already held to have been defamatory and was sued again by Ms. Lollar. Moreover, Cummins
9 attempted to sue Ms. Lollar for defamation in federal court, which was dismissed as a bad faith
10 filing in the Central District.

11 E. Cummins' Misrepresentation Concerning Her Petition For Certiorari Having Anything To
12 Do With This Case.

13 Finally, Cummins has claimed that she has a Petition for Certiorari pending in the U.S.
14 Supreme Court on the *original* Texas judgment.³ That is a flat-out lie. The Texas Judgment that
15 is the subject of this case was entered on August 27, 2012. [ECF 35-2, Exhibit 3]. The Court of
16 Appeals affirmed that judgment on April 9, 2015. *Cummins v. Bat World Sanctuary*, Case No.
17 **02-12-00285-CV**, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015). Cummins' Petition for
18 Review to the Texas Supreme Court was denied on August 28, 2015. Denial of Petition for
19 Review, attached to Stillman Declaration as Exhibit 4. U.S. Supreme Court Rule 13 requires that
20 any petition for certiorari must be filed within 90 days of the denial of discretionary review, *i.e.*, 90
21 days from August 28, 2015. Thus, it is absolutely clear and subject to judicial notice that the
22 Petition for Certiorari now pending in the Supreme Court is *not* from the Texas Judgment in *this*
23 case.

24 After the Texas Judgment was entered, and affirmed on appeal, Cummins reposted some

26 ³ In addition to being false, it is also irrelevant, since in Texas, judgments become final for
27 *res judicata* and collateral estoppel purposes once the trial court loses plenary power over the
28 judgment, *regardless of whether the judgment is appealed. Scurlock Oil Co. v. Smithwick*, 724
S.W.2d 1, 6 (Tex. 1986). Thus, even if a cert. Petition was pending on the Texas Judgment, it would
still be final, binding and conclusive.

1 of the defamatory statements for which she was found liable to the original judgment creditor,
2 Amanda Lollar, and was sued again for defamation. Cummins moved to dismiss that second
3 defamation action on the same grounds raised in her collateral attack on the Texas Judgment in
4 this Court, namely that it was barred by (1) the Texas Citizens Participation Act (TCPA); (2) the
5 Texas Defamation Mitigation Act (TDMA); (3) a lack of clear and convincing evidence that she
6 allegedly defamed Lollar with malice; (4) Lollar and her attorney, Randy Turner, committed fraud,
7 forgery, and perjury; and (5) the trial court did not have personal or subject matter jurisdiction.⁴
8 *Cummins v. Lollar*, Case No. **07-16-00337-CV**, 2018 Tex. App. LEXIS 3155, at *3 (App. May 3,
9 2018) (“*Cummins II*”). Each of those contentions were rejected. *Id.* Cummins took an interlocutory
10 appeal of the denial of her Motion to Dismiss, which was affirmed by the Texas Court of Appeals
11 on May 3, 2018. *Id.* Cummins’ Petition for Review to the Texas Supreme Court was denied on
12 August 24, 2018. *Id.*

13 Although Cummins did file a Petition for Certiorari with the Supreme Court on February 5,
14 2019, that Petition was thus on a completely different case than the Texas Judgment at issue in
15 this case and the pending Motion for Summary Judgment. The U.S. Supreme Court docket
16 shows that the Petition was filed on February 5, 2019, seeking certiorari on the Texas Court of
17 Appeals’ affirmance of the trial court’s denial of Cummins’ Motion to Dismiss dated May 3, 2018,
18 Texas Court of Appeals Case No. **07-16-00337-CV**, *i.e.*, the appeal from the trial court’s denial of
19 Cummins’ Motion to Dismiss the *second* action filed by Ms. Lollar, *not* the final judgment at issue
20 in this case, which was Texas Court of Appeals Case No. **02-12-00285-CV**. A copy of the U.S.
21 Supreme Court Docket is attached to the Stillman Declaration as Exhibit 5. Thus, the
22 representation that Cummins’ new Petition for Certiorari has anything to do with this case is
23 simply false.

24
25 ⁴ Cummins argues that because the second defamation suit is based on the same
26 statements found to be defamatory in the first action, the second action is somehow germane to the
27 Motion for Summary Judgment. However, it is a separate action and has no bearing on whether the
28 Texas Judgment is collateral estoppel on Plaintiff’s § 523(a)(6) claim. Nonetheless, Plaintiff will
discuss it herein, as it was raised by Cummins and further supports application of collateral
estoppel.

