

**APPELLANT REQUESTS  
ORAL ARGUMENT**

**2:21-cv-04671-AB**

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IN APPEAL IN THE  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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MARY CUMMINS,  
Defendant and Appellant,

v.

KONSTANTIN KHIONIDI, as Trustee of the COBBS TRUST  
Plaintiff and Appellee

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Appeal from Order of US Bankruptcy Court Adverse Proceeding  
Central District of California  
Case Nos. 2:18-ap-01066-RK, 2:17-bk-24993-RK Honorable Robert Kwan

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**APPELLANT'S OPENING BRIEF**

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**United States District Court Central District  
State of California**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Court of Appeal Case Number: 2:18-ap-01066-RK

Case Name: Konstantin Khionidi v Mary Cummins

Please check the applicable box:

- There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None



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Dated: August 13, 2021

Signature of Party Submitting Form

Printed Name: Mary Cummins

Party Represented: Appellant

**IDENTITY OF PARTIES AND COUNSEL**

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**APPELLEE:**

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*Generes v. Justice Court* (1980) 106 Cal. App. 3d 678, 682 [165 Cal. Rptr. 222]

*People v. Porter* (1955) 136 Cal. App. 2d 461, 467 [288 P.2d 561]

*People v. Sturm, supra*, 37 Cal.4th at p. 1243

*Pratt v. Pratt* (1903) 141 Cal. 247, 252

*Santiago v. EW Bliss Co.*, 941 N.E.2d 275 (Ill. App. Ct. 2010)

*United States v. 936.71 Acres of Land*, 418 F.2d 551, 556 (5th Cir.1969).

*Wieburg v. GTE Southwest Inc.*, 272 F.3d 302, 306 (5th Cir.2001)

### Statutes and Rules

Federal Rules of Civil Procedure 17(a)

Federal Rules of Civil Procedure 41(b)

### Constitutional Provisions

US Constitution 7<sup>th</sup> Amendment

### Other

California Penal Code Section 529

California Penal Code section 470

## **STATEMENT OF THE CASE**

Defendant, Appellant Mary Cummins (“Cummins”) appeals from a March 18, 2021 order (Docs #202, #203 2:18-ap-01066-RK, Appendix 1) denying Defendant’s Motion to Dismiss Adversary Proceeding (Doc #198) and April 27, 2021 order (Doc #208, Appendix 2) denying Defendant’s Motion to Rehear Motion to Dismiss (Doc #206). Appellant argues that the Court abused its discretion in denying Appellant’s Motion to Dismiss the Adversary Proceeding because Plaintiff does not exist. Per Federal Rules of Civil Procedure 17(a) “An action must be prosecuted in the name of the real party in interest.” Plaintiff, Appellee Konstantin Khionidi (Plaintiff / Khionidi) does not exist and therefore cannot legally file a complaint, i.e. the Adversary Proceeding. This also makes any contract, agreement, assignment of the judgment, previous legal filing a nullity. This is evidence of fraud, perjury, forgery, impersonation which is evidence of “unclean hands.”

## **STATEMENT REGARDING ORAL ARGUMENT**

Appellant believes that oral argument will significantly aid in clarifying the issues involved in this appeal. This case presents important issues regarding the legal ability of people who do not exist to file lawsuits.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant is a well-respected Los Angeles real estate appraiser, real estate legal expert<sup>1</sup> and head of non-profit Animal Advocates which has worked positively with Los Angeles City and County for years<sup>2</sup> (all footnotes, statements in court record including Doc2 #91, 1-300). Appellant was appointed and approved to be on the Los Angeles City Prop F Committee by Mayor Eric Garcetti, was named to be a Commissioner for LA Animal Services under Mayor Antonio Villaraigosa, worked with Mayor Jim Hahn for the 2004 city wildlife policy<sup>3</sup>, went through the Police Academy and Humane Academy

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<sup>1</sup> Mary Cummins Curriculum Vitae real estate <http://www.marycummins.com/marycumminscurriculumvitae.pdf>

<sup>2</sup> Mary Cummins Curriculum Vitae Animal Advocates <http://animaladvocates.us/Mary%20Cummins%20Animal%20Advocates%20resume%20curriculum%20vitae.pdf>

<sup>3</sup> Mary Cummins new LA Wildlife Policy <https://www.businesswire.com/news/home/20040824005654/en/City-Los-Angeles-Approves-Wildlife-Policy>

to become a Humane Officer and has received numerous awards from the City of Los Angeles, Los Angeles Business Journal, and other agencies and organizations over 35+ years.

In 2010 Cummins went to Bat World Sanctuary (BWS) run by actual Plaintiff and original owner of the underlying judgment Amanda Lollar (Plaintiff Lollar) in Texas to attend an internship to learn more about bats. Instead Cummins witnessed animal cruelty, neglect, violations of the Animal Welfare Act, Health Department and other violations. Cummins as a mandatory reporter submitted 100% factual, fair, privileged reports, video, photos to authorities about the violations of the Animal Welfare Act, Texas Parks & Wildlife Department, Texas Health Department and other government agencies. Appellees were investigated. Violations were found. The main USDA veterinarian stated Plaintiff Lollar caused “pain, suffering and death,” “violated the Animal Welfare Act” and caused bats to die<sup>4</sup> (Doc #91). Appellees lost their USDA permit and were reprimanded by many government agencies for violations.

In retaliation Appellant was falsely, frivolously sued for defamation, breach of contract, copyright by Appellees, Texas case 352-248269-10 in 2010 (Doc #91).

Immediately before one hearing and the trial the sitting Judge Bonnie Sudderth specifically requested Judge William Brigham a retired visiting Judge over the mandatory retirement age of 75 in Texas to sit in for Sudderth for a “vacation” only for those two very specific times (Doc #91). 84 year old long retired Judge Brigham was assigned the case for five days from June 10 to June 15, 2012 but never signed and filed an oath of office as mandated by Texas law. Judge Brigham never had legal jurisdiction over the case. Judge Brigham no longer had jurisdiction by time when it was signed August 27, 2012.

Before one hearing Plaintiff’s Texas attorney Randy Turner stated to Appellant in the court room “I’ve known this Judge for many years. He’ll sign anything I put in front of him.” Plaintiff never denied this. Appellant was never even notified about the change of

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<sup>4</sup> Amanda Lollar violations, loses USDA permit  
[http://www.marycummins.com/amanda\\_lollar\\_bat\\_world\\_sanctuary\\_usda\\_cancelled.pdf](http://www.marycummins.com/amanda_lollar_bat_world_sanctuary_usda_cancelled.pdf)

Judges. Judge William signed every order written by Randall Turner without even reading or editing them. One order forced Cummins to remove articles, comments made by others in other people's websites which Cummins does not control some of which were in Chinese which Cummins does not speak.

This "visiting judge" routine is a judicial scam used to game the system<sup>5</sup> i.e. "The sitting judge follows the same plan of using visiting judges to make rulings in controversial or politically sensitive cases, so the elected judges won't have to suffer the fallout from voters or influential sides in the litigation." (George Flynn Houston Press 61903 p.19). In this case the visiting Judge made a ruling not based on any evidence or law but as a favor to his long time personal friend Randall Turner. Turner even mailed the final judgment for signature to the judge's personal residence.

Judge William Brigham has been called to sit in for "vacationing" Judges in criminal cases including appeals in Texas. Judge Brigham has sent African Americans, Latinos and poor people to prison. Judge Brigham never signed or filed an oath of office for those cases either. Those people are still in prison and have contacted Appellant. Texas is the number one state for false criminal convictions due to corruption such as visiting judges.

Even though Plaintiffs never showed even one element of defamation, i.e. never stated what they thought was defamatory or who wrote/posted what, no element of breach of contract, they admitted they had no proof of any damages, admitted they had no proof of causation in trial, Appellant lost the trial court in the amount of approximately \$6,176,000. Not only did Plaintiff never even mention damages or show any proof of damages but there was never a separate trial for damages. Any damages would have to relate to Defendant's net worth or actual damages. Defendant was indigent at the time because of the cost of defending the case spending every penny of Defendant's savings and assets. Los Angeles attorney David Casselman argued this point in Casselman's Amicus Brief<sup>6</sup> in the Appeal. Number one freedom of speech attorney Paul Alan Levy

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<sup>5</sup> Gaming the Texas Judicial system with assigned Judges  
<http://marycummins.com/eliminate%20assigned%20judges.pdf>

<sup>6</sup> David Casselman amicus brief  
[http://www.animaladvocates.us/mary\\_cummins\\_v\\_bat\\_world\\_sanctuary\\_amicus\\_letter.pdf](http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf)



filed another amicus brief from Public Citizen and the ACLU based on the lack of any valid defamation claim<sup>7</sup>.

The six page judgment is a takedown order only (Appendix 3). It doesn't say "defamation," "defamatory..." It states nothing else is included in the judgment other than what is specifically written. Appellees subsequently filed a sister state judgment in Los Angeles, California case BS140207 in 2012.

The Second Court of Appeals Court in Texas released their opinion April 2015 18 months after the case was submitted on briefs and after Judge Brigham died. The Court reversed the take down order, breach of contract claim, associated liquidated damages and attorney fees by BWS. The one remaining claim was not reversed<sup>8</sup>.

Immediately after the opinion was released April 2015 Plaintiff Lollar filed an identical copy/paste lawsuit 2015-00259-2/3. Since the 2010 case was filed the Texas Defamation Mitigation Act and Citizen Participation Acts passed to cut down on the many identical frivolous defamation cases such as this one. Plaintiff now had to specifically state and show defamatory items and prove it is defamation. Because Appellant never defamed Plaintiff, Plaintiff forged their exhibits and submitted a perjured affidavit stating the exhibits were true and correct copies of the originals which are still online today. Appellant never wrote or posted the forged exhibits. They were forged by Plaintiff Lollar<sup>9</sup>.

That case was appealed and the Appeals Court stated the forgery and perjury should have been dealt with in the trial court. The trial court then dismissed that case February 2020. Currently there is a criminal investigation into forgery, perjury, impersonation of a government official by Plaintiff Lollar and her attorney in that case.

