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8 COBBS TRUST

9 **UNITED STATES BANKRUPTCY COURT FOR THE**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 In re: ) Case No. 2:17-bk-24993-RK  
12 MARY CUMMINS-COBB, ) Chapter 7  
13 Debtor ) Adv. Proc. No. 2:18-ap-01066-RK  
14 )  
15 KONSTANTIN KHIONIDI, as Trustee of the ) NOTICE OF MOTION AND MOTION FOR  
16 COBBS TRUST, ) JUDGMENT ON THE PLEADINGS  
17 )  
18 vs. ) Plaintiff,  
19 )  
20 MARY CUMMINS-COBB, ) Defendant.  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Judge: Honorable Robert N. Kwan  
Courtroom: 1675  
Edward R. Roybal Federal Building  
255 E. Temple Street, Suite 1682  
Los Angeles, CA 90012



1 ¶ 36; Answer, ¶ 2 (admitting ¶ 36).

2 In its Opinion attached to the Complaint as Exhibit 2, the Texas Court of Appeals affirmed  
3 the trial court's finding that the Debtor acted with malice in defaming Ms. Lollar. In particular, the  
4 Court held at pp. 61-62 that:

5 Cummins posted a flood of statements about Lollar accusing her of all manner of  
6 serious wrongdoings, including crimes, and she published her statements to as  
7 wide of an audience as she could, including to numerous law enforcement  
8 agencies. The statements were designed to ruin Lollar's professional and personal  
9 reputation locally and nationally. . . . Lollar showed by clear and convincing  
10 evidence that Cummins acted with malice as that term is used in chapter 41 and  
11 with the actual malice required under the First Amendment. The evidence supports  
12 a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with  
13 the intention to ruin both Lollar's life's work and her credibility and standing in the  
14 animal rehabilitation community. Cummins posted innumerable derogatory  
15 statements about Lollar impugning her honesty and her competency, and she  
16 repeatedly and relentlessly reported Lollar to multiple government agencies. The  
17 comments she made about Lollar leave no doubt that she had a specific intent to  
18 cause substantial injury or harm to Lollar. Clear and convincing evidence also  
19 supports a finding that Cummins published statements on the internet with actual  
20 malice.

21 Accordingly, it has been finally adjudicated that the Debtor's defamation of Ms. Lollar was both  
22 "willful and malicious" as those terms are defined in *In re Sicroff*, 401 F.3d 1101, 1106 (9<sup>th</sup> Cir.  
23 2005)(judgment for defamation is nondischargeable pursuant to § 523(a)(6)). The debt  
24 represented by the Defamation Judgment and the Sister State Judgment is therefore  
25 nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

## 26 II.

### 27 **THE JUDGMENT AGAINST THE DEBTOR IS NONDISCHARGEABLE**

28 A discharge under 11 U.S.C. § 727 does not discharge an individual debtor from "any debt  
for willful and malicious injury by the debtor to another entity or to the property of another entity."  
11 U.S.C. § 523(a)(6).

#### 29 A. The Defamation Was "Willful".

30 An injury is "willful" if acts are done with the actual intent to cause injury. *Kawaauhau v.*  
31 *Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998); *In re Youngchul Park*, 2017 Bankr. LEXIS  
32 1939, at 35 (Bankr. C.D. Cal. July 13, 2017)("an injury is 'willful' 'when it is shown either that the  
33 debtor had a subjective motive to inflict the injury or that the debtor believed that injury was

1 substantially certain to occur as a result of his conduct.”) The Texas Court of Appeals held that  
2 “comments she made about Lollar leave no doubt that she had a specific intent to cause  
3 substantial injury or harm to Lollar.” Cummins-Cobb therefore acted willfully.

4 B. The Injury Was “Malicious.”

5 An injury is “malicious,” as that term is used in Section 523(a)(6), when it is: “(1) a  
6 wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is  
7 done without just cause or excuse.” [citation omitted]. Within the plain meaning of  
this definition, it is the wrongful act that must be committed intentionally rather than  
the injury itself.

