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10
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**
) **MOTION TO DEEM PLAINTIFF MARY**
) **CUMMINS A VEXATIOUS LITIGANT;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT THEREOF**

) [Filed Concurrently With Defendant's Request
) for Judicial Notice In Support of Motion to
) Deem Plaintiff A Vexatious Litigant]

) Date: September 27, 2013

) Time: 8:30 a.m.

) Dept: 75

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21 TO THE HONORABLE COURT, INTERESTED PARTIES AND ATTORNEYS OF
22 RECORD:

23 PLEASE TAKE NOTICE THAT on September 27, 2013 at 8:30 a.m. or as soon
24 thereafter as the matter may be heard, in Department 75 of the above-captioned Court located at
25 111 N. Hill Street, Los Angeles, California 90012, Defendant Amanda Lollar will and hereby
26 does move the Court for an order deeming Plaintiff Mary Cummins a vexatious litigant.
27 Consistent with such a determination, Defendant respectfully requests the Court require Plaintiff
28 to furnish security in the instant action and issue a pre-filing order prohibiting Plaintiff from

1 filing any new litigation in the Courts of this State without first obtaining leave from the
2 presiding justice or judge of the Court where the litigation is proposed to be filed.

3 Defendant makes this motion pursuant to California Code of Civil Procedure, Section
4 391 et seq. Defendant's motion shall be based upon the within pleadings, the accompanying
5 Request for Judicial Notice and such other arguments and matters as may be presented within
6 Defendant's reply brief or at the hearing on this matter.

7
8 Dated: August 28, 2013

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

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10 

11 By: _____

12 Dean A. Rocco
13 Attorneys for Defendant
14 AMANDA LOLLAR

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Mary Cummins (“Cummins”) plainly meets the definition of a vexatious litigant.
4 As demonstrated herein, she has a lengthy history of unsuccessfully prosecuting actions *in*
5 *propria persona*. Furthermore, she has a unwavering habit of recklessly seeking to relitigate
6 issues determined against her and otherwise ignoring Court orders or filing frivolous motions
7 and pleadings.

8 As a means of avoiding the time and expense associated with Cummins’ troublesome and
9 wasteful litigation, Defendant Amanda Lollar (“Lollar”) respectfully requests the Court deem her
10 a vexatious litigant pursuant to California Code of Civil Procedure, Section 391 et seq. Upon
11 doing so, Lollar requests the Court require Cummins to furnish security in the instant action and
12 issue a pre-filing order preventing her from filing any new litigation in the Courts of this State
13 without first obtaining leave from the presiding justice or judge of the Court where the litigation
14 is proposed to be filed.

15 II. CUMMINS’ HISTORY OF LITIGATION ABUSE

16 The following are examples of litigations filed by Cummins *in propria persona*, other
17 than those in small claims court, which have been adjudicated against her in the last seven (7)
18 years:¹

- 19 • Cummins v. Amanda Lollar, Los Angeles County Superior Court Case No.
20 BS143169. Cummins’ application for restraining orders against Mrs. Lollar
21 was denied in July 2013; the Court sanctioned Cummins \$6,350 for
22

23
24 ¹ It should be noted that a number of other cases have apparently been adjudicated against
25 Cummins, including: Cummins v. Anderson, Los Angeles County Superior Court Case No.
26 11W00011 [2011 small claims action adjudicated against Cummins]; Amer. Express v.
27 Cummins, Los Angeles County Superior Court Case No. 08C00867 [2008 default judgment
28 entered against Cummins in collection action]; Cummins v. Colapinto, Los Angeles County
Superior Court Case No. 99S01608 [1999 small claims action adjudicated against Cummins for
failure to prosecute]; Cummins v. Thunder Roadhouse, Los Angeles County Superior Court Case
No. 97S01724 [1997 small claims action adjudicated against Cummins]; Cummins v. Carl
Williams/Prudential Realty Los Angeles County Superior Court Case No. 93S01539 [1993 small
claims action adjudicated against Cummins]. See Req. Jud. Not., Ex. FF.