1 That small excerpt of the laundry list of Cummins' misconduct in this case and leading up
2 to this case is the epitome of "unclean hands."

3 III.

4 **EVEN TREATING CUMMINS' "MOTION" AS SOME SORT OF SUMMARY JUDGMENT**
5 **MOTION ON A NON-ASSERTED AFFIRMATIVE DEFENSE, IT IS VEXATIOUS**

6 Cummins never pled an affirmative defense of unclean hands. However, even ignoring
7 that, the only other procedural mechanism for dismissal would be a motion for summary
8 judgment on her non-existent affirmative defense. Since there is no such affirmative defense
9 and Cummins clearly failed to comply in any way, shape or form with LBR 7056-1, that ploy is
10 meritless. However, Plaintiff will discuss Cummins' meritless claim of unclean hands
11 nonetheless, notwithstanding that it is so frivolous.

12 A. **Nothing Cummins Alleges In Her Motion Bears Any Relation To This Case.**

13 Not surprisingly, the doctrine of "unclean hands" requires clean hands only where some
14 unconscionable act of one coming for relief has *immediate and necessary* relation to the equity
15 that he seeks in respect of the matter in litigation. *Keystone Driller Co. v. Gen. Excavator Co.*,
16 290 U.S. 240, 245, 54 S. Ct. 146, 147-48 (1933). Putting aside the fact that there was no
17 misconduct of any type, courts "do not close their doors because of plaintiff's misconduct,
18 whatever its character, that has no relation to anything involved in the suit, but only for such
19 violations of conscience as in some measure affect the equitable relations between the parties in
20 respect of something brought before the court for adjudication." *Id.* (Party had unclean hands in
21 patent infringement case due to the destruction of documents in case).

22 Moreover, "the doctrine has limits, and not all misconduct by a plaintiff will soil that
23 plaintiff's hands. Among other things, the doctrine 'only applies when the claimant's misconduct is
24 *directly related* to the merits of the controversy between the parties, that is, when the tawdry acts
25 'in some measure affect the equitable relations between the parties in respect of something
26 brought before the court for adjudication.'" *Dr. Jose S. Belaval, Inc. v. Perez-Perdomo*, 488 F.3d
27 11, 15-16 (1st Cir. 2007)(quoting *Keystone*, 290 U.S. at 245). "The mere fact that the 'misconduct'
28 arises from some overlapping facts is not enough. Since 'relatively few plaintiffs are wholly free

1 from any trace of arguable misconduct at least tangentially related to the objective of their suit,
2 the right to injunctive relief . . . would have little value if the defendant could divert the proceeding
3 into the byways of collateral misconduct.” *Id.*

4 Thus, “A court can deny relief under the doctrine of unclean hands only when there is a
5 close nexus between a party's unethical conduct and the transactions on which that party seeks
6 relief.” *In re Uwimana*, 274 F.3d 806, 810-11 (4th Cir. 2001), citing *Keystone Driller Co. v. General*
7 *Excavator Co.*, 290 U.S. 240, 245, 78 L. Ed. 293, 54 S. Ct. 146 (1933); *Wetzler v. Cantor*, 202
8 B.R. 573 (D. Md. 1996) (noting that even truthful allegations of self-dealing did not warrant
9 application of “unclean hands” doctrine if the self-dealing was not “connected with the transaction
10 upon which the claimant sought relief”). “We are not open to arguments about a party’s general
11 moral fitness . . .” *Uwimana*, 274 F.3d at 811.

