

Case No. 22-55372

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MARY CUMMINS-COBB,

Debtor and Appellant,

v.

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

APPELLEE'S RESPONSE TO THIS COURT'S MAY 12, 2022 ORDER

United States District Court of the Central District of California,
Case No. 2:21-cv-04671-AB
Hon. Andre Birotte, Jr.

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TABLE OF CONTENTS

INTRODUCTION	<u>1</u>
STATEMENT OF FACTS.....	<u>2</u>
A. The Bankruptcy Court Proceeding.....	<u>2</u>
B. Cummins I.....	<u>4</u>
C. Cummins II.....	<u>5</u>
ARGUMENT	<u>8</u>
I. THE APPEAL IS PLAINLY FRIVOLOUS	<u>8</u>
CONCLUSION.....	<u>10</u>

TABLE OF AUTHORITIES

<i>Cummins-Cobb v. Khionidi (In re Cummins-Cobb)</i> , No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS 247738, at *2 (C.D. Cal. Dec. 28, 2021)	7
<i>Cummins-Cobb v. Khionidi (In re Cummins-Cobb)</i> , No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154 (C.D. Cal. Jan. 7, 2021)	3-5
<i>Cummins-Cobb v. Khionidi</i> , No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 197348 (C.D. Cal. Feb. 24, 2021)	5
<i>In re Cummins</i> , Case No. 2:17-bk-24993-RK (Bank.C.D.Cal. 2017).....	3
<i>In re Cummins-Cobb</i> , No. 2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at *39-41 (Bankr. C.D. Cal. Feb. 10, 2020)	4
<i>Khionidi v. Cummins</i> , Adv. Proc. No. 2:18-ap-01066-RK	3
<i>Milgard Tempering, Inc. v. Selas Corp. of Am.</i> , 902 F.2d 703, 715 (9 th Cir. 1990)	9
<i>Tahoe-Sierra Pres. Council, Inc.v. Tahoe Reg'l Planning Agency</i> , 322 F.3d 1064, 1077 (9 th Cir. 2003)	9

INTRODUCTION

By Order dated May 12, 2022, this Court directed appellant Mary Cummins to either dismiss this frivolous appeal or “file a statement explaining why the appeal is not frivolous and should go forward.” In keeping with Cummins’ penchant for attempting to relitigate the same arguments repeatedly rejected in both orders of the bankruptcy court and two affirmances on appeal to the District Court, she has now filed a frivolous statement regarding why – unlike the District Court (Birotte, J.), who certified that the appeal is frivolous – she thinks that the appeal should go forward. However, as Cummins is fully aware after losing two appeals in the District Court, all of the issues that she is again attempting to raise before this Court were adjudicated by the Bankruptcy Court and then affirmed on appeal, such as her repeated issue that “Plaintiff doesn’t exist.” As Judge Birotte held, this appeal lacks any merit and should be dismissed.¹

Rather than ostensibly argue why the bankruptcy court’s denial of her “motion to dismiss adversary proceeding” was improper when the adversary

¹ Although not specifically relevant to whether this appeal is frivolous, Cummins continues to misrepresent facts to the Court. For example, she purports to be “legally homeless,” but has resided at 2657 Van Buren Place, Los Angeles, CA 90007 since the beginning of the Chapter 7 bankruptcy. She also fails to disclose funds that she receives from Animal Advocates, Inc., a company that Cummins operates and uses to pay her expenses. See <http://animaladvocates.us>.

proceeding had already been closed and final judgment entered, the entirety of her “statement” to this Court argues that Konstantin Khionidi “doesn’t exist,” something that Cummins repeatedly claimed during the Adversary Proceeding with literally no evidence whatsoever.

As the Bankruptcy Judge patiently explained to Cummins in the hearing on her Motion for Reconsideration, found in Cummins’ improperly combined Opening Brief and Appendix filed in the District Court, at p. 57, lines 11-21, her argument regarding Mr. Khionidi was raised in the summary judgment proceedings, the Bankruptcy Court rejected that argument and the argument was raised in her earlier appeal and the Bankruptcy Court’s judgment was affirmed by the District Court. Therefore her argument is barred by res judicata and law of the case.

