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7 Attorneys for plaintiff KONSTANTIN KHIONIDI, as Trustee of the
8 COBBS TRUST

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

11 In re:
12 MARY CUMMINS-COBB,
13 Debtor

14 Case No. 2:21-cv-04671-DMG
15 Ch. 7 Case No. 2:17-bk-24993-RK
16 Adv. Proc. No. 2:18-ap-01066-RK

17 KONSTANTIN KHIONIDI, as Trustee of the
18 COBBS TRUST,

19 Chapter 7

20 **APPELLEE'S NOTICE OF RELATED CASES**

21 vs. Plaintiff,

22 No Hearing Required

23 MARY CUMMINS-COBB,
24 Defendant.

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1 PLEASE TAKE NOTICE that pursuant to this Court’s Notice Regarding Bankruptcy Appeal
2 requiring the parties to “to notify the Court of any cases previously filed with the District Court that
3 appear to be related to this bankruptcy appeal,” [Dkt. 3], this bankruptcy appeal is substantially
4 related to the previously decided bankruptcy appeal in *Cummins-Cobb v. Khionidi*, Case No.
5 2:20-cv-02149-AB (C.D.Cal. Jan. 7. 2021) (“*Cummins I*”), as appellant is seeking literally to re-
6 argue the issues already decided in the prior appeal between the same parties, regarding the
7 same adversary proceeding. In fact, in a frivolous filing in the bankruptcy court before the case
8 was transferred from the Bankruptcy Appellate Panel to the District Court, Cummins preemptively
9 attempted to claim that this matter should *not* go to Judge Birotte because “Defendant will not
10 receive a fair trial in the District Court of Judge Andre Birot.[sic].” Defendant’s Objection to
11 Plaintiff’s Election to Have Appeal Proceed in the United States District Court, Case No.
12 2:18-ap-01066-RK (Bankr.C.D. Cal. May 13, 2021) [Dkt. 220].

13 Cummins clearly knows that this case should be related to *Cummins I* and referred to
14 Judge Birotte. Cummins stated:

15 Judge Birot is clearly too busy to hear the case in a fair manner and is biased
16 against pro se parties. Judge Andre Birot dealt with Defendant’s Motions by
17 ignoring them thereby denying Defendant’s motions by time default (see docket).
18 Andre Birot has never had a hearing on a Motion in a previous appeal. Judge
19 Birot’s previous ruling was just a direct copy/paste of the previous Judge’s ruling.
20 There was no legal argument of the evidence or law on appeal. It
21 appeared that Judge Andre Birot never even read the judgment under appeal. The
22 judgment as written is dischargeable. The words of the judgment weren’t even
23 mentioned.

24 Thus, Cummins virtually acknowledges that this appeal should be referred to Judge Birotte. But
25 that is not all that Cummins claims:

26 Defendant believes Judge Birot is biased against Defendant. If Judge Birot weren’t
27 previously biased against Defendant, Judge Birot would be biased now based on
28 the above statements. If Judge Birot didn’t read them directly, Plaintiff would be
sure to include Defendant’s statements in Plaintiff’s documents filed with the Court.
The Court must rule according to perceived bias in this case. Therefore the Court
must not refer the case to the District Court or Judge Andre Birot if Defendant is to
have a fair trial.

However, ignoring the virtual acknowledgment that the two bankruptcy appeals are closely
related, the three factors listed in Local Rule 83-1.3 show that the cases are related and should
be disposed of by Judge Birotte.

STATEMENT OF FACTS

1
2 Appellee Konstantin Khionidi is the assignee of a defamation judgment against debtor
3 Mary Cummins in the Texas Superior Court, affirmed after appeal by the Texas Court of Appeals.
4 See *Cummins I*, attached hereto as Exhibit 1. That judgment was domesticated in the Los
5 Angeles Superior Court and duly assigned to appellee Khionidi. *Id.* In *Cummins I*, Cummins
6 appealed from the bankruptcy court's entry of judgment after granting Summary Adjudication of
7 Issues and then Partial Summary Judgment against Cummins, holding that pursuant to clear
8 Ninth Circuit precedent, the defamation judgment was not dischargeable pursuant to 11 U.S.C. §
9 523(a)(6) ("willful and malicious injury"). After the entry of final judgment, the adversary
10 proceeding was closed.