12 In *Uwimana*, the Republic of Rwanda sued its former ambassador for defalcation and
13 embezzlement. The ambassador, Uwimana, filed a Chapter 7 bankruptcy and the Republic of
14 Rwanda filed an adversary proceeding to determine the nondischargeability of the debt. The
15 Uwimanas claimed that the adversary proceeding should be dismissed based on the Republic of
16 Rwanda’s “unclean hands,” arguing that the Republic of Rwanda “has unclean hands because it
17 seeks to “persecute” Aloys Uwimana for his political beliefs, and they accuse Rwanda of an
18 “unholy quest” to undermine their finances and reputation.” *Id.* at 810. However, the Uwimanas
19 produced no evidence that Rwanda was responsible for Aloys Uwimana’s decision to spend
20 embassy funds, either by threatening or misleading him. During the bankruptcy hearing, Aloys
21 Uwimana did state that if he returned to Rwanda he and his family might face a terrible “fate.” But
22 he has never claimed that he sought asylum to avoid punishment by Rwanda. Indeed, Aloys
23 Uwimana asked the district court to take judicial notice of the 1994 State Department Human
24 Rights Report on Rwanda, which concluded that the government of the country did not sanction
25 extra-judicial killings. “At most we can conclude, as the district court did, that Aloys Uwimana was
26 afraid to return to Rwanda because of the general unrest there. *[citation omitted]* Although we do
27 not minimize this fear, we cannot attribute it to the Republic of Rwanda for purposes of the
28 unclean hands doctrine.” *Id.* The Court thus denied the application of “unclean hands” as an

1 affirmative defense to the nondischargeability adversary proceeding.

2 Here, none *alleged* misconduct in *this* case has any “close nexus” to the merits of the
3 action, which is limited to whether or not the existing final judgment from Texas for defamation is
4 nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Nothing that Cummins claims in her
5 unsubstantiated conglomeration of grudges changes the fact that the Texas Judgment is a final
6 judgment that meets the criteria for nondischargeability.

7 B. All Of Cummins’ Complaints in State Court Are Barred By The Litigation Privilege.

8 Other than the two unsubstantiated claims leveled against Mr. Stillman in this case, the
9 remainder of Cummins’ gripes all relate to actions taken or allegedly taken in the Los Angeles
10 Superior Court in connection with first Lollar’s and then Mr. Little’s efforts to collect on the
11 judgment from Cummins. As such, all such actions are privileged by California’s litigation
12 privilege, Civil Code § 47(b).

13 The litigation privilege, codified at Civil Code § 47(b), provides that a “publication or
14 broadcast” made as part of a “judicial proceeding” is privileged. This privilege is absolute in
15 nature, applying “to all publications, irrespective of their maliciousness.” *Silberg v. Anderson*
16 (1990) 50 Cal.3d 205, 216 [266 Cal. Rptr. 638, 786 P.2d 365]. “The usual formulation is that the
17 privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by
18 litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4)
19 that [has] some connection or logical relation to the action.” *Id.* at p. 212. The privilege “is not
20 limited to statements made during a trial or other proceedings, but may extend to steps taken
21 prior thereto, or afterwards.” All of Cummins’ gripes stem from privileged conduct by either Mr.
22 Little in attempting to collect on the judgment or Ms. Lollar, and are therefore privileged.

23 For example, with zero evidence whatsoever, Cummins claims that Mr. Little, now
24 deceased “forged multiple documents and submitted perjured testimony.” Motion, p. 2, lines 12-
25 14. What documents? What relevance do such documents have to the fact that a final judgment
26 was entered in Texas for defamation against Cummins? Why didn’t Cummins bring those issues
27 up in connection with the judgment debtor’s examination conducted by Mr. Little? No one knows.
28 Cummins next claims that “Plaintiff has also filed numerous false complaints against Defendant

1 to police, USDA, Fish & Wildlife, city council members and other government agencies.”
2 Although clearly privileged, who is Cummins referring to as “plaintiff?” Cummins has
3 interchangeably used “plaintiff” to refer to Ms. Lollar or Mr. Khionidi. What does filing such claims
4 have anything do to with whether or not the Texas Judgment is nondischargeable? Again, who
5 knows. Cummins claims that “Plaintiff intentionally mailed the original April 10, 2017
6 acknowledgment of assignment of judgment to the wrong address so Defendant never received
7 it.” Whether Cummins received a copy of the Assignment or not, it was addressed to her, and
8 her mere claim that she did not receive it is meaningless.⁵ *In re Estate of Wiechers* (1926) 199
9 Cal. 523, 530 (“it cannot be said that petitioner’s mere statement that ‘no papers were ever
10 served upon’ her . . . is such ‘clear and convincing proof’ as to require a finding . . . that no legal
11 service of notice of the motion was made upon her”). The Proof of Service for the Assignment
12 and its filing in the docket establish that there was valid service.

13 Cummins claims that “Plaintiff then forged service of the May 5, 2017 application and
14 order for appearance and examination. Plaintiff then forged service of two ex-parte motions so
15 Defendant would not appear and lose by default which happened.” Motion, p. 2-3. What
16 “plaintiff?” What ex parte motions in the Los Angeles Superior Court? How was service allegedly
17 “forged?” Moreover, what does any of that have to do with *this* case, where the issue is limited to
18 whether the final Texas Judgment for defamation is nondischargeable under 11 U.S.C. §
19 523(a)(6)? Even if such gripes had any relevance, Cummins states in the Superior Court that she
20 reviewed the docket in that case and therefore timely appeared, notwithstanding the alleged
21 “forged service.”

22 Cummins then makes her usual claims about Amanda Lollar posting various comments on
23 the internet concerning Cummins. Motion, p. 4, lines 11-14. What Cummins conveniently
24 omitted is that in 2011, she sued Lollar in federal court for allegedly posting defamatory
25

26 ⁵ Her receipt of a copy of the Assignment has nothing to do with the validity of the
27 assignment. Code Civ. P. § 673(a) (“An assignee of a right represented by a judgment may become
28 an assignee of record **by filing with the clerk of the court** which entered the judgment an
acknowledgment of assignment of judgment.”) (emphasis added)

1 statements about her online. *Cummins v. Lollar*, Central District of California Case No.
2 11-cv-08081-DMG-MAN. The District Court (Gee, J.) granted summary judgment against
3 Cummins. A copy of the Order Granting Summary Judgment is attached to the Stillman Decl. as
4 Exhibit 6. Thus, Cummins has omitted yet more material facts in connection this frivolous Motion
5 to Dismiss. Moreover, whether or not Lollar posts anything about Cummins is manifestly
6 irrelevant to *this* case. Lollar is not the plaintiff in this case, and whatever Lollar is or is not
7 posting about Cummins, one thing is established beyond dispute – *Cummins* repeatedly,
8 intentionally and maliciously defamed Lollar and that judgment was upheld on appeal. Her claims
9 that Lollar defamed her were dismissed by summary judgment. Thus, whatever disputes
10 Cummins has with Lollar, they are irrelevant to whether the existing and final defamation
11 judgment at issue in this case is nondischargeable, or whether Cummins committed perjury on
12 her bankruptcy schedules.

13 Cummins’ ruminations about Mr. Little, Benjamin Falcioni or John Feiner are just that –
14 ruminations that have nothing to do with this case, nothing to do with the validity of the Texas
15 Judgment and nothing to do with this adversary proceeding, and Plaintiff will not waste further
16 time belaboring such irrelevancies.⁶ Cummins wraps things up with her blanket claim that
17 “During the course of this adversary proceeding “Plaintiff” has made many, many false
18 statements about the facts in court and in legal filings to this Court. Motion, p. 6, lines 12-17.
19 These are just a rehash of Cummins’ prior gripes and have anything to do with this case, Mr
20 Khionidi, or whether the judgment is nondischargeable.

21 ///
22 ///
23 ///
24 ///
25 ///

26 _____

27 ⁶ Mr. Little is deceased. Mr. Feiner worked for Mr. Little, not current counsel and has nothing
28 to do with this Adversary proceeding. Mr. Falcioni is also a lawyer that apparently did some work for
Mr. Little. He does not work for current counsel and also has nothing to do with this case.

1 **CONCLUSION**

2 For the foregoing reasons, Plaintiff requests that this Court deny Cummins' "Motion to
3 Dismiss," not continue the Motion for Summary Judgment even one more day, and enter Partial
4 Summary Judgment on the Fourth Cause of Action seeking a determination of
5 nondischargeability of the Texas Judgment and the California Sister State Judgment forthwith.

6 Respectfully Submitted,

7 STILLMAN & ASSOCIATES

8 

9 Dated: March 12, 2019

By: _____

10 Philip H. Stillman, Esq.
11 *Attorneys for KONSTANTIN KHIONIDI, as Trustee of*
12 *the COBBS TRUST*

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*):

OPPOSITION TO DEFENDANT’S MOTION TO DISMISS BASED ON UNCLEAN HANDS; DECLARATION OF PHILIP STILLMAN IN SUPPORT

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*) March 13, 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.

3/13/2019 <i>Date</i>	Philip H. Stillman <i>Printed Name</i>	/s/ Philip H. Stillman <i>Signature</i>
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.
