

1 Philip H. Stillman, Esq. SBN# 152861
STILLMAN & ASSOCIATES
2 3015 North Bay Road, Suite B
Miami Beach, Florida 33140
3 Tel. and Fax: (888) 235-4279
pstillman@stillmanassociates.com
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5 Attorneys for plaintiff KONSTANTIN KHIONIDI, as Trustee of the
COBBS TRUST
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7 **UNITED STATES BANKRUPTCY COURT FOR THE**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 In re:) Case No. 2:17-bk-24993-RK
10 MARY CUMMINS-COBB,) Chapter 7
Debtor) Adv. Proc. No. 2:18-ap-01066-RK
11)
12 KONSTANTIN KHIONIDI, as Trustee of the) PLAINTIFF'S FURTHER REPLY IN SUPPORT
COBBS TRUST,) OF HIS MOTION FOR PARTIAL SUMMARY
13) JUDGMENT ON THE FOURTH CAUSE OF
Plaintiff,) ACTION
14 vs.)
15 MARY CUMMINS-COBB,) Date: March 12, 2019
Defendant.) Time: 2:30 p.m.
16)
17 Judge: Honorable Robert N. Kwan
Courtroom: 1675
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012
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1 Plaintiff KONSTANTIN KHIONIDI, as Trustee of the COBBS TRUST submits the following
2 further Reply in support of his Motion for Partial Summary Judgment on the Fourth Cause of
3 Action of the Adversary Complaint to determine the non-dischargeability of Plaintiff's judgment
4 against the debtor and defendant Mary Katherine Cummins-Cobb pursuant to 11 U.S.C. §
5 523(a)(6), as permitted by this Court's January 3, 2019 Order continuing the hearing on Plaintiff's
6 Motion for Partial Summary Judgment. As set forth below, despite being given more than a
7 month to put together *any* disputed facts (if there were any) in opposition to the Motion for Partial
8 Summary Judgment, and despite being warned specifically that she was required to present facts
9 to legitimately dispute Plaintiff's proposed Findings of Fact and Conclusions of Law, Cummins
10 has failed to present anything more than unsupported and irrelevant argument in response.
11 Accordingly, the facts underlying the Motion – which are specifically supported by court records –
12 must be deemed to be undisputed and the Motion for Partial Summary Judgment should be
13 granted.

14 ARGUMENT

15 I.

16 **CUMMINS HAS SUBMITTED NO EVIDENCE TO RAISE ANY GENUINE ISSUE OF MATERIAL**

17 **FACT**

18 Although Cummins is *in pro per*, Cummins is obligated to know and follow the Rules of
19 Civil Procedure, the Rules of Bankruptcy Procedure and the Local Bankruptcy Rules. LBR 9011-
20 2(d). LBR 7056-1(c), which governs responses to a motion for summary judgment requires that a
21 non-moving party do three things. See January 3, 2019 Order [ECF 41]. First, she must identify
22 each material fact and cite specific admissible evidence in support of her factual dispute.
23 Second, Cummins must present admissible evidence in support of her Separate Statement.
24 Third, Cummins must identify any additional facts, supported by admissible evidence, if any, that
25 create a genuine issue of *material* fact. Cummins has done none of those things, despite this
26 Court's gracious extension of *6 weeks* to do so.

27 A. Cummins Failed To Controvert Any Of The Statement of Undisputed Facts.

28 The January 3, 2019 Order could not have more clearly explained Cummins' specific

1 obligations regarding any dispute as to Plaintiff's uncontroverted facts. First, Cummins was
2 required to "serve, file, and lodge a separate concise statement of genuine issues with the
3 response" that "identify each material fact that is disputed and *cite the particular portions of any*
4 *pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to*
5 *establish the dispute and the existence of a genuine issue precluding summary judgment or*
6 *adjudication.*" LBR 7056-1(c)(2)(B).