11 A. *Cummins I.*

12 Cummins appealed the entry of judgment and pursuant to Appellee's Notice of Election,
13 was transferred to the District Court (Birotte, J.). *Id.* (1) the Texas Judgment is dischargeable; (2)
14 the Texas Judgment was void; (3) Appellee does not exist and therefore has no standing; and (4)
15 Appellee has unclean hands. *Order Affirming Bankruptcy Court Judgment On Appeal, Cummins-*
16 *Cobb v. Khionidi*, Case No. 2:20-cv-02149-AB (C.D.Cal. Jan. 7. 2021) at p. 3. A copy of the
17 Order is attached hereto as Exhibit 1.

18 Despite repeated warnings from Judge Birotte and several motions, Cummins failed to
19 present either a proper Opening Brief or a proper record on appeal. Appellee, in his Answering
20 Brief, included the proper documents necessary for the resolution of the appeal. Ultimately, after
21 providing Cummins with two opportunities to present a proper Opening Brief and record, the court
22 affirmed the bankruptcy court in all respects. Although Cummins filed a Petition for Rehearing in
23 the District Court, that was denied.

24 B. *Cummins II.*

25 After the appeal was decided on January 7, 2021, Cummins then filed a "motion to dismiss
26 Adversary Proceeding" in the Bankruptcy Court, even though the adversary proceeding was
27 closed, final judgment entered, and affirmed on appeal. Cummins' theory was that despite
28 raising the issue in *Cummins I*, the adversary proceeding should be "dismissed" because Mr.

1 Khionidi “doesn’t exist.” On February 8, 2021, the Bankruptcy Court denied her motion on the
 2 narrow technical ground that the district court had not yet ruled on her Petition for Rehearing.
 3 After the District Court denied her Petition, she re-filed the same Motion to Dismiss Adversary
 4 Proceeding on February 26, 2021, which was denied by the Bankruptcy Court on March 18,
 5 2021. [Dkt. 203]. Regarding Cummins’ basis for the Motion, the Bankruptcy Court held that

6 This court’s judgment affirmed on appeal determined that the Cobbs Trust was
 7 valid and plaintiff as its representative had standing to bring the adversary
 8 proceeding. Thus, the court’s determinations already addressed the issue raised by
 9 defendant in her motion to dismiss regarding whether plaintiff is the real party in
 10 interest under Federal Rule of Civil Procedure 17(a). In determining that the trust is
 11 valid and that plaintiff as its representative had standing to bring the adversary
 12 proceeding, the court determines that plaintiff was the real party in interest under
 13 Federal Rules of Civil Procedure 17(a).

14 Order Denying Motion to Dismiss, p. 2. Cummins appealed this Order in *Cummins II* on May 10,
 15 2021, approximately 52 days after the entry of the Order. Thus, the appeal of that Order is
 16 untimely, even if it had any merit, was not barred by the law of the case and was an appealable
 17 order.¹ Undeterred, Cummins then filed a “Motion for Reconsideration” in the Bankruptcy Court,
 18 which was also denied on April 27, 2021. [Dkt. 208].

19 In the current appeal, Cummins identifies two issues: (1) that her “motion to dismiss the
 20 adversary proceeding,” filed in the bankruptcy court two months *after* the District Court (Birotte,
 21 J.) affirmed the Bankruptcy Court’s entry of final judgment was timely (Statement of Issues on
 22 Appeal, Issue No. 1) and (2) a claim that the bankruptcy court erred in granting summary
 23 judgment because, according to Cummins, Mr. Khionidi “does not exist.” (Issue Nos. 2-5).
 24 Because this appeal is plainly barred by Judge Birotte’s decision in *Cummins I* and Cummins
 25 never appealed that decision, *Cummins II* is directly related and indeed, four of the five identified
 26 issues on appeal are barred by the law of the case and res judicata.

27 ARGUMENT

28 Local Rule 83-1.3 states that a cases is related if (1) arise from the same or a closely

29 ¹ On May 13, 2021, the Bankruptcy Appellate Panel issued an Order to Show Cause re
 30 Appellate Jurisdiction but the case was transferred to this Court before the BAP could rule on
 31 whether there was appellate jurisdiction. A copy of the Order to Show Cause is attached hereto as
 32 Exhibit 2.

1 related transaction, happening, or event; (2) call for determination of the same or substantially
2 related or similar questions of law and fact; or (3) for other reasons would entail substantial
3 duplication of labor if heard by different judges. Using the disjunctive “or” means that a case is
4 related if any of the three factors are met. All are met here.