1 prosecuting a baseless application. See Request for Judicial Notice in
2 Support of Motion to Deem Cummins a Vexatious Litigant (“Req. Jud.
3 Not.”), Ex. A.

- 4 • Cummins v. Shupps, *U.S.D.C. (Cent. Dist. CA) Case No. CV 11-08081 BRO*
5 *(MANx)*. Cummins’ defamation and tort action against Mr. Shupps was
6 dismissed in August 2013 pursuant to a motion to dismiss for failure to
7 effect service under F.R.C.P. Rule 12(b)(5). See Req. Jud. Not., Ex. B.
- 8 • Cummins v. Krog et al., *U.S.D.C. (Cent. Dist. CA) Case No. CV 11-08081*
9 *BRO (MANx)*. Cummins’ defamation and tort action against Ms. Krog and
10 two other defendants was dismissed in February 2013 based upon concerns
11 said defendants were added in an attempt destroy diversity jurisdiction. See
12 Req. Jud. Not., Ex. C.
- 13 • Cummins v. Batworld Sanctuary et al., *U.S.D.C. (Cent. Dist. CA) Case No. 11-*
14 *cv-08081 BRO (MANx)*. Cummins’ defamation and tort action against
15 Batworld Sanctuary and Amanda Lollar was dismissed in November 2012
16 pursuant to said defendants’ motions for summary judgment. See Req. Jud.
17 Not., Ex. D.
- 18 • Cummins v. Batworld Sanctuary et al., *U.S.D.C. (Cent. Dist. CA) Case No. 12-*
19 *cv-04902 GHK (MRW)*. Cummins’ personal injury action was dismissed
20 and ordered transferred to Texas in August 2012 based upon improper
21 venue.² See Req. Jud. Not., Exs. E and EE.
- 22 • Cummins v. Schmidt, *Los Angeles County Superior Court Case No. BS129901*.
23 Cummins’ application for restraining orders against Mr. Schmidt was denied
24

25
26 ² Following this determination of improper venue, Cummins’s claims were presented to
27 the U.S. District Court for the Northern District of Texas in a case captioned Cummins v.
28 Batworld Sanctuary et al., *U.S.D.C. (No. Dist. Tex) Case No. 12-cv-00560-Y*. The judge has
since partially dismissed Cummins’s claims pursuant to a Rule 12 motion to dismiss (Ex F), and
the remaining claims and parties are presently subject to further motions to dismiss under Rule
12 (Ex. G-H). See Req. Jud. Not., Ex. F-H.

1 in December 2010 for lack of good cause. See Req. Jud. Not., Ex. I.

2 The following are **examples of Cummins acting in propria persona and unsuccessfully**
3 **attempting to re-litigate the validity of determinations made against her:**

- 4 • Cummins v. Amanda Lollar, Los Angeles County Superior Court Case No.
5 BS143169. After the Court denied Cummins' application for restraining
6 orders and sanctioned her \$6,350, Cummins filed a Motion for
7 Reconsideration. Cummins then filed an "Amended Motion for
8 Reconsideration" the day before the hearing on her original Motion for
9 Reconsideration. The Court denied Cummins' motion based upon her
10 failure to put forth new or different facts or law than what Cummins
11 presented in connection with the underlying application for restraining
12 orders. Req. Jud. Not., Ex. "A" and "DD".³
- 13 • Batworld Sanctuary et al. v. Cummins, Tarrant County (Texas) District Court
14 (352nd Jud. Dist) Cause No. 352-248169-10. In this action, an injunction
15 and \$6.1 Million judgment were entered against Cummins upon a finding
16 she engaged in defamation that was "egregious as well as malicious as well
17 as intentional." (Ex. J; quoted text is in the transcripts from trial at page 4,
18 lines 7-11). Cummins filed at least two motions for new trial (Exs. K and
19 L). She filed three failed motions to recuse the judge (Exs. M-O); she made
20 a similar motion to recuse the judge to the Court of Appeal in Texas, which
21 was denied (Ex. P); she also filed a failed motion for reconsideration on her
22 denied motion to recuse the judge (Ex. Q). She also filed a motion to void
23 the injunction issued against her (Ex. R). Cummins also filed an Appeal (Ex
24 S). See Req. Jud. Not., Exs. J-S. In a related California action to enforce
25 the \$6.1 Million sister state judgment against Cummins (Batworld Sanctuary