Plaintiff Lollar allegedly gave, assigned the judgment to Russian citizen living in Russia "Konstantin Khionidi" March 2017 (Doc #91, Assignment). Khionidi's attorney did not send, serve the assignment or notice of debtor hearing to Appellant. Instead

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<sup>7</sup> Paul Alan Levy, Public Citizen, amicus brief [http://www.animaladvocates.us/cummins\\_amicus\\_brief.pdf](http://www.animaladvocates.us/cummins_amicus_brief.pdf)

<sup>8</sup> Mary Cummins v Amanda Lollar, BWS <http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

<sup>9</sup> Lollar v Cummins case dismissed due to forgery, perjury <http://marycumminsamandalollarlawsuit.blogspot.com/>

Appellee Khionidi forged a proof of service for an address where Appellant hadn't lived in years. Appellee allegedly mailed the same to Appellant minus Appellant's unit number which means Appellant never received it. Appellant proved in Court the server of process did not even exist. The purpose was so Appellant would never be notified of the debtor exam and miss it so a bench warrant would be issued. The purpose was to have Appellant arrested, thrown in jail and violently assaulted in Los Angeles County jail with no means of bail destroying Appellant's reputation and life. Thankfully Plaintiff Lollar finally bragged online to media who posted about the looming arrest. Appellant checked all of the legal cases and found the debtor hearing, replied and the bench warrant was rescinded.

At the first debtor hearing Plaintiff Lollar from Texas showed up and stated to Appellant paraphrased "Did you see the look on her face? She was so shocked to realize the Russian is just us." (Doc #91, Docs #1-300) Plaintiff Lollar is pretending to be, impersonating Konstantin Khionidi (California Penal Code Section 529 PC) who does not exist. Someone who does not exist cannot file a lawsuit. This case and now reply to appeal must be dismissed due to impersonation, forgery, perjury and unclean hands. Lollar flew in from Texas and sat right next to Plaintiff's attorney at every hearing telling the attorney exactly what to do and say word for word.

The underlying trust agreement is a free California probate form downloaded from the internet in English (Appendix 4, Doc #68, Doc #91, pg 5). Plaintiff Lollar, BWS is still listed as the owner of the judgment in the agreement (Appendix 4, Pg 1, Paragraph 4; Doc #91, pg 6). To this date Plaintiff has not filed any evidence to show that Plaintiff Khionidi actually exists because Plaintiff Khionidi does not exist. Plaintiff's attorney swore for months that a notarized signature would be provided by Khionidi but it never was submitted to the Court (Doc #91). Plaintiff's attorney Philip Stillman (Stillman) stated at the May 29, 2019 1:30 p.m. hearing "But I do believe that the likelihood is going to be is that we're going to resolve that issue by substituting Ms. Lollar in as the Plaintiff instead of Mr. Khionidi (Doc #91, pg 7, Line 21-26). That never happened.

Appellant filed for bankruptcy December 7, 2017 2:17-bk-24993-RK.

Alleged Plaintiff Konstantin Khionidi filed an Adversary Proceeding 2:18-ap-01066-RK March 10, 2018 in the Bankruptcy case. Stillman stated many times in hearings, sworn pleadings and court documents that Konstantin Khionidi is a real person in Russia and not an alter ego of anyone else. Stillman specifically stated that Khionidi is not an alter ego of the original owner of the judgment Plaintiff Lollar who has been directing Stillman's every action in this case. That is false and fraud upon the Court as Konstantin Khionidi does not exist. That makes Plaintiff's complaint a nullity voided from the onset which should be dismissed per Federal Rules of Civil Procedure 17(a) "An action must be prosecuted in the name of the real party in interest." It further makes any contract, agreement, assignment of and the actual judgment null and void, "Conveyance to a fictitious person is a nullity." Plaintiff therefore has no standing in this case. The Statute of Limitations for filing an Adverse Proceeding in this case has long passed. The Court has the power to dismiss a case that is not filed by a real person. The Adverse Proceeding should be dismissed and the judgment discharged.

The Adversary Proceeding was filed with Konstantin Khionidi as the only Plaintiff (Doc #1).

Plaintiff never requested to file the original Complaint as a "John Doe."

The Court has never approved of a John Doe filing in this case for Plaintiff.

Stillman stated in Court documents and in hearings that Konstantin Khionidi is a real person, the Plaintiff and no one else (hearing transcript May 29, 2019 1:30 p.m. Doc #91, Exhibit 1 pg 8 lines 7, 12) "Your Honor, I'm going to say one thing. That my client is Mr. Khionidi." "That's my client, he's the plaintiff."

At the same hearing Stillman said he would resolve the issue of the validity of the assignment by having Konstantin give the judgment to Plaintiff Lollar. Stillman asked for another continuance in order for his client to be able to get the agreement notarized by a US notary. Stillman stated his client was busy traveling. Konstantin never signed a notarized agreement because Konstantin does not exist.

Plaintiff has never provided any evidence that Plaintiff Konstantin Khionidi exists. In discovery Defendant specifically requested evidence that Plaintiff existed in the form of

identification or other means. Plaintiff refused to produce any evidence to prove they exist to Defendant or the Court.

Original interrogatories and discovery requests were answered by and signed by Stillman and not Plaintiff (Doc #91).

Plaintiff has never signed and notarized any document in this case, the assignment of the judgment or case BS140207 not even the trust agreement.

The Trust agreement which Plaintiff was forced to give to the Court states “IN WITNESS WHEREOF, as of this the 20<sup>th</sup> day of March 2017, Trustor and Trustee have signed this instrument.” (Appendix 4). Konstantin is both the Trustor and the Trustee. There is no witness or notary on the agreement even though the agreement states it was witnessed. The agreement is void.

Page 1, paragraph one states that Khionidi lives in the “Anapa, Krasnodarskii Krai, Russian Federation County, State of California.” There is no Anapa, Krasnodarskii Krai, Russian Federation County” in the state of California. There is no “California” in Russia. There is an “Anapa, Krasnodarskii Krai” in the Russian Federation in Russia. Defendant believes Plaintiff added “California” to make it appear that this court has jurisdiction as does the California Probate Court form agreement.

Page 1, paragraph 2, item 1 states the COBBS TRUST is created “in accordance with the California probate code.” There is no reason why a trust named after Defendant and created for the purpose of possessing a judgment would be based on California probate code. Page 1 at the top it states it’s a revocable living trust agreement. The purpose of a revocable living trust agreement is to avoid probate. This is a California probate form. Plaintiff is a Russian citizen living in Russia. There is no probate case anywhere.

Page 15, item 42 states “The Trustor is not a citizen or tax resident of the United States. In the event that the Trust generates taxable income, it will be subject to withholding taxes under the applicable tax treaty...” Then why was a California, USA probate agreed used?!

Page 1, paragraph 4 states that if the trustor dies, the beneficiary is BWS in Texas one of the original parties in the underlying Texas lawsuit. All claims to BWS were reversed

on appeal. The address listed is a 217 N Oak, Mineral Wells, Texas which Plaintiff Lollar and BWS have not owned or used in many years. This agreement is dated March 2017 long after Plaintiff Lollar and BWS left that building. On top of this Plaintiff and their attorney Stillman swore that Plaintiff Lollar and BWS have nothing to do with the current lawsuit or judgment.

Page 1, item 3 (Doc #91, Pg 6) states the “If the Trustor is unable to serve as Trustee for any reason, then the Trustor hereby appoints Plaintiff Lollar as Successor Trustee.” Again, Plaintiff swore Lollar was not involved in any way.

Page 1 item (Doc #91, Pg 6) 3 states “The principal place of administration of this trust if the Trustors place of residence.” That would be Russia. Then why use a California, USA probate form and legalese?

Page 1 item 3 (Doc #91, Pg 6) states “All rights, title, and interest”...listed on the attached Exhibit “A”, is hereby assigned, conveyed and delivered to the Trustee for inclusion in this Trust.” The only items listed in Exhibit A is \$100 and a bank account. The judgment is not listed as an asset of the trust March 20, 2017. As the judgment was allegedly assigned to Khionidi April 20, 2017, it should have been included. There is no evidence that the judgment is part of the trust. There are no other agreements which include the judgment.

Page 17 (Doc #91, Appendix 4) Plaintiff Khionidi signed its name as the trustor and the trustee of the agreement. Above the signatures it states “IN WITNESS WHEREOF” yet there is no notary or witness statement or signature. The agreement would have to be notarized in order to use in a lawsuit proceeding in California. There is no other way to know who signed the document. No signature of Khionidi has ever been notarized in this case.

Konstantin Khionidi has been represented by good counsel in this case. It’s incomprehensible that Khionidi a Russian who speaks Russian would download a free trust agreement in English from the Internet related to California probate laws and sign his name in English. It’s believable that Plaintiff Lollar forged this document as Lollar has forged many documents in the past. Lollar forged an agreement in a lawsuit with

Talking Talons in New Mexico. Lollar forged the agreement in the underlying Texas lawsuit regarding the judgment. Lollar forged exhibits in the copy/paste second defamation lawsuit in Texas which was dismissed last year. This appears to be just another forgery by Plaintiff Lollar.

July 3, 2017 the Cobbs Trust sent an email to Defendant (Doc #91). The email is childishly written with a fake Russian accent as if to prove the Plaintiff is really Russian. The email even mentions the Russian's love of bats. The original Plaintiffs were Plaintiff Lollar and BWS. The email is signed "Sasha."

Plaintiff's attorney Stillman stated to this Court that the Plaintiff would sign an agreement notarized by the US notary to transfer the judgment to Plaintiff Lollar. After many, many months, multiple excuses and continuances Stillman never was able to obtain or file a notarized signature or document to the Court because Plaintiff does not exist.

The original Plaintiff and original owner of the judgment Plaintiff Lollar stated in person to Defendant at the first debtor exam in October 2017 for this sister state judgment case BS140207 "Did you see the look on her face? She was so shocked to realize the Russian is just us." Lollar admitted that Lollar is the Russian Plaintiff Konstantin Khionidi (Doc #91, Docs #1-300).

Plaintiff Lollar has flown from Texas and stayed over night to be present at every hearing and deposition here in Los Angeles, California. Lollar sat directly next to her now deceased original attorney James J. Little and directed his every question at the hearings and deposition. Little stated that Lollar and her friend Dottie Hyatt and husband Larry Crittenden who accompanied her were Little's assistant and worked on behalf of the Plaintiff.

The original Plaintiff and original owner of the judgment Plaintiff Lollar has a long history of pretending to be other people, forging documents and committing perjury. Lollar's previous attorney James J. Little forged proofs of service for hearings at least five times with the intent that Defendant would not show and lose by default. Another Proof of Service was forged so Plaintiff could get a bench warrant against Defendant to

throw Defendant in Los Angeles County jail for not appearing for a hearing which Defendant knew nothing about.