5 A. The Cases Arise From The Same Transaction.

6 *Cummins II* involves the same adversary proceeding, the same bankruptcy court order
7 granting summary judgment on Mr. Khionidi’s standing, and the same parties.

8 B. The Appeal Involves The Same Or Substantially Related Questions of Law And Fact.

9 Although Cummins’ Motion to Dismiss the adversary proceeding after Judge Birotte’s
10 Order affirming the entry of judgment against Cummins in the adversary proceeding was totally
11 and completely without merit, this appeal raises the same issues already determined in *Cummins*
12 *I*, namely that, as the bankruptcy court held in denying her Motion to Dismiss, that it had already
13 held that Mr. Khionidi did not lack standing and that finding had been affirmed on appeal. Thus,
14 Cummins’ remedy was a further appeal, not a motion to dismiss in the bankruptcy court after
15 losing the appeal. Since the issues of law and fact raised by Cummins in her Statement of Issues
16 on Appeal are identical to those raised in *Cummins I*, and even the appeal of the denial of her
17 motion for reconsideration is premised on the fact that the Bankruptcy Court erred in holding that
18 Mr. Khionidi had standing, this appeal also involves the same or substantially related questions of
19 law and fact.

20 C. This Appeal Would Entail Substantial Duplication of Labor If Heard by Different Judges.

21 In *Cummins I*, Judge Birotte became well-versed in the facts of the underlying bankruptcy
22 proceeding by virtue of determining not only the appeal itself, but a motion to dismiss the appeal,
23 a Motion for rehearing, review of the same record on appeal and two Opening Briefs and Mr.
24 Khionidi’s Answering Brief and Excerpts of the Record submitted by Mr. Khionidi. Although he
25 ultimately affirmed the appeal on the basis that Cummins had failed to submit a proper brief or
26 record on appeal from which to review any purported error, the Court did review the salient orders
27 on Summary Adjudication of Issues and then the Motion for Partial Summary Judgment. Judge
28 Birotte is therefore specifically familiar with the case and the issues, and would involve

1 substantial duplication if another judge were to hear this new appeal based on the same issues.²

2 Moreover, because a reversal of the bankruptcy court in *Cummins II* would literally conflict
3 with the District Court's ruling in *Cummins I*, it is in the nature of a motion for reconsideration of
4 *Cummins I* since it raises the same issue of Mr. Khionidi's standing already adjudicated by the
5 bankruptcy court and affirmed on appeal. Thus, it is only natural that the appeal should be re-
6 heard by Judge Birotte.

7 **CONCLUSION**

8 For the foregoing reasons, appellee Konstantin Khionidi respectfully requests that this
9 bankruptcy appeal be transferred to Judge Birotte for further proceedings.

10 Respectfully Submitted,

11 STILLMAN & ASSOCIATES

12 

13 Dated: June 12, 2021

14 By: _____

15 Philip H. Stillman, Esq.
16 Attorneys for KONSTANTIN KHIONIDI, as Trustee of
17 the COBBS TRUST

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25 _____
26 ² Local Rule 83-1.2.2 *requires* that if a case is dismissed prior to the entry of judgment and
27 “thereafter the same or essentially the same claims, involving the same or essentially the same
28 parties, are alleged in another action, the later-filed action shall be assigned to the judge to whom
the first-filed action was assigned.” Although Judge Birotte actually ruled on *Cummins I*, and
therefore this Rule does not technically apply, it certainly codifies the unremarkable concept that a
party cannot simply re-appeal to another judge.

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on June 13, 2021 or as soon as possible thereafter, copies of the foregoing Notice of Related Cases was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same and to the email address of Appellant listed with the Court, mmmarycummins@gmail.com.

By: /s/ Philip H. Stillman
Attorneys for Appellee Kostantin Khionidi as Trustee of the Cobbs Trust.

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Exhibit 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.: CV 20-02149-AB Date: January 7, 2021
Case in other Court: Bankruptcy No. 2:17-bk-24993-RK

Adversary No. 2:18-ap-01066-RK

Title: *In re: Cummins-Cobb*
Mary Katherine Cummins-Cobb v. Konstantin Khionidi

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian
Deputy Clerk

N/A
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Appearing

Attorney(s) Present for Defendant(s):
None Appearing

Proceedings: [In Chambers] ORDER AFFIRMING BANKRUPTCY COURT JUDGMENT

Appellant pro se Mary Katherine Cummins-Cobb (“Cummins” or “Appellant”)¹ appeals the Bankruptcy Court’s grant of summary judgment in favor of Appellee Konstantin Khionidi, as Trustee of the Cobbs Trust (“Appellee”), that pursuant to 11 U.S.C § 523(a)(6), a Texas defamation judgment against Cummins and the domesticated California judgment based thereon, are nondischargeable. Appellant’s request for oral argument is denied, as argument will not assist in the disposition of this appeal. The Bankruptcy Court’s Order is **AFFIRMED**.

BACKGROUND

The following background is based primarily on the Findings of Fact set

¹ The record states Appellant’s surname inconsistently as Cobb-Cummins, Cummins-Cobb, and Cummins.

forth by the Bankruptcy Court. See Appellant's Appendix of Excerpts of Record ("Appx.," Dkt. No. 38-1), 101-108.

On October 4, 2011, Bat World Sanctuary and Amanda Lollar filed a Second Amended Petition against Defendant Mary Cummins in the Texas District Court for Tarrant County, *Bat World Sanctuary et al. v. Cummins*, Case No. Case No. 352-248169-10 (the "Texas Case"). Appx. 102-103 (Fact 1). That Petition had counts for breach of contract, defamation, and exemplary damages. Appx. 103 (Fact 2). After a bench trial, the Texas Trial Court orally ruled that "the plaintiff has clearly proven that a defamation in this case was egregious as well as malicious as well as intentional." Appx. 103 (Fact 3). Based thereon, the Texas Trial Court entered a judgment ("Texas Judgment," Appx. 0011-0016) on August 27, 2012 and awarded \$3 million in actual damages for defamation and \$3 million in exemplary damages in favor of Plaintiff Amanda Lollar. Appx. 103 (Fact 4). In addition, the Texas Trial Court included a list of all of the defamatory statements that, as part of the Texas Judgment, Cummins was ordered to take down. *Id.* Cummins appealed that judgment and the judgment was affirmed as to the defamation cause of action and as to the award of exemplary damages relating to Lollar. See *Cummins v. Bat World Sanctuary*, No. 02-12-00285-CV, 2015 WL 1641144 (Tex. App. Apr. 9, 2015); see also Appx. 0019-0094. Appellant's petition for review to the Texas Supreme Court was denied, so the Texas Judgment is therefore final. Appx. 103 (Fact 6).

The Texas Court of Appeals stated in its opinion: "In a defamation case in which actual malice is required and is found, the First Amendment requires appellate courts to conduct an independent review of the evidence supporting the finding." Subsequently, the Texas Court of Appeals made extensive findings in support of its appellate judgment affirming the Texas Judgment. Appx. 103-104 (Fact 7); see also Appx. 104-106 (Facts 8-24) (summarizing the Texas Court of Appeals' findings). After all of these findings, the Texas Court of Appeals concluded that clear and convincing evidence supported the trial court's finding that Cummins published statements against Lollar with actual malice. Appx. 106 (Fact 21). The Texas Court of Appeals, in affirming the defamation and exemplary damages portions of the judgment, found that (1) the Debtor defamed Lollar, (2) clear and convincing evidence established that the libelous statements were made by the Debtor with actual malice, (3) the statements were designed to ruin Lollar's professional and personal reputation locally and nationally, and (4) Cummins had a specific intent to cause substantial injury or harm to Lollar. Appx. 106 (Facts 22).

Lollar then domesticated the Texas Judgment in California, which judgment

was entered as a California Judgment on November 9, 2012 in the amount of \$6,121,039.42. Appx 107 (Fact 25). Lollar assigned the judgment to Konstantin Khionidi, as Trustee of the Cobbs Trust, pursuant to Cal. Code Civ. P. § 673. Appx. 107 (Fact 26).

On December 7, 2017, Cummins filed the underlying voluntary petition under Chapter 7 of the Bankruptcy Code. Appx. 107 (Fact 27). On March 10, 2018, Khionidi commenced an adversary proceeding by filing a Complaint to Determine Dischargeability of Debt under 11 U.S.C. § 523(a)(6) against Cummins. Khionidi sought a ruling that the Texas and California Judgments were nondischargeable in Cummins's bankruptcy proceeding. Section 523(a)(6) provides that a bankruptcy discharge does not discharge 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).

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.

Ultimately, on February 10, 2020, in an extensive order that incorporated the prior findings of fact, the Bankruptcy Court denied Cummins's Motion for Summary Judgment and granted partial summary judgment for Khionidi. *See* Order (Appx. 158-193). The Bankruptcy Judge held that there was no issue of fact regarding the validity of the Cobbs Trust or the Assignment of the Judgment to Khionidi as trustee, and entered partial final judgment pursuant to Fed. R. Civ. P. 54(b) for Khionidi on his claim to determine the Texas and California judgments nondischargeable pursuant to 11 U.S.C. § 523(a)(6). The bankruptcy court held that "Summarily Adjudicated Uncontroverted Facts 1-30, determined by the court in its order of May 24, 2019, establish that the debt owed by Defendant from Plaintiff's assigned judgment of the Texas courts arose from willful and malicious injury." Appx. 166. Accordingly, pursuant to § 523(a)(6) Appellant's debt was not discharged in bankruptcy.

This appeal by Cummins followed. Cummins argues the Bankruptcy Court's judgment in favor of Appellee was wrong in four respects: (1) the Texas Judgment is dischargeable; (2) the Texas Judgment was void; (3) Appellee does not exist and therefore has no standing; and (4) Appellee has unclean hands.

DISCUSSION

The Court has reviewed the parties' briefs and summarily **AFFIRMS** the Bankruptcy Court's Judgment based on Appellant's failure to file a compliant opening brief or the necessary excerpts of record, as explained below.

Federal Rule of Bankruptcy Procedure ("FRBP" or "Rule") states that "[t]he appellant's brief must contain the following under appropriate headings and in the order indicated," and goes on to list 10 specific components of a brief. For example, Appellant's brief must include "(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review; (6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record; (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings; (8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies . . ." Fed. R. Bankr. P. 8014(a). Appellant's opening brief is missing these fundamental elements. Although Appellant's brief has a "statement of the case" that sets forth certain issues/rulings she is appealing, *see* Opening Br. (Dkt. No. 37) p. 1-2, she does not include a concise statement of the applicable standard of appellate review for each issue. More problematic, although the remainder of the brief sets forth material that could partly satisfy some of items (5) through (8), it is completely missing citations to the record, thus thwarting this Court's ability to review that record.

FRBP 8018(b)(4) states that "the appellant must serve and file with its principal brief excerpts of the record as an appendix. It must contain the following: (A) the relevant entries in the bankruptcy docket; (B) the complaint and answer, or other equivalent filings; (C) the judgment, order, or decree from which the appeal is taken; (D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal; (E) the notice of appeal; and (F) any relevant transcript or portion of it." Appellant Cummins designated "Docs. 1-166, All docs in adversary proceeding case," in her designation of record. *See* Designation (Dkt. No. 20-1), ECF p. #123. Appellant designated every document despite the advisement on the form designation that she used "that [the designation] should be limited to the documents and transcripts relevant to the arguments you are making on appeal. This almost always means that you should *not* include on this list every document filed in the Bankruptcy Court." *Id.* Notwithstanding Appellant's

overbroad designation, Appellant failed to file sufficient excerpts of record in violation of FRBP 8018(b)(4). Appellant filed only three record items: (1) the Texas Judgment, (2) the Bankruptcy Court's order denying without prejudice Appellee's motion for judgment on the pleadings (which is not relevant), and (3) the Bankruptcy Court's short (half-page) order granting summary judgment for Appellee on his claim for non-dischargeability. *See* Appendix to Opening Br. Appellant's briefs are replete with references to the Texas proceedings and accusations that Appellee has unclean hands based on those proceedings, the domestication of the judgment in California, and Appellee's conduct before the Bankruptcy Court, but Appellant has not filed any briefs or transcripts, for example, that would be necessary to review the proceedings below. "[A] failure to provide a sufficient record to support an informed review of the trial court's determinations may result in either dismissal of the appeal or summary affirmance of the trial court's judgment based upon the appellant's inability to demonstrate error." *In re Hamel*, No. ADV.07-00517, 2009 WL 7751431, at *10 (B.A.P. 9th Cir. Apr. 16, 2009). Here, without a sufficient record to review or citations to it, Appellant cannot demonstrate error and the Court cannot reasonably review the record in light of Appellant's arguments. The Court therefore summarily affirms the Bankruptcy Court's Judgment. *See In re O'Brien*, 312 F.3d 1135, 1137 (9th Cir. 2002) ("As with briefing inadequacies, the failure to present a sufficient record can itself serve as a basis for summary affirmance").

