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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 ALAN BAKER, LINDA B. OLIVER;

12 Plaintiffs,

13 v.

14 ALLSTATE INSURANCE COMPANY,
15 EDWARD CARRASCO, and DOES 1
16 through 10, inclusive,

17 Defendants.

Case No. 2:19-cv-08024-ODW-JC

**PLAINTIFFS ALAN BAKER AND
LINDA B. OLIVER'S RESPONSE TO
THE COURT'S ORDER TO SHOW
CAUSE [DKT. NO. 25]**

1 Plaintiffs Alan Baker and Linda B. Oliver (collectively, the “Insureds”)—
2 through their newly-retained counsel Barnes & Thornburg LLP—submit the following
3 brief response to the Court’s minute order dated December 2, 2019 [Dkt. No. 25]
4 solely with respect to the Court’s order to show cause why this action should not be
5 dismissed with prejudice.

6 The Insureds are surprised and appalled by their former counsel Christopher
7 Hook’s statements and conduct as reflected in Defendant Allstate Insurance
8 Company’s (“Allstate”) *ex parte* application for various orders, including an order
9 dismissing this action based upon Mr. Hook’s statements and conduct (the
10 “Application”). Declaration of Alan Baker (“Baker Decl.”) ¶ 4; Declaration of Linda
11 B. Oliver (“Oliver Decl.”) ¶ 4. Mr. Hook did not notify the Insureds about the filing of
12 the Application, and the Insureds only learned about the Application—and Mr. Hook’s
13 statements and conduct described therein—through concerned family and friends who
14 saw references to the Application on the internet. *Id.* Furthermore, ***the opposition***
15 ***filed by Mr. Hook to the Application was filed without the Insureds’ knowledge or***
16 ***approval. Id.***

17 The Insureds do not condone Mr. Hook’s statements or conduct. Baker Decl. ¶
18 5; Oliver Decl. ¶ 5. Such statements and conduct do not represent them, were wholly
19 unauthorized, and are in no way acceptable to them. *Id.* During the time Mr. Hook
20 was apparently engaging in this conduct, the Insureds were out of the country as part of
21 a work trip. *Id.* Mr. Hook’s statements and conduct have put the Insureds’
22 professional and community reputations that they have worked so hard to achieve at
23 risk. *Id.* Upon learning of Mr. Hook’s statements and conduct as reflected in the
24 Application, the Insureds promptly terminated Mr. Hook’s representation of them and
25 retained new counsel Barnes & Thornburg LLP to represent them in this action. Baker
26 Decl. ¶ 6; Oliver Decl. ¶ 6.

1 While district courts have the “inherent power” to control their dockets—which
2 inherent power includes the authority to impose a wide range of sanctions—Ninth
3 Circuit law is clear that dismissal “is a harsh remedy and should only be imposed in
4 ‘extreme circumstances.’” *Hamilton Copper & Steel Corp. v. Primary Steel, Inc.*, 898
5 F.2d 1428, 1429 (1990). With respect to the meaning of “extreme circumstances,” the
6 Ninth Circuit has determined that “[d]ue process limits the imposition of the severe
7 sanctions of dismissal or default to ‘extreme circumstances’ in which ‘the deception
8 relates to the matters in controversy’ and prevents their imposition ‘merely for
9 punishment of an infraction that did not threaten to interfere with the rightful
10 decision of the case.’” *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1338 (9th
11 Cir. 1985) (emphasis added).

12 Ultimately, the Insureds should not be subject to the ultimate sanction—
13 dismissal of their *meritorious* claim for insurance coverage—solely because of
14 unauthorized conduct by their former counsel which was wholly unknown to the
15 Insureds and which does not go to the merits of their case. Indeed, while Mr. Hook’s
16 conduct is repugnant to the Insureds, such conduct neither relates to substantive
17 matters in controversy nor interferes with the rightful decision of the case. *Fjelstad*,
18 *supra* at 1338. Furthermore, the Insureds have retained new counsel, and there will be
19 no similar issues going forward in this case.

20 Contrary to Allstate’s suggestion in connection with the Application, district
21 courts can and must consider relative fault between attorneys and their clients when
22 considering terminating sanctions. *See Greco v. Stubenberg*, 859 F.2d 1401, 1404 (9th
23 Cir. 1988) (“We also note that as a general rule the district court must consider the
24 relative fault of the client and the attorney” including “whether the conduct giving rise
25 to the dismissal was caused entirely by the party’s attorney”); *see also In re*
26 *Fitzsimmons*, 920 F.2d 1468, 1472, 74 (9th Cir. 1990) (“unless there are egregious
27 circumstances, the district court must, as the general rule requires, explicitly consider
28

1 relative fault and alternative sanctions”). As above, the circumstances here—while
2 shocking—neither relate to substantive matters in controversy nor interfere with the
3 rightful decision of the case. Alternative sanctions are available to address and deter
4 counsel’s conduct directly.¹ It would be unjust under the circumstances here to punish
5 the Insureds with dismissal, the most severe sanction available.

6 Accordingly, the Insureds respectfully request that the Court discharge the order
7 to show cause re dismissal and allow them to proceed with this action through new
8 counsel.

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10 **BARNES & THORNBURG LLP**

11 Dated: December 11, 2019

By: /s/ Matthew B. O’Hanlon

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26 ¹ Short of dismissal, district courts have various available alternatives including formal
27 reprimand, fines, the temporary suspension of culpable counsel from practice before
28 the court, and preventing a case from going forward unless new counsel is secured.
Hamilton, supra at 1429. Except in extreme circumstances going to the merits, failure
to consider such alternative sanctions can constitute an abuse of discretion leading to
reversal of any such dismissal. *Hamilton, supra* at 1430.