After the first defamation lawsuit against Defendant Plaintiff Lollar filed a second identical copy/paste lawsuit. Because the Defamation Mitigation Act and Citizen Participation Acts had recently passed in Texas Plaintiff had to show specific evidence of defamation and prove it to the Defendant before filing a suit. Plaintiff did not do this. Instead Plaintiff forged the defamation exhibits. Plaintiff defamed Plaintiff in exhibits and submitted that as evidence of Defendant's defamation. That case was dismissed last year. Plaintiff Lollar is currently under investigation for forgery, perjury and fraud in that case and the first case.

### **QUESTIONS ON APPEAL, STATEMENT OF ISSUES**

1. Whether the Bankruptcy Court erred in finding that Defendant's Motion to Dismiss was not timely.
2. Whether the Bankruptcy Court erred in finding that the assignment of the Plaintiff's judgment was valid considering Plaintiff does not exist.
3. Whether the Bankruptcy Court erred in finding that Plaintiff exists, if the Court found that Plaintiff exists, which Defendant disputes.
4. Whether the Bankruptcy Court erred in allowing a Plaintiff who does not exist to file a lawsuit, i.e. the Adversary Proceeding, per F.R.C.P. 17(a).
5. Whether the Bankruptcy Court erred in not dismissing the Adversary Proceeding because Plaintiff does not exist per F.R.C.P. 17(a).

### **ARGUMENT**

Federal Rule of Civil Procedure 17(a)(1) requires that an action "must be prosecuted in the name of the real party in interest." "The real party in interest is the person holding the substantive right sought to be enforced." *Wieburg v. GTE Southwest Inc.*, 272 F.3d 302, 306 (5th Cir.2001). A plaintiff that does not possess a right under the substantive law is not the real party in interest with respect to that right and may not assert it. *United States v. 936.71 Acres of Land*, 418 F.2d 551, 556 (5th Cir.1969).

A fictitious party further makes any contract, agreement, assignment of and the actual judgment null and void, "Conveyance to a fictitious person is a nullity."

Per Federal Rules 41(b) the Court has the power to dismiss a case that does not comply with the Federal Rules, "Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Defendant moves to dismiss this action.

In *Santiago v. EW Bliss Co.*, 941 N.E.2d 275 (Ill. App. Ct. 2010) the opinion stated the "court has discretion, as a matter of law, to dismiss a complaint with prejudice when brought by a plaintiff using a fictitious name without leave of court." In that case the Plaintiff admitted they used a different name other than the person's legal name for a real person and tried to refile with the corrected legal name. In this case Plaintiff's attorney has sworn that the Plaintiff is a real person and the only Plaintiff. Stillman did not try to refile the case in the name of "Amanda Lollar" or anyone else. Still did tell the Court they would transfer the judgment back to Lollar but never did because they could never get a notarized signature from Khionidi because Khionidi does not exist.

Whoever signed the Trust Agreement as Khionidi has committed forgery, i.e. Penal Code section 470. That section provides, "Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority so to do, to, ... [any] deed ... or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, ... forged, ... matters, ... with intent to defraud, ... is guilty of forgery." [2] In *People v. Porter* (1955) 136 Cal. App. 2d 461, 467 [288 P.2d 561], this court stated that in order to establish forgery three essential facts must be proven: "(1) Intent to defraud, (2) making a false instrument by signing another's name without authority or the name of a fictitious person, or knowingly uttering same, and (3) the instrument on its face be capable of defrauding someone who might act upon it as genuine or the person in whose name it is forged." More succinctly, forgery is a "writing which falsely purports to be the writing of another, ..." (*Generes v. Justice Court* (1980) 106 Cal. App. 3d 678, 682 [165 Cal. Rptr. 222]; see also *Century Bank v. St. Paul Fire & Marine Ins. Co.* (1971) 4 Cal. 3d 319, 321-322 [93 Cal. Rptr. 569, 482 P.2d 193].)



## CONCLUSION

The Appeal should be granted because a person who does not exist cannot file a lawsuit per F.R.C.P. 17(a). It is fraud upon the court and any lawsuit must be dismissed per F.R.C.P. 41(b) and due to unclean hands. For the same reasons Plaintiff cannot reply to this Appeal and should lose automatically.

The fact that Plaintiff does not exist and is not allowed to file a legal complaint such as the Adversary Proceeding takes precedence over the later filing of the Motion for Summary Judgment. The specific issue of F.R.C.P. 17(a) wasn't raised or heard in the Motion for Summary judgment. The fact that the Plaintiff does not exist makes the underlying assignment of judgment a nullity and void. The MSJ order never stated that Plaintiff exists or Plaintiff proved they exist. Appellant raised the issue, filed the Motion to Dismiss, set the hearing and filed this Appeal before the order on the MSJ was final. Plaintiff never replied to the Motions before the hearing dates or within the time period to reply. Plaintiff should have lost by default. Judge Robert Kwan refused to hear it in a timely manner.

The real Plaintiff Lollar admitted the "Russian" Plaintiff does not exist. The "Russian" Plaintiff has never proved that they exist even though that information was requested in discovery. Plaintiff's attorney Stillman swore to the Court Stillman would provide proof of existence but never did because they couldn't because Plaintiff doesn't exist.

The above acts of judicial misconduct or the error in excluding evidence would constitute an error that "materially affect[ed] the substantial rights" of Cummins such that a new trial was necessary, (Right to a Fair Trial) US Constitution 7<sup>th</sup> Amendment. "the cumulative effect of the trial judge's conduct requires reversal." (*People v. Sturm, supra, 37 Cal.4th at p. 1243.*) "The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand." (*Pratt v. Pratt (1903) 141 Cal. 247, 252.*)

The Court is asked to reverse the order, dismiss the Adversary Proceeding and find that the judgment is dischargeable due to unclean hands. Appellant also requests an

award of fees and costs for this appeal and the other court proceedings in amounts to be determined.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink on a white background.

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**CERTIFICATE OF COMPLIANCE**

**Pursuant to California Rule of Court 8.204(c)(1)**

Pursuant to California Rule of Court 8.204(a) and (c)(1), I certify that the text of this brief is less than the maximum per mandate and is 4,302 words. In so certifying, I am relying on the word count of Microsoft Word, the computer program used to prepare this brief.

DATED: August 13, 2021

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins". The signature is written in black ink on a white background.

By \_\_\_\_\_

Mary Cummins  
Appellant in Pro Per

PROOF OF SERVICE BY MAIL  
(FRCivP 5 (b)) or  
(CCP 1013a, 2015.5) or  
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

**APPELLANT'S OPENING BRIEF**

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110140, Los Angeles, CA 90015-1640 and/or by filing via ECF.

**Philip Stillman**  
**Stillman & Associates**

**Judge Robert Kwan**  
**US Bankruptcy Court**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, August 13, 2021, at Los Angeles, California.

Respectfully submitted,



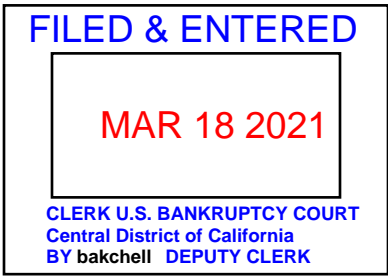
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Mary Cummins  
645 W. 9th St. #110-140  
Los Angeles, CA 90015

**APPELLANT'S APPENDIX**  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

MARY CUMMINS-COBB,  
  
Debtor.

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

Chapter 7

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

**STATEMENT OF DECISION RE:  
DEFENDANT’S MOTION TO DISMISS THE  
ADVERSARY PROCEEDING AND  
PLAINTIFF’S EX PARTE APPLICATION TO  
STRIKE MOTION TO DISMISS**

KONSTANTIN KHIONIDI, AS TRUSTEE  
OF THE COBBS TRUST,

Plaintiff,

vs.

MARY CUMMINS-COBB,

Defendant.

Vacated Hearing  
Date: March 30, 2021  
Time: 2:30 p.m.  
Courtroom: 1675

Having considered defendant’s motion to dismiss the adversary proceeding, filed on February 26, 2021 (Docket No. 198), and plaintiff’s ex parte application to strike in response thereto, filed on March 9, 2021 (Docket No. 200), the court rules as follows.

1. Pursuant to Local Bankruptcy Rule 9013-1(j)(3), the court determines that

1 oral argument on the motion to dismiss the adversary proceeding is not  
2 necessary and dispenses with it, and the court takes the motion to dismiss  
3 under submission and vacates the hearing on the motion to dismiss  
4 noticed before the court on March 30, 2021 at 2:30 p.m.

5 2. The motion to dismiss fails to set forth a proper legal basis for dismissing  
6 the adversary proceeding after the entry of final judgment in favor of  
7 plaintiff, which has been affirmed on appeal to the district court. This  
8 court's judgment affirmed on appeal determined that the Cobbs Trust was  
9 valid and plaintiff as its representative had standing to bring the adversary  
10 proceeding. Thus, the court's determinations already addressed the issue  
11 raised by defendant in her motion to dismiss regarding whether plaintiff is  
12 the real party in interest under Federal Rule of Civil Procedure 17(a). In  
13 determining that the trust is valid and that plaintiff as its representative had  
14 standing to bring the adversary proceeding, the court determines that  
15 plaintiff was the real party in interest under Federal Rules of Civil  
16 Procedure 17(a). Defendant's remedy to contest the judgment based on  
17 the court's determinations is an appeal, not a post-judgment motion to  
18 dismiss, which the court determines to lack merit.

19 3. Accordingly, the motion will be denied.

20 4. Plaintiff's ex parte application to strike the motion to dismiss will be denied  
21 as moot.

22 5. No appearances are required on the hearing on the motion on March 30,  
23 2021, which hearing is now vacated.

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6. A final order denying the motion to dismiss and the application is being filed and entered concurrently herewith.

IT IS SO ORDERED.

