

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 COURT FOR THE**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

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

14 Case No. 2:22-cv-00423-DSF  
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 appeals in *Cummins-Cobb v. Khionidi*, Case No.  
5 2:20-cv-02149-AB (C.D.Cal. Jan. 7, 2021) (“*Cummins I*”), and *Cummins-Cobb v. Khionidi*, Case  
6 No. 2:21-cv-04671-AB (C.D.Cal. Dec. 28, 2021) as appellant is seeking literally to re-argue the  
7 issues already decided in the prior appeal between the same parties, regarding the same  
8 adversary proceeding. *Cummins II* was previously transferred for the same reasons to Judge  
9 Birotte on June 17, 2021.

10 In fact, in a frivolous filing in the bankruptcy court before the case was transferred from the  
11 Bankruptcy Appellate Panel to the District Court, Cummins preemptively attempted in *Cummins II*  
12 to claim that this matter should *not* go to Judge Birotte because “Defendant will not receive a fair  
13 trial in the District Court of Judge Andre Birot.[sic].” Defendant’s Objection to Plaintiff’s Election  
14 to Have Appeal Proceed in the United States District Court, Case No. 2:18-ap-01066-RK  
15 (Bankr.C.D. Cal. May 13, 2021) [Dkt. 220].

16 Cummins clearly knows that this case should be related to *Cummins I* and *Cummins II* and  
17 referred to Judge Birotte. Cummins stated:

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

27 Thus, Cummins virtually acknowledged that this appeal should be referred to Judge Birotte. But  
28 that is not all that Cummins claims:

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

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

#### 4 **STATEMENT OF FACTS**

5 Appellee Konstantin Khionidi is the assignee of a defamation judgment against debtor  
6 Mary Cummins in the Texas Superior Court, affirmed after appeal by the Texas Court of Appeals.  
7 *See Cummins I*, attached hereto as Exhibit 1. That judgment was domesticated in the Los  
8 Angeles Superior Court and duly assigned to appellee Khionidi. *Id.* In *Cummins I*, Cummins  
9 appealed from the bankruptcy court's entry of judgment after granting Summary Adjudication of  
10 Issues and then Partial Summary Judgment against Cummins, holding that pursuant to clear  
11 Ninth Circuit precedent, the defamation judgment was not dischargeable pursuant to 11 U.S.C. §  
12 523(a)(6) ("willful and malicious injury"). After the entry of final judgment, the adversary  
13 proceeding was closed.

#### 14 A. Cummins I.

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

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

#### 27 B. Cummins II.

28 After the appeal was decided on January 7, 2021, Cummins then filed a "motion to dismiss

1 Adversary Proceeding” in the Bankruptcy Court, even though the adversary proceeding was  
2 closed, final judgment entered, and affirmed on appeal. Cummins’ theory was that despite  
3 raising the issue in *Cummins I*, the adversary proceeding should be “dismissed” because Mr.  
4 Khionidi “doesn’t exist.” On February 8, 2021, the Bankruptcy Court denied her motion on the  
5 narrow technical ground that the district court had not yet ruled on her Petition for Rehearing.  
6 After the District Court denied her Petition for Rehearing, she re-filed the same Motion to Dismiss  
7 Adversary Proceeding on February 26, 2021, which was denied by the Bankruptcy Court on  
8 March 18, 2021. [Dkt. 203]. Regarding Cummins’ basis for the Motion, the Bankruptcy Court held  
9 that

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

18 Order Denying Motion to Dismiss, p. 2. Cummins appealed this Order in *Cummins II* on May 10,  
19 2021. Thus, the appeal of that Order not only had no merit, but was barred by the law of the  
20 case.<sup>1</sup> Undeterred, Cummins then filed a “Motion for Reconsideration” in the Bankruptcy Court,  
21 which was also denied on April 27, 2021. [Dkt. 208].

22 In *Cummins II*, Cummins identified two issues on appeal: (1) that her “motion to dismiss  
23 the adversary proceeding,” filed in the bankruptcy court two months *after* the District Court  
24 (Birotte, J.) affirmed the Bankruptcy Court’s entry of final judgment was timely (Statement of  
25 Issues on Appeal, Issue No. 1) and (2) a claim that the bankruptcy court erred in granting  
26 summary judgment because, according to Cummins, Mr. Khionidi “does not exist.” (Issue Nos. 2-  
27 5). *Cummins II* was transferred to Judge Birotte, who affirmed the bankruptcy court’s orders on  
28 December 28, 2021.

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26 <sup>1</sup> On May 13, 2021, the Bankruptcy Appellate Panel issued an Order to Show Cause re  
27 Appellate Jurisdiction but the case was transferred to this Court before the BAP could rule on  
28 whether there was appellate jurisdiction. A copy of the Order to Show Cause is attached hereto as  
Exhibit 2.

1 C. Cummins III.

2 Cummins filed another Notice of Appeal on January 14, 2022. However, in this appeal,  
3 she has yet to identify what order she is appealing from. See e.g., Notice of Deficiencies of  
4 Bankruptcy Appeal dated January 20, 2022 [Dkt 4]. In identifying the order being appealed,  
5 Cummins merely stated:

6 Affirmation of Judgment in Adversary Proceeding. Defendant doesn't know date of  
7 the order or if an order has been made. Court will not state on phone. Defendant  
8 doesn't want to be late, is making this appeal today relative to whenever the order  
will be made. Form would only accept today's date below. The date the judgment,  
order, or decree was entered: 01/14/2022

9 However, there was no judgment, order or decree entered on January 14, 2022 and there is no  
10 appealable order entered by the bankruptcy court after Cummins' appeal in *Cummins II* from  
11 which to appeal, given that Cummins first appealed from the entry of final judgment against her in  
12 the Adversary Proceeding, and then appealed the only two post-judgment orders denying her  
13 motion to dismiss adversary proceeding (on which judgment had already been affirmed) and her  
14 subsequent Motion for Reconsideration of that denial. Thus, there is literally nothing left to  
15 appeal from.

16 In response to an email from counsel regarding what order Cummins is purporting to  
17 appeal from, Cummins claimed on March 15, 2022 that on February 6, 2022, she had filed a  
18 Notice attaching the Order by Judge Birotte in *Cummins II* affirming the bankruptcy court's two  
19 post-judgment orders as the order being appealed. However, Cummins' remedy was to file an  
20 appeal with the 9<sup>th</sup> Circuit Court of Appeals and not, as she did, the 9<sup>th</sup> Circuit Bankruptcy  
21 Appellate Panel. A copy of her March 15, 2022 email is attached hereto as Exhibit 1. *Cummins*  
22 *III* is directly related to the two prior decisions by Judge Birotte and there is no appellate  
23 jurisdiction.

24 **ARGUMENT**

25 Local Rule 83-1.3 states that a cases is related if (1) arise from the same or a closely  
26 related transaction, happening, or event; (2) call for determination of the same or substantially  
27 related or similar questions of law and fact; or (3) for other reasons would entail substantial  
28 duplication of labor if heard by different judges. Using the disjunctive "or" means that a case is

1 related if any of the three factors are met. All are met here.

2 A. The Cases Arise From The Same Transaction.

3 *Cummins III* involves the same adversary proceeding, the same bankruptcy court order  
4 granting summary judgment on Mr. Khionidi's standing, and the same parties.

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

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

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

19 In *Cummins I* and *Cummins II*, Judge Birotte became well-versed in the facts of the  
20 underlying bankruptcy proceeding by determining not only the appeal itself, but a motion to  
21 dismiss the appeal, a Motion for rehearing, review of the same record on appeal and two  
22 Opening Briefs and Mr. Khionidi's Answering Brief and Excerpts of the Record submitted by Mr.  
23 Khionidi. Although he ultimately affirmed the appeal on the basis that Cummins had failed to  
24 submit a proper brief or record on appeal from which to review any purported error, the Court did  
25 review the salient orders on Summary Adjudication of Issues and then the Motion for Partial  
26 Summary Judgment. Similarly, in the next appeal, Cummins again tried to relitigate the issues  
27 already determined in *Cummins I*.

28 Judge Birotte is therefore specifically familiar with the case and the issues, and would

1 involve substantial duplication if another judge were to hear this new appeal based on the same  
2 issues.<sup>2</sup>

3 **CONCLUSION**

4 Although this Court is certainly capable of determining what to do with this improper  
5 appeal, because Judge Birotte has handled both *Cummins I* and *Cummins II*, and this purported  
6 “appeal” is so plainly related to the earlier appeals, this Court should transfer the case to Judge  
7 Birotte for any further proceedings. For the foregoing reasons, appellee Konstantin Khionidi  
8 respectfully requests that this improper appeal be transferred to Judge Birotte for further  
9 proceedings.

10 Respectfully Submitted,  
11 STILLMAN & ASSOCIATES

12 

13 Dated: March 24, 2022

14 By: \_\_\_\_\_  
15 Philip H. Stillman, Esq.  
16 Attorneys for KONSTANTIN KHIONIDI, as Trustee of  
17 the COBBS TRUST

25 \_\_\_\_\_  
26 <sup>2</sup> 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  
*Cummins II*, 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 March 24, 2022 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](mailto: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”)<sup>1</sup> 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

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<sup>1</sup> 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



JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:21-cv-04671-AB

Date: December 28, 2021

Title: *Mary Katherine Cummins-Cobb v. Konstantin Khionidi*  
*In re: Cummins-Cobb*, BK# 2:17-bk-24993-RK; ADV# 2:18-ap-01066-RK

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

Carla Badirian  
Deputy Clerk

N/A  
Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Appearing

None Appearing

**Proceedings: [In Chambers] ORDER AFFIRMING BANKRUPTCY COURT ORDERS**

Appellant *pro se* Mary Katherine Cummins-Cobb (“Cummins” or “Appellant”) appeals the Bankruptcy Court’s March 18, 2021 Order Denying her Motion to Dismiss Adversary Proceeding, and its April 27, 2021 Order Denying Defendant’s Motion to Rehear Motion to Dismiss Adversary Proceeding.

**DISCUSSION**

For all of the reasons stated in the responsive brief of Appellee Konstantin Khionidi, as Trustee of the Cobbs Trust (“Appellee”), this appeal is frivolous. The Bankruptcy Court previously issued an order in the adversary proceeding denying Appellant’s Motion for Summary Judgment and granting partial summary judgment for Appellee. Appellant appealed that Order. On January 7, 2021, this Court affirmed the Bankruptcy Court’s Order, and thereafter denied Appellant’s motion for reconsideration. *See Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. CV 20-02149-AB (*Cummins I*), Dkt. Nos. 40, 49. Those orders are final.

Thereafter, Appellant filed in the Bankruptcy Court her Motion to Dismiss the Adversary Proceeding. However, judgment was already entered in the Adversary Proceeding, and it was affirmed by this Court. The Adversary Proceeding was closed and the judgment became final, so there was no case to dismiss.

Substantively, Appellant’s central argument—that the Bankruptcy Court erred in granting summary judgment to Appellee Mr. Khionidi because he “does not exist” and thus lacks standing—is barred by both res judicata and law of the case. Appellant raised this exact issue in the summary judgment proceedings. The Bankruptcy Court found that Mr. Khionidi did have standing, and this Court affirmed that decision on appeal. These orders are final, so the issue is clearly barred by both res judicata and law of the case. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (elements of res judicata), and *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (discussing when law of the case applies).

Even if the matters raised on appeal were not barred, the Court would summarily affirm the Bankruptcy Court’s Orders based on the deficiencies in Appellant’s briefing and appendix. *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.”), and *In re Hamel*, No. ADV.07-00517, 2009 WL 7751431, at \*10 (B.A.P. 9th Cir. Apr. 16, 2009) (“[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.”).

Appellant’s request for oral argument is denied, as argument will not assist in the disposition of this appeal.

For at least the above reasons, the Bankruptcy Court’s Orders are **AFFIRMED**.

**IT IS SO ORDERED.**

Cc: BK Court