

**APPELLANT REQUESTS
ORAL ARGUMENT**

B327355

IN THE COURT OF APPEALS
IN THE STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT

MARY CUMMINS,
Defendant and Appellant,

v.

BAT WORLD, KONSTANTIN KHIONIDI, et al
Plaintiffs and Appellees

Appeal Orders of Los Angeles Superior Court
Case BS140207 Judge Kirstin Escalante

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: B327355

Case Name: Bat World, Konstantin Khionidi et al 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) who replied.

Interested entities or parties are: Amanda Lollar, Bat World Sanctuary



Dated: August 12, 2024

Signature of Party Submitting Form

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Party Represented: Appellant

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STATEMENT OF THE CASE

Appellant Mary Cummins (“Appellant”) filed a Motion to Vacate Renewal of Sister State Judgment (CT V1 p 217) and Motion to Rehear (CT V2 p 344) same with hearings on November 28, 2022 and January 31, 2023 respectively. The Court filed orders denying the Motions respectively (CT V2 p 338, V2 p 418). Appellant did not receive a fair trial. The court orders did not properly rule on all issues presented in the Motions to Vacate or during oral argument.

Appellant was not allowed a legally requested court reporter with fee waiver for the hearing so that Appellant could appeal (CT V2 p 418). Fortunately, Appellant gave written notice that the hearing would be recorded (CT V2 p 357) and recorded it (audio of hearing). Judge Kirstin Escalante (“Escalante”) lied about what happened in the hearing and in the order not realizing it was indeed recorded (CT V2 p 418). After Escalante saw the transcript they stated in writing they made “errors,” “misstatements” and “mistakes” (CT Vol 2 p 485 ¶ 5) but didn’t bother to correct them or issue a new order. These “errors” alone are grounds for reversal.

Appellant argued in the Motions that Appellee Konstantin Khionidi (“Appellee”) does not exist (CT V 1 p 227) making assignment of judgment, underlying trust agreement, renewal of judgment and any claims null and void. Per CCP § 367 “an action must be prosecuted in the name of the real party of interest.” Appellee has had sufficient opportunity to prove they exist, stated they will prove they exist but have never because they can’t. No Court has ever ruled on CCP § 367 in this case.

Appellee has never legally appeared before this Court. The attorney of record for Appellee James J. Little (“Little”) died January 13, 2018 (California Bar: Little, James Jeffery, Deceased, 123373, Los Angeles). Philip Stillman (“Stillman”) Appellee’s attorney was not Little’s law partner. The real Plaintiff Amanda Lollar (“Lollar”) has stated Khionidi is not real and that Lollar is the real owner of the judgment (CT V 1 p 231). Bat World Sanctuary (“BWS”) and Lollar’s names are in the void trust agreement (CT V 1 p 266). This is also evidence of perjury, forgery, and fraud.

Appellee is not a real person and should not be able to reply to this Appeal and should lose by default. BWS, Lollar did not reply to the Appeal after the Appeal Court sent notice so they should lose by default. Stillman does not represent BWS or Lollar and is not replying on their behalf. Stillman is not the attorney of record for Appellee in this case. Appellant appeals those two court orders and requests Renewal of Judgment to be Vacated.

STATEMENT OF APPEALABILITY

This appeal is from the judgment, orders of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

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 a Judge denying the right to a fair trial and lying in court and court orders. It also deals with the legal inability of people who do not exist to file lawsuits, enter into agreements and unclean hands.

STATEMENT OF FACTS

Appellant is a well-respected Los Angeles real estate appraiser, real estate legal expert¹ who has worked positively with Los Angeles City and County for years (all footnotes, statements in CT, CT V 1 p 222, CT V 1 p 75-81). 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, went through the Police Academy and Humane Academy 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 40 years.

In 2010 Appellant went to BWS run by actual Plaintiff and original owner of the underlying judgment, Lollar in Texas to attend an internship to learn more about bats. Instead Appellant witnessed animal cruelty, neglect, violations of the Animal Welfare Act, Health Department and other violations. Appellant as a mandatory reporter

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

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 (CT V 1 p 222). BWS, Lollar were investigated. Violations were found. The main USDA veterinarian stated Lollar caused “pain, suffering and death,” “violated the Animal Welfare Act” and caused bats to die². BWS, Lollar 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 BWS, Lollar, Texas case 352-248269-10 in 2010 (CT V 1 p 222).

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 (CT V 1 p 223). 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 any jurisdiction 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.” (CT V 1 p 222) Plaintiff never denied this. Appellant was never even notified about the change of Judges. Judge William signed every order written by Randall Turner without even reading or editing them. One order forced Appellant to remove articles, comments made by others in other people’s websites which Appellant does not control some of which were in Chinese which Appellant does not speak.

This “visiting judge” routine is a judicial scam used to game the system³ 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

² Amanda Lollar violations, loses USDA permit
http://www.marycummins.com/amanda_lollar_bat_world_sactuary_usda_cancelled.pdf

³ Gaming the Texas Judicial system with assigned Judges
<http://marycummins.com/eliminate%20assigned%20judges.pdf>

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

Even though BWS, Lollar 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 (Judgment CT V1 p 241). Not only did BWS, Lollar 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 Appellant’s net worth or actual damages. Appellant was indigent at the time because of the cost of defending the case spending every penny of Appellant’s savings and assets. Los Angeles attorney David Casselman argued this point in Casselman’s Amicus Brief⁴ in the Appeal (CT V1 p 223). Number one freedom of speech attorney Paul Alan Levy filed another amicus brief from Public Citizen and the ACLU based on the lack of any valid defamation claim⁵ (CT V1 p 233).