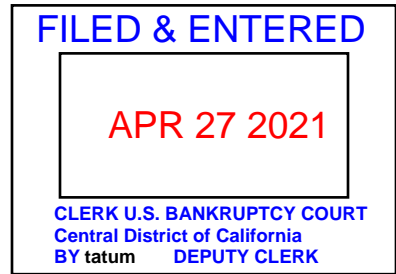
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Date: March 18, 2021



Robert Kwan  
United States Bankruptcy Judge





**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

11 In re: 12 MARY CUMMINS-COBB, 13 14 Debtor.	Case No. 2:17-bk-24993-RK Chapter 7 Adv. No. 2:18-ap-01066-RK <b>ORDER DENYING DEFENDANT'S MOTION TO REHEAR MOTION TO DISMISS</b>
15 16 KONSTANTIN KHIONIDI, AS TRUSTEE OF THE COBBS TRUST, 17 18 Plaintiff, 19 vs. 20 MARY CUMMINS-COBB, 21 Defendant.	<u>Hearing via Zoom for Government</u> Date: April 27, 2021 Time: 2:30 p.m. Courtroom: 1675

22  
23 On April 27, 2021, the court held a hearing on Defendant Mary Cummins-Cobb's  
24 Motion to Rehear Motion to Dismiss, filed on March 23, 2021, (Docket No. 206). Philip  
25 Stillman of Stillman & Associates appeared on behalf of Plaintiff Konstantin Khionidi, as  
26 Trustee of the Cobbs Trust. Ms. Cummins-Cobb appeared and represented herself.  
27 Having considered the motion and the arguments made at the April 27, 2021 hearing,  
28 the court hereby DENIES the motion to dismiss for the reasons stated on the record at

1 the hearing and in its prior statement of decision on defendant's prior motion to dismiss  
2 filed and entered on March 18, 2021 (Docket No. 203).

3 IT IS SO ORDERED.

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25 Date: April 27, 2021



26 \_\_\_\_\_  
Robert Kwan  
United States Bankruptcy Judge

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APPENDIX 2

CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY and AMANDA LOLLAR Plaintiffs,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
v.	§	OF TARRANT COUNTY, TEXAS
	§	
MARY CUMMINS, Defendant	§	352 <sup>ND</sup> JUDICIAL DISTRICT

JUDGMENT

ON the 11<sup>th</sup> day of June this cause came on to be heard. Amanda Lollar, Plaintiff whose last three digits of her Texas driver's license number are 000, appeared in person and by her attorney and announced ready for trial. Bat World Sanctuary, Plaintiff, appeared by and through its attorney and announced ready for trial. Mary Cummins, Defendant whose last three digits of her California driver's license number are 781 appeared *pro se* and announced ready for trial. No jury having been demanded, all questions of fact were submitted to the Court.

After hearing the evidence and arguments of counsel and the defendant the Court finds that the plaintiffs, Amanda Lollar and Bat World Sanctuary, are entitled to recover from the defendant, Mary Cummins.

IT IS THEREFORE ORDERED that Amanda Lollar recover from Mary Cummins actual damages in the amount of THREE MILLION DOLLARS (\$3,000,000.00).

IT IS FURTHER ORDERED that Amanda Lollar recover from Mary Cummins exemplary damages in the amount of THREE MILLION DOLLARS (\$3,000,000.00).

IT IS FURTHER ORDERED that Bat World Sanctuary recover from Mary Cummins actual damages in the amount of TEN THOUSAND DOLLARS (\$10,000.00).

IT IS FURTHER ORDERED that Bat World Sanctuary recover from Mary Cummins attorney's fees in the amount of ONE HUNDRED SEVENTY SIX THOUSAND SEVEN HUNDRED DOLLARS (\$176,700.00).

IT IS ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://www.animaladvocates.us/batWorldLawsuit/>:

1. They breed animals in the facility.

2. Pretty ironic for this group to certify Bat World Sanctuary when the health department told her to leave town and they had to gut the building and remove her belongings.
3. Vet recommended blood and stool tests. Lollar declined. She just wants empirical therapy. If that doesn't work, she wants to euth the dog. She refused treatment. When I was at Bat World June 19, 2010 to June 28, 2010 I saw her use her fingers to pull out one of the dog's teeth, i.e. oral surgery on dogs.
4. The current method she suggests is also inhumane. The bats die of suffocation. She also forgets to mention that the drugs she suggests must be used under the direction of a veterinarian. She doesn't even administer the gas legally, humanely, or safely.
5. He should not be working for free for someone who commits animal cruelty.
6. I doubt he'll be speaking about this embarrassing little case where he is actually representing someone who commits animal cruelty and neglect.
7. She took the money that came from the dissolution of Bonnie Bradshaw's group and bought a new silver Honda Eclipse. That money was supposed to go for animals. This is what Lollar does with money that is given to Bat World.
8. Lollar never even washed her hands before surgery, you can see dirty finger nails in the photos, no surgical garments, no mask, hat, nothing. Night and day.
9. Just confirmed that Amanda Lollar of Bat World Sanctuary is illegally obtaining human and animal rabies vaccinations. ...Again, breaking the law. I'm amazed she admitted to having the vaccine and buying it when she is doing it illegally.
10. She does not state that it died from neglect of care. She also chose to euth it instead of treating it as her vet suggested. She'd previously turned down care which her vet suggested.
11. When I was at Bat World she told me the place where she buys her rabies vaccine thinks she's a doctor.
12. Earlier in the year the vet noted the dog had major dental issues yet she didn't have the vet treat them. You know how painful it would be to have a mouth full of rotten teeth? That's animal neglect.
13. BREAKING NEWS!!! Amanda Lollar of Bat World Sanctuary admits in writing that she and Bat World Sanctuary are being forced to leave Mineral Wells because of all the complaints to the City and Health Department.
14. The dogs rear claws are super long. There is no way she could stand. ... She has to drag herself on cement.
15. She tells people to use Isoflurane illegally, inhumanely and unsafely in her book.

16. He didn't care that she admitted to illegally having the human rabies vaccination, admitted to using drugs not according to the label or that she "proudly" admitted to performing surgery.
17. In the video Lollar takes tweezers and just pulls out the molars of a conscious bat that is fighting and biting her while it bleeds. Lollar is proud of this and posted this video in her book and online. Bat experts know that bats must be unconscious and intubated to remove molars. Can you imagine the pain that bat felt?
18. Pulling molars out of conscious bats is not "cutting-edge" though cutting open conscious bats might fall into that "category." Operating on bats using the drop anesthesia technique or amputating wings instead of pinning them is also not cutting edge but cave man veterinary practice.
19. Lollar is exposing people to rabies by not checking their cards.
20. Her recent story about the episiotomy at the depo was that, that was not the bat's vagina and uterus being pulled out. It was the "placenta separating." It clearly was not.
21. She'd already yanked out the placenta which is what helped cause the prolapse, besides cutting way too much and pulling too hard. She really needs to get her vision checked. Someone with very bad vision is the last person who should be slicing into microbats.
22. Yeah, I look like crap in the videos but at least there are no videos of me hacking an animal to death.
23. She's been breeding her bats illegally. She's committing fraud asking for money for a project she cannot and will not do.
24. She said she would use the bag for the trip then return it to Walmart for a refund. She admitted to me with an evil laugh that she does this frequently.
25. Rabies complaint against Bat World Sanctuary. General sanitation laws, harboring high risk rabies animals, allowing them in downtown.
26. Amanda Lollar and her buildings have been written up so many times for building violations, safety issues, rabies, histoplasmosis, no address, unsightly building, build up of guano 6-8 feet... People have been reporting her smelly building and rabid bats for over 15 years.
27. She's basically experimenting on bats. The bats are dying because she doesn't take them to the vet. That's okay because she can just go get more bats.
28. Amanda Lollar of Bat World Sanctuary found guilty of illegally breeding bats at her facility. It is a violation of her permit.

29. Amanda Lollar of Bat World Sanctuary is now sending threats of extortion from Mineral Wells, Texas. Because she's sending it over the computer it's a Federal crime.
30. She has violated the following regulations listed on her permit. "15 a. Permit holder is prohibited from a. Propagating, selling or bartering animals or animal remains received or held under authority of this permit." She is allowing the bats to breed.
31. The complaints going back 18 years were about alleged animal cruelty, animal neglect, violations of the health code and building and safety regulations.
32. The complaints stretching back 18 years were about animal cruelty, animal neglect, violations of the health code, violations of Texas Parks & Wildlife regulations, violations of the Animal Welfare Act, building violations and a report about a rabid bat biting a toddler directly next door to Bat World Sanctuary.
33. Here is the disgusting photo of my face which they photoshopped semen onto. They then added the caption "Yep, screw you too, Mmmmary!" They named the file "mmmm." This is how disgusting and childish these people are.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ordered to immediately and permanently remove from the following URL's in their entirety:

1. [http://www.animaladvocates.us/batWorldLawsuit/Amanda\\_Lollar\\_Bat\\_World\\_Sanctuary\\_Breeding\\_Bats.pdf](http://www.animaladvocates.us/batWorldLawsuit/Amanda_Lollar_Bat_World_Sanctuary_Breeding_Bats.pdf)
2. [http://www.animaladvocates.us/batWorldLawsuit/amanda\\_lollar\\_1994\\_manual\\_original.pdf](http://www.animaladvocates.us/batWorldLawsuit/amanda_lollar_1994_manual_original.pdf)
3. <http://www.animaladvocates.us/batWorldLawsuit/mmmm.jpg>

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at [http://www.animaladvocates.us/mary\\_cummins\\_sues\\_amanda\\_lollar\\_bat\\_world\\_sanctuary](http://www.animaladvocates.us/mary_cummins_sues_amanda_lollar_bat_world_sanctuary)

1. She's the one who handles rabid bats with her bare hands.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://www.facebook.com/marycummins>:

1. Update: Health Dept. forced Bat World Sanctuary to leave town. In January they gutted the building, cleaned it and removed her property.

2. Amanda who runs bat sanctuary just uses her bare hands. The rabid bats even bite her.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://www.facebook.com/AnimalAdvocatesUSA>:

1. Update: Health Dept. forced Bat World Sanctuary to leave town. In January they gutted the building, cleaned it and removed her property.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://plus.google.com/107575973456452472889>:

1. Bat World Sanctuary admits in writing they are being forced to leave the City because of all the complaints to the City and Health Dept.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://twitter.com/MMMARYinLA>:

1. Bat World Sanctuary admits in writing that they are being forced to leave the City because of all the complaints to the City and Health Dept.
2. Update: Health Dept. forced Bat World Sanctuary to leave town. They gutted her building, cleaned it and removed her property.
3. Amanda Lollar commits animal cruelty at Bat World Sanctuary <http://goo.gl/fb/ufv4x>

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://www.myspace.com/mmmaryinla>:

1. Health Dept. forced Bat World Sanctuary to leave town. They gutted her building, cleaned it and removed her property.
2. Bat World Sanctuary admits in writing they are being forced to leave the City because of all the complaints to the City and Health Dept.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and prohibited from posting on the internet or publishing to any person any video recording of any episiotomy that was recorded or made at Bat World Sanctuary.