7 Although Cummins prepared what she apparently contends was a statement of genuine
8 issues in dispute, in disputing such uncontroverted facts as the findings of the Texas trial court or
9 the Texas Court of Appeals, she presented *no* evidence whatsoever, and only presented pure
10 argument that she disagreed with the findings of the trial court and the Court of Appeals. That
11 falls far short of the specific instructions by this Court that she must support each claim that a fact
12 is disputed with admissible evidence, that if believed, would create a *genuine* factual dispute.
13 She has not only failed to present any *admissible* evidence that would controvert the
14 uncontrovertible, but she has instead merely re-argued her irrelevant beliefs that the judgments
15 were unfair, were unsupported by evidence, etc. That does not create an issue of fact.

16 B. Cummins Failed To Submit Any Admissible Evidence That Controverted A Single Fact
17 Germane To The Motion.

18 This Court's January 3, 2019 Order again could not have been clearer in spelling out
19 Cummins' obligations in disputing any facts relied upon by Plaintiff:

20 if defendant opposes plaintiff's motion for summary judgment, it is up to defendant
21 to show to the court that the specific facts alleged by plaintiff to be uncontroverted
22 are indeed controverted by defendant with admissible evidence, and thus, the rules
23 require that defendant as the responding party show in the statement of genuine
issues under Local Bankruptcy Rule 7056-1(c) with respect to each and every fact
asserted by plaintiff to be uncontroverted that either the fact is
uncontroverted or the fact is controverted with admissible evidence.

24 In response to 31 separate uncontroverted facts, Cummins did not present a single piece of
25 evidence to create a genuine issue of fact – only unsupported and irrelevant arguments about the
26 unfairness of the Texas judgment. In fact, despite this Court's admonition that if Cummins did
27 not submit admissible evidence, the Court would deem each fact as uncontroverted, Cummins
28 has not submitted any evidence at all, whether admissible or not, in support of her Separate

1 Statement. Accordingly, pursuant to LBR 7056-1(f), “the court may assume that the material
2 facts as claimed and adequately supported by the movant are admitted to exist without
3 controversy. . . .” It is now high time to put the hammer down on this vexatious defendant and
4 formally rule that the Texas Judgment and the California Judgment based thereon are non-
5 dischargeable, based on Cummins’ clear lack of any evidence or even valid argument
6 unsupported by evidence that the debt is dischargeable.

7 **CONCLUSION**

8 Since Cummins has not submitted any evidence at all to oppose the entry of partial
9 summary judgment on the Fourth Cause of Action, the narrow issue before this Court is whether
10 the evidence submitted by Plaintiff establishes a prima facie case that the Texas judgment is
11 nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Because the Texas Judgment attached to
12 the Stillman Decl. as Exhibit 2 is entitled to collateral estoppel effect and establishes that is is a
13 “willful and malicious injury” under § 523(a)(6), there is no genuine issue of material fact and
14 Plaintiff is entitled to judgment on the Fourth Cause of Action. For the foregoing reasons, plaintiff
15 Konstantin Kionidhi, as Trustee of the Cobbs Trust, requests that this Court enter Partial
16 Summary Judgment on the Fourth Cause of Action in the Adversary Complaint, determining that
17 the Defamation Judgment and the Sister State Judgment based thereon, are non-dischargeable
18 pursuant to 11 U.S.C. § 523(a)(6).

19 Respectfully Submitted,

20 STILLMAN & ASSOCIATES

21 

22 Dated: February 26, 2019

23 By: _____

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

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

Stillman & Associates
3015 North Bay Road, Suite B
Miami Beach, Florida 33140

A true and correct copy of the foregoing document entitled (*specify*):

REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE FOURTH CAUSE OF ACTION

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) December 26, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Debtor and Defendant *in pro per*, Mary Cummins-Cobb, mmarycummins@gmail.com (via email by stipulation of the parties)

Hon. Robert Kwan
US Bankruptcy Court, Central District of California, Room 303
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/26/2018 <i>Date</i>	Philip H. Stillman <i>Printed Name</i>	/s/ Philip H. Stillman <i>Signature</i>
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