The six page judgment is a takedown order only (CT V1 p 241). It doesn’t say “defamation,” “defamatory...” It states nothing else is included in the judgment other than what is specifically written. Lollar, BWS subsequently filed a sister state judgment in Los Angeles, California case BS140207 in 2012 (CT V1 p 254).

Appellant appealed. The Second Court of Appeals Court in Texas released their opinion April 2015 18 months after the case was submitted and soon after Judge Bringham

⁴ David Casselman amicus brief

http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf

⁵ Paul Alan Levy, Public Citizen, amicus brief http://www.animaladvocates.us/cummins_amicus_brief.pdf

died (CT V 1 p 247). The Court reversed the take down order, breach of contract claim, associated liquidated damages and attorney fees and all claims to BWS. The one remaining defamation claim against Lollar was not reversed.

Immediately after the opinion was released April 2015 Lollar filed an identical copy/paste lawsuit 2015-00259-2/3 (CT V 1 223, 226). 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. Lollar now had to specifically state and show defamatory items and prove it is defamation. Because Appellant never defamed Lollar, Lollar 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 Lollar⁶. Here is a sample of just one forgery (CT V1 p 70).

That case was appealed and the Appeals Court stated the forgery and perjury should have been dealt with in the trial court⁷. The trial court then dismissed that case February 2020 (CT V 1 p 224). This proves Lollar has unclean hands, has forged documents and committed perjury and fraud upon the court.

Lollar allegedly gave, assigned the judgment to a Russian citizen living in Russia “Konstantin Khionidi” March 2017 (CT V 1 p 249) reserving rights if Khionidi dies or is incapacitated. Khionidi’s attorneys did not send, serve the assignment or notice of debtor hearing to Appellant. Instead Appellee Khionidi forged a proof of service for an address where Appellant hadn’t lived in years (CT V 2 p 369, CT V 1 p 67). Court ordered Little to give notice of the resulting bench warrant for missing the debtor hearing but he did not (CT V 1 p 67). This is a crime per Penal Code § 115 PC – Filing a False Document in California. Appellee mailed the Notice of Debtor Hearing 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

⁶ Lollar v Cummins case dismissed due to forgery, perjury <http://marycumminsamandalollarlawsuit.blogspot.com/>

⁷ Cummins v Lollar <https://search.txcourts.gov/Case.aspx?cn=07-16-00337-CV&coa=coa07>

was to have Appellant arrested, thrown in jail and assaulted in Los Angeles County jail with no means of bail destroying Appellant's reputation and life. Thankfully Lollar finally bragged online to someone who posted about the looming arrest. Appellant checked all of the legal cases and found the debtor hearing, replied and the bench warrant for Appellant's arrest was rescinded.

At the first debtor hearing 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." (CT V 1 p 231) 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 Appellee's now dead wheelchair bound attorney Little at every hearing telling the attorney exactly what to do and say word for word. There were no Russians.

The underlying trust agreement is a free California probate form downloaded from the internet in English (CT V 1 p 266). Lollar, BWS are still listed in the agreement (CT V 1 p 266). To this date Appellee has not filed any evidence to show that Khionidi actually exists because Khionidi does not exist. Appellee's attorney swore for months that a notarized signature would be provided by Khionidi but it never was submitted to the Court (CT V 1 p 227). Appellee's attorney 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." (CT V 1 p 227) That never happened. It proves Khionidi and Lollar are one.

Appellee 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 Appellee.

Stillman stated in Court documents and in hearings that Konstantin Khionidi is a real person, the Plaintiff and no one else (CT V 1 p 227) "Your Honor, I'm going to say one thing. That my client is Mr. Khionidi." "That's my client, he's the plaintiff."

Appellee has never provided to Appellant any evidence that Konstantin Khionidi exists. In discovery Appellant specifically requested evidence that Appellee existed in the

form of identification or other means. Appellee refused to produce any evidence to prove they exist to Appellant stating Appellant would post it online. Appellant offered a protective order. Appellant has never violated a protective order but Appellee has violated EVERY SINGLE ONE. Appellee allegedly filed for court view only a photocopy of a passport and the trust agreement. Court finally allowed Appellant to see the trust agreement which was a forgery. Appellant is sure that the passport is a forgery as well because of Lollar's long history of forging documents and pretending to be other people. Appellant was forced to give Appellee Appellant's passport under a protective order. Appellee then posted it unredacted in a public filing and online violating the order.

Appellee has never signed and notarized any document in this case, the assignment of the judgment and not even the trust agreement. If the passport were real, they would have been able to notarize a document but didn't. Instead they gave excuses about being too busy traveling the world.

The Trust agreement (CT V 1 p 266) which Appellee was forced to give to the Court states "IN WITNESS WHEREOF, as of this the 20th day of March 2017, Trustor and Trustee have signed this instrument." 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 (CT V 1 p 282). The agreement is void.

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 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.

Appellee filed to renew the Sister State Judgment in 2022 (CT V 1 p 213) with many errors, mistakes and false statements. Appellant filed a Motion once with only one tiny technical error in the POS in this case and the Motion was denied for that reason.

Appellant filed Motion to Vacate the Renewal of the Sister State Judgment (CT V 1 p 217) and Motion to Reconsider Motion to Vacate (CT V 1 p 344). Appellee admitted Appellee's Renewal had mistakes (CT V 2 p 306). Appellant appeals the denial of the Motions to Vacate.

This is scorched earth litigation because Appellant reported Lollar to authorities, violations were found and they lost their USDA permit (CT V 1 p 222). Lollar uses this judgment as a club to attack, harass, and humiliate Appellant through debtor hearings, discovery and motions the results of which Lollar posts online in Lollar's over 400 websites and blogs. No sane person would spend thousands in legal fees to keep a judgment which is worth much less than zero which involves years of relentless expensive litigation, motions and hearings. Lollar uses the judgment to make sure Appellant can never make any money which proves the goal is not the money judgment but revenge.