IT IS FURTHER ORDERED that the total amount of the judgment here rendered will bear interest at the rate of five percent (5%) per year from the date of this judgment until paid.

All costs of court spent or incurred in this cause are adjudged against Mary Cummins, defendant.

All writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.

All other relief not expressly granted in this judgment is denied.

SIGNED this 27 day of August, 2012.

William Brigham  
JUDGE PRESIDING



## REVOCABLE LIVING TRUST AGREEMENT

THIS REVOCABLE LIVING TRUST AGREEMENT, (hereinafter "Trust"), is being made as of the 20th day of March 2017, by and between Konstantin Khionidi of Anapa, Krasnodarskii Krai, Russian Federation County, State of California, hereinafter referred to as the Trustor and the Trustee designated below and shall be governed and administered in accordance with the following terms and provisions:

### ARTICLE I NAME OF TRUST

1. **NAME OF TRUST:** This trust may be referred to as **THE COBBS TRUST** and is created in accordance with California Probate Code.

### ARTICLE II IDENTIFICATION

2. **TRUSTOR AND BENEFICIARIES:** The Trustor or Settlor of this trust is **Konstantin Khionidi**, an Individual residing at Ul. Shevchenko 241-50, Anapa, Krasnodarskii Krai, Russian Federation 353440.

The Beneficiary of the Trust during the lifetime of the Trustor is the Trustor. Except as otherwise provided herein, upon the death of the Trustor, the Beneficiary is Bat World Sanctuary, a Texas Corporation with offices at: 217 N. Oak Avenue, Mineral Wells, TX 76067.

### ARTICLE III TRUSTEE APPOINTMENT

3. **TRUSTEE APPOINTMENTS:** The Trustor, hereby appoints **Konstantin Khionidi**, the Trustor, as Trustee of this Trust. If the Trustor, is unable to serve as Trustee for any reason, then the Trustor hereby appoints Amanda Lollar as Successor Trustee. The Trustee shall have all powers as provided in this agreement and the laws of the State of California. The principal place of administration of this trust is the Trustors place of residence, regardless of the residence of the Trustee. In the event a vacancy in the office of Trustee occurs and there is no successor trustee, the existing Trustee, if one, and the beneficiaries, or the beneficiaries, if there is no trustee, may agree to a non-judicial change in the trustee by amendment to this Trust agreement.

### ARTICLE IV ASSETS OF TRUST

4. **ASSETS OF TRUST:** All rights, title, and interest in and to all real and personal property, tangible or intangible, listed on the attached Exhibit "A", is

hereby assigned, conveyed and delivered to the Trustee for inclusion in this Trust.

**5. ADDITIONS TO TRUST PROPERTY:** Additional property may be conveyed to the Trust by the Trustor, or any other third party at any time. Trustor may execute such other documents as is necessary to effectuate the assignment of property to this Trust.

**6. RIGHTS TO TRUST ASSETS:** Except as specifically provided herein, the Beneficiaries of this trust shall have no rights to any assets of the trust.

**7. HOMESTEAD EXEMPTION:** Grantor(s) reserves the right to use, occupy and reside upon any real property placed in this Trust as their permanent residence during their lives. Grantor(s) shall have the right to reside in the property rent free and without charge except for the payment of the following: (1) all mortgages costs and expenses (2) all property taxes, and (3) reasonable expenses of upkeep and maintenance. Grantor(s) retain the legal right to use and benefit from the property in all respects. It is the intent of this provision to retain for the grantor(s) the requisite beneficial interest and possessor right in and to such real property needed to retain their qualification for any exemption, freeze of tax rates and/or valuation granted to any individual or individuals so qualifying.

#### **ARTICLE V TRUSTEE POWERS AND OTHER PROVISIONS**

**8. POWERS:** The Trustor does hereby grant to the Trustee all powers necessary to deal with any and all property of the Trust as freely as the Trustor could do individually. The Trustee shall at all times and in all actions act as a fiduciary in good faith. Trustee is hereby granted all powers contained herein and all powers conferred upon Trustee under the applicable statutes and laws of the State of California, to the broadest extent possible, including, but not limited to all of the powers authorized by the California Probate Code, all powers granted to the Trustee by this Trust Agreement are ministerial in nature and are not intended to create or alter substantial rights. Without limiting the foregoing general statement of powers, the Trustee powers include, but shall not be limited to the following:

**(A) TRUST ASSETS:** The Trustee is hereby authorized and granted all powers necessary to retain as a permanent investment of the Trust, or for such time as the Trustee shall deem advisable, the original assets of the Trust and all other property later transferred, devised or bequeathed to the Trustee, without liability for loss or depreciation resulting from such retention.

- (B) **NONPRODUCTIVE ASSETS:** The Trustee is hereby granted all powers and authority necessary to hold uninvested cash, and to retain, acquire, and hold unproductive realty or personalty for any periods deemed advisable by the Trustee, even though the total amount so held is disproportionate under trust investment law or would not be permitted without this section.
- (C) **INVESTMENT POWERS:** The Trustee is hereby granted all powers necessary to invest and reinvest any and all of the property of the Trust in any and all types of property, security or other asset deemed by the Trustee to be in the best interests of the Trust as a whole, without limitation or regard to yield rates or income production.
- (D) **SECURITIES:** The Trustee is specifically authorized, in his or her discretion, to maintain brokerage margin accounts, to buy, sell or transfer options, warrants, puts, calls, commodities, futures contracts, and repurchase contracts, and to exercise any options, rights, and conversion privileges pertaining to any securities held by the Trustee as Trust assets.
- (E) **ADDITIONAL PROPERTY:** The Trustee is specifically authorized to receive additional property from any source and to hold and administer this property as part of the Trust Estate.
- (F) **SELL AND LEASE:** The Trustee is hereby granted all powers necessary to sell, convey, lease, transfer, exchange, grant options to purchase or otherwise dispose of any Trust asset on any terms deemed by the Trustee to be in the best interests of the Trust, to execute and deliver deeds, leases, bills of sale, and other instruments of whatever character, and to take or cause to be taken all action deemed necessary or proper by the Trustee in furtherance of this authority.
- (G) **INSURANCE:** The Trustee is specifically authorized to insure Trust property and assets with any insurer against any hazards, foreseeable or unforeseeable, including public liability, and to use insurance proceeds to repair or replace the asset insured, at the discretion of the Trustee. In addition, the Trustee may carry or purchase life insurance on the life of any Trust beneficiary, and may exercise or release any rights with regard to such policy.
- (H) **BORROWING AND LENDING:** The Trustee is specifically authorized to lend Trust funds to any borrower, on any terms deemed advisable, and to change the terms of these loans at any time and for any reason. This authorization includes the power to

extend loans beyond maturity with or without renewal and without regard to the existence or value of any security, and to facilitate payment, to change the interest rate, to consent to the modification of any guarantee, and to forgive loans in their entirety.

The Trustee is further granted all powers necessary to borrow whatever money the Trustee deems desirable for any Trust on any terms from any lender, and to mortgage, pledge or otherwise encumber as security any assets of the borrowing Trust.

- (I) **MODIFICATION OF TERMS:** The Trustee is specifically authorized, incident to the exercise of any power, to initiate or change the terms of collection or of payment of any debt, security, or other obligation of or due to any Trust, upon any terms and for any period, including a period beyond the duration or the termination of any or all Trusts.
- (J) **CLAIMS:** The Trustee is hereby granted all powers necessary to compromise, adjust, arbitrate, sue on, defend, or otherwise deal with any claim, upon whatever terms the Trustee deems advisable, against or in favor of any Trust, and to abandon any asset the Trustee deems of no value or of insufficient value to warrant keeping or protecting. The Trustee is further authorized, in his or her sole and absolute discretion, to refrain from paying taxes, assessments, or rents, and from repairing or maintaining any asset; and to permit any asset to be lost by tax sale or other proceeding.
- (K) **DISTRIBUTIONS:** The Trustee is specifically authorized to distribute any shares of the Trust in cash or in property, or partly in each, and the Trustee's valuations of and selection of assets upon making distribution shall, if made in good faith, be final and binding on all beneficiaries.
- (L) **NOMINEE:** The Trustee is specifically authorized to hold any or all of the Trust assets, real or personal, in the Trustee's own name, the name of any Co-Trustee, corporation, partnership, or any other person as the Trustee's nominee for holding the assets, with or without disclosing the fiduciary relationship. A corporate Trustee does hereby have the power necessary to appoint a Trustee to administer property in any jurisdiction in which it shall fail to qualify.
- (M) **FORECLOSURE:** The Trustee is specifically authorized to foreclose on any mortgage, to bid on the mortgaged property at the foreclosure sale, or acquire mortgaged property from the mortgagor without foreclosure, and to retain or dispose of the property upon any terms deemed advisable by the Trustee.

- (N) **ENCUMBRANCES:** The Trustee may pay off any encumbrance on any Trust asset and may invest additional amounts of money in the asset, as the Trustee deems appropriate, to preserve the asset or to increase its productivity.
- (O) **VOTING:** The Trustee may vote stock for any purpose, either in person or by proxy, may enter into a voting trust, and may participate in corporate activities related to a trust in any capacity as permitted by law, including service as officer or director.
- (P) **REORGANIZATION:** The Trustee is hereby granted all powers necessary to unite with other owners of property similar to any property held in this Trust in carrying out the foreclosure, lease, sale, incorporation, dissolution, liquidation, reincorporation, reorganization, or readjustment of the capital or financial structure of any association or corporation in which any Trust has a financial interest; to serve as a member of any protective committee; to deposit Trust securities in accordance with any plan agreed upon; to pay any assessments, expenses, or other sums deemed expedient for the protection or furtherance of the interests of the beneficiaries; and to receive and retain as Trust investments any new securities issued pursuant to the plan, even though these securities would not constitute authorized Trust investments without this provision.
- (Q) **PURCHASE FROM ESTATE OR TRUST:** The Trustee is specifically authorized to purchase property of any type, whether real or personal, from a Trustor or beneficiary's estate or Trust for their benefit upon such terms and conditions, price and terms of payment as the Trustee and the respective personal Representative shall agree upon, and may hold any property so purchased in Trust although it may not qualify as an authorized Trust investment except for this provision, and may dispose of such property as and when the Trustee shall deem advisable.
- (R) **ASSISTANTS AND AGENTS:** The Trustee is hereby granted all powers necessary to employ any person or persons the Trustee deems advisable for the proper administration of any Trust, including but not limited to: attorneys-at-law, accountants, financial planners, brokers, investment advisors, realtors, managers for businesses or farms, technical consultants, attorneys-in-fact, agents and any other consultants and assistants.
- (S) **RESERVES:** The Trustee is hereby authorized to set aside and maintain reserves for the payment of present or future expenses,

including but not limited to: taxes, assessments, insurance premiums, debt amortizations, repairs, improvements, depreciation, obsolescence, maintenance, fees, salaries and wages, as well as to provide for the effects of fluctuations in gross income, and to equal or apportion payments for the benefit of income beneficiaries under the Trust.