Despite Appellant's failure to file a compliant opening brief and sufficient excerpts of record, the Court did review the excerpts that Appellee filed. *See* (Dkt. No. 38-1). Appellee's Appendix of Excerpts includes six documents: (1) the Complaint objecting to discharge (which attached the Texas Judgment and the Texas Appellate Court Opinion affirming it); (2) Appellant's response to the Complaint; (3) and (5) the Bankruptcy Court's two lengthy orders resolving the summary judgment motions; (4) a declaration of Appellee's counsel in opposition to Appellant's summary judgment motion; and (6) the Bankruptcy Court's Final Judgment. The Court has reviewed these materials, and they reflect no facially obvious errors underlying the Judgment, let alone any that would require vacating the Judgment in Appellee's favor. The Court notes that much of Appellant's brief amounts to a collateral attack on the Texas proceedings. But Appellant cannot collaterally attack the final Texas judgment in this Court on an appeal from the Bankruptcy Court's judgment. *In re Jung Sup Lee*, 335 B.R. 130, 138-39 (B.A.P. 9th Cir. 2005) (no collateral attack in the bankruptcy court of a final sister-state judgment). Apart from this collateral attack, Appellant's opening brief summarily argues her bases for appeal, *see* Opening Br. 11-17, but as presented—without a sufficient record or citations to it, coherent legal argument, or citations to

authority—none of them overcomes the thorough reasoning set forth by the Bankruptcy Judge. At bottom, Appellant’s brief shows that she disagrees with the Bankruptcy Court’s orders, but does not show how those orders were wrong based on the record and under the law. By making these observations, the Court is not exercising discretion to review the proceedings below despite the Appellant’s deficient briefing and failure to file the excerpts of record. Rather, the Court is simply further elaborating why the deficiencies in Appellant’s filings are fatal to her appeal.

In sum, although Appellant is representing herself pro se, and although courts can give pro se litigants leeway in some respects, pro se litigants are nevertheless bound by the same rules of procedure as attorneys are. *See, e.g.*, Local Rule 1-3. Thus, pro se litigants must file compliant briefs and required excerpts of record. Here, the insufficient opening brief and the absence of the necessary excerpts of record mean that Appellant cannot meet her burden on appeal, so the Orders and Judgment of the Bankruptcy Court are affirmed.

CONCLUSIONS

For the foregoing reasons, the Bankruptcy Court’s Orders and Judgment are **AFFIRMED**.

IT IS SO ORDERED.

CC: BK Court

Exhibit 2

FILED

MAY 13 2021

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:

MARY CUMMINS-COBB,

Debtor.

MARY CUMMINS-COBB,

Appellant,

v.

KONSTANTIN KHIONIDI, AS
TRUSTEE OF THE COBBS TRUST,

Appellee.

BAP No. CC-21-1100

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

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

**CLERK'S ORDER RE
FINALITY
(Response Required)**

On March 18, 2021, the bankruptcy court entered an order denying a motion to dismiss an adversary proceeding and an application to strike the motion to dismiss. Bankruptcy Court Docket at 202 (Order Denying Motion and Application). Debtor Mary Katherine Cummins-Cobb filed a motion for reconsideration of that order on March 23, 2021. Bankruptcy Court Docket at 206 (Motion to Rehear Motion to Dismiss). An order denying reconsideration was entered on April 27, 2021. Bankruptcy Court Docket at 208 (Order Denying Defendant's Motion to Rehear Motion to Dismiss). Debtor filed a notice of appeal on May 10, 2021. Bankruptcy Court Docket at 210 (Notice of Appeal).

A jurisdictional issue must be resolved at this time. The order on appeal denied a motion to dismiss the adversary proceeding and denied an application to strike the appellant's motion to dismiss. Thus, the order on appeal does not appear to fully and finally dispose of the underlying litigation. *See Slimick v. Silva (In re Slimick)*, 928 F.2d 304, 307 (9th Cir. 1990).

No later than **Thursday, May 27, 2021**:

- a. Appellant must file with the BAP a written, legally-sufficient response explaining how the order on appeal is final and immediately reviewable under 28 U.S.C. § 158(a)(1); or
- b. Appellant must file with the BAP a motion for leave to appeal explaining why the BAP should hear the above-referenced appeal before the full and final disposition of the entire adversary proceeding. *See Lompa v. Price (In re Price)*, 79 B.R. 888, 889 (9th Cir. BAP 1987), *aff'd*, 871 F.2d 97 (9th Cir. 1989).

Failure to comply with the requirements of this order may result in dismissal of this appeal without further notice to the parties.

FOR THE PANEL,

Susan M. Spraul

Susan M. Spraul, Clerk of Court