STATEMENT OF FACTS

A. The Bankruptcy Court Proceeding.

Appellee Konstantin Khionidi is the assignee of a defamation judgment against debtor Mary Cummins in the Texas Superior Court, affirmed after appeal by the Texas Court of Appeals. That judgment was domesticated in the Los Angeles Superior Court and duly assigned to appellee Khionidi as Trustee of the Cobbs Trust. To stop collection activities, Cummins then commenced a Chapter 7

bankruptcy, *In re Cummins*, Case No. 2:17-bk-24993-RK (Bank.C.D.Cal. 2017).

Mr. Khionidi commenced an adversary proceeding to determine the nondischargeability of the defamation judgment pursuant to 11 U.S.C. § 523(a)(6) (“willful and malicious injury”), *Khionidi v. Cummins*, Adv. Proc. No. 2:18-ap-01066-RK.

On May 24, 2019, the bankruptcy court granted Summary Adjudication of Issues in favor of Mr. Khionidi, holding that pursuant to clear Ninth Circuit precedent, the defamation judgment was not dischargeable pursuant to 11 U.S.C. § 523(a)(6) (“willful and malicious injury”). [Adv. Proc. Dkt. 82] A copy of the Bankruptcy Court’s Order granting Summary Adjudication is attached hereto as Exhibit 1. *See also, Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154 (C.D. Cal. Jan. 7, 2021) at *2-4, (stating factual findings of the bankruptcy court).

On February 10, 2020, the Bankruptcy Court denied Cummins’ Motion for Summary Judgment and instead, entered summary judgment in favor of Mr. Khionidi. Germane to this appeal, the Bankruptcy Court held:

As to Defendant's second assertion, that Plaintiff lacks legal standing to assert the claims in this case, . . . In support of her argument, Defendant made the following assertions: (1) that Plaintiff's trust agreement is not valid, (2) *that the trust agreement is a forgery*, (3) that there is no evidence that the judgment is part of the trust and (4)

that Plaintiff is a strawman who does not exist. The evidence in support of these assertions of Defendant consists of her declaration stating that "Everything in my DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was written by me and is the truth to the best of my knowledge" and a copy of the transcript of the hearing in this case on May 29, 2019 . . . Defendant has not offered competent and admissible evidence to rebut Plaintiff's evidentiary showing of standing.

In re Cummins-Cobb, No. 2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at *39-41 (Bankr. C.D. Cal. Feb. 10, 2020)(emphasis added); [Adv. Proc. Dkt. 117]. Final judgment thereafter entered and the adversary proceeding was closed.

B. *Cummins I.*

Cummins appealed the entry of judgment and pursuant to Appellee's Notice of Election, was transferred to the District Court (Birotte, J). *Id.* Cummins raised the following issues on appeal: (1) whether the Texas Judgment is dischargeable; (2) whether the Texas Judgment was void; (3) whether Appellee has no standing because he does not exist; and (4) whether Appellee has unclean hands.

Cummins-Cobb v. Khionidi (In re Cummins-Cobb), No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154, at *5-6 (C.D. Cal. Jan. 7, 2021) ("*Cummins I*").

Despite repeated warnings from the District Court and several motions, Cummins failed to present either a proper Opening Brief or a proper record on appeal. However, Appellee, with his Answering Brief, included the proper

documents necessary for the resolution of the appeal. Ultimately, after providing Cummins with two opportunities to present a proper Opening Brief and record, the court affirmed the bankruptcy court in all respects. *Cummins I*, 2021 U.S. Dist. LEXIS 5154, at *11 (C.D. Cal. Jan. 7, 2021). Although Cummins filed a Petition for Rehearing, that too was denied. *Cummins-Cobb v. Khionidi*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 197348 (C.D. Cal. Feb. 24, 2021). *Cummins I* was not appealed and is now both “law of the case” and res judicata on her new appeal.