(T) **MANAGEMENT OF REALTY:** The Trustee is specifically authorized to deal with real and personalty, including oil, gas, and mineral rights in any manner lawful to an owner on any terms and for any period, including periods beyond the duration or termination of any Trusts.

(U) **BUSINESS:** With respect to any business that is part of or may become part of any Trust, no matter how such business may be organized, the Trustee is hereby granted the authority to:

- a. hold, retain and continue to operate such business solely at the risk of the Trust estate and without liability to the Trustee for any resulting losses;
- b. incorporate, dissolve, liquidate, or sell such business at any time and upon any terms as the Trustee deems advisable. In exercise of this authority, the Trustee may obtain a qualified appraisal, although the Trustee is not obligated in any way to seek other offers in contracting for sale to any person including another shareholder, trust, or beneficiary; mortgage, pledge or otherwise encumber any assets of any Trust to secure loans for any business purposes;
- c. engage in the redemption of stock and to take such actions as are necessary to qualify the redemption under IRC Sections 302 or 303 and the applicable requirements of state law.
- d. create a special lien for the payment of deferred death taxes under IRC Section 6324, or similar provisions of state law.
- e. create, continue, or terminate an S-Corporation election.

9. **AUTHORITY TO ACT:** The approval of any court, the Trustor, or any beneficiary of any Trust created by this Trust shall not be required for any dealings with the Trustee of this Trust, and any person so dealing with the Trustee of this Trust shall assume that the Trustee has the same power and authority to act as any individual does in the management of his or her own affairs. Further, upon presentation of a copy of this page and any other page of this Trust, any person shall accept same as conclusive proof of the terms and authority granted by this Trust, and shall assume that no conflicting terms or directions are contained in any of the omitted pages.

**ARTICLE VI**  
**TRUST ADMINISTRATION DURING LIFE OF TRUSTOR**

**10. MANAGEMENT OF TRUST PROPERTY:** All property of the Trust shall be managed by the Trustee at the direction of the Trustor. The Trustee shall collect all income of the Trust, and shall pay from the income such amounts and to such persons as the Trustor may from time to time direct. In the absence of direction from the Trustor, the Trustee may accumulate the net income of the Trust, or may disburse any portion of the net income to or for the benefit of the Trustor. The Trustee is also authorized to pay from the principal of this Trust any and all amounts necessary for the health or maintenance of the standard of living of the Trustor.

**11. INCAPACITY OF TRUSTOR:** During any period of incapacitation of the Trustor, as defined by this Trust Agreement, the Successor Trustee may apply or expend all or a part of the income and principal of this Trust, or both, for the health and maintenance of the Trustor, in his or her accustomed manner of living. Provided sufficient resources exist for the care and maintenance of the Trustor, during any period of incapacity of the Trustor, the Successor Trustee is further authorized to make distributions to or for the benefit of any issue of the Trustor who has no other financial resources and who requires said distribution for their health or support. The Successor Trustee shall consider all financial resources available to a beneficiary, including, but not limited to, the ability of said beneficiary and his or her spouse, if any, to earn a living prior to making an invasion of this Trust. Under no circumstances may a Successor Trustee exercise this power for his or her own benefit.

**12. RESERVATION OF RIGHTS:** Except during periods of incapacitation as defined by this Trust Agreement, upon delivery to the Trustee of a written instrument, signed and acknowledged by the Trustor, the Trustor does hereby reserve during his or her lifetime the following rights:

- (A) To revoke this Trust Agreement in its entirety and to recover any and all remaining property of the Trust after payment of all Trust administration expenses in accordance with California Probate Code Section 15401,
- (B) To alter or amend this instrument in any and every particular at any time and from time to time in accordance with California Probate Code Section 15402,
- (C) To change, at any time and from time to time, the identity or number, or both, of the Trustee and/or Successor Trustee,
- (D) To withdraw from the operation of this Trust, at any time and from time to time, any or all of the Trust property.

**ARTICLE VII  
DISTRIBUTIONS DURING LIFETIME OF TRUSTORS**

**13. GENERAL DISTRIBUTIONS:** The following options are available to the Trustee regarding the distribution of principal or income to or for a beneficiary:

- (A) Payments may be made directly to the beneficiary as an allowance, in such amounts as the Trustee may deem advisable;
- (B) Payments may be made to the Guardian of the beneficiary.
- (C) Payments may be made to a relative of the beneficiary upon the agreement of such relative to expend such income or principal solely for the benefit of the beneficiary. Said agreement may include a custodianship under the Uniform Transfers (or Gift) to Minors Act of any state.
- (D) The Trustee may expending such income or principal directly for the beneficiary. After making a distribution as provided above, the Trustee shall have no further obligation regarding the distribution.
- (E) In making distributions of income or principal, the Trustee shall be mindful of the Beneficiaries health, education, support, maintenance, comfort and general welfare needs.

**14. RESIDENCE:** A residence may be purchased or otherwise obtained by the Trustee for the benefit of an income beneficiary of any Trust for use by the beneficiary and his or her family. Rent shall not be charged to said beneficiary and expenses of maintaining such residence may be borne by the Trust, the beneficiary, or partly by each, as the Trustee may deem proper.

**15. OTHER PAYMENTS:** At the request of any Trustor in writing, the Trustee shall make lump sum or periodic payments to any third party designated by such Trustor.

**ARTICLE VIII  
TRUST ADMINISTRATION AFTER TRUSTOR'S DEATH**

**16. TRUSTEE:** Upon the death of the Trustor, the Successor Trustee shall continue to administer the assets of this Trust, as well as any other property received by this Trust from any source, and shall distribute said assets as provided herein.

**17. BENEFITS PAYABLE TO TRUST:** Upon the death of the Trustor, the Trustee is hereby authorized to take any and every action necessary to collect any and all benefits payable to the Trust, including but not limited to proceeds from life insurance policies, retirement plans, or IRA's. The Trustee is further authorized to collect any and all tax refunds, health insurance proceeds, refunds



under any contract, death benefits, or any other item payable to the Trustor's estate.

**18. LIABILITIES OF TRUSTOR'S ESTATE:** Prior to the distribution of any assets of this Trust, the Trustee may, at his or her sole and absolute discretion, pay to the Trustor's estate, from the principal or income of the Trust, any or all of the Trustor's just debts, funeral expenses, and administration expenses of the Trustor's estate. Alternatively, the Trustee may, but is not obligated to, pay such expenses directly.

**19. TAXES:** Upon the death of the Trustor, all estate and inheritance taxes that become due and payable upon all of the property comprising the Trustor's gross estate, without regard to how such property passes, shall be paid by the Trustee either to the estate of the Trustor or to the appropriate tax agency. The Trustee shall have the right of contribution as provided by Section 2207 and 2207A IRC, if applicable.

**20. ADDITIONAL DISTRIBUTIONS:** The Trustee is hereby authorized to pay to the Probate Estate of the deceased Trustor as much of the income and principal of this Trust as the Trustee deems necessary for any purpose, in addition to the other distributions provided for in this Trust.

**21. GIFTS:** The Trustee shall, upon the death of the Trustor, make such gifts of the tangible personal property of the Trustor held or acquired by this Trust as may be directed by the Trustor's Will or any list, letter, or other writing of the Trustor permitted by the Will of the Trustor, or as may be directed by a list, letter or other writing designated as Schedule B of this Trust, whenever made. All costs of storing, packing, shipping and insuring such gifts shall be paid by the Trust.

#### **ARTICLE IX TRUSTOR'S DEATH**

**22. DISTRIBUTIONS:** Upon the death of the Trustor, the following distributions shall be made from the property of this Trust after payment of the Trustor's just debts, funeral expenses, expenses of any last illness, and the other distributions otherwise provided for in this Trust:

**(a) DISTRIBUTION UPON DEATH OF TRUSTOR:** Upon the death of the Trustor, the Trustee shall distribute or hold the trust property as follows:

All trust property, including principal or income shall be distributed to Bat World Sanctuary. If more than one person is named, they shall receive property equally. If any of the named persons are minors, the Trustee shall retain his or her portion of the Trust Estate in accordance with the Sprinkling Trust provisions below.

**(b) SPRINKLING TRUST:** The Trustee shall hold, administer, and distribute the assets of the Sprinkling Trust as follows:

i) For any named beneficiaries who are minors on the date of my death the trustee shall hold his or her trust estate in a separate trust to be used in the discretion of the trustee for the health, education, maintenance, and general welfare of such beneficiary.

ii) Upon the beneficiary reaching 21 years of age, the trustee shall distribute outright all remaining income and principal to such beneficiary and the trust for such beneficiary shall terminate.

iii) If any beneficiary of this Sprinkling Trust shall die before age 21, and leave no living issue, his or her share of the trust will be distributed equally to the other beneficiaries named herein. If the named beneficiary leaves living issue, then they shall be substituted for the deceased beneficiary, and this trust shall be administered for their benefit, pursuant to the provisions for their deceased parent. Upon such beneficiary reaching 21 years of age all remaining principal and income shall be distributed to the sole beneficiary.

**23. DEATH OF BENEFICIARY:** Should a named beneficiary die before a complete distribution of this Trust is made, and that Beneficiary leave no living issue, then that beneficiary's share shall go to the surviving Beneficiaries. If a Beneficiary dies before complete distribution and leaves living issue, such living issue shall step into the shoes of his or her parent and the trust shall be administered for their benefit.