QUESTIONS ON APPEAL, STATEMENT OF ISSUES

- I. Whether the Court provided Appellant with a fair trial.
- II. Whether the Court erred denying the Motions to Vacate Judgment.
- III. Whether the Court erred in granting Judgment amount.

ARGUMENT

All parties must be allowed a fair trial per the US Constitution. All actions must be prosecuted in the name of the real party of interest CCP § 367. All agreements, assignments must have two real parties to be valid. Renewal of Judgments must be filed legally, properly and timely. All parties must come to court with clean hands.

I. APPELLANT DID NOT RECEIVE A FAIR TRIAL

Escalante lied in a court hearing, court documents and court orders to cause Appellant to be treated with bias and be deprived of a fair trial. When evidence proved Escalante lied, Escalante then stated in writing that the lies were merely "mistakes" "misstatements" and "errors." (CT Vol 2 p 485 P 5) Instead of fixing the "mistakes" Escalante decided to cover up the "mistakes" by striking court documents (CT V 2 p 485) thereby destroying court records. After Escalante's many violations of the California

Code of Judicial Ethics⁸ and extreme bias Escalante refused to recuse herself when requested per 170, 170.3 (c)(1) (CT V 2 p 487).

A case similar to this was just determined by the Commission on Judicial Performance, i.e. Judge Emily J. Cole May 15, 2024⁹. Cole lied in hearings and orders in an almost identical manner about court proceedings. The Commission stated "The Supreme Court has stated unequivocally that honesty is a minimum qualification for every judge. If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental." (Inquiry Concerning Ross (2005) 49 Cal.4th CJP Supp. 79, at p.89 [citing Kloepfer v.Commission on Judicial Performance (1989) 49 Cal.3d 826,865].) Judge Cole's conduct was, at a minimum, improper action within the meaning of California Constitution, article VI, section 18(d). Judge Cole's misconduct involved dishonesty and a lack of integrity, and undermined respect for the judiciary, which aggravated the discipline.”

Judge Escalante has done similar things in this case besides being dismissive, discourteous, rude, biased, abusing their authority, acting in bad faith, disregarding fundamental rights, intentionally disregarding the law and depriving Appellant of a fair trial.

Below outlines the specific behavior, verbatim spoken/written words, various types of misconduct and even the exact sections of the Code of Ethics which were Violated causing Appellant to be deprived of a fair trial.

STATEMENT OF FACTS: APPELLANT DID NOT RECEIVE FAIR TRIAL

Escalante took over an existing case from Judge Robert Hess filed in 2012 Case # BS140207 titled Bat World Sanctuary v Mary Cummins. Escalante only oversaw one main hearing which was a Motion to Vacate Sister State Judgment filed by Appellant October 21, 2022 (CT V 1 p 217). Appellant then filed a Motion to Rehear the Motion to Vacate (CT V 2 p 344). Appellant requested a court reporter with fee waiver

⁸ California Code of Judicial Ethics https://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf

⁹ Severe Public Censure Judge Emily J. Cole https://cjp.ca.gov/wp-content/uploads/sites/40/2024/05/Cole_DO_Censure_Stip_05-29-24.pdf

(CT V 2 p 384) as Appellant knows a court transcript is needed in order to appeal a case based on oral statements per California Rules of Court Rule 8.120(b). Appellant knows full well that many Judges are biased against pro se parties especially so if they're indigent and female. Judges don't seem to realize that most pro se parties are forced to represent themselves because they have no means to procure a lawyer. Some Judges will violate the law and Code of Ethics to deny a pro se party's rights in order to end a case and reduce their workload. This is especially common if they think there is no court reporter, recording or transcript to hold them accountable.

HEARINGS, ORDERS WHICH PROVE UNFAIR TRIAL

1. Hearing on Motion Rehear Motion Vacate Sister State Judgment

A. Escalante Denied Requested Court Reporter and Lied About It

Appellant gave notice in the Motion that the hearing would be recorded, i.e. "Notice is hereby given to the Court and Parties that the hearing will be recorded." (CT V 2 p 357) The Court and Plaintiff did not object. The hearing was recorded.

The Motion also stated Appellant filed a request for court reporter with a waiver, "Cummins is requesting an official court reporter and court record per California Rules of Court, rule 2.956(c)(2)." (CT V 2 p 357) Appellant also already had a full waiver for all costs and fees on this case.

Appellant filed "Request for Court Reporter Services by Party with Fee Waiver Filed by Mary Cummins" January 9, 2023.

Appellant did these things knowing the Courts are generally biased against indigent, female pro se parties and will do, say whatever they want if they feel they are not being recorded and won't be held accountable which is exactly what happened in this case.

At the January 31, 2023 hearing on Motion Rehear Motion Vacate Escalante stated Appellant did not file the request for a Court Reporter or fee waiver. The Judge's assistant and Appellant both stated twice in the hearing on the record that

Appellant did file the request. From the transcript and audio (CT V 2 p 445, AUDIO OF HEARING) filed with the Court in multiple documents: (J=Judge Escalante, M=Mary Cummins/Appellant, A=Judge's Assistant)

J: You don't have, you haven't not filed a request for a waiver of court reporter fees. You did put in a request for court reporter, that was denied, I don't think we have...

M: I never received any notice

A: It was put in

J: But do we have a request for a waiver of court reporter fees?

A: Yes.

J: So you don't, I mean, I will see if you have a waiver of course, court reporter fees. You don't necessarily have a right to make a long statement on the record for your motion for reconsideration, as the first order of business is to see if there are proper grounds to reconsider prior orders. I will see if...

A: Here is a request for court reporter waiver (holds up actual paper)

J: Ya, there's no waiver of court reporter fees so the request for the court reporter is denied, so we don't have

M: I never received notice or any indication

J: You never put in a waiver. (Total Lie)

B. Escalante was rude and cut off Appellant during oral argument.

Appellant's case was one of the last cases that day. Appellant witnessed Escalante allow male lawyers to give oral arguments which were much, much longer than Appellant. Appellant was given two minutes and lawyers were allowed to speak freely for upwards of 30 minutes and were not cut off by Escalante. Appellant was cut off because they're an indigent, female, pro se and Escalante did not believe there was a recorded transcript. Escalante admitted they cutoff Appellant (CT V 2 p 485) "The Court cut off Ms Cummins." Below is from the transcript (CT V 2 p 463)

J: Alright, so, the tentative is to deny the motion for reconsideration, grounds for considering under CCP section 1008 and, um, that is the tentative ruling. I will give

Ms Cummins just a brief moment to address the court.

M: Thank you, your honor.

J: I understand your arguments but they've been made and rejected already. (I hadn't even started yet)

M: Actually they haven't, your honor. I just want to make three points today. I'm raising a different issue in a different court in a different jurisdiction than the bankruptcy case. I'm raising California Code of Civil Procedure 367 which requires that every action must be prosecuted in the name of a real party of interest....(to) Guess whose passport was posted on the ...

(Appellant read their printed oral argument until last sentence above Exhibit 1 and then the Judge stopped Appellant)

J: I'm going to have to ask you to wrap it up. I've already ruled on this exact motion. You may disagree with my, my ruling, however, my order, dated 11/28/2022, these are the same arguments you made in your previous motion. I ruled on the motion now I have to look to see whether there's grounds for reconsideration of that motion in the statute and I just don't find that there's any grounds so I, you know, considered these exact arguments the last time around and have ruled on that so this is a repeat of the prior motion so I'm just going to go ahead and stick with my tentative ruling.

C. Escalante refused to allow Appellant to submit document at hearing

Escalante refused to allow Appellant to submit a text copy of the three minute oral argument even though Appellant gave notice in the Motion that other exhibits may be presented at the hearing (CT V 2 p 446).

“The Motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, as well as the Declaration of Mary Cummins, all papers and records on file with the Court in this action, new evidence, new exhibits, new argument and upon such further oral and/or documentary evidence as may be presented at the hearing on this Motion.” (CT V 2 p 346)

M: Okay, your honor, I'd like to submit as exhibit 1 my testimony today.(CT V 2 p 446)

J: You're not gonna be, I'm not gonna accept any additional augmentation of the record

M: Okay, I only spoke for two minutes and my total statement...

J: I'm not going to accept any further argument at this point so um I'm going to ask the judicial assistant to please give notice of the court's ruling. Alright, thank you.

M: Is that it? (end of hearing)

J: That's it. (5:18 minute long hearing)

In Motion Rehear Appellant was not allowed to submit evidence, new argument with new citation regarding the fact that Appellee an alleged Russian named Konstantin Khionidi is not a real person. Only real persons may file lawsuits. There is no John Doe or AKA in this case. The real Plaintiff freely admits Khionidi doesn't exist.

2. Order on Motion Rehear Motion Vacate Sister State Judgement

Escalante filed an Order on Motion Rehear Motion Vacate on January 31, 2023 (CT V 2 p 418). The Order stated "(sic) Plaintiff (Appellant) has not filed a request for a waiver of court reporter fees, and therefore the request for a court reporter is denied."

This was a total lie as noted in the transcript cited above.

Other errors in the order:

"Defendant's request for sanctions is DENIED as procedurally improper." That should be "Plaintiff."

"Contrary to Defendant's representation, she appeared at the hearing on November 22, 2022." Appellant stated Appellant was only not allowed to appear by video. For that reason Appellant appeared by phone only and never denied this.

3. Record on Appeal, Order Strike Transcript

Appellant immediately filed Notice of Appeal February 21, 2023 (CT V 2 p 435)

and Filed Appellant's Proposed Settled Statement (CT V 2 p 468) and Notice

Designating Record on Appeal (CT V 2 p 455). It was accepted March 21, 2023.

Appellant requested that the transcript, text of oral argument and audio also be included in the court record. The record was due July 2023 but not filed. December 2023

Appellant filed letter to Appeals Court asking about the status out of fear of losing by lack of prosecution.

Almost a year later on February 9, 2024 Escalante replied, signed filed Minute Order: (Court Order Re: Striking of Transcript of Audio Recording;) (CT V 2 p 482, 485). “The Court has reviewed the Appeal - Referral of Statement on Appeal for Certification, filed on 07/25/2023 and orders the following: The Court orders the “Transcript”, provided by the Appellant, which seems to have been recorded through her telephone or some other recording device, STRICKEN.”

Escalante struck the transcript but did not strike the audio from which the transcript was made. The same transcript is included in a few other documents filed, accepted by the Court. It’s part of the legal record. Appellant filed Motion to Augment Court Record to include transcript and audio. Motion was granted.

February 14, 2024 Escalante filed Order : on Appellant's Proposed Settled Statement (Unlimited Civil Case) which is now listed as “Unavailable Currently Unavailable.” (CT Vol 2 p 485 P 5). Record appears destroyed.

“A hearing was held on the motion for reconsideration on January 31, 2023. The hearing was not an evidentiary hearing, but was for oral argument on the motion. At the hearing Cummins began to read a written statement that that reiterated points she had been made in the papers in support of the original motion to vacate and in the papers in support of the motion for reconsideration.

After a few minutes, the court cut off Ms. Cummins, informing her that the court had read her papers and already considered those arguments, and that she did not need her to reiterate the arguments further.

At some point in the hearing, Ms. Cummins stated she was entitled to a court reporter provided by the court because she had a fee waiver. The court quickly reviewed the file but did not see an order granting fee waiver as to court reporter fees. The court informed Ms. Cummins that she was not entitled to a court reporter because the fee waiver order did not include a waiver of such fees. (In preparing this settled statement, the court now sees the fee waiver order dated December 16, 2016 includes an order waiving fees for "Reporter's fees for attendance at hearing or trial, if reporter provided by the court." The court's misstatement was an inadvertent mistake, not a lie

as claimed by Ms. Cummins.)

Contrary to the statements of Ms. Cummins in her proposed settled statement, the court did not lie in its order; did not prevent Ms. Cummins from presenting oral argument (although she was not allowed time to read in full her written statement that reiterated points previously made in her papers); did not try to deny Ms. Cummins a "fair trial" or hearing; and did not try to make it impossible for Ms. Cummins to appeal the court's ruling.

Attached to Ms. Cummins proposed settled statement was a transcript of the January 31, 2023 hearing that Ms. Cummins unlawfully recorded in violation of court rules. The court issued an order striking the transcript.”

Escalante admitted Escalante made a mistake and misstatement in the hearing and court order. Escalante also admitted that Escalante cut off Appellant. Escalante could not possibly know what Appellant was going to say before she said it. Appellant never got the chance to make the full short oral argument. It was not all on paper.

Escalante lied in the court order about the waiver. Escalante also knows full well that an appeal based on oral proceedings is not possible without a transcript per 8.120(b). Appellant was denied right to a fair trial and hearing and ability to appeal properly.

Record was due April 15, 2024 and was still not filed. Appellant knew the stricken and necessary documents and audio would probably be missing so Appellant prepared then filed a Motion to Augment the Record 07/10/24 which was heard and granted 07/30/24.

Appellant filed Motion to Recuse Escalante (CT V 2p 487) because of Escalante's biased behavior. Escalante refused to recuse themselves (CT V 2 p 448).

ARGUMENT: NO FAIR TRIAL

Escalante's behavior was dishonest, biased and riddled with admitted mistakes which deprived Appellant of a fair trial. Escalante has violated CJP Types of

Misconduct numbers 4, 5, 8, 9, 12, 20, 23, 25¹⁰. Escalante's conduct was willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge.

Escalante's misconduct is serious and undermined the integrity of, and respect for, the judiciary. (See policy declarations 7.1(1)(b) [the nature and seriousness of the misconduct] and 7.1(1)(h) [whether the misconduct undermines the integrity of the judiciary, respect for the judiciary or the administration of justice].) It is a basic requirement of judicial office to be a neutral and impartial arbiter of the facts and law. Escalante's subsequent conduct, attempting to shade her initial misconduct in a more positive light in the court minutes, further reflects an initial reluctance to accept full responsibility for her misconduct, and an effort to minimize the gravity of her misconduct.

It is a basic requirement of judicial office to be a neutral and impartial arbiter of the facts and law. "A fair trial in a fair tribunal is a basic requirement of due process." (In re Murchison (1955) 349 U.S. 133, 136.) "The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship." (Mistretta v. United States (1989) 488 U.S. 361, 407.) "The judicial robe is a mantle of responsibility that entrusts an individual with the most sacred obligations that our society can impose -- the protection of each citizen's rights in a neutral forum. The acceptance of the judicial function does not confer greater wisdom upon the individual but only greater responsibility." (People v. Hernandez (1984) 160 Cal.App.3d 725, 750-751.)

Escalante lied in a court hearing and in multiple court orders and filings. Escalante did not allow Appellant to give their short oral argument especially the New argument and third point. Escalante admitted in writing to

¹⁰ Types of Misconduct https://cjp.ca.gov/wp-content/uploads/sites/40/2016/09/Chart_-_Types_of_Misconduct.pdf

making multiple alleged “misstatements,” “mistakes” and “errors.” Escalante was extremely late replying to the Appeals Court request for the court record. Escalante struck, destroyed court records which are missing from the public record. Each of these multiple acts is a separate count of violation of the Code of Ethics. All of these acts deprived Appellant of a fair trial.

Escalante violated canons 1 (a judge shall observe high standards of conduct so that the integrity of the judiciary is preserved), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), 3B(5) (a judge shall perform judicial duties without bias or prejudice or the appearance thereof), 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and shall manage their courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law), and 3E (a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law) of the Code of Judicial Ethics, and constitutes, at a minimum, prejudicial misconduct.

Escalante has violated the California Code of Judicial Ethics Against Appellant. The most egregious violation is repeated dishonesty. Because of Escalante’s unethical behavior, lies, bias, mistakes and more Appellant was deprived of their right to a fair trial.

The acts of judicial misconduct or the error in excluding evidence would constitute an error that “materially affect[ed] the substantial rights” of Appellant such that a new trial was necessary, (Right to a Fair Trial) US Constitution 7th 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.)

II. RENEWAL OF JUDGMENT SHOULD HAVE BEEN VACATED

The Orders did not properly resolve all issues raised in the Motion to Vacate. Appellee is not a real person. The trust agreement is void. The assignment was not legal. The renewal was not timely, was improper and legally flawed. Only real people can file or reply to a complaint. Only real people may enter into a contract. You need two real people for a legal agreement. Appellee has unclean hands. Appellant did properly request a waiver of court reporter fees.

A. Court Order Denying Motion Vacate

The Court ruled on Motion to Vacate 11/28/2022 (CT V 2 p 335) “The issue of the creditor’s standing has already been conclusively and finally resolved in the creditor’s favor in an adversary bankruptcy proceeding. That ruling has collateral estoppel effect here and is binding on Ms. Cummins.” “Further, the application for renewal of the judgment is timely. Further, the time for filing the application for renewal was tolled while the action was stayed during the bankruptcy. The court further finds that the renewed judgment was properly served.”

No court anywhere has ever ruled that Konstantin Khionidi is a real person who exists who can legally file a complaint, enter into an agreement, receive property or file legal notice. This Court did not rule on CCP § 367. The bankruptcy proceeding was Federal Court and a different issue. Any document filed by a person who does not exist must be dismissed. The judgment is based on the trust agreement allegedly signed but not notarized by Khionidi. If people were allowed to use fake strawmen, criminals would put their assets in the name of strawmen. They’d be able to legally launder money, hide assets...

The Court only ruled on the issue of timeliness and not whether or not the document was filed legally or properly. Those issues were raised in the Motion but not ruled upon. The Renewal of Judgment was still not timely, legal or proper.

B. Court Order Denying Motion Rehear Motion to Vacate

The Court ruled on Motion to Rehear Motion to Vacate (CT V 2 p 418) “Defendant has provided no grounds for reconsideration under Code of Civil Procedure section

1008. Contrary to Defendant's representation, she appeared at the hearing on November 22, 2022. Plaintiff has not filed a request for a waiver of court reporter fees, and therefore the request for a court reporter is denied.”

Escalante cut off Appellant during oral argument not allowing Appellant to state new grounds for reconsideration. Appellant still stated new grounds in their Motion. Appellant did file a request for a waiver of court reporter fees (CT V 2 p 384). Appellant argues that the existence of Appellee as a “real living person” was never resolved in any court let alone Los Angeles County Superior Court case BS140207.

State civil procedure requires (California Code of Civil Procedure (CCP) § 367 that “every action must be prosecuted in the name of the real party in interest, unless otherwise provided by statute.” 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). Konstantin Khionidi is not the real party of interest. Lollar is and they did not reply to appeal or file the Renewal of Judgment.

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 Cal. Code Civ. Proc. § 581 (5) the Court may dismiss a case “By the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal.” The real Plaintiff has not appeared. 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 Appellee’s attorney has sworn that the Appellee is a real person and the only Appellee. Stillman did not try to refile the case in the name of Lollar or anyone else. Stillman 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].)

1. APPELLEE KONSTANTIN KHIONIDI HAS NO LEGAL STANDING

CCP § 367 states “Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” Konstantin Khionidi is not a real person, does not exist and therefore has no right to file a lawsuit, complaint, reply to a complaint or file a renewal of judgment. This further makes the assignment of judgment and trust agreement void because there was only one party to the agreement. Any action not prosecuted in the name of a real party must be dismissed. No John Doe or nom de plum was requested or approved by the Court.

From Bankruptcy and Adversary Proceeding cases 2:17-bk-24993-RK and 2:18-ap-01066-RK Motion to Dismiss. Stillman stated in Court documents and in hearings that Konstantin Khionidi is a real person, the Plaintiff and no one else (CT V 1 p 227) “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 back to 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 the world. Konstantin never signed a notarized agreement because Konstantin does not exist. Appellee has never provided any evidence that Appellee Konstantin Khionidi exists. In discovery Appellant specifically requested evidence that Appellant existed in the form of identification or other means. Appellee refused to produce any evidence to prove they exist to Appellant.

Appellee has never signed and notarized any document in this case, the assignment of the judgment or case BS140207, not even the trust agreement which states it was notarized. CCP 367 has never been argued in any Court let alone BS140207.

The Trust agreement (CT V 1 p 266) which Appellee was forced to give to the Court states “IN WITNESS WHEREOF, as of this the 20th day of March 2017, Trustor and Trustee have signed this instrument.” 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.

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. Appellant believes Appellee added “California” to make it appear that this court has jurisdiction.

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 Appellant 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. Appellee is a Russian citizen living in Russia. 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 Bat World Sanctuary 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 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 Appellee and their attorney Stillman swore that Lollar and BWS had nothing to do with the current lawsuit or judgment. This nonsense really must end.

Page 1, item 3 states the “If the Trustor is unable to serve as Trustee for any reason, then the Trustor hereby appoints Amanda Lollar as Successor Trustee.” Again, Appellee swore Lollar was not involved in any way. More evidence of deceit. Page 1 item 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 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 Appellee April 20, 2017 (CT V 1 p 249), it should have been included. There is no evidence that the judgment is part of the trust. There is no evidence of such a bank

account. There are no other agreements which include the judgment.

Page 17 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. The purpose of a notary or witness is to prevent fraud such as this. 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 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 which Lollar lost. Lollar forged the agreement in the underlying Texas lawsuit regarding the judgment. That claim was reversed. 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 Lollar.

July 3, 2017 the Cobbs Trust sent an email to Defendant. The email is childishly written with a fake Russian accent as if to prove the writer, Appellee is really Russian. The email even mentions the Russian’s love of bats. The original Plaintiffs were Lollar and BWS. The email is signed “Sasha.” (CT V 1p 230)

Randy Turner Lollar’s Texas attorney and Lollar have both publicly posted on the Internet that a Russian most likely Alya Michelson, Alevtina Michelson is helping Lollar <http://www.randyturner.com/randys-cyber-stalker> (CT V 2p 379). The help is most likely in the form of paying legal fees using money from Alya’s husband Dr Gary Michelson. Appellant requested the identity of anyone else involved in this case in discovery and Appellee stated there is no one else which was false. Appellee is being deceitful and making a mockery of this court and the Judicial system by hiding behind a strawman. If everyone could use a fake name to sue people, criminals would use that loophole to hide assets and sue their enemies with no fear of being deposed or having to

answer discovery. In this case the Appellee is allegedly a Russian in Russia which is over 100 miles away so they can't be deposed.