C. *Cummins II*

After the *Cummins I* appeal was decided on January 7, 2021, Cummins then filed a “motion to dismiss Adversary Proceeding” in the Bankruptcy Court, again arguing that Mr. Khionid “doesn’t exist,” even though the adversary proceeding was closed, final judgment entered, and the final judgment had been affirmed on appeal.

On February 8, 2021, the Bankruptcy Court denied her motion on the narrow technical ground that the District Court had not yet ruled on her Petition for Rehearing. After the District Court denied her Petition on February 24, 2021, she re-filed the same Motion to Dismiss Adversary Proceeding on February 26, 2021, which was denied by the Bankruptcy Court on March 18, 2021 at [Dkt. 203]

A copy of the Order Denying Motion to Dismiss which is submitted herewith as Exhibit 2. Regarding Cummins' basis for the Motion, the Bankruptcy Court held that

This court's judgment affirmed on appeal determined that the Cobbs Trust was valid and plaintiff as its representative had standing to bring the adversary proceeding. Thus, the court's determinations already addressed the issue raised by defendant in her motion to dismiss regarding whether plaintiff is the real party in interest under Federal Rule of Civil Procedure 17(a). In determining that the trust is valid and that plaintiff as its representative had standing to bring the adversary proceeding, the court determines that plaintiff was the real party in interest under Federal Rules of Civil Procedure 17(a).

Id. at p. 2. Undeterred, Cummins then filed a "Motion to Rehear" in the Bankruptcy Court, which was also denied on April 27, 2021 for the same reasons. [Dkt. 208]. Cummins appealed both orders on May 10, 2021.

In the *Cummins II* appeal, District Court Case no. 2:21-cv-04671-AB, Cummins identified two issues: (1) that her "motion to dismiss the adversary proceeding," filed in the bankruptcy court two months *after* this Court affirmed the Bankruptcy Court's entry of final judgment was timely (Statement of Issues on Appeal, Issue No. 1) and (2) a claim that the bankruptcy court erred in granting summary judgment because, according to Cummins, Mr. Khionidi "does not exist." (Issue Nos. 2-5).

On December 28, 2021, the District Court again affirmed the bankruptcy

court's orders (1) denying Cummins' Motion to Dismiss Adversary Proceeding and (2) Motion to Rehear:

Substantively, Appellant's central argument—that the Bankruptcy Court erred in granting summary judgment to Appellee Mr. Khionidi because he "does not exist" and thus lacks standing—is barred by both res judicata and law of the case. Appellant raised this exact issue in the summary judgment proceedings. The Bankruptcy Court found that Mr. Khionidi did have standing, and this Court affirmed that decision on appeal. These orders are final, so the issue is clearly barred by both res judicata and law of the case. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (elements of res judicata), and *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (discussing when law of the case applies).

Cummins-Cobb v. Khionidi (In re Cummins-Cobb), No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS 247738, at *2 (C.D. Cal. Dec. 28, 2021) ("*Cummins II*").

After a torturous round of procedural mishaps, where Cummins failed to identify the Order that she was appealing to the Bankruptcy Appellate Panel, the Bankruptcy Appellate Panel remanded the appeal to the District Court (Fischer, J), who transferred the appeal to Judge Birotte. Once Cummins finally identified that it was Judge Birotte's decision in *Cummins II* that she was appealing and not some other random order of the Bankruptcy Court, Judge Birotte then transferred the appeal to this Court.

ARGUMENT

I.

THE APPEAL IS PLAINLY FRIVOLOUS

Cummins is a vexatious litigant who has attempted to use the machinery of litigation to torture those she sees as her “enemies.”² Among other tactics, she continually has attempted to relitigate issues that she plainly lost, as in this appeal. The issue of Mr Khionidi not existing, which is the basis for her current appeal to this Court, is plainly frivolous because that issue was litigated and decided in *Cummins I*, which was not appealed. As the District Court held in *Cummins II*, those issues were foreclosed by the bankruptcy court’s orders that were the subject of the appeal in *Cummins I* and the District Court’s January 7, 2020 decision on appeal, affirming the bankruptcy court in all respects.