26
27 ³ Cummins has yet to pay the sanctions issued at the hearing on her application for
28 restraining orders and has recently announced her intention to further appeal the ruling on said
motion. See Req. Jud. Not., Declaration of Dean A. Rocco, Esq. ("Rocco Dec."), ¶¶5-6, Ex.GG.

1 et al. v. Cummins, *Los Angeles County Superior Court Case No.*
2 *BS140207*), she again unsuccessfully attempted to relitigate the case through
3 a failed motion to vacate the judgment. See Req. Jud. Not., Ex. T.

- 4 • Cummins v. Batworld Sanctuary et al., U.S.D.C. (Cent. Dist. CA) Case No. 11-
5 cv-08081 BRO (MANx). After the Court granted summary judgment in
6 favor of defendants Batworld Sanctuary and Amanda Lollar, Cummins
7 unsuccessfully filed a motion to vacate the judgment (Ex. C) and motion for
8 reconsideration (Ex. U) and brought a failed appeal (Ex. V). See Req. Jud.
9 Not., Exs. C, U-V.

10 The following are **examples of Cummins acting in propria persona and filing**
11 **unmeritorious motions or otherwise engaging in frivolous tactics:**

- 12 • Batworld Sanctuary et al. v. Cummins, Tarrant County (Texas) District Court
13 (352nd Jud. Dist) Cause No. 352-248169-10. As previously noted, Cummins
14 unsuccessfully pursued motions for a new trial, to recuse the judge and to
15 void the injunction issued against her. See Req. Jud. Not., Exs. J-R. The
16 judge explicitly described Cummins' motion to recuse as "groundless and
17 filed in bad faith" and sanctioned her \$500. See Req. Jud. Not., Ex. M
18 [hearing transcripts at pg. 11, lines 2-7]. Cummins was also compelled to
19 appear for her deposition (Ex. X), sanctioned \$500 for abusing the discovery
20 process (Ex. Y), and held in contempt for failing to follow Court Orders to
21 provide information in discovery and sanctioned \$100 per day until she
22 complied (Ex. Z). Cummins also unsuccessfully pursued protective orders
23 (Ex. AA), as well as motions for contempt and malicious prosecution
24 against the opposing parties. See Req. Jud. Not., Rocco Dec., ¶23, Exs. X-
25 AA.⁴

26
27 ⁴ Notably, Cummins' original attorney moved to withdraw as counsel due to disagreements
28 stemming from Cummins' falsely accusing opposing counsel of massaging her hand during her
deposition. See Req. Jud. Not., Ex W.