## **ARTICLE X TRUSTEE PROVISIONS**

**24. THIRD PARTIES:** Any person dealing in good faith with the Trustee shall deal only with the Trustee and shall presume the Trustee has full power and authority to act on behalf of the Trust. Confirmation or approval of any beneficiary shall not be required for any transaction with the Trustee. No Trustee of this trust shall be personally liable for contracts entered into on behalf of the trust unless the Trustee fails to reveal his or her representative capacity and identify the trust estate in the contract. Further, the Trustee shall not be personally liable for contracts or torts in connection with the administration of the trust unless the Trustee is personally at fault.

**25. COMPENSATION:** Any beneficiary of this Trust serving as Trustee shall do so without compensation for his or her services, except that the Trustee shall be reimbursed for reasonable expenses incurred in the administration of the Trust. Any Trustee not a beneficiary hereunder shall be compensated at the rate customarily charged by commercial trust companies for services as a trustee of

an inter vivos trust in the State of California, unless such compensation is waived by the Trustee.

**26. BOND AND QUALIFICATIONS:** Bond shall not be required of the Trustee or any Successor Trustee. The Trustee and any Successor Trustee shall not be required to qualify in any court and is hereby relieved of the requirement of filing any document and accounting in any court or beneficiary.

**27. SUCCESSOR TRUSTEE(S):** No Successor Trustee shall be responsible for acts of any prior Trustee. In the event a vacancy in the office of Trustee occurs and there is no successor trustee, the existing Trustee, if one, and the beneficiaries may agree to a non-judicial change in the trustee by amendment to this trust agreement. No person shall be required to apply to any court in any jurisdiction for confirmation of said appointment. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service.

**28. REMOVAL OF SUCCESSOR TRUSTEES:** A Successor Trustee may be removed by the last individual to serve as Trustee; however, if that person is deceased or incapacitated, the Successor Trustee may be removed by a majority vote in interest in Trust income. Said removal must be in writing, stating the reasons for removal and indicate the successor Trustee, which must be a corporate trustee.

Removal of a Successor Trustee shall be permitted only for the convenient administration of the Trust and not for the purpose of influencing the exercise of the discretionary powers of a Successor Trustee as granted by this instrument.

Removal of a Successor Trustee shall be effective upon delivery of the notice of removal. The removed Trustee shall have a reasonable period of time to transfer assets to his or her successor. In the event the successor Trustee believes that his or her removal is improper, he or she may, but shall not be required to, apply to a court of competent jurisdiction, at his or her expense, for a declaration of the propriety of the removal. In that event, the removal shall be effective only upon the order of said court and after any appeal. In the event the Successor Trustee prevails, he or she shall be entitled to reimbursement from the Trust for reasonable costs and attorneys fees associated with such action.

**29. DELEGATION OF POWERS:** Any management function of any Trust may be delegated by any Trustee to any Successor Trustee, even if such Successor Trustee is not then serving as Trustee. The terms of such delegation of power shall be any conditions agreed to by the Trustees which are not detrimental to

the Trust. Provided, however, that the Trustee shall not delegate ALL of the trustee's duties and responsibilities.

**30. LIMITED AMENDMENT POWER:** The Trustee shall enjoy a limited power to amend management functions of this Trust only as may be required to facilitate the convenient administration of this Trust, to deal with the unexpected or the unforeseen, or to avoid unintended or adverse tax consequences. Any amendment under this provision shall be in writing and must be consented to by the Trustor, if not then deceased or incapacitated, or the beneficiaries of any Trust if the Trustor is deceased or incapacitated. The amendment may be retroactive. This limited power to amend shall not affect the rights of any beneficiary to enjoy Trust income or principal without the consent of said beneficiaries. The dispositive provisions of any Trust shall not be affected by this limited power to amend, and such power shall not be exercisable in such any manner as to create gift, estate, or income taxation to the Trustee or any beneficiary. No amendment shall affect the rights of third persons who have dealt or may deal with the Trustee without their consent.

**31. RESIGNATION OF TRUSTEE:** Any Trustee may resign by writing filed among the trust papers effective upon the trustees' discharge. The resigning Trustee, or other interested party, shall provide notice to all adult income beneficiaries and other adult beneficiaries of the Trust. The resignation shall be effective upon agreement of all parties entitled to notice, or thirty days after notice, whichever occurs first.

**32. NONLIABILITY FOR ACTION OR INACTION BASED ON LACK OF KNOWLEDGE OF EVENTS.** When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered.

**33. TRUSTEE AS BENEFICIARY.** Notwithstanding any other provision herein or of California Laws, a trustee who is also a beneficiary of the trust may exercise powers to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee;

(2) Discretionary allocations of receipts or expenses as between principal and income; or

(3) Discretionary distributions of either principal or income to satisfy a legal obligation of the trustee.

**34. WAIVER OF ACCOUNTING.** Except as otherwise provided herein, neither this trust, nor any Trustee, shall be required to provide an accounting to any Beneficiary.

**ARTICLE XI  
TRUST ADMINISTRATION**

**35. ALLOCATION TO PRINCIPAL AND INCOME – SEPARATE TRUSTS:** All expenses and all receipts of money or property paid or delivered to the Trustee may be allocated to principal or income in the sole discretion of the Trustee. The Trustee, in a reasonable and equitable manner, shall also have the discretion to allocate, in whole or in part:

- (A) Expenses of administration of the Trust to income or principal.
- (B) Fees of the Trustee to income or principal.
- (C) Any expense of Trust administration or administration of its assets which are deductible for Federal Income Tax purposes to income.
- (D) The gains or losses from option trading, and capital gains distributions from utility shares, on mutual funds, or tax managed funds to income; and
- (E) To income or principal, distributions from qualified or non-qualified pension plans, profit sharing plans, IRA accounts or deferred compensation arrangements.

To the extent that division of any Trust is directed, the Trustee may administer any Trust physically undivided until actual division becomes necessary. Further, the Trustee may add the assets of the Trust for any beneficiary to any other trust for such beneficiary having substantially the same provisions for the disposition of trust income and principal, whether or not such trust is created by this agreement. The Trustee may commingle the assets of several trusts for the same beneficiary, whether or not created by this agreement, and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and to allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several trusts as a single estate shall not defer the vesting of any whole or fractional share of a trust for its beneficiary at the times specified.

**36. ALIENATION:** Excepting the Trustor, no income or principal beneficiary of any Trust shall have any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the Trust, in any way. No interest in any Trust shall, in any manner, be liable for or subject to the debts,

liabilities or obligations of such beneficiary or claims of any sort against such beneficiary.

**37. TERMINATION OF TRUST:** Should the aggregate principal of any Trust at any time be valued at Twenty Thousand Dollars (\$20,000) or less, the Trustee may, in his or her sole discretion, terminate such Trust and distribute the assets of the Trust to the beneficiaries in proportion to each beneficiary's share of the Trust.

**38. ELECTIONS:** The Trustee and the Personal Representative of the Trustor's estate will have various options in the exercise of discretionary powers, and may exercise any such discretion without incurring liability to any beneficiary, nor shall any beneficiary have the right to demand a reallocation or redistribution of Trust income or principal as a result of the proper action of the Trustee or Personal Representative, subject only to the requirement that the Trustee and the Personal Representative act in good faith and within the bounds of their fiduciary duty. Specifically, the Trustee or Personal Representative may make certain elections for Federal Income Tax and Estate Tax purposes which may affect the administration of Trust income or principal.

**39. BENEFICIARY DESIGNATION:** Upon written designation by the Trustor of a beneficiary for a qualified plan or IRA benefits made payable to this Trust, the Trustee shall distribute the right to receive such benefits to the designated beneficiary. If no such designation of beneficiary exists, the Trustor grants to the Trustee the power, on behalf of the Trustor, to distribute the right to receive such benefits as a part of the share which is otherwise to be distributed to any beneficiary, and such person shall be the Trustor's designated beneficiary. It is intended that the operation of this paragraph qualify under the requirements of 401(a) (9) and 408(a) (6) IRC and it shall be interpreted in all regards in accordance with this intent.

**40. CERTIFICATE OF TRUST:** The Trustee is hereby authorized and granted all powers necessary to execute a Certificate of Trust, describing any Trust matter, including but not limited to a description of the Trust terms, the administrative powers of the Trustee and the identity of any current Trustee. Any person receiving an original or photocopy of said Certificate of Trust shall be held harmless from relying on same, and shall not be obligated to inquire into the terms of the Trust or maintain a copy of the Trust.

**41. REGISTRATION OF TRUST ASSETS:** Assets of this Trust during the Trustor's lifetime shall be registered as follows: Konstantin Khionidi, Trustee, or his or her successors in trust, under THE COBBS TRUST, dated as of the 20th day of March, 20\_\_\_, and any amendments thereto.

**42. TAX IDENTIFICATION:** The Trustor is not a citizen or tax resident of the United States. In the event that the Trust generates taxable income, it will be

subject to withholding taxes under the applicable tax treaty and the Trustee shall ensure that any and all taxes are paid. Upon the Trustor's death, the Trustee shall then apply to the IRS for a tax identification number for the Trust and any other Trust created by this Trust Agreement.

**43. SPENDTHRIFT CLAUSE:** The interest of any Beneficiary of this Trust in the income and principal shall not be subject to claims of his or her creditors, or others, or be liable to attachment, execution, or other process or law and no Beneficiary shall have the right to encumber, hypothecate, or alienate his or her interest in any of the trust in any manner except as provided herein.

**44. PERPETUITIES CLAUSE:** All Trusts created by this instrument and interests therein shall vest in their then beneficiary twenty-one years after the death of the last of the issue of the Trustor who was alive when the Trustor died, notwithstanding any provision of this Trust to the contrary. No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the said time period.

## **ARTICLE XII TERMS AND DEFINITIONS**

The terms below, as used throughout this Trust Agreement, shall have the following meaning

**45. INCAPACITATED:** For the purposes of this Trust Agreement, if a Trustee or a beneficiary, is under a legal disability, or by reason of illness, mental or physical disability is, in the written opinion of two doctors currently practicing medicine, unable to properly manage her affairs, he or she shall be deemed incapacitated.

**46. REHABILITATION:** For the purposes of this Trust Agreement, as a Trustee or as a beneficiary, shall be deemed rehabilitated when he or she is no longer under a legal disability or when, in the written opinion of two doctors currently practicing medicine, he or she is able to properly manage his or her own affairs. Upon rehabilitation, his or her successors shall relinquish all powers and be relieved of all duties, and the rehabilitated party shall resume the duties and powers he or she had prior to incapacity.