Appellee's attorney Stillman stated to this Court that the Appellee would sign an agreement notarized by the US notary to transfer the judgment to 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 Appellee does not exist.

The original Plaintiff and original owner of the judgment 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." (CT V 1 p 231) Lollar admitted that Lollar is the Russian Appellee Konstantin Khionidi.

Lollar has flown from Texas and stayed over night to be present at every hearing and deposition here in Los Angeles, California since the Russian was involved. Lollar sat directly next to her now deceased original attorney Little and directed his every question at the hearings and deposition (CT V 1 p 231). Little who was dying of cancer in hospice stated that Lollar and her friend Dottie Hyatt and husband Larry Crittenden who accompanied her were Little's assistants and worked on behalf of the Plaintiff.

The original Plaintiff and original owner of the judgment Lollar has a long history of pretending to be other people, forging documents and committing perjury. Lollar's previous attorney Little forged proofs of service for hearings at least five times with the intent that Appellee would not show and lose by default. Another Proof of Service was forged so Plaintiff could get a bench warrant against Appellant to throw Appellant in Los Angeles County jail for not appearing for a hearing which Appellant knew nothing about.

Based on all of this evidence it is clear that Appellee does not exist. It's also clear that the Appellee is a fictitious straw person for Lollar. This makes the assignment of the judgment, trust agreement and renewal of assigned judgment a

nullity. The renewal should be dismissed because only a known party may file a legal document. Any case not filed by a real person must be dismissed.

The renewal of judgment, assignment of judgment and proof of service of renewal of judgment were not filed legally, properly or timely for the following reasons.

A. The Renewal was not filed Legally or Properly

1. Konstantin Khionidi is not a real person and therefore cannot file any renewal of judgment. See above argument.

2. Stillman is not the attorney of record in case BS140207.

Stillman never substituted in as attorney of record in this case. The current attorney of record is disbarred, convicted felon Little who died January 13, 2018 in Los Angeles, California. Court notices to Little have been returned.

Stillman is not the attorney for Lollar who is the original owner of the judgment. Court notices to Little have been returned RETURNED MAIL (CT V 1 p 19) Stillman can't argue Lollar's interests or any acts related to Lollar. Stillman also can't be the attorney for someone who doesn't exist. The recent Court notices were mailed to dead attorney James J. Little who died in 2018 (CT V 2 p 481). They were returned to the Court.

3. The Renewal states the Judgment was recorded May 6, 2013.

Defendant never received a mandated copy of this recording whatever it was.

4. The Service and Proof of Service were, are not legal.

Defendant claims Defective Service of Process. Defendant never received the second POS page in the envelope mailed to Defendant. The first POS page states case # 22SMCV01273 which is case BRIAN WHITAKER VS MACKAY REALTY COMPANY LTD., A CALIFORNIA CORPORATION, ET AL (CT V 1 p 232).

Stillman was the attorney in that case. Appellant had to go to lacourt.org and download the full filing. The correct POS had to be mailed to Defendant and it wasn't. Appellee admitted this mistake (CT V 2 p 306).

The Service was not legal because Stillman an attorney who stated he was in Miami, Florida stated he "caused" the Renewal to be served in Los Angeles,

California. Stillman did not serve the documents. His friend another convicted felon who was convicted of mail and wire fraud and is a disbarred California attorney Peter Miles Hoffman (<https://apps.calbar.ca.gov/attorney/Licensee/Detail/66205>) is the one who printed out the papers and mailed them from Hoffman's home at residential address 115 N. Orange Dr, Los Angeles, CA 90036 (CT V 1 p 233). Hoffman is a lawyer and knew this was not legal service. This is mail fraud on behalf of Peter Hoffman and Stillman.

In Case 19-12337 Doc #303 Filed 09/02/2020 it was proved that Peter Hoffman is paid by Stillman. Stillman owed money to Hoffman for his legal work as a disbarred attorney. Stillman failed to disclose Hoffman has an interest in that case and is not an independent process server. Stillman is also Hoffman's attorney in cases including a bankruptcy fraud case.

Stillman stated the 115 N Orange Dr address is Stillman's business address as Stillman does business in Los Angeles, California. The address is a duplex owned by another person. It's zoned residential with residential use only. Business cannot be conducted at this address. Stillman does not have a Los Angeles City business permit at this address. Stillman's business address is in Miami, Florida in CalBar (<https://apps.calbar.ca.gov/attorney/Licensee/Detail/152861>) Stillman's statement on the POS is false. Stillman stated these things under oath under the laws of California even though he was in Miami Beach, Florida. Stillman signed the POS "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 19, 2022 at Miami Beach, Florida." Stillman was in Miami Beach, Florida and didn't cause the service. Peter Hoffman actually printed out the documents and mailed them. Peter Hoffman should have signed the POS but he didn't. Service was not legal. You can see on the envelope (CT V 1 p 285) that Hoffman started to add Hoffman's name, crossed it out then added Stillman's name.

Appellant has filed documents in this case which were 99.99% correct in form and been denied because they weren't 100%. Here Appellee has made multiple different

mistakes and done things which are completely dishonest yet the court accepted their motion and affirmed the renewal. This is clearly discriminatory.