To be clear, the only issues in *Cummins II* were (1) whether the bankruptcy court erred in denying her post-judgment motion to dismiss the adversary proceeding (which had already been closed) and (2) whether the bankruptcy court erred in denying her “Motion to rehear,” neither of which issues have anything to

² A list of Cummin’s many procedural maneuvers collected by the original judgment creditor can be found at <https://batworldstalkermarycummins.com/2017/02/21/mary-cummins-vexatious-litigant>.

do with Cummins' rant to this Court on June 16, 2022 regarding whether Mr. Khionidi "exists."

Because the issue of Mr. Khionidi's standing was decided by the bankruptcy court and affirmed on appeal in *Cummins I*, Cummins was foreclosed from relitigating those issues in *Cummins II*. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (elements of res judicata), and *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (discussing when law of the case applies). Accordingly, her appeal of the District Court's decision in *Cummins II* is totally and completely without merit and, as the District Court certified, is frivolous.

Of note, despite this Court's leave to explain why her appeal is not frivolous, Cummins does not explain her reasoning why the District Court's decision on appeal in *Cummins II* is wrong, or why the bankruptcy court erred in denying her Motion to Dismiss Adversary Proceeding or abused its discretion in denying her "Motion to Rehear." At most, she repeats the same arguments that she made in *Cummins I* that were rejected by the bankruptcy court and the District Court. This Court should therefore dismiss this appeal as frivolous.

CONCLUSION

For the foregoing reasons, appellee Konstantin Khionidi respectfully requests that Cummins' appeal be dismissed as frivolous.

Respectfully Submitted,

STILLMAN & ASSOCIATES



Dated: June 27, 2022

By: _____

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

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr.P. 8015(a)(7)(B)(i), I certify that the Appellee's Response to This Court's May 12, 2022 Order is proportionally spaced in serif font, has a typeface of 14 points, and contains 2,034 words, excluding the parts of the brief exempted by Fed. R. Bankr. P. 8015(g). This Response was prepared using Corel WordPerfect and the word count was determined using the WordPerfect word count application.

Dated: June 27, 2022

/s/ Philip H. Stillman
Philip H. Stillman, Esq.

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on June 27, 2022 or as soon as possible thereafter, copies of the foregoing Response to This Court's May 12, 2022 Order was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

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

Exhibit 1

1
2
3 **FILED & ENTERED**
4
5
6

7 **MAY 24 2019**
8
9

10 **CLERK U.S. BANKRUPTCY COURT**
11 **Central District of California**
12 **BY: bakchell DEPUTY CLERK**

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

16 In re:

17 MARY CUMMINS-COBB,

18 Debtor.

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

20 Chapter 7

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

22 **ORDER GRANTING IN PART AND**
23 **DENYING IN PART THE MOTION OF**
24 **PLAINTIFF KONSTANTIN KHIONIDI FOR**
25 **PARTIAL SUMMARY JUDGMENT ON THE**
26 **FOURTH CAUSE OF ACTION, DENYING**
27 **PARTIAL SUMMARY JUDGMENT AND**
28 **GRANTING SUMMARY ADJUDICATION OF**
29 **CERTAIN FACTS**

30 KONSTANTIN KHIONIDI, AS TRUSTEE
31 OF THE COBBS TRUST,

32 Plaintiff,

33 vs.