**47. GUARDIANSHIP:** During any period of incapacity or incompetence, the Trustor does hereby nominate as Guardian of the Trustor's property the same person(s) in name and order of succession who serve as Trustee as provided herein.

**48. SURVIVORSHIP:** This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

**49. APPLICABLE LAW:** This Agreement shall in all respects be construed and regulated according to the laws of the State of California. Should any Trust or asset of any Trust be administered in another State, this Trust may be regulated by the laws of that State if required to avoid excessive administration expenses or to uphold the validity of any terms of this Trust.

**50. TRUSTEE AND TRUST:** The term "Trustee" refers to the single, multiple and Successor Trustee, who at any time may be appointed and acting in a fiduciary capacity under the terms of this agreement. Where appropriate, the term "Trust" refers to any trust created by this agreement.

**51. GENDER - SINGULAR AND PLURAL:** Where appropriate, words of the masculine gender include the feminine and neuter; words of the feminine gender include the masculine and neuter; and words of the neuter gender include the masculine and feminine. Where appropriate, words used in the plural or collective sense include the singular and vice-versa.

**52. IRC:** The term "IRC" refers to the Internal Revenue Code and its valid regulations.

**53. SERVE OR CONTINUE TO SERVE:** A person cannot "serve or continue to serve" in a particular capacity if they are incapacitated, deceased, have resigned, or are removed by a court of competent jurisdiction.

**54. ISSUE:** The term "issue", unless otherwise designated herein, shall include adopted "issue" of descendants and lineal descendants, both natural and legally adopted indefinitely. Such term shall specifically exclude individuals adopted out of the family of the Trustor or out of the family of a descendant of the Trustor. The word "living" shall include unborn persons in the period of gestation.

**55. NOTICE:** No person shall have notice of any event or document until receipt of written notice. Absent written notice to the contrary, all persons shall rely upon the information in their possession, no matter how old, without recertification, verification, or further inquiry.

**56. MERGER:** The doctrine of merger shall not apply to any interests under any Trust.

**57. REPRESENTATION:** In any Trust matter a beneficiary whose interest is subject to a condition (such as survivorship) shall represent the interests in the Trust of those who would take in default of said condition. The members of a class shall represent the interests of those who may join the class in the future (e.g. living issue representing unborn issue). The legal natural guardian of a



person under a legal disability shall represent the interests of the disabled person.

IN WITNESS WHEREOF, as of this the 20<sup>th</sup> day of March, 2017, Trustor and Trustee have signed this Instrument.

  
\_\_\_\_\_  
TRUSTOR  
Print Name: Konstantin Khionidi

  
\_\_\_\_\_  
TRUSTEE  
Print Name: Konstantin Khionidi

THE COBBS TRUST

**Schedule A**

The sum of One Hundred Dollars (\$100.00) in cash.

TOGETHER WITH:

Bank of America account No. [REDACTED]

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE:	.	Case No. 2:17-bk-24993 (RK)
	.	Chapter 7
MARY KATHERINE	.	
CUMMINS-COBB,	.	
	.	Los Angeles, California
Debtor.	.	Tuesday, April 27, 2021
	.	2:30 p.m.
. . . . .		
KONSTANTIN KHIONIDI,	.	
As Trustee of the	.	
Cobb's Trust,	.	Adv. No. 2:18-ap-01066 (RK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
MARY KATHERINE	.	
CUMMINS-COBB,	.	
	.	
Defendant.	.	
. . . . .		

TRANSCRIPT OF MOTION TO  
REHEAR MOTION TO DISMISS  
BEFORE HONORABLE ROBERT KWAN  
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor/ Defendant:	By: MARY CUMMINS-COBB, Pro Se 645 West 9th Street #110-140 Los Angeles, CA 90015 (310) 877-4770
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For the Plaintiff:	Stillman & Associates By: PHILIP H. STILLMAN, ESQ. 3015 North Bay Road, Suite B Miami Beach, FL 33140 (888) 235-4279
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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**APPEARANCES (Cont'd):**

Court Recorder:

SHAFARI TATUM  
U.S. Bankruptcy Court  
255 East Temple Street, Room 940  
Los Angeles, CA 90012  
(855) 460-9641

1 THE COURT: Turning to the first part of the calendar  
2 we have, let's see, Item Number 10, Khionidi versus Cummins-  
3 Cobb. Appearances?

4 MR. STILLMAN: Good afternoon, Your Honor. Philip  
5 Stillman for Mr. Khionidi, the nonmoving party.

6 THE COURT: Do we have a moving party defendant, Ms.  
7 Cummins?

8 (No audible response)

9 THE COURT: Mr. Stillman, I see Ms. Cummins' tile on  
10 the screen, but I don't know if she's -- it says that she's on  
11 the phone. Is she on the phone?

12 MR. STILLMAN: I have no idea, Your Honor.

13 THE COURT: Well, I have a note in the chat box. You  
14 know, you can look at the chat box. It says I'm on the phone  
15 now. And I don't hear anything from Ms. Cummins.

16 Ms. Cummins, are you there? I'm on the phone, I hear  
17 you, I'm talking, but -- okay, it says connecting to audio.  
18 Okay. It's --

19 MS. CUMMINS-COBB: I'm here.

20 THE COURT: Oh, okay. So, Ms. Cummins, do you want  
21 to argue?

22 MS. CUMMINS-COBB: Yes, I would. Number one, I heard  
23 the same plaintiff. They never stated what was inflammatory  
24 pretrial or during the trial, so that makes it impossible for  
25 me to have been found as committed defamation and they never

1 showed or proved any damages. And in this case, in the  
2 adversary proceeding, the plaintiff does not exist.

3 The ex-plaintiff, Amanda Lowlar, bragged in person  
4 that they were the Russians. And the plaintiff has --  
5 plaintiff's attorney, Mr. Stillman, swore that he would prove  
6 that the Russian existed by having him notarize an agreement  
7 giving the judgment back to the ex-plaintiff, Lawlor. That  
8 never happened. He kept saying he was busy and couldn't find a  
9 notary.

10 So, because a plaintiff doesn't exist, the adversary  
11 proceeding should be dismissed. It's against the federal rules  
12 for someone who does not exist to file a lawsuit and I'm asking  
13 the Court to please hear the motion to dismiss and then dismiss  
14 the lawsuit.

15 THE COURT: Anything else?

16 MS. CUMMINS-COBB: No, that's it.

17 THE COURT: All right. Mr. Stillman, do you want to  
18 respond? I know you didn't file a written opposition but I'll  
19 let you respond.

20 MR. STILLMAN: I mean, I've opposed this exact thing  
21 twice now, Your Honor. And it's clear, first of all, Ms.  
22 Cummins, this case has been -- is a judgment. It's been  
23 entered. It's been approved on -- it's been affirmed on appeal  
24 by the District Court. It was never appealed further to the  
25 Ninth Circuit Court of Appeals. The case it's over. It's res

1 judicata on any claims that -- however Ms. Cummins would like  
2 to phrase those claims, it's res judicata at this point and her  
3 recollection of this -- she's raised this issue of Mr. Khionidi  
4 not existing over and over in this case, including an  
5 opposition in the motion for summary judgment. And so this has  
6 been litigated, decided, judgment's been entered.

7 She raised the same issues in her appeal, the  
8 appeal's been dismissed. Excuse me -- your Honor, it's been  
9 affirmed that she filed a motion for reconsideration that was  
10 denied on the same grounds. I mean, there's a time and Ms.  
11 Cummins needs to be told to stop filing motions because -- I  
12 can't get sanctions from her and it's just -- so there's no  
13 guardrails to keep this from happening again and again. And so  
14 the Court has to just put an end to it at this point. There's  
15 literally zero legal basis for opening the case up and  
16 dismissing this adversary proceeding at this point in the case.

17 THE COURT: Ms. Cummins, do you want to respond?

18 MS. CUMMINS-COBB: Yes, I would like to. Number one,  
19 the plaintiff has never proved that the plaintiff exists.  
20 Multiple times plaintiff's attorney, Mr. Stillman, said he  
21 would prove to the Court that he existed. Every time I filed a  
22 motion about this issue, he's never replied and shown that  
23 proof.

24 And number two, this Court has never, never allowed  
25 both parties to argue the existence of plaintiff before it.

1 The plaintiff has never replied to my motions stating that the  
2 plaintiff exists with any proof. And that is not the -- my  
3 initial motion for summary judgment, which was denied, it was  
4 not for the -- stating that plaintiff does not exist. It was  
5 for unclean hands and the judgment is dischargeable. And this  
6 Court did not rule on that issue of the plaintiff not existing.

7 THE COURT: All right.

8 MS. CUMMINS-COBB: So, that has not been ruled upon.

9 THE COURT: All right. Thank you, Ms. Cummins. You  
10 had your chance to argue a rebuttal.

11 The Court has considered the motion and the arguments  
12 of the parties, and this is really the same motion as the prior  
13 motion to dismiss that the Court had ruled upon in its order  
14 filed and entered on March 18th of this year. And there's no  
15 legal basis for this motion.

16 You know, the order granting summary judgment is a  
17 final order. And it's res judicata and there's been an appeal.  
18 And the remedy here was a prior appeal. The Court had  
19 determined that the trust was a valid entity to -- and had  
20 standing. And so that is res judicata, is this case. So,  
21 motion's denied. The Court will prepare an order. Thank you.

22 MR. STILLMAN: Thank you, Your Honor.

23 MS. CUMMINS-COBB: Can I say something?

24 THE COURT: No, that's it. The hearing is over.

25 MS. CUMMINS-COBB: Okay. Thank you.



1 MR. STILLMAN: Thank you, Your Honor.

2 THE COURT: Your remedy is an appeal, I think.

3 MS. CUMMINS-COBB: Okay. We'll appeal.

4 THE COURT: All right. Well, I guess we'll know.

5 All right. Thank you.

6 MS. CUMMINS-COBB: Okay, thank you.

7 MR. STILLMAN: Thanks, Your Honor.

8 THE COURT: Thank you.

9 \* \* \* \* \*

10 **C E R T I F I C A T I O N**

11 I, ALYCE H. STINE, court approved transcriber,  
12 certify that the foregoing is a correct transcript from the  
13 official electronic sound recording of the proceedings in the  
14 above-entitled matter, and to the best of my ability.

15

16 /s/ Alyce H. Stine

17 ALYCE H. STINE

18 J&J COURT TRANSCRIBERS, INC.

DATE: May 17, 2021

19

20

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23

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