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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARRIE ANN CLARK,  
Plaintiff,  
v.  
HORACE MANN INSURANCE  
COMPANY,  
Defendant.

No. 2:16-cv-2252 TLN DB

ORDER

Plaintiff alleges, essentially, that her home was insured by defendant at the time the home caught fire, and that defendant conducted a fraudulent investigation into plaintiff's insurance claim. (ECF No. 7 at 1.) The matter came before the undersigned on May 18, 2018, for hearing of defendant's motion to compel pursuant to Local Rule 302(c)(1). (ECF No. 45.) Attorney Robbin Coker appeared telephonically on behalf of the plaintiff. Attorney Brian O'Conner appeared in person on behalf of the defendant.

On May 22, 2018, the undersigned issued an order granting defendant's motion to compel, ordering plaintiff to provide defendant discovery responses within twenty-one days, and ordering plaintiff's counsel to pay defendant \$2,430 in sanctions within twenty-one days. (ECF No. 46.) On July 17, 2018, defendant filed a motion for sanctions due to plaintiff's failure to comply with the May 22, 2018 order. (ECF No. 47.) That motion seeks terminating and/or evidentiary

1 sanctions, as well as an additional \$2,940 in monetary sanctions. Nonetheless, plaintiff failed to  
2 file any response to defendant's motion.

3 Accordingly, on July 31, 2018, the undersigned issued to plaintiff an order to show cause.  
4 (ECF No. 48.) Plaintiff was ordered to show cause in writing within fourteen days. Plaintiff's  
5 counsel were also ordered to serve a copy of the order on the plaintiff and file proof of service  
6 with the court. Moreover, plaintiff was to file a statement of opposition or non-opposition on or  
7 before August 31, 2018. (Id. at 2.) Plaintiff's counsel has failed to respond to that order in any  
8 manner.

9 Plaintiff's counsel Robbin Coker has repeatedly failed to diligently prosecute this action  
10 and comply with the court's orders. See ECF Nos. 12, 16, 24, 26, 29, 30, 33. On June 15, 2017,  
11 attorney Coker filed a declaration stating:

12 . . . due to counsel's family related issues that have occurred over the  
13 first several months of this year, counsel is filing herewith an  
14 Association of Counsel adding attorney Robert E. McCann, as co-  
15 counsel to ensure that this matter is handled expeditiously should  
future unanticipated medical emergencies with her or her family  
arise.

16 (ECF No. 36 at 2.) However, neither attorney Coker nor attorney McCann have complied with  
17 the undersigned's May 22, 2018, or July 31, 2018 orders.<sup>1</sup>

18 Despite repeated opportunities, plaintiff's attorneys have failed to prosecute this action,  
19 failed to oppose defendant's motion, and failed respond to orders from this court. As a result,  
20 defendant's motion will be granted with respect to the request for additional monetary sanctions  
21 due to the conduct of plaintiff's counsel. However, the undersigned remains concerned that  
22 plaintiff may be unaware of the conduct of plaintiff's counsel. The court will, therefore, make an  
23 additional effort to ensure plaintiff is informed about the status of this action.

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26 <sup>1</sup> Moreover, the court's research reveals that, according to the California State Bar's website, on  
27 July 3, 2018, attorney Robbin Coker was no longer "Eligible to Practice Law in California" as a  
28 result of "Suspended, failed to pay Bar member Fees." Attorney Coker's status was returned to  
active on August 24, 2018.

1           Accordingly, IT IS HEREBY ORDERED that:

2           1. Within fourteen days of the date of this order attorney Robbin Coker and attorney  
3 Robert McCann shall show cause in writing providing good cause for their conduct. The  
4 attorney's filings shall also address why the undersigned should not issue additional monetary  
5 sanctions against them, and why this action should not be dismissed for a failure to prosecute;

6           2. Within fourteen days of the date of this order attorney Robbin Coker or attorney Robert  
7 McCann shall serve on plaintiff a copy of defendant's July 17, 2018 motion as well as a copy of  
8 this order and file proof of such service;

9           3. Within fourteen days of the date of this order attorney Robbin Coker and/or attorney  
10 Robert McCann shall pay defendant an additional sanction of \$2,940<sup>2</sup>;

11           4. Within fourteen days of the date of this order plaintiff shall comply with the May 22,  
12 2018 (ECF No. 46) order;

13           5. Within fourteen days of the date of this order, defendant shall provide the court with  
14 plaintiff's last known address, so that the court may serve a copy of this order on the plaintiff at  
15 the last known address;

16           6. The August 31, 2018 hearing of defendant's motion for sanctions (ECF No. 47) is  
17 vacated;

18           7. Defendant's July 17, 2018 motion for sanctions (ECF No. 47) is granted in part as  
19 reflected above<sup>3</sup>; and

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26 <sup>2</sup> Payment of this sanction is solely the responsibility of attorneys Coker and McCann. Plaintiff  
27 is not responsible for the payment of this sanction and it shall not be charged against the plaintiff.


28 <sup>3</sup> Defendant's request for terminating sanctions is taken under submission and the undersigned  
will address that request based upon the responses received to this order.

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8. Plaintiff is again cautioned that the failure to timely comply with this order may result in a recommendation that this case be dismissed.

Dated: August 27, 2018

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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE