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

<p>9 In re:</p> <p>10 MARY CUMMINS-COBB,</p> <p style="padding-left: 200px;">Debtor</p> <hr/> <p>11 KONSTANTIN KHIONIDI, as Trustee of the</p> <p>12 COBBS TRUST,</p> <p style="padding-left: 200px;">Plaintiff,</p> <p style="padding-left: 100px;">vs.</p> <p>13 MARY CUMMINS-COBB,</p> <p style="padding-left: 200px;">Defendant.</p> <hr/>	<p>) Case No. 2:17-bk-24993-RK</p> <p>) Chapter 7</p> <p>) Adv. Proc. No. 2:18-ap-01066-RK</p> <p>) PLAINTIFF'S OPPOSITION TO PURPORTED</p> <p>) MOTION FOR A STAY AND FOR AN ORDER</p> <p>) SHORTENING TIME</p> <p>) [Fed.R.Bank.P. 7041]</p> <p>) Judge: Honorable Robert N. Kwan</p> <p>) Courtroom: 1675</p> <p>) Edward R. Roybal Federal Building</p> <p>) 255 E. Temple Street, Suite 1682</p> <p>) Los Angeles, CA 90012</p>
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1 Plaintiff hereby objects to defendant Mary Cummins-Cobb's latest time-waster, *i.e.*, her
2 Motion for a Stay and for an Order Shortening Time. Because there is no so-called emergency,
3 the Motion seeks to relitigate the Fourth Cause of Action that has already determined against her
4 and for a stay of her own appeal pending in the District Court over which this Court lacks
5 jurisdiction, this Motion is completely without merit. Moreover, the premise on which it is based,
6 *i.e.*, the coronavirus pandemic, is irrelevant as (1) Cummins appears by telephone for any
7 hearings, (2) Cummins can clearly file whatever papers she wants by mailing them to the Clerk,
8 and (3) although this Court lacks jurisdiction to issue orders regarding the pending appeal in the
9 district court, Cummins has access online through PACER for every filing that she wants to
10 designate for the appeal, Thus, her Motion and the Order Shortening Time is totally without merit
11 and should be denied. As grounds for this Opposition, Plaintiff states:

12 1. On February 10, 2020, this Court denied Defendant's Motion for Summary
13 Judgment based on Unclean Hands and entered an Order granting partial summary judgment on
14 Plaintiff's Fourth Cause of Action to determine the non-dischargeability of Plaintiff's judgments
15 against debtor and Defendant Mary Cummins-Cobb.

16 2. Plaintiff filed a Motion to Dismiss his First through Third Causes of Action alleging
17 violations of 11 USC § 727(a) without prejudice on March 5, 2020 on negative notice. Time to
18 give notice that either the U.S. Trustee or the Chapter 7 Trustee opposes the Motion runs
19 tomorrow, March 19, 2020. Thus, as of March 19, Plaintiff's Motion to Dismiss will be unopposed
20 and the remainder of the Adversary Proceeding should be dismissed.

21 3. Cummins filed an appeal of this Court's partial final judgment and Plaintiff filed his
22 election to have the appeal heard in the District Court, where it is now pending.

23 A. The Application For A Stay Is Meritless

24 1. **The Request In This Court To Stay The Appeal In The District Court Is**
25 **Completely Without Merit.**

26 4. Cummins wants a stay of the appeal currently pending in the District Court. This
27 Court lacks jurisdiction to stay the appeal. As already explained to Cummins, any request to alter
28 the deadlines for the appeal must be filed in the appellate court – in this case, the District Court –

1 and not the bankruptcy court. “The filing of a notice of appeal is an event of jurisdictional
2 significance - it confers jurisdiction on the court of appeals and divests the district court of its
3 control over those aspects of the case involved in the appeal.” *Trulis v. Barton*, 107 F.3d 685,
4 694-95 (9th Cir. 1995) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103
5 S. Ct. 400, 74 L. Ed. 2d 225 (1982)). Moreover, it appears that Cummins wants to relitigate this
6 Court’s final judgment determining that Plaintiff’s judgment is nondischargeable. However, “[a]
7 pending appeal divests a bankruptcy court of jurisdiction to vacate or modify an order which is on
8 appeal.” *In re Marino*, 234 B.R. 767, 769 (9th Cir. BAP 1999). Thus, her excuse is frivolous.

9 5. Moreover, the purported justification for the stay, even if it had any merit, is that she
10 will not be able to file via ECF in the district court because the password is being sent to her
11 mailbox, and she is apparently afraid to go to her mailbox to pick up any mail. However, once
12 issued, the ECF Help Desk can provide it to Cummins over the telephone if Cummins identifies
13 herself. Thus, that excuse fails. In addition, all information that Cummins needs for her appeal is
14 in the docket of the appeal or in this Court. Thus, she does not need to go anywhere for
15 information relevant to her appeal.

16 2. **There Is No Alleged Emergency Otherwise.**

17 6. Cummins claims that “If this Application is not heard on shortened notice,
18 Defendant will be unable to defend this case. Defendant will lose Defendant's right to a trial on
19 the remaining claims, the right to appeal and the right to discharge this ridiculous ten million
20 \$10,000,000.00+ judgement which is the only real debt in the bankruptcy case.” This is the core
21 of both the Order Shortening Time and the Motion for a Stay.