8 *In re Sicroff*, 401 F.3d 1101, 1106 (9<sup>th</sup> Cir. 2005). In *Sicroff*, the Ninth Circuit held that libelous  
9 statements meet at least the first three elements of a nondischargeable debt under 11 U.S.C. §  
10 523(a)(6):

11 Because we are persuaded that at least some of Sicroff's statements were libelous,  
12 we also conclude that the first two criteria of "malicious injury" are met. A libelous  
act, by its nature, is self-evidently wrongful and is committed by an intentional act of  
13 publication--in this case, by Sicroff's dissemination of his letter. The third  
14 criterion--that the action necessarily cause injury--is also met because Sicroff's  
statements were directed at Jett's professional reputation and, therefore, will  
necessarily harm him in his occupation.

15 *Id.* at 1106. Similarly, in affirming the defamation portion of the judgment, the Texas Court of  
16 Appeals explicitly held that (1) the Debtor defamed Amanda Lollar, (2) clear and convincing  
17 evidence established that the libelous statements were made by the Debtor with actual malice, (3)  
18 “the statements were designed to ruin Lollar’s professional and personal reputation locally and  
19 nationally” and (4) Cummins-Cobb “had a specific intent to cause substantial injury or harm to  
20 Lollar.” See Complaint, Exhibit 2, pp. 61-62.

21 The fourth element, that the libelous statements were made without “just cause” is addressed  
22 by the specific finding by the Texas Court of Appeals that Cummins-Cobb acted with actual malice  
23 and an intent to injure Ms. Lollar’s professional reputation. *Id.* As in *Sicroff*, “libelous statements  
24 were not made with just cause and excuse.” *Id.* at 1107.

25 C. Collateral Estoppel Establishes Non-Dischargeability As A Matter Of Law.

26 Principles of collateral estoppel apply to proceedings seeking exceptions from discharge  
27 brought under 11 U.S.C. § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n.11, 112 L. Ed. 2d 755,  
28 111 S. Ct. 654 (1991); *In re Harmon*, 250 F.3d 1240, 1245 (9<sup>th</sup> Cir. 2001). The Texas Judgment is

1 entitled to collateral estoppel on the issue of “willful and malicious injury” as is the California  
2 judgment based thereon. “[C]ollateral estoppel precludes relitigation of issues argued and decided  
3 in prior proceedings.” *In re Harmon*, 250 F.3d at 1245. There are five threshold requirements:

4 First, the issue sought to be precluded from relitigation must be identical to that  
5 decided in a former proceeding. Second, this issue must have been actually litigated  
6 in the former proceeding. Third, it must have been necessarily decided in the former  
7 proceeding. Fourth, the decision in the former proceeding must be final and on the  
8 merits. Finally, the party against whom preclusion is sought must be the same as, or in  
9 privity with, the party to the former proceeding.

10 *Id.* All of the elements of collateral estoppel are obviously met here. The issues are identical, in  
11 that the court found that the Debtor acted willfully and with actual malice and with a specific intent  
12 to injure Ms. Lollar. Those issues were actually litigated and necessarily decided by the Texas  
13 Judgment as required elements of the defamation claim. The Texas Judgment is obviously final  
14 and on the merits, and was entered as a Sister State Judgment in California.<sup>2</sup> Finally, Cummins-  
15 Cobb was the defendant in the Texas Judgment. Thus, collateral estoppel establishes the non-  
16 dischargeability of the Texas Judgment and the Sister State Judgment as a matter of law and  
17 Plaintiff is entitled to judgment on the Fourth Cause of Action.

### 18 CONCLUSION

19 For the foregoing reasons, plaintiff Konstantin Kiondhi, as Trustee of the Cobbs Trust,  
20 requests that this Court enter judgment on the Fourth Cause of Action in the Adversary  
21 Complaint, determining that the Defamation Judgment and the Sister State Judgment based  
22 thereon, are non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

23 Respectfully Submitted,

24 STILLMAN & ASSOCIATES



25 Dated: April 27, 2018

26 By: \_\_\_\_\_

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

<sup>2</sup> Only a final judgment can be entered as a Sister State Judgment. See Code Civ. P. § 1710.50(a)(1). The Texas Supreme Court denied Debtor’s Petition for Review on August 28, 2015 in *Cummins v. Lollar*, Texas Supreme Court Case No. 15-0459.