

1 Philip H. Stillman, Esq. SBN# 152861
2 STILLMAN & ASSOCIATES
3 3015 North Bay Road, Suite B
4 Miami Beach, Florida 33140
5 Tel. and Fax: (888) 235-4279
6 pstillman@stillmanassociates.com

7 Attorneys for plaintiff KONSTANTIN KHIONIDI, as Trustee of the
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 _____)	NOTICE OF ERRATA RE DECLARATION OF
15 KONSTANTIN KHIONIDI, as Trustee of the)	PHILIP STILLMAN IN OPPOSITION TO
16 COBBS TRUST,)	DEFENDANT'S MOTION TO DISMISS
17 vs.)	BASED ON UNCLEAN HANDS
18 MARY CUMMINS-COBB,)	Date: March 27, 2019
19 Defendant.)	Time: 2 p.m.
20 _____)	

21 Judge: Honorable Robert N. Kwan
22 Courtroom: 1675
23 Edward R. Roybal Federal Building
24 255 E. Temple Street, Suite 1682
25 Los Angeles, CA 90012
26
27
28

Exhibit 1

UNITED STATES BANKRUPTCY COURT

CENTRAL District of CALIFORNIA

In re MARY CUMMINS-COBB Debtor

Case No. 2:17-bk-24993-RK

(Complete if issued in an adversary proceeding)

Chapter 7

KONSTANTIN KHIONIDI, Trustee Plaintiff

Adv. Proc. No. 2:18-ap-01066-RK

MARY CUMMINS-COBB v. Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Jennifer Charnofsky (Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: PLACE (9171 Wilshire Blvd, Suite 500, Beverly Hills, California, 90210) and DATE AND TIME (October 30, 2018 at 10 a.m.)

The deposition will be recorded by this method:

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: Documents listed on Exhibit A attached hereto.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: October 12, 2018

CLERK OF COURT

OR [Signature] Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, email address, and telephone number of the attorney representing (name of party) Konstantin Khionidi, Trustee, who issues or requests this subpoena, are: Philip Stillman, 3015 North Bay Road, Suite B, Miami Beach, FL 33140, tel. no. (888) 235-4279, pstillman@stillmanassociates.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DEFINITIONS

1. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

2. The term “DOCUMENT” or “DOCUMENTATION” is defined to be synonymous in meaning and equal in scope to the usage of the term “DOCUMENTS or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

3. When referring to DOCUMENTS, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

4. When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

5. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the

litigation.

6. The term “CONCERNING,” as used herein, means, in the broadest sense, constituting, referring to, relating to, reflecting, mentioning, discussing, summarizing, analyzing, depicting, describing, arising out of, in connection with or involving a transaction or course of dealing with or about the subject, or evidencing in any way.

7. “Person” refers to any individual, corporation, general partnership, limited partnership, joint venture, association, joint-stock company, trust, incorporated organization, government or political subdivision thereof, and other non-natural persons of whatever nature.

8. “Communication” means any contact between two or more persons and shall include, without limitation, written contact by means such as letters, memoranda, telegrams, or telexes, or by any document, and any oral contact such as face-to-face meetings and telephone conversations.

9. The requested documents include all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the documents requested.

10. If any document requested herein has been lost, destroyed or is otherwise unavailable for inspection, identify the author(s), address(es), the last custodian thereof, and the circumstances of its loss, destruction or unavailability.

11. “You”, “Your” or “Yourself” means, unless otherwise stated, Jennifer Charnofsky.

12. “Bankruptcy Petition” or “Petition” means the Petition, Schedules, Statement of Financial Affairs and all other DOCUMENTS submitted by Mary Cummins-Cobb in connection with the commencement of *In re Mary Cummins-Cobb*, Case No.

2:17-bk-24993-RK, where Jennifer Charnofsky is listed as a secured creditor.

13. Except where otherwise stated, the document requests are for the time period from January 1, 2013 to the present.

14. "Mary Cummins" or "Mary Cummins-Cobb" means the defendant and Debtor in this bankruptcy case and the alleged borrower on a purported automobile loan by you for the purchase of a 2005 Toyota Prius, as well as her agents, employees, servants, representatives and all other persons or entities acting on her behalf.

INSTRUCTIONS

1. The DOCUMENTS requested include all that are in your actual or constructive possession, custody, or control, including possession, custody, or control of your attorney.

2. You are instructed that possession, custody, or control, includes constructive possession in that you need not have actual physical possession. As long as you have a superior right to compel the production from the third party (including any agency, authority or representative), you have possession, custody, or control.

3. Notwithstanding any other language implying to the contrary, Plaintiffs are not requesting production of any materials which constitute the work product of any attorney.

4. You are requested to produce the documents responsive to this request as they are kept in the usual course of business, or to organize and label them to correspond with the categories specified below.

5. All documents shall be produced that respond to any part or clause of any paragraph of this request. Any document requested that cannot be produced in full,

produce such document to the extent possible and indicate specifically in your response to this request your inability to produce the remainder and sufficient information concerning the un-produced document or portion thereof so that the court and counsel can determine if a motion to compel is appropriate and determine if *in camera* inspection is needed to test the validity of any claim, privilege or other reason for non-production.

6. Selection of documents from the files and other sources shall be performed in such a manner as to ensure that the source of each document may be determined.

7. Documents attached to each other should not be separated unless sufficient records are kept to permit reconstruction of such grouping.

DOCUMENTS TO BE PRODUCED

1. All Documents Concerning a security interest in a Toyota Prius purportedly owned by debtor Mary Cummins-Cobb, including, without limitation, loan documents, checks received or paid, any records of title, any credit checks performed by YOU prior to purportedly making the automobile loan or any checks showing the purchase of the Toyota Prius for Mary Cummins-Cobb.

2. All Documents Concerning payments to you by Mary Cummins-Cobb for any purpose, from January 1, 2013 through the present.

3. All Documents Concerning payments to You by any person or entity on behalf of Mary Cummins-Cobb.

4. All Documents Concerning any lien filed with the California Department of Motor Vehicles to perfect a security interest in any vehicle owned or purportedly owned by

Mary Cummins-Cobb.

5. All Documents Concerning payments to You by Mary Cummins-Cobb or on her behalf as payments for an alleged automobile loan incurred on or about December 23, 2013.

6. All Documents Concerning Your payment of any money to Mary Cummins-Cobb.

7. All Documents Concerning Your payment of any money to anyone on behalf of Mary Cummins-Cobb.