34 MARY CUMMINS-COBB,

35 Defendant.

36 **Vacated Hearing**

37 Date: May 29, 2019

38 Time: 1:30 p.m.

39 Courtroom: 1675

40 The motion of Plaintiff Konstantin Khionidi (“Plaintiff”), as Trustee of the Cobbs Trust, for
41 partial summary judgment on the fourth cause of action under 11 U.S.C. § 523(a)(6) in the
42 adversary complaint (“Motion”), filed on November 26, 2018 (Docket No. 35), came on for
43 hearing before the undersigned United States Bankruptcy Judge on March 27, 2019. Attorney
44 Philip H. Stillman, of Stillman & Associates, appeared for Plaintiff. Defendant Mary Cummins-

1 Cobb ("Cummins" or "Defendant") appeared for herself at the hearing. Plaintiff's motion for
2 partial summary judgment requested summary judgment on the fourth cause of action to
3 determine the judgment rendered in Texas state court against Cummins for defamation on
4 August 27, 2012, and the California Sister-State judgment entered on the Texas judgment by
5 the Superior Court of California for the County of Los Angeles nondischargeable pursuant to
6 11 U.S.C. § 523(a)(6).

7 Defendant filed a Reply to Plaintiff's Second Motion for Partial Summary Judgment on
8 the Fourth Cause of Action ("Opposition") (Docket No. 39), on December 19, 2018. On
9 December 26, 2018, Plaintiff filed a Reply in Support of his Motion for Partial Summary
10 Judgment on the Fourth Cause of Action ("Reply") (Docket No. 39). On February 11, 2019,
11 Defendant filed a Reply to Plaintiff's Statement of Uncontroverted Facts and Conclusions of
12 Law in Support of Plaintiff's Motion for Summary Judgment (Docket No. 50). Plaintiff filed a
13 Further Reply in Support of his Motion for Partial Summary Judgment on the Fourth Cause of
14 Action (Docket No. 55), on February 26, 2019.

15 The Motion is currently set for hearing before this court on May 29, 2019 at 1:30 p.m.

16 Having considered the Motion, Opposition, Reply and related pleadings listed above,
17 and the arguments of the parties, the court modifies and adopts Plaintiff's Statement of
18 Uncontroverted Facts as follows based on its independent review of the evidence in support of
19 Proposed Statement of Uncontroverted Facts and Conclusions of Law on Plaintiff's Motion for
20 Partial Summary Judgment on the Fourth Cause of Action filed by Plaintiff on November 26,
21 2018 and in opposition thereto by Defendant. The court hereby grants Plaintiff's motion as to
22 summary adjudication of certain facts, but denies the motion requesting partial summary
23 judgment as to the fourth cause of action and summary adjudication of other facts.

24 **UNCONTROVERTED FACTS**

25 The court determines that the following material facts are not genuinely in dispute and
26 that such facts are uncontroverted and are deemed established in this case.

27 1. On October 4, 2011, Plaintiffs Bat World Sanctuary and Amanda Lollar filed a
28 Second Amended Petition against Defendant Mary Cummins in the Texas District Court for

1 Tarrant County, *Bat World Sanctuary et al. v. Cummins*, Case No. Case No. 352-248169-10
2 (the “Texas Case”). Motion, Declaration of Philip H. Stillman (“Stillman Decl.”) ¶ 2, and Exhibit
3 1 attached thereto.

4 2. The Second Amended Petition in the Texas Case had counts for breach of
5 contract, defamation and exemplary damages. Motion, Exhibit 1 to Stillman Decl., Second
6 Amended Petition, ¶¶ 14, 16, and 17. These claims were common law claims under state law.
7 Cummins appeared at trial, testified, and presented her own evidence. Motion, Exhibit 4 to
8 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr.
9, 2015).

10 3. After a bench trial, the Texas Trial Court gave its oral ruling that “the plaintiff has
11 clearly proven that a defamation in this case was *egregious* as well as *malicious* as well as
12 *intentional*.” Motion, Exhibit 2 to Stillman Decl., June 14, 2012 Trial Transcript, 4:8–11
13 (emphasis added).

14 4. Based thereon, the Texas Trial Court entered a judgment (“Texas Judgment”) on
15 August 27, 2012 and awarded \$3 million in actual damages for defamation and \$3 million in
16 exemplary damages in favor of Plaintiff Amanda Lollar. Motion, Exhibit 3 to Stillman Decl.,
17 Texas Judgment, *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 at *1 (Tex.
18 App. Apr. 9, 2015).