5. A Texas judgment is valid for ten years from the date it is signed by the judge.

Oral judgment was made June 15, 2012. It was signed August 27, 2012. Ten years would have been August 27, 2022. A judgment can be revived by a Writ of Execution signed by the Judge. March 5, 2021 Randy Turner the Texas attorney only for Plaintiff Lollar filed an Application for Writ of Execution (CT V 1p 284) on behalf of Lollar who no longer owned the Judgment and had no interest and Konstantin Khionidi. Turner does not represent Khionidi who doesn't exist.

March 17, 2021 Sharon Wilson a Clerk signed the Writ of Execution for the original Judgment. Appellant filed an Objection stating these things with the Texas Court March 18, 2021. The Writ is void because it was not signed by the Judge and it included all the claims and judgment for BWS which were reversed by the Appeals Court (CT V 1 p 247). The Application was filed by Turner who does not represent the then owner of the judgment Khionidi. Lollar no longer owned by judgment. The Texas renewal is therefore void.

6. Appellee has Unclean Hands

Appellee argued unclean hands in the Motions and oral argument. Appellee has unclean hands because they are still in violation of two previous court orders with sanctions (CT V 1 p 224), have filed fake proofs of service to try to throw Appellant in jail, have filed false documents, lied in court documents, committed perjury, fabricated evidence, the underlying defamation case was malicious and the copy paste defamation case was dismissed due to perjury, forgery. (Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970, 986 (Kendall-Jackson).) “The doctrine demands that a plaintiff act fairly in the matter for which [they] seek[] a remedy. [They] must come into court with clean hands, and keep them clean, or [they] will be denied relief, regardless of the merits of [their] claim. [Citations.]” (Id. at p. 978.) unclean-hands defense is, as noted, available in malicious-prosecution actions. As to the second prong—the nature of the misconduct—a plaintiff’s actions giving rise to the unclean-hands defense “need not be a

crime or actionable tort. Any conduct that violates good conscience, or good faith, or other equitable standards of conduct is sufficient to invoke the doctrine. [Citations.]”

B. The Renewal of Judgment in California was not filed Timely

CCP §683.020 states “upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.”

Appellee did not timely file the renewal. Ten years after original judgment or after oral judgment June 15, 2012 is June 15, 2022. Texas judgment signed August 27, 2012 so August 27, 2022 would have been expiration of signed judgment. Notice of Renewal filed September 19, 2022. Appellant timely filed Motion to Vacate Renewal immediately after finally receiving the notice 10/21/2022 (CT V 1 p 217). There was no time to legally, properly correct the errors and refile the renewal with the minimum 30 days’ notice to Defendant.

III Amount and Interest Rate of Judgment is not Correct

The Texas judgment clearly states the interest rate is 5%. Appellee calculated 10% which is customary for California. “In California, the interest rate for a sister state judgment is usually 10% per year, unless the judgment entered in the sister state indicates otherwise.”¹¹

Appellant is a Pro Se Party

Appellant is a pro se party because Appellant doesn’t have the means to procure an attorney because of this judgment. “It has always been the policy of the courts in California to resolve a dispute on the merits of the case rather than allowing a dismissal on technicality.” *Harding v. Collazo* (1986) 177 Cal. “The trial judge has a “duty to see that a miscarriage of justice does not occur through inadvertence.” “ *Lombardi v. Citizens Nat. Trust & Sav. Bank* (1951) 137 Cal App.¹²

¹¹ Sister Statement Judgment Packet, Superior Court of California
<https://www.sdcourt.ca.gov/sites/default/files/sdcourt/generalinformation/forms/civilforms/pkt028.pdf>

¹² A Review of California Case Law on Judicial Treatment of Self Represented Litigants
<https://www.courts.ca.gov/partners/documents/ReviewCaliforniaCaseLaw.pdf>

The Courts have stated that Judges must treat pro se parties fairly in light of the fact they do not have an attorney. A “Judge must make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”¹³ Appellant pro se asks the Court to treat Appellant fairly in light of the fact they aren’t and don’t have an attorney.

CONCLUSION

Appellant submits that the Appeal should be granted because (I) Appellant did not receive a fair trial, (II) the Courts Orders did not properly resolve all issues raised in the Motions to Vacate and (III) Judgment amount is incorrect. Appellant provided sufficient evidence to show a person who does not exist cannot file a complaint, the underlying assignment of judgment is void as there was only one real party, the Trust agreement is void as Plaintiff does not exist and it was not notarized, Appellee has unclean hands, Renewal of Judgment was not filed legally, properly or timely by the real party of interest and judgment amount is incorrect. Appellee has never proven they exist. For the same reasons Appellee cannot reply to this Appeal because they don’t exist and should lose by default. Parties Lollar and BWS should also lose by default because they did not reply at all. The Court is asked to reverse the orders, vacate the sister state judgment and reassign the case to another Judge.

Respectfully submitted,



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¹³ Handling Cases Involving Self Represented Litigants
https://www.courts.ca.gov/partners/documents/benchguide_self_rep_litigants.pdf

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 10,433 words. In so certifying, I am relying on the word count of WPS Office, the free computer program used to prepare this brief typing on a 12 year old Windows 7 laptop.

DATED: August 19, 2024

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 PO Box 18738, Los Angeles, California 90018. 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 PO Box 18738, Los Angeles, CA 90018 and/or by electronic filing.

Philip Stillman
Stillman & Associates
Judge Kristin Escalante
111 N Hill St Dept 24, Los Angeles, CA 90012
Amanda Lollar
Bat World Sanctuary

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 19, 2024, at Los Angeles, California.

Respectfully submitted,



Mary Cummins
PO Box 18738
Los Angeles, CA 90018