22 7. At her request, partial final judgment was entered in the Adversary Proceeding.
23 That is therefore a final judgment on nondischargeability and finally resolves the dischargeability
24 of “this ridiculous ten million \$10,000,000+ judgment.” Even if so inclined, this Court lacks
25 jurisdiction to allow Cummins to relitigate her meritless summary judgment motion as it is on
26 appeal. Additionally, Cummins has no right to a trial on the remaining claims, which Plaintiff has
27 already moved to dismiss on negative notice on March 5, 2020. Cummins has already exercised
28 her right to appeal and that appeal is pending, so she will not lose “the right to appeal.” There is

1 nothing further to defend, since the adversary proceeding will be terminated as to all causes of
2 action after the time within which to oppose the voluntary dismissal runs. Accordingly, there is
3 neither any emergency nor excuse for an Order Shortening Time or a stay.

4 B. The Motion For A Stay Is Without Merit.

5 8. Cummins' motion for a stay fares no better than her Request for an OST. In order
6 to obtain a stay pending appeal under Bankruptcy Rule 8005, a movant must establish the
7 elements necessary to obtain a preliminary injunction: When deciding whether to issue a
8 discretionary stay pursuant to Rule 8005, courts consider the following four factors: (1) movant's
9 likelihood of success on the merits of the appeal; (2) significant and/or irreparable harm that will
10 come to movant absent a stay; (3) harm to the adverse party if a stay is granted; and (4) where
11 the public interest lies. *In re O'Reilly & Collins*, 2014 U.S. Dist. LEXIS 113275, at *7 (N.D. Cal.
12 Aug. 14, 2014). Without belaboring the point, Cummins cannot satisfy even one of the elements.

13 9. She claims here that "The purpose of the stay is so Defendant can reply to the
14 proposed judgment, request a trial date to hear Defendant's remaining claims and/or appeal the
15 judgment of the adverse proceeding. Because of the world wide Covid 19 pandemic Defendant
16 can't file a reply because of a missing court order, the appeal package, inability to get pro se
17 legal help, inability to currently file in the district court . ." None of these excuses have any merit.

18 10. There is nothing left in this Adversary Proceeding but for this Court to dismiss the
19 remaining claims pursuant to Plaintiff's unopposed motion, she is not entitled to any trial, and
20 there is no "reply" to file in the Adversary Proceeding, because there is no "missing court order."
21 Although she does not identify what "court order" she is referring to, Cummins has been served
22 with everything filed in this Adversary Proceeding via email, including the proposed final judgment
23 that this Court ordered Plaintiff to prepare, which was served on her on March 5, 2020. Thus,
24 there is no missing order on which to comment, and the time to object to that order has long
25 since expired.

26 11. Cummins' claim that she cannot print documents because she doesn't have a
27 printer is irrelevant (even if true, which is highly unlikely), because she acknowledges in her Stay
28 Motion, p. 4 that this Court has permitted her to email filings to the Clerk and they will be filed.

1 She also claims that she cannot print documents because she cannot afford to. However, there
2 is nothing left for Cummins to print in this case, as the only thing remaining in the Adversary
3 Proceeding is for the Court to grant Plaintiff's unopposed Motion to voluntarily dismiss the
4 remaining claims in the adversary proceeding. Although irrelevant, since she acknowledges that
5 she can file documents by email, even if there was anything left for Cummins to file in this case, a
6 review of the hundreds of pages of documents that she has filed shows that when it has suited
7 her, she has had no problem printing documents, if printing was required. She has had no
8 trouble affording to print those hundreds of pages either, assuming that she did not have a
9 printer. On February 13, 2020 (ECF 122), Cummins represented that she made \$600 per month
10 and did not pay rent. On December 7, 2017, on her Schedule I (ECF 7), she claimed that she
11 was making \$600 per month. Thus, she supposedly makes the same amount now as she claims
12 to have made at the beginning of this case, yet never had any problem printing hundreds of
13 pages of documents, preparing motions, oppositions, etc. and getting them filed. Moreover, she
14 has not once claimed that she had to personally appear in Court because she could not afford
15 CourtCall. Thus, it is simply another excuse.

16 12. Any complaints that Cummins has about preparing her appeal or obtaining orders in
17 the district court are meritless because they can all be obtained online through PACER and any
18 issues regarding the preparation of her appeal must be addressed to the District Court, not this
19 Court. *Trulis*, 107 F.3d at 694-95.

20 13. Finally, there is nothing to stay in this Court. The only remaining task for this Court
21 is to dismiss the remaining claims in this Adversary Proceeding, which is unopposed.

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1 14. Far too much time and attorney's fees have been wasted having to respond to
2 Cummins' litigation tactics and now the meritless appeal. It is now time to put an end to them and
3 deny the OST and deny the Motion for a stay on the merits. Plaintiff does not believe that there
4 is any reason to waste more money on Courtcall and asks that this Motion be denied without a
5 hearing.

6 Respectfully Submitted,
7 STILLMAN & ASSOCIATES

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9 Dated: March 18, 2020

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

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PROOF OF SERVICE OF DOCUMENT

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

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

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

PLAINTIFF'S OPPOSITION TO MOTION FOR A STAY AND FOR AN ORDER SHORTENING TIME

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 18, 2020, 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.

3/18/2020 <i>Date</i>	Philip H. Stillman <i>Printed Name</i>	/s/ Philip H. Stillman <i>Signature</i>
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