19 5. In addition, the Texas Trial Court included a list of all of the defamatory
20 statements that, as part of the Texas Judgment, Cummins was ordered to take down. Motion,
21 Exhibit 3 to Stillman Decl., Texas Judgment, pp. 1–5.

22 6. Cummins appealed that judgment and the judgment was affirmed as to the
23 defamation cause of action and as to the award of exemplary damages relating to Lollar.
24 Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS
25 3472 (Tex. App. Apr. 9, 2015). Her petition for review to the Texas Supreme Court was denied.
26 *Id.* and Stillman Decl. ¶ 5. The Texas Judgment is therefore final. Stillman Decl. ¶ 5.

27 7. The Texas Court of Appeals stated in its opinion: “In a defamation case in which
28 actual malice is required and is found, the First Amendment requires appellate courts to

1 conduct an independent review of the evidence supporting the finding.” Motion, Exhibit 4 to
2 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. Lexis 3472, at *8 (Tex. App.
3 2015) (citing *Bentley v. Bunton*, 94 S.W.3d 561, 597 (Tex. 2002)). Subsequently, the Texas
4 Court of Appeals affirmed the Texas Judgment, making extensive findings in support of its
5 appellate judgment. *Id.*

6 8. After reviewing the trial record, the Texas Court of Appeals held that “The
7 comments she [Cummins] made about Lollar leave no doubt that she had a specific intent to
8 cause substantial injury or harm to Lollar.” Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat*
9 *World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex. App. Apr. 9, 2015).

10 9. In reviewing the issue of whether sufficient evidence supported that finding, the
11 Texas Court of Appeals stated: “Clear and convincing evidence also supports a finding that
12 Cummins published statements on the internet with actual malice.” Motion, Exhibit 4 to
13 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex.
14 App. Apr. 9, 2015).

15 10. In reviewing de novo whether evidence presented at trial established actual
16 malice by clear and convincing evidence as required under Texas law, the Texas Court of
17 Appeals found that the evidence presented at trial established that Cummins posted a flood of
18 statements about Lollar accusing her of serious wrongdoings, including crimes, and she
19 published her statements to as wide of an audience as she could, including to numerous law
20 enforcement agencies. Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*,
21 2015 Tex. App. LEXIS 3472, at *71–73 (Tex. App. Apr. 9, 2015).

22 11. The Texas Court of Appeals found that “Lollar showed by clear and convincing
23 evidence that Cummins acted with malice as that term is used in chapter 41 and with the
24 actual malice required under the First Amendment.” Motion, Exhibit 4 to Stillman Decl.,
25 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *72 (Tex. App. Apr. 9,
26 2015).

27 12. The Texas Court of Appeals further stated in its opinion: “The evidence supports
28 a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with the

1 intention to ruin both Lollar's life's work and her credibility and standing in the animal
2 rehabilitation community." Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World*
3 *Sanctuary*, 2015 Tex. App. LEXIS 3472, at *72–73 (Tex. App. Apr. 9, 2015).

4 13. Cummins posted innumerable derogatory statements about Lollar impugning her
5 honesty and her competency, and she repeatedly and relentlessly reported Lollar to multiple
6 government agencies. "The comments she made about Lollar leave no doubt that she
7 [Cummins] had a specific intent to cause substantial injury or harm to Lollar." Motion, Exhibit 4
8 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex.
9 App. Apr. 9, 2015).

10 14. The Texas Trial Court awarded \$3 million in "exemplary damages" in favor of
11 Lollar and against Cummins. Motion, Exhibit 3 to Stillman Decl., Texas Judgment.

12 15. The record in the Texas case "supports a finding of malice—both of the malice
13 required for an award of exemplary damages under Texas law and of actual malice as required
14 for an award of exemplary damages in defamation actions." Motion, Exhibit 4 to Stillman
15 Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *75 (Tex. App. Apr. 9,
16 2015).

