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

<p>9 In re:</p> <p>10 MARY CUMMINS-COBB,</p> <p style="text-align: right;">Debtor</p> <hr/> <p>11 KONSTANTIN KHIONIDI, as Trustee of the</p> <p>12 COBBS TRUST,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>13 MARY CUMMINS-COBB,</p> <p style="text-align: right;">Defendant.</p> <hr/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Appeal No. 2:20-cv-02149-AB</p> <p>Bankruptcy Case No. 2:17-bk-24993-RK</p> <p>Adv. Proc. No. 2:18-ap-01066-RK</p> <p>APPELLEE'S RESPONSE TO THIS COURT'S</p> <p>OSC TO APPELLANT AND REQUEST TO</p> <p>DISMISS APPEAL FOR LACK OF</p> <p>PROSECUTION</p> <p>Hon. Andre Birrote, Jr.</p>
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1 Appellee and plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust in the
2 above-captioned adversary proceeding case and the Appellee herein (“Appellee”) hereby
3 responds to this Court’s Order to Show Cause to Appellant dated April 9, 2020 and in light
4 of appellant Mary Cummins-Cobbs’ failure to respond or take any steps set forth in the
5 OSC, appellee hereby requests that this Court dismiss this bankruptcy appeal for lack of
6 prosecution. As grounds therefor, Appellee states the following:

7 1. On April 9, 2020, this Court issued an Order to Show Cause re Dismissal of
8 this Appeal , directing appellant Cummins to (1) correct the defects in her appeal and (2)
9 file a declaration establishing good cause for failing to prosecute the appeal by April 23 or
10 the appeal would be dismissed without further notice. Cummins has done neither. In fact,
11 other than to file a request for leave to file electronically that was granted on May 9, 2020,
12 Cummins has done nothing in the intervening 16 days since even *that* date.

13 2. Appellee is the assignee of a final \$6,121,039.42 million judgment for
14 defamation and punitive damages against Appellant Mary Cummins-Cobb, and
15 domesticated in California. The sole issue in this appeal is whether the bankruptcy court
16 erred in finding that the Texas judgment and the domesticated California judgment are non-
17 dischargeable as “willful and malicious injury” pursuant to 11 U.S.C § 523(a)(6). The
18 Texas judgment was appealed by Cummins in Texas, and the Court of Appeals affirmed the
19 trial court on the defamation judgment and the award of punitive damages. The Texas
20 Supreme Court denied review.

21 3. The Texas courts made several highly damaging findings that render this
22 appeal frivolous. First, after the bench trial, in making his oral ruling from the bench at the
23 conclusion of the trial and before the written form of judgment had been prepared, the trial
24 court ruled that “the plaintiff has clearly proven that a defamation in this case was
25 *egregious* as well as *malicious* as well as *intentional*.” Order on Plaintiff’s Motion for
26 Summary Judgment or Summary Adjudication of Facts, Adversary Proceeding No. 18-
27 01066 (C.D.Bankr. May 24, 2019), Dkt. No. 82 (“Summary Judgment Order”), Finding of
28 Fact No. 3.

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

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

17 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015),
18 p. 71. A “persistent, calculated attack on Lollar with the intention to ruin both Lollar's life's
19 work and her credibility and standing in the animal rehabilitation community” made with
20 actual malice can *only* be consistent with “the actual intent to cause injury” sufficient to
21 establish the “willfulness” prong of § 523(a)(6). Summary Judgment Order, Finding Nos.
22 8-15.

23 5. Third, the trial court awarded \$3 million in “exemplary damages.” Summary
24 Judgment Order, Fact No. 14. As the Court of Appeals held, “We hold that the record
25 supports a finding of malice—both of the malice required for an award of exemplary
26 damages under Texas law and of actual malice as required for an award of exemplary
27 damages in defamation actions.” *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS
28 3472, at p. 75 (Tex. App. Apr. 9, 2015). “Malice” in this context means “a specific *intent*

1 by the defendant to cause substantial injury or harm to the claimant.” *Id.* at p. 70, citing
2 Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7)(defining malice). The Texas Supreme
3 Court denied review. Summary Judgment Order, Fact No. 6.

4 6. On February 10, 2020, after numerous extensions of time for Cummins to
5 prepare and several rounds of briefing by Cummins, the Bankruptcy Court entered
6 summary judgment against Cummins on Appellee’s claim to determine the non-
7 dischargeability of the debt pursuant to 11U.S.C. § 523(a)(6) – a foregone conclusion given
8 the Ninth Circuit’s decision in *In re Sicroff*, 401 F.3d 1101, 1106 (9th Cir. 2005) holding
9 that a defamation judgment is non-dischargeable as a willful and malicious injury pursuant
10 to § 523(a)(6).

11 7. Cummins timely filed her Notice of Appeal on February 13, 2020. (Dkt. 121)
12 and Appellee timely filed his election to proceed in the District Court. (Dkt. 142).
13 Although Cummins was appealing from an interlocutory order, *i.e.*, the entry of summary
14 judgment, final judgment was entered on March 5, 2020 (Dkt. 146).

15 8. Pursuant to the Federal Rules of Bankruptcy Procedure, Cummins was
16 required to have filed her Notice of Designation of Record, Statement of Issues and
17 Transcripts of Proceedings within 14 days after Appellant’s Notice of Appeal became
18 effective.

19 9. On April 2, 2020, the bankruptcy court notified Cummins that she had failed to
20 take any of these required steps.

21 10. After Cummins failed to do anything to move the appeal along, this Court
22 issued an Order to Show Cause re Why the Appeal Should Not Be Dismissed on April 9,
23 2020, indicating that any response was due on or before April 23. The Court’s OSC
24 specifically stated “The Court may consider Appellant’s filing of the required items along
25 with a declaration of good cause for the delay a sufficient response to this order to show
26 cause. Appellant must respond no later than 4/23/2020, or the appeal may be dismissed
27 without further notice.” None of the required items were filed or served, and there was no
28 response to the OSC was filed by Cummins.

1 11. More than a month after this Court's response date and almost three months
2 after the documents were due, the appeal is still in default, and no designations have been
3 filed.

4 12. The Court should also note that although Cummins is *in pro per*, she is a
5 highly experienced litigator, who represented herself all the way through trial in Texas,
6 represented herself in the appeals, prepared a filed a petition for certiorari to the U.S.
7 Supreme Court, and vexatiously litigated the adversary proceeding in the bankruptcy court.
8 She has repeatedly stated in filings that the only reason that she filed bankruptcy was to
9 avoid Appellee's judgment.

10 13. Given Cummins' failure to comply with her obligations to move this appeal
11 forward despite repeated notices from this Court and the bankruptcy court, her failure to
12 respond to this Court's OSC and the total and complete lack of any merit to her appeal, this
13 Court should dismiss the Appeal for lack of prosecution.

14 WHEREFORE, appellee Konstantin Khionidi, as Trustee of the Cobbs Trust,
15 respectfully requests that this Court dismiss the appeal for lack of prosecution.

16 Respectfully Submitted,

17 STILLMAN & ASSOCIATES

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19 Dated: May 25, 2020

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

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PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on May 26, 2020 or as soon as possible thereafter, copies of the foregoing Response to OSC and Request to Dismiss For Lack Of Prosecution was served electronically by the Court’s ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

By: /s/ Philip H. Stillman
Attorneys for Appellee Kostantin Khionidi as Trustee
of the Cobbs Trust.