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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13 MARY CUMMINS,
14 Plaintiff,

15 v.

16 AMANDA LOLLAR,
17 Defendant.

) Case No.: BS143169
)
) Action filed: 5/24/2013
)
) **DEFENDANT AMANDA LOLLAR'S**
) **RESPONSE TO PLAINTIFF MARY**
) **CUMMINS' MOTION TO DISQUALIFY**
) **AND FOR SANCTIONS IN**
) **CONNECTION WITH HER MOTION TO**
) **DEEM PLAINTIFF A VEXATIOUS**
) **LITIGANT**
)
)
) Date: September 27, 2013
) Time: 8:30 a.m.
) Dept: 75
)
)

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22 In connection with her Motion to Deem Plaintiff Mary Cummins a Vexatious Litigant,
23 Defendant AMANDA LOLLAR hereby responds to Plaintiff's "Motion to Recuse, Disqualify
24 Judge Carol Boas Goodson CCP § 170.3(c)(1); Motion for Sections CCP § 128.7."

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Rather than filing a response to Defendant's motion, Plaintiff has filed another one of a
4 series of motions in this case. She has filed two motions in one: a motion to disqualify under
5 CCP Section 170.3 and a motion for sanctions under CCP Section 128.7. Neither of these is an
6 opposition to Defendant's Motion to Deem Plaintiff a Vexatious Litigant. Neither these meets
7 the requirements under Sections 170.3 and 128.7. Assuming, however, that these motions are a
8 form of opposition to Defendant's Motion, Defendant is providing this response.

9 **ARGUMENT**

10 **I.**

11 **PLAINTIFF'S MOTIONS ARE NOT AN OPPOSITION TO DEFENDANT'S MOTION**

12 Plaintiff's motions are not an opposition to Defendant's motion to have her deemed as a
13 vexatious litigant. Nowhere in Plaintiff's motions does she challenge either the factual bases or
14 legal bases for Defendant's motion. In fact, it is difficult to see how Plaintiff might dispute the
15 number and character of her actual filings drawn from court records. Instead, she devotes her
16 energy to charging Judge Goodson with mistreating her in these proceedings and charging
17 Defendant's counsel with fraud by allegedly making certain false statements in opposing her
18 TRO. Ironically, these are the very tactics that qualify her as a vexatious litigant. Accordingly,
19 by her failure to oppose the grounds for Defendant's motion, she is deemed to have admitted
20 them, and therefore the Court should grant the motion.

21 **II.**

22 **PLAINTIFF'S MOTIONS, EVEN IF THEY MAY BE CONSIDERED AN**
23 **OPPOSITION, WERE NOT FILED OR SERVED TIMELY**

24 Plaintiff neither filed nor served her motions, if deemed an opposition to Defendant's
25 motion, within the required time prescribed in CCP Section 1005(b). The section requires that
26 opposition to a motion be filed and served nine court days before the hearing on the motion.
27 Nine court days before September 27, 2013 is September, 16, 2013. The file stamp on
28 Plaintiff's papers is September 20, 2013. Moreover, there is some doubt that Plaintiff effected

1 service on the date she filed her papers. Although the proof of service on Plaintiff's papers
2 shows mail service on Defendant of September 20, 2013, defense counsel did not receive the
3 papers until September 25, 2013 for a mailing within the City of Los Angeles.

4 **III.**

5 **DEFENDANT PROPERLY SERVED PLAINTIFF AND DID NOTHING TO PREVENT**
6 **HER FROM FILING AN OPPOSITION**

7 Plaintiff appears to claim that Defendant did not give her proper notice of the vexatious
8 litigant motion, or that Defendant made it difficult for her to respond. (Plaintiff's Motions at
9 pp. 7-8) Neither is true. The proof of service to the motion shows that it was served by mail
10 on Plaintiff at the PO Box at which all other papers have been served on her and where she has
11 insisted that service be effected. Plaintiff claims, however, that she was too sick to go to her
12 PO Box to retrieve her mail for several days. She contends that she asked defense counsel to
13 email her the motion and acknowledged that she received a copy by email.