- 1 • Cummins v. Batworld Sanctuary et al., U.S.D.C. (Cent. Dist. CA) Case No. 11-
2 cv-08081 BRO (MANx). As noted above, Cummins unsuccessfully pursued
3 a motion to vacate the judgment, a motion for reconsideration and an appeal.
4 See Req. Jud. Not., Exs. C, U-V. In the same case, Cummins failed in
5 attempts to get preliminary injunctions issued against the defendants (Ex.
6 BB) and to get opposing counsel held in contempt of Court (Ex. CC). See
7 Req. Jud. Not., Exs. BB-CC.
- 8 • Cummins v. Krog et al., U.S.D.C. (Cent. Dist. CA) Case No. CV 11-08081
9 BRO (MANx). As noted above, Cummins added defendants to a federal
10 lawsuit as a means of attempting to destroy diversity in order to argue the
11 U.S.D.C. could not rule upon other defendants’ motions for summary
12 judgment; the Court promptly dismissed the improperly joined parties. See
13 Req. Jud. Not., Ex. C [Court describes at pages 1-3 Cummins’ effort to add
14 non-diverse defendants in order to destroy diversity as a means of avoiding
15 the ruling on summary judgment motions of other defendants].
- 16 • Cummins v. Amanda Lollar, Los Angeles County Superior Court Case No.
17 BS143169. As noted above, the Court sanctioned Cummins \$6,350 for
18 filing a frivolous application for restraining orders. Cummins thereafter
19 filed a groundless Motion for Reconsideration and “Amended Motion for
20 Reconsideration.” Req. Jud. Not., Ex. A and DD.
- 21 • Cummins v. Batworld Sanctuary et al., U.S.D.C. (Cent. Dist. CA) Case No. 12-
22 cv-04902 GHK (MRW). The Court found Cummins’ conduct of adding
23 defamation claims to existing personal injury claims in hopes of curing
24 venue defects as being “in bad faith” and stated it viewed “such tactics with
25 disfavor.” See Req. Jud. Not., Exs. E. (holding Cummins’ amendment to be
26 in bad faith at pages 2-3) and EE (describing the amendment as being “in
27 bad faith” and viewed with “disfavor” at page 1, paragraph 3).
- 28

1 **III. LEGAL ARGUMENTS**

2 California's Code of Civil Procedure, Section 391, defines a "vexatious litigant" as
3 follows:

4 (b) "Vexatious litigant" means a person who does any of the
5 following:

6 (1) In the immediately preceding seven-year period has
7 commenced, prosecuted, or maintained in propria persona at least
8 five litigations other than in a small claims court that have been (i)
9 finally determined adversely to the person or (ii) unjustifiably
10 permitted to remain pending at least two years without having been
11 brought to trial or hearing.

12 (2) After a litigation has been finally determined against the
13 person, repeatedly relitigates or attempts to relitigate, in propria
14 persona, either (i) the validity of the determination against the
15 same defendant or defendants as to whom the litigation was finally
16 determined or (ii) the cause of action, claim, controversy, or any of
17 the issues of fact or law, determined or concluded by the final
18 determination against the same defendant or defendants as to
19 whom the litigation was finally determined.

20 (3) In any litigation while acting in propria persona, repeatedly
21 files unmeritorious motions, pleadings, or other papers, conducts
22 unnecessary discovery, or engages in other tactics that are
23 frivolous or solely intended to cause unnecessary delay.

24 (4) Has previously been declared to be a vexatious litigant by any
25 state or federal court of record in any action or proceeding based
26 upon the same or substantially similar facts, transaction, or
27 occurrence.

28 Once an individual is deemed a vexatious litigant, the Court can monitor and control their
access to the Court system. More specifically, upon a showing an individual is a vexatious
litigant and there is no reasonable probability she will prevail in the underlying action, the Court
may order her to furnish security or an undertaking (usually in the form of a bond) to assure
payment of the opposing party's reasonable expenses, including attorneys' fees. Code Civ. Proc.
§391(c). In addition, Courts can issue "pre-filing orders" prohibiting vexatious litigants from
filing new litigation in a California court *in propria persona* without permission from the
presiding judge. Code Civ. Proc. §391.7(a); see also Moran v. Murtaugh Miller Meyer &
Nelson, LLP 40 Cal. 4th 780 (2007) Wolfe v. George 486 F.3d 1120 (9th Cir. 2007) [upholding
the constitutionality of the limitations placed upon vexatious litigants].

1 In this case, Cummins clearly meets the definition of a vexatious litigant. She has a
2 history of unsuccessfully prosecuting actions *in propria persona*. As noted above, Cummins
3 has instituted six failed litigations against various defendants in the last seven years. See, Req.
4 Jud. Not., Exs. A-E, I and EE; compare Civ. Proc. Code §391(b)(1).

