

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

ROBERT R. RIGGS (SBN 107684)
Katzoff & Riggs LLP
1500 Park Avenue, Suite 300
Emeryville, CA 94608
Tel. (510) 597-1990
email: rriggs@katzoffriggs.com

Attorneys for Plaintiffs KAREN RIGSBY,
Trustee, and DONALD P. STEINMEYER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

KAREN RIGSBY, Trustee of the)	Case No. 2:17-cv-01347-MCE-EFB
MARSH REVOCABLE TRUST OF)	
2003, et al.,)	ORDER AFTER STATUS
)	CONFERENCE
Plaintiffs,)	
)	
vs.)	
)	
INTERCARE SPECIALITY RISK)	
INSURANCE SERVICES, INC, et al.,)	
)	
Defendants.)	
_____)	

This matter came before the Court for status conference on November 1, 2018, at 11:00 a.m., based on the Court’s Minute Order of October 22, 2018 at ECF No. 130, which required the personal appearance of all parties including defendant Kevin Hamm, in pro se. Robert Riggs appeared for the Plaintiffs, Karen Rigsby and Donald Steinmeyer. Proof was made that the Court’s Minute Order was served by the Clerk on defendant Kevin Hamm at his address of record, c/o ISR Holdings, Inc., 140 Diamond Creek Place,

1 Roseville, CA 95747. Defendant Kevin Hamm did not appear. Defendants ISR Holdings,
2 Inc., formerly named Intercare Specialty Risk Insurance Services, Inc., and Phoenix Risk
3 Management, Inc. did not appear.

4 The Court, in its order entered herein July 3, 2018, has previously cautioned
5 defendants ISR Holdings, Inc. and Phoenix Risk Management, Inc. that they cannot make
6 any further appearance in this matter without counsel appearing on their behalf. Despite
7 this warning, defendants ISR Holdings, Inc. and Phoenix Risk Management, Inc., have
8 not appeared through counsel for four months. Entry of the default of these defendants,
9 due to their failure to appear in this action despite the Court's warning, is proper at this
10 time. *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 998 (9th Cir.
11 2007); *Board of Trustees of IBEW Local Union No. 100 Pension Trust Fund v. Porges*,
12 2013 WL 4012009, *4 [2013 U.S. Dist. LEXIS 110643] (E.D. Cal. 2013).

13 Additionally, the dismissal of the Counterclaim of Defendant ISR Holdings, Inc.
14 pursuant to Federal Rule 41(b) is warranted at this time. Such dismissal is warranted here
15 based on (1) the general public interest in expeditious resolution of litigation, (2) this
16 Court's need to manage its docket, and (3) the prejudice to Plaintiffs from the failure of
17 ISR Holdings, Inc. to appear and prosecute this matter diligently. *E.g., Ken-Mac Metals*
18 *v. Independent Sheet Metal, Inc.*, 2011 U.S. Dist. LEXIS 53706 [2011 WL 1937135], at *5
19 - *8 (D. Nev. 2011).

20 Good cause appearing, IT IS HEREBY ORDERED as follows:

21 1. Default is hereby entered as to Defendants Phoenix Risk Management, Inc.
22 and ISR Holdings, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22


2. ISR Holdings, Inc.’s Cross Complaint at ECF No. 34, as amended by its First Amended Counterclaim at ECF No. 111, is hereby dismissed for lack of prosecution.

3. All current hearings and due dates established by the Court’s Initial Pretrial Scheduling Order at ECF No. 4, as amended by the Joint Report of the Parties Outlining Discovery Plan and Order Thereon at ECF No. 75, and the Stipulation and Order to Modify Initial Pretrial Scheduling Order and Joint Report of the Parties Outlining Discovery Plan, at ECF No. 104, are hereby vacated.

4. A hearing on Plaintiffs’ application for default judgment pursuant to Federal Rule 55(b)(2) is hereby set for 11 a.m. on Monday, December 3, 2018.

IT IS SO ORDERED.

Dated: November 8, 2018


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE