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5 COBBS TRUST, judgment creditor

6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR LOS ANGELES COUNTY**

9 AMANDA LOLLAR,  
10 Plaintiff  
11 v.  
12 MARY CUMMINS,  
13 Defendant

Case No. BS140207

**OPPOSITION TO MOTION TO VACATE  
RENEWAL OF JUDGMENT**

Date: November 28, 2022  
Time: 8:30 a.m.  
Room: Dept 24

Hon. Kristin S. Escalante  
Reservation ID: 425701048689

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1 **INTRODUCTION**

2 This is judgment debtor Mary Cummins’ fourth attempt to relitigate the validity of the  
3 underlying judgment being renewed. However, her two main claims, that (1) she did not defame  
4 Amanda Lollar and (2) the judgment cannot be renewed because the assignee of the domesticated  
5 sister state judgment “does not exist” have been repeatedly rejected by the Texas Court of Appeals,  
6 the U.S. Bankruptcy Court for the Central District of California (twice), the U.S. District Court sitting  
7 as an appellate court over the judgment of the Bankruptcy Court (twice and in a third ruling, finding  
8 her contentions to be frivolous).<sup>1</sup>

9 As the District Court held,

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

20 *Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS  
21 247738, at \*2 (C.D. Cal. Dec. 28, 2021).

22 As for her claim that she did not defame Lollar, the District Court affirmed the Bankruptcy  
23 Court judgment, holding:

24 The Court notes that much of Appellant's brief amounts to a collateral attack on the  
25 Texas proceedings. But Appellant cannot collaterally attack the final Texas judgment  
26 in this Court on an appeal from the Bankruptcy Court's judgment. *In re Jung Sup Lee*,  
27 335 B.R. 130, 138-39 (B.A.P. 9th Cir. 2005) (no collateral attack in the bankruptcy  
28 court of a final sister-state judgment).

*Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS  
5154, at \*10 (C.D. Cal. Jan. 7, 2021).

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<sup>1</sup> The District Court also affirmed the Bankruptcy Court’s Summary Judgment Order holding that the Judgment was non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). “The judgment owed to Plaintiff as determined in the judgment in the Texas case and the resulting Sister State Judgment based thereon and entered in the Superior Court of California for the County of Los Angeles is not dischargeable.” *In re Cummins-Cobb*, No. 2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at \*53 (Bankr. C.D. Cal. Feb. 10, 2020).

1 After she applied for an *in forma pauperis* waiver of fees and costs for an appeal of  
2 *Cummins II*, the District Court held that “The court has considered the motion and the motion is  
3 DENIED. The Court certifies that the proposed appeal is not taken in good faith under 28 U.S.C.  
4 1915(a) and is frivolous, without merit and does not present a substantial question within the  
5 meaning of 28 U.S.C.753(f).” *In re Cummins-Cobb*, Case No. 2:21-cv-04671-AB (C.D.Cal. May 9,  
6 2022). A copy of this Order is attached to the Declaration Of Philip Stillman as Exhibit 1.

7 Therefore, the only one of Cummins’ arguments *not* barred by the judgments of the District  
8 Court and the bankruptcy court is that the amount of the renewed judgment is incorrect. However,  
9 not only is the amount of the renewed judgment correct, but Cummins claims that the interest rate  
10 used to calculate the amount of interest added to the judgment should be 5% – the Texas judgment  
11 rate – rather than the California judgment rater of 10% as set forth in Code Civ. P. § 685.010. As set  
12 forth in the Stillman Declaration, the renewed judgement correctly gives Cummins credit for amounts  
13 paid, *before* the calculation of interest and other than the interest rate, Cummins points to nothing  
14 that would support an argument that the amount of the renewed judgment is incorrect.

### 15 **STATEMENT OF FACTS**

16 A. The Issues Raised Regarding The Existence Of The Assignee and The Validity of the Trust  
17 And the Assignment of the Judgment Have Been Litigated And Lost.

18 Amanda Lollar obtained a judgment against Cummins in the principal amount of  
19 \$6,121,039.42, including costs and interest on August 27, 2012. Stillman Decl., ¶ 2. On November  
20 9, 2012, Lollar domesticated the Sister State Judgment pursuant to Code Civ. P. § 1714.10 *et seq.*  
21 In the amount of \$6,000,000 plus interest in the amount of \$120,821.92 and \$217.50 in costs, for a  
22 total of \$6,121,039.42, a copy of which is attached to the Application for Renewal of Judgment, filed  
23 on September 19, 2022 in this Court. On April 25, 2013, the judgment was recorded with the County.  
24 A copy of the recording is attached to the Stillman Declaration as Exhibit 2.

25 On April 10, 2017, the judgment was duly assigned to Konstantin Khionidi, as Trustee of the  
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1 Cobbs Trust.<sup>2</sup> *In re Cummins-Cobb*, No. 2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at \*40-41  
2 (Bankr. C.D. Cal. Feb. 10, 2020) (“Plaintiff has offered sufficient and uncontroverted evidence of his  
3 standing to sue because on the assignment of the judgment of the Texas Courts from Amanda  
4 Lollar, the original plaintiff, to him as trustee of the trust. Defendant has not offered competent and  
5 admissible evidence to rebut Plaintiff’s evidentiary showing of standing.”). Regarding Cummins’  
6 claim that the Cobbs Trust was a forgery, the Bankruptcy Court granted summary judgment, holding  
7 that “summary adjudication of this issue is granted in favor of the nonmoving party, Plaintiff, and  
8 against the moving party, Defendant, on the ground that the Cobbs Trust is a valid revocable living  
9 trust under California law.” *Id.* at \*47-48.

10 As to the validity of the Assignment to Mr. Khionidi, the bankruptcy court held that

11 Having reviewed the Assignment of Judgment attached to the Stillman Declaration as  
12 Exhibit 2, the court finds as an uncontroverted fact that the Acknowledgment of  
13 Assignment of Judgment to Konstantin Khionidi as Trustee of the Cobbs Trust  
14 complies in every respect with California Code of Civil Procedure § 673 and is  
therefore a valid assignment to the Cobbs Trust of the Texas Judgment and the  
California Sister-State Judgment. The court also determines as a matter of law that  
Defendant lacks standing to challenge the Assignment.

15 *In re Cummins-Cobb*, 2020 Bankr. LEXIS 358, at \*49. The Bankruptcy Court’s judgment was  
16 appealed to the District Court, which affirmed the Bankruptcy Court. *Cummins-Cobb v. Khionidi (In*  
17 *re Cummins-Cobb)*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154, at \*5-6 (C.D. Cal. Jan. 7,  
18 2021), where “Cummins argues the Bankruptcy Court’s judgment in favor of Appellee was wrong in  
19 four respects: (1) the Texas Judgment is dischargeable; (2) the Texas Judgment was void; (3)  
20 Appellee does not exist and therefore has no standing; and (4) Appellee has unclean hands.”

21 Cummins then filed a Motion to Dismiss the Adversary proceeding (although judgment had  
22 already entered and was affirmed), based on the same arguments. That Motion was denied:

23 Rejecting Cummins’ basis for the Motion, the Bankruptcy Court held that

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25 <sup>2</sup> To avoid collection activities after the Assignment, Cummins filed a Chapter 7 Bankruptcy,  
26 *In re Cummins*, Case No. 2:17-bk-24993-RK (Bank.C.D.Cal. 2017). Mr. Khionidi commenced an  
27 adversary proceeding to determine the nondischargeability of the defamation judgment pursuant to  
28 11 U.S.C. § 523(a)(6) (“willful and malicious injury”), *Khionidi v. Cummins*, Adv. Proc. No.  
2:18-ap-01066-RK, on which summary judgment was granted in favor of Khionidi on February 10,  
2020).

1 This court's judgment affirmed on appeal determined that the Cobbs Trust was valid  
2 and plaintiff as its representative had standing to bring the adversary proceeding.  
3 Thus, the court's determinations already addressed the issue raised by defendant in  
4 her motion to dismiss regarding whether plaintiff is the real party in interest under  
5 Federal Rule of Civil Procedure 17(a). In determining that the trust is valid and that  
6 plaintiff as its representative had standing to bring the adversary proceeding, the court  
7 determines that plaintiff was the real party in interest under Federal Rules of Civil  
8 Procedure 17(a). Defendant's remedy to contest the judgment based on the court's  
9 determinations is an appeal, not a post-judgment motion to dismiss, which the court  
10 determines to lack merit.

11 *In re Cummins*, Case 2:18-ap-01066-RK (Bank. C.D.Cal. Mar. 18, 2021), Order Denying Motion to  
12 Dismiss, p. 2, attached to the Stillman Decl. as Exhibit 3. Cummins appealed that Order to the  
13 District Court which again affirmed the Bankruptcy Court, as quoted above. *Cummins-Cobb v.*  
14 *Khionidi (In re Cummins-Cobb)*, No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS 247738, at \*2 (C.D.  
15 Cal. Dec. 28, 2021). Cummins then appealed to the Ninth Circuit, and the District Court entered an  
16 Order finding that her appeal was frivolous. *In re Cummins-Cobb*, Case No. 2:21-cv-04671-AB  
17 (C.D.Cal. May 9, 2022). Stillman Decl., Exhibit 1.

18 B. The Renewal Of The Judgment.

19 As discussed above, Mr. Khionidi, as Trustee of the Cobbs Trust, is the valid assignee of the  
20 Lollar Judgment. The Texas Judgment was renewed on March 21, 2021. The Sister State  
21 Judgment entered on November 9, 2012 was timely renewed on September 19, 2022, *i.e.*, within 10  
22 years of the judgment.<sup>3</sup> Code Civ. P. § 683.130(a) (judgment may be renewed within 10 years of  
23 entry of judgment).

24 The Notice of Application for Renewal of Judgment was served via mail on Cummins to her  
25 correct address on September 19, 2022 pursuant to Code Civ. P. § 683.160 and the Proof of  
26 Service filed with the Court, and she acknowledges having received the Notice in her Motion. Her  
27 Motion was timely filed on October 21, 2022.

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<sup>3</sup> The Application for Renewal of Judgment was actually filed on September 1, 2022, but was not processed by the Clerk until September 19, 2022.

1 **ARGUMENT**

2 **I.**

3 **CUMMINS' CLAIMS REGARDING THE VALIDITY OF THE SISTER STATE JUDGMENT, THE**  
4 **EXISTENCE OF THE ASSIGNEE, THE VALIDITY OF THE TRUST AND THE VALIDITY OF**  
5 **THE ASSIGNMENT HAVE ALL BEEN REPEATEDLY RESOLVED AGAINST HER AND ARE**  
6 **BARRED BY RES JUDICATA**

7 Code Civ. P. § 683.170(a), renewal of a judgment pursuant to this article may be vacated on  
8 any ground that would be a defense to an action on the judgment. None of these collateral attacks  
9 are a defense to any actions on the judgment. However, it is a purely theoretical discussion,  
10 because regardless, as discussed fully above, the Bankruptcy Court's final judgment on the issues,  
11 as well as the District Court's two affirmances disposes of Cummins' arguments that Mr. Khionidi  
12 doesn't exist, that the assignment to Mr. Khionidi is invalid, that the original Texas judgment was  
13 wrongly decided – all of the substantive claims – have been clearly determined against Cummins.  
14 In fact, as quoted above, the District Court specifically held that these "contentions" have been  
15 resolved against Cummins and are res judicata. California courts must give full faith and credit to  
16 the judgment of a federal court. Code Civ. Proc. § 1908. Therefore, this court must give the same  
17 effect to the federal dismissal as would be accorded to it in a federal court. *Levy v. Cohen* (1977) 19  
18 Cal.3d 165, 173 [137 Cal.Rptr. 162, 561 P.2d 252], *cert. den.* 434 U.S. 833 [54 L.Ed.2d 94, 98 S.Ct.  
19 119]. Since the District Court already held that these issues were barred by res judicata.  
20 Accordingly, Cummins is barred from litigating them again here.

21 **II.**

22 **CUMMINS' ARGUMENT REGARDING THE PROOF OF SERVICE IS MERITLESS**

23 Cummins spends an inordinate amount of time regarding the allegedly defective Proof of  
24 Service. However, as the Court can plainly see from the Docket, the Proof of Service is in proper  
25 form and filed with the Court on the same day that it was served. However, even assuming that the  
26 Proof of Service that she received somehow misidentified the case, that is irrelevant because the  
27 validity of the Renewal of Judgment is not dependent on a Proof of Service.

28 As set forth in Code Civ. P. § 683.160(a), "The judgment creditor shall serve a notice of

1 renewal of the judgment on the judgment debtor. Service shall be made personally or by first-class  
2 mail and proof of service shall be filed with the court clerk.” Subsection (b) states that “until proof of  
3 service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement  
4 proceedings be commenced to enforce the judgment, except to the extent that the judgment would  
5 be enforceable had it not been renewed.” Since no writs or enforcement proceedings to enforce the  
6 judgment have been commenced, whether the Proof of Service mistakenly referred to a different  
7 case by accident is irrelevant, as there is no question that Cummins received the Notice of Renewal  
8 of Judgment and the Application for Renewal of Judgment – she admits that she did, Motion, p. 16.

9 Her various complaints about Counsel for the Judgment Creditor allegedly not causing the  
10 documents to be mailed from his Los Angeles office and her personal attacks on Mr. Hoffman, who  
11 works for Mr. Stillman as a paralegal, Stillman Decl., ¶ 5, are unsupported by any law and are  
12 baseless, not only because she actually received the documents, meaning that they were properly  
13 addressed, but she timely and within 30 days of service, filed her motion. Accordingly, her  
14 arguments regarding the Proof of Service are legally meritless and have nothing to do with the  
15 validity of the Renewal of Judgment.

### 16 III.

#### 17 **THE RENEWAL WAS TIMELY AND THE JUDGMENT CORRECTLY COMPUTED**

18 Cummins’ last claims are that the renewal of the California judgment was untimely and that  
19 the amount of the renewed judgment was incorrect. Both lack any merit.

20 First, aside from the fact that Cummins is citing to Code Civ. P. § 1714.10 *et seq.*, which  
21 governs *obtaining* a Sister State judgment, a *renewal* of a California judgment is governed by Code  
22 Civ. P. § 683.110 *et seq.* Code Civ. P. § 683.130(a) provides that “In the case of a lump-sum  
23 money judgment . . . the application for renewal of the judgment may be filed at any time before the  
24 expiration of the 10-year period of enforceability provided by Section 683.020. Since the California  
25 judgment was obtained on November 9, 2012, to be timely, the application for renewal of the  
26 judgment had to be filed prior to November 9, 2022. Here, the application was filed on September 1,  
27 2022, but processed by the Clerk on September 19, 2022, well prior to November 9, 2022.

28 Second, as shown by the worksheet providing the calculation of the amount of the judgment

1 is exactly correct. Cummins' only objections are (1) that the interest rate should be 5%, not 10%  
2 and (2) that she was not given credit for money previously seized, which is false, Stillman Decl., ¶ 6.  
3 As set forth above, this is a California judgment, not a Texas judgment. California judgments bear  
4 an interest rate of 10%, not 5%. Code Civ. P. § 685.010. Accordingly, the interest rate used is  
5 correct. As for Cummins' contention that she was not given credit in the renewed judgment for the  
6 \$4,390.75 that had been seized, that is simply not the case as shown by the Application for Renewal  
7 of Judgment listing that amount as a credit. Moreover, from a mathematical point of view, the  
8 amount of the judgment was calculated by first deducting the \$4,390.75 from the Judgment and then  
9 applying interest only to the net amount of the judgment after deducting the \$4,390.75. Stillman  
10 Decl., ¶¶ 6-7.

11 **IV.**

12 **IF THE COURT BELIEVES THAT THERE IS ANY ERROR, THE JUDGMENT CREDITOR**  
13 **SHOULD BE PERMITTED TO AMEND THE APPLICATION**

14 The amount of the judgment is correct and complies with Code Civ. P. § 683.110 *et seq.*  
15 However, Code Civ. P. § 683.170(c) provides that "Upon the hearing of the motion, the renewal may  
16 be ordered vacated upon any ground provided in subdivision (a), and another and different renewal  
17 may be entered, including, but not limited to, *the renewal of the judgment in a different amount if*  
18 *the decision of the court is that the judgment creditor is entitled to renewal in a different amount.*"  
19 (Emphasis added). Although Mr. Khionidi denies that there is any error in the amount of the  
20 renewed judgment, to the extent that the Court believes that there has been some error, Khionidi  
21 respectfully requests that this Court renew the judgment in the amount that this Court believes is  
22 correct.

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1 **CONCLUSION**

2 For the foregoing reasons, Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust  
3 hereby requests that this Court deny Cummins' Motion to Vacate Renewal of Judgment.

4 Respectfully Submitted,

5 STILLMAN & ASSOCIATES

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7 Dated: November 14, 2022

8 By: \_\_\_\_\_  
Philip H. Stillman, Esq.  
9 *Attorneys for KONSTANTIN KHIONIDI, as Trustee of*  
*the COBBS TRUST*

1 **PROOF OF SERVICE**

2 Case Name: *Amanda Lollar et al. v. Mary Cummins,*  
3 Case Number: BS140207  
4 Court: Los Angeles County Superior Court

5 I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or  
6 proceeding. I have an office in Los Angeles, California where the mailing occurred.

7 On November 14, 2022, I caused to be served the following document(s):

8 **OPPOSITION TO MOTION TO VACATE RENEWED JUDGMENT; DECLARATION OF  
9 PHILIP STILLMAN**

10 on the interested parties in this action by email through OneLegal Attorney Service to:

11 Mary Cummins a/k/a Mary Cummins-Cobb  
12 645 W. 9th St. #110-140,  
13 Los Angeles, CA 90015  
14 [mmmarycummins@gmail.com](mailto:mmmarycummins@gmail.com)

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
16 and correct. Executed on November 14, 2022 at Miami Beach, Florida.

17 

18 By: \_\_\_\_\_  
19 Philip H. Stillman, Esq.