17 16. Cummins's intentional smear campaign against Lollar can be grouped into
18 several categories. "Most of statements fall into one of three categories: allegations that Lollar
19 committed animal cruelty, allegations that Lollar committed fraud, and allegations that Lollar
20 violated a law, rule, standard, or regulation." Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
21 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *33–34 (Tex. App. Apr. 9, 2015).

22 17. As to each of the statements, the evidence in the Texas case established that the
23 statements Cummins made and published on the internet were false. Motion, Exhibit 4 to
24 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *34-69 (Tex.
25 App. Apr. 9, 2015)

26 18. The Texas Court of Appeals also held that Cummins repeatedly lied at trial. "For
27 example, with regard to Cummins's statements about Lollar's dogs, the evidence supported a
28

1 finding that Cummins was not telling the truth.” Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
2 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73–74 (Tex. App. Apr. 9, 2015).

3 19. Regarding a video Cummins posted, the Texas Court of Appeals held that
4 Cummins “had no basis for asserting as fact what was at best speculation and at worst total
5 fabrication. But she posted her version as fact, not speculation, and then she spread her
6 version as far and wide as she possibly could.” Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
7 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *74 (Tex. App. Apr. 9, 2015).

8 20. The Texas Court of Appeals held: “The trial court’s determination that Cummins
9 was not credible was a reasonable one . . . Cummins published fabricated statements about
10 Lollar’s care of her dogs, and, thus the statements were made with actual malice.” Motion,
11 Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at
12 *74 (Tex. App. Apr. 9, 2015).

13 21. Based on these credibility determinations, the Texas Court of Appeals held that
14 clear and convincing evidence supports the trial court’s finding that Cummins published
15 statements on these matters with actual malice. Motion, Exhibit 4 to Stillman Decl., *Cummins*
16 *v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73–74 (Tex. App. Apr. 9, 2015).

17 22. The Texas Trial Court, and the Texas Court of Appeals in affirming the
18 defamation and exemplary damages portions of the judgment, found that (1) the Debtor
19 defamed Amanda Lollar, (2) clear and convincing evidence established that the libelous
20 statements were made by the Debtor with actual malice, (3) the statements were designed to
21 ruin Lollar’s professional and personal reputation locally and nationally and (4) Cummins had a
22 specific intent to cause substantial injury or harm to Lollar. Motion, Exhibit 4 to Stillman Decl.,
23 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, (Tex. App. Apr. 9, 2015).

24 23. These findings were consistent with the trial judge’s oral ruling from the bench at
25 the conclusion of the bench trial, and before the written form of judgment had been prepared,
26 that “the plaintiff has clearly proven that a defamation in this case was *egregious* as well as
27 *malicious* as well as *intentional*.” Motion, Exhibit 2 to Stillman Decl., June 14, 2012 Trial
28 Transcript, 4:8–11 (emphasis added).

1 24. Based on its de novo review, the Texas Court of Appeals held that clear and
2 convincing evidence supported the trial court's finding that Cummins made statements on
3 these matters with actual malice. Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World*
4 *Sanctuary*, 2015 Tex. App. LEXIS 3472, *73 (Tex. App. Apr. 9, 2015).

5 25. Lollar then commenced an action in the Superior Court of California for the
6 County of Los Angeles pursuant to the California Sister-State Judgment Act, CA Code Civ. P.
7 § 1710.25, *Lollar v. Cummins*, Case No BS140207 (Superior Court of California, County of Los
8 Angeles), to domesticate the Texas Judgment, which judgment was entered as a California
9 Judgment on November 9, 2012 in the amount of \$6,121,039.42. Motion, Exhibit 5 to Stillman
10 Decl., Judgment Based on Sister-State Judgment.

