

**2:20-cv-02149-AB**

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IN APPEAL IN THE  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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MARY CUMMINS,  
Defendant and Appellant,

v.

KONSTANTIN KHIONIDI, as Trustee of the COBBS TRUST  
Plaintiff and Appellee

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Appeal from Order of US Bankruptcy Court Adverse Proceeding  
Central District of California  
Case Nos. 2:18-ap-01066-RK, 2:17-bk-24993-RK Honorable Robert Kwan  
Hearing March 12, 2021 10:00 a.m. André Birotte Jr.

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**PETITION TO REHEAR**

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Mary Cummins  
Petitioner, Plaintiff, Appellant In Pro Per  
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## **APPELLANT'S PETITION TO REHEAR**

Appellant Mary Cummins ("Cummins") appealed from an order on a Motion for Summary Judgment case 2:18-ap-01066-RK. The Appeals Court released their order on this case January 7, 2021 affirming the bankruptcy court judgment. Appellant did not receive this order from the Court until January 8, 2021 via the Court's automatic email system.

### **ARGUMENT**

Appellant makes this petition for rehearing because the order misstates the record and misinterprets the relevant statutes and case law.

Appellant has never defamed Plaintiff. Plaintiff didn't show even one element of defamation in the trial court. Plaintiff never even stated what they felt was defamatory or who made any statements. It's impossible to prove malice in defamation if one has never even proved one element of defamation.

The judgment is dischargeable. The bankruptcy court previously ruled the judgment was dischargeable May 25, 2018 Appellant Appendix #2. The Court clearly stated the judgment meets the federal standards for debt dischargeability claims under 11 U.S.C. 523(a)(6) under *In re Plyam*, 530 B.R. 456 (9th Cir. BAP 2015).

Plaintiff still does not exist. It's fraud upon the Court for a non-existent Plaintiff to bring a complaint in front of the Court. A party who does not exist cannot be harmed and therefore cannot be a Plaintiff in a complaint. Plaintiff's attorney swore to the Court that Plaintiff would provide proof in the form of a notarized document that Plaintiff exists yet was never able to do so even after many months, see appeal citations. Plaintiff has never proved they exist. Plaintiff has no standing in this case.

### **MISTATEMENT OF THE RECORD**

The January 7, 2021 order from this Court states as follows,

“On Khionidi’s motion for summary judgment, the Bankruptcy Court found the above facts, but found triable issues concerning the validity of the Cobbs Trust and therefore Khionidi’s standing. Thereafter, Cummins moved for summary judgment on several grounds including the outstanding issue of Khionidi’s standing.”

This is false. The first ruling on the Motion for Summary Judgment was May 25, 2018 Bankruptcy Court Doc #19 pg 3 Appellant Appendix #2. It stated as follows boldface added for emphasis,

“Deny plaintiff's motion for judgment on the pleadings because: (1) no proof of service on defendant (LBR 9013-1(a), FRBP 7005 and FRCP 5(b)(2) requires mail service on defendant - no proof of consent by defendant to electronic service); (2) no proof of standing to assert claim of Amanda Lollar - defendant denies that plaintiff is Lollar's assignee in her answer, which also precludes judgment on the pleadings; **(3) no showing that plaintiff is entitled to judgment on the pleadings that the elements of collateral estoppel meet the standards of Texas law under which the state court judgment was entered and the judgment entitled to collateral estoppel effect under Texas law meets the federal standards**

**for debt dischargeability claims under 11 U.S.C. 523(a)(6) under In re Plyam, 530 B.R. 456 (9th Cir. BAP 2015).”**

The Court allowed Plaintiff to file a second Motion for Summary Judgment under certain conditions.

“In resubmitting the motion, plaintiff should also submit a copy of the state court complaint which relates to the state court judgment so that the court can see what exactly were the claims upon which judgment was rendered. Plaintiff (sic) ahsould also submit any express findings of fact made by the Texas trial court which were not attached to the complaint, which findings may show whether the standards of proof met in the **state court case** satisfy the federal standard of willfulness and malice under 11 U.S.C. 523(a)(6).”

Plaintiff did not submit facts and findings from the Texas trial court. Plaintiff instead submitted excerpts from the Opinion from the Appeal of the Texas trial court. The basis of this bankruptcy is a six page judgment from the trial court judgment case #352-2481690-10 Appendix Item 1. That judgment clearly states pg 6 that nothing else is included in the August 2012 judgment. The case had not been appealed at that time and might not have been appealed. If the case were not appealed, the Appeals Court Opinion would not exist. The Judge who oversaw the original trial died before the Appeals Court Opinion was released and didn't sign that Opinion. The ONLY evidence and facts in this case are in the actual judgment at the center of the bankruptcy. The Texas Appeals Court

Opinion should not be included in the analysis of the judgment which was made years earlier.

### **MISINTERPRETATION OF THE LAW**

As stated above the Order on the Motion for Summary Judgment and the resulting Appeal misinterpret the law on dischargeability of judgment debts in bankruptcy. The six page judgment as written is dischargeable. The judgment doesn't include the words "defamation," "defamatory," "malice," ... or anything else which would rise to the level of actual malice and nondischargeability.

The judgment is not a "list of defamatory statements." Defendant clearly didn't even make the statements in the judgment! They were clearly made by Plaintiff, Plaintiff's veterinarian, government agencies and other known and unknown people.

Plaintiff still does not exist. A non-existent entity cannot file a complaint unless under a John Doe alias. Plaintiff never filed under a John Doe alias but under a fake Russian name who does not exist who does not live anywhere and definitely not in Russia. The purpose of the

fake person was so there could be no discovery because the fake person stated they live in Russia over 100 miles away.

Plaintiff admitted in the trial court that they had no evidence of any damages or causation of anything by Defendant, see appeal citations. There never was one penny of damages and definitely not \$10,000,000 in damages. Plaintiff admitted this under oath in the trial court which was cited in appeal!

There was never a separate trial for damages in Texas. Damages must relate to actual damages and the net worth of Defendant. Defendant had a net worth less than zero before the judgment. Damages were never argued in these case. David Casselman wrote an amicus brief making these same arguments, see appeal citation.

### **CONCLUSION**

The Opinion is not based on the record or law in this case. Appellant asks the Court to grant a rehearing with argument.

Respectfully submitted,



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Mary Cummins January 27, 2021  
Appellant In Pro Per

## CERTIFICATE OF CONFERENCE

Defendant emailed Plaintiff's attorney Philip Stillman January 27, 2021 and asked if Stillman agreed with the motion to rehear. Stillman stated in email Stillman did not agree.

PROOF OF SERVICE BY MAIL  
(FRCivP 5 (b)) or  
(CCP 1013a, 2015.5) or  
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

**PETITION TO REHEAR**

on the following parties by filing it with the ECF system.

**Philip Stillman  
Stillman & Associates**

**Judge Robert Kwan  
US Bankruptcy Court**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, January 28, 2021, at Los Angeles, California.

Respectfully submitted,



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Mary Cummins  
645 W. 9th St. #110-140  
Los Angeles, CA 90015