5 Moreover, Cummins has repeatedly attempted to relitigate issues determined against her.
6 See Req. for Jud. Not., Exs. A and DD and GG [efforts to relitigate Cummins' denied application
7 for restraining orders], J and K-T [efforts to relitigate the judgment entered against Cummins in
8 the Texas defamation action] and C and U-V [efforts to relitigate the order granting summary
9 judgment of Cummins' California defamation action]; compare Civ. Proc. Code §391(b)(2).

10 In addition, Cummins has routinely ignored Court orders and pursued frivolous motions
11 and pleadings.⁵ See e.g. Req. for Jud. Not., Exs. J-R [Cummins pursuing repeated motions to
12 recuse the judge in the Texas defamation case against her and being sanctioned \$500 for said
13 motions being "groundless and filed in bad faith"]; X-Z [Cummins ignoring Court orders and
14 otherwise engaging in discovery abuses which resulted in her being held in contempt and
15 sanctioned in the Texas defamation case against her]; BB-CC [Cummins pursuing baseless
16 motions for preliminary injunctions and for contempt in her California defamation action]; C
17 [Cummins unsuccessfully adding non-diverse parties to her California defamation action in an
18 attempt to divest the Court with jurisdiction and avoid its ruling on other defendants' motions for
19 summary judgment]; E and EE [Cummins' failed attempts to add defamation claims to her
20 California personal injury action as a means of avoiding dismissal for lack of venue
21 characterized by the Court as being "in bad faith"]; see also Rocco Dec., ¶23, Ex. AA [Cummins
22 pursuing unsuccessful motions for protective orders and for contempt in the Texas defamation
23 case against her]; see also Id. at ¶¶3-6, Ex. A, DD and GG [Cummins being sanctioned \$6,350
24 for pursuing a baseless application for restraining orders, then filing a baseless Motion for
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26
27 ⁵ Additionally, as noted above, Cummins' attorney had to withdraw as counsel in the
28 Texas defamation action due to her specious claims of opposing counsel massaging her hand
during a deposition [Ex. W], and Cummins pursued or unsuccessfully opposed a number of small
claims and collections against beyond those contemplated by Section 391(b)(1) [Ex. FF].

1 Reconsideration of the denial of said application and still refusing to pay the sanctions ordered
2 against her]; compare Civ. Proc. Code §391(b)(3).

3 Given the foregoing, this Court should deem Cummins a vexatious litigant, order her to
4 furnish an undertaking in this case and issue a pre-filing order preventing her from instituting
5 any new lawsuits in California without first obtaining permission from a presiding judge.

6 **IV. CONCLUSION**

7 For all the reasons stated herein, Lollar respectfully requests the Court deem Cummins a
8 vexatious litigant pursuant to California Code of Civil Procedure, Section 391 et seq. In doing
9 so, Lollar requests the Court require Cummins to furnish security in the instant action and issue a
10 pre-filing order preventing her from filing any new litigation in the Courts of this State without
11 first obtaining leave from the presiding justice or judge of the Court where the litigation is
12 proposed to be filed.

13
14 Dated: August 27, 2013

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

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16 

17 By: _____
18 Dean A. Rocco
19 Attorneys for Defendant
20 AMANDA LOLLAR

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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
6 of 18 and not a party to the within action; my business address is: 555 S. Flower Street, Suite
2900, Los Angeles, California 90017-5408

7 On August 28, 2013, I served the foregoing document described as:

8 **DEFENDANT AMANDA LOLLAR'S MOTION TO DEEM PLAINTIFF MARY
9 CUMMINS A VEXATIOUS LITIGANT; MEMORANDUM OF POINTS AND
10 AUTHORITIES IN SUPPORT THEREOF**

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

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

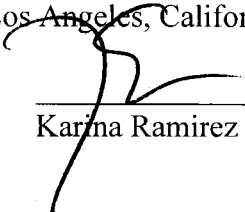
17 **[XX] BY MAIL**

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

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

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

28 Executed on August 28, 2013, at Los Angeles, California



Karina Ramirez