11 26. On April 10, 2017, Lollar assigned the judgment to the current plaintiff,
12 Konstantin Khionidi, as Trustee of the Cobbs Trust, pursuant to CA Code Civ. P. § 673.
13 Motion, Stillman Decl. ¶7 and Exhibit 6 attached thereto, Acknowledgement of Assignment of
14 Judgment.

15 27. Defendant Cummins filed her voluntary petition under Chapter 7 of the
16 Bankruptcy Code, 11 U.S.C., in this bankruptcy case on December 7, 2017. On March 10,
17 2018, Plaintiff commenced this adversary proceeding by filing his Complaint to Determine
18 Dischargeability of Debt under 11 U.S.C. § 523(a)(6) against Defendant Cummins. Adv.
19 Docket No. 1, Adv. Complaint.

20 29. Defendant filed and served an Answer to the Complaint on April 11, 2018. Adv.
21 Docket No. 9, Defendant's Reply to Plaintiff's Complaint to Deny Debtor's Discharge,
22 Determine Non-Dischargeability of Debts.

23 30. With interest accruing at \$1,676.99 per day, as of March 9, 2018 (the date before
24 the filing of the adversary proceeding), the amount of the Sister State Judgment is
25 \$9,385,842.81. Adv. Complaint, ¶ 36; Defendant's Reply to Plaintiff's Complaint to Deny
26 Debtor's Discharge, ¶ 2 (admitting ¶ 36 of Complaint).

27 These facts numbered 1 through 30 are uncontested and deemed established in this
28 case.

CONTROVERTED FACTS

Nevertheless, the court determines that there are genuine issues of material fact for trial as to whether Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust, created a valid trust and has standing to pursue a judgment in this adversary proceeding and whether the Assignment meets all of the requirements for a valid assignment of a judgment because there is outstanding discovery that Defendant needs in order to respond to the motion for partial summary judgment or summary adjudication of facts pursuant to Federal Rule of Bankruptcy Procedure and Federal Rule of Civil Procedure 56(d).

Accordingly, Plaintiff's motion is granted in part as to the summary adjudication of certain facts as recited above and is denied in part as to his request for partial summary judgment as to the fourth cause of action of the complaint and as to summary adjudication of other facts as recited above.

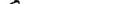
The further hearing on this motion scheduled for May 29, 2019 to announce a ruling is hereby vacated in light of the issuance of this written ruling. No appearances on this motion are required on May 29, 2019.

However, because the adversary proceeding is not completely resolved as no final judgment is ready to be entered, the status conference in this adversary proceeding scheduled for May 29, 2019 at 1:30 p.m. remains on calendar, and appearances are required for the status conference.

IT IS SO ORDERED.

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Date: May 24, 2019



Robert Kwan
United States Bankruptcy Judge

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FILED & ENTERED

MAR 18 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

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

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

2. The motion to dismiss fails to set forth a proper legal basis for dismissing the adversary proceeding after the entry of final judgment in favor of plaintiff, which has been affirmed on appeal to the district court. This court's judgment affirmed on appeal determined that the Cobbs Trust was valid and plaintiff as its representative had standing to bring the adversary proceeding. Thus, the court's determinations already addressed the issue raised by defendant in her motion to dismiss regarding whether plaintiff is the real party in interest under Federal Rule of Civil Procedure 17(a). In determining that the trust is valid and that plaintiff as its representative had standing to bring the adversary proceeding, the court determines that plaintiff was the real party in interest under Federal Rules of Civil Procedure 17(a). Defendant's remedy to contest the judgment based on the court's determinations is an appeal, not a post-judgment motion to dismiss, which the court determines to lack merit.
3. Accordingly, the motion will be denied.
4. Plaintiff's ex parte application to strike the motion to dismiss will be denied as moot.
5. No appearances are required on the hearing on the motion on March 30, 2021, which hearing is now vacated.

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1 6. A final order denying the motion to dismiss and the application is being
2 filed and entered concurrently herewith.
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4 IT IS SO ORDERED.
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Date: March 18, 2021



Robert Kwan
United States Bankruptcy Judge