14 **IV.**

15 **PLAINTIFF'S MOTIONS ARE WHOLLY WITHOUT MERIT**

16 Making matters worse, neither of Plaintiff's motions have any merit under the
17 applicable provisions of the Code of Civil Procedure by which they are brought:

18 *First*, in the combined two-motion pleading, Plaintiff seeks to disqualify Judge Goodson
19 under CCP Section 170.3(c)(1). She fails to meet one of the principal requirements under that
20 section, namely, to *personally serve* the judge alleged to be disqualified. The proof of service
21 attached to her combined motions shows only that she served Defendant.

22 *Second*, Plaintiff seeks to have sanctions imposed upon defense counsel Dean Rocco
23 under CCP Section 128.7. Here, she fails to meet two important requirements in the code.
24 Under subsection (c)(1), this motion must be made separately from other motions, and it cannot
25 be filed unless within 21 days after service the challenged allegation is "not withdrawn or
26 appropriately corrected."

27 At best, these two combined motions are procedurally defective; at worst, they are
28 another bad faith attempt at delaying and protracting her litigation against Defendant, adding

1 another strike to Defendant's motion to have Plaintiff deemed a vexatious litigant.

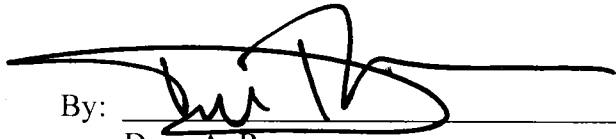
2 **CONCLUSION**

3 For all the foregoing reasons, Defendant respectfully requests the Court grant her
4 Motion to Deem Plaintiff a Vexatious Litigant, and deny Plaintiff's combined Motions to
5 Disqualify and for Sanctions. Under her Motion, therefore, Defendant requests that the Court
6 (i) require Plaintiff to furnish security in this action and issue a pre-filing order preventing her
7 from filing any new litigation in the Courts of this State without first obtaining leave from the
8 presiding justice or judge of the Court where the litigation is proposed to be filed.

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Dated: September 26, 2013

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP



By: _____
Dean A. Rocco
Attorneys for Defendant
AMANDA LOLLAR

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 CASE NAME: Mary Cummins v. Amanda Lollar

4 CASE NUMBER: BS143169

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is: 555 S. Flower Street, Suite 2900,
7 Los Angeles, California 90017-5408

8 On **September 26, 2013**, I served the foregoing document described as:

9 **DEFENDANT AMANDA LOLLAR'S RESPONSE TO PLAINTIFF MARY CUMMINS'**
10 **MOTION TO DISQUALIFY AND FOR SANCTIONS IN CONNECTION WITH HER**
11 **MOTION TO DEEM PLAINTIFF A VEXATIOUS LITIGANT**

12 in this action by placing a true copy thereof in a sealed envelope addressed as follows:

13 Mary Cummins
14 645 W. 9th Street, #110-140
15 Los Angeles, CA 90015
16 Tel: (310) 877-4770
17 mmmaryinla@aol.com

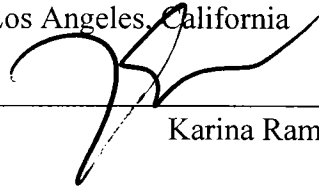
18 **[XX] BY MAIL**

19 **[XX]** I deposited such envelope in the mail at Los Angeles, California. The envelope
20 was mailed with postage thereon fully prepaid.

21 **[XX]** As follows: I am "readily familiar" with the firm's practice of collection and
22 processing correspondence for mailing. Under that practice it would be deposited with U.S.
23 postal service on that same day with postage thereon fully prepaid at Los Angeles, California in
24 the ordinary course of business. I am aware that on motion of the party served, service is
25 presumed invalid if postal cancellation date or postage meter date is more than one day after date
26 of deposit for mailing in affidavit.

27 **[XX] STATE** I declare under penalty of perjury under the laws of the State of California that
28 the above is true and correct.

Executed on **September 26, 2013**, at Los Angeles, California



Karina Ramirez