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The Blacklist Online, LLC and
Shalon Doney

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE BLACKLIST ONLINE, LLC, a Delaware
limited liability complaint; SHALON DONEY,
an individual,

Plaintiffs,

vs.

ADAM CAMPBELL, an individual;
MATTHEW WAGNER, an individual.

And Related Claims.

Case No. 22-cv-2378-SK

**NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
COUNSEL FOR PLAINTIFFS**

Date: August 2, 2023
Time: 10:00 a.m.
Courtroom: 540**

****REMOTE/ZOOM APPEARANCE
REQUESTED**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on August 2, 2023 at 10:00 AM or as soon
thereafter as counsel may be heard in Courtroom 540 of the above-entitled court,
Plaintiffs' Counsel David S. Gingras, Esq. ("Gingras") will and hereby does move to
withdraw as counsel for Plaintiffs THE BLACKLIST ONLINE, LLC ("TBO") and
SHALON DONEY ("Doney") pursuant to Cal. Cent. Dist. Local Rule 83-2.3.2.

The motion will be based on this Notice, the accompanying Memorandum of
Points and Authorities, and upon such other and further oral and documentary evidence
as may be presented prior to or at the time of the hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3
which took place on various dates beginning on June 23, 2023.

1 **I. INTRODUCTION/PROCEDURAL HISTORY**

2 This action is simple. As explained in the Complaint (Doc. 1), Plaintiff Shalon
3 Doney and Defendant Adam Campbell were previously married. During their marriage,
4 Ms. Doney started an online business called “The Blacklist” which published cannabis-
5 related news, among other things. *See* Compl ¶¶ 10–16.

6 Ms. Doney alleges during the marriage, she was the sole manager and member of
7 The Blacklist’s owner, The Blacklist Online, LLC. *See* Compl. ¶ 17. Doney alleges that
8 as TBO’s sole member and manager, she was the sole operator of the business and she
9 maintained “primary management and control” of the company. *See* Compl. ¶¶ 34–36.

10 In 2021, Mr. Campbell filed a Petition for Dissolution of his marriage to Ms.
11 Doney. Shortly thereafter, Ms. Doney discovered Mr. Campbell and a co-defendant
12 (Matthew Wagner) used TBO’s trademarks without permission in an effort to solicit
13 business on behalf of The Blacklist. *See* Compl. ¶¶ 37–46. This action (which primarily
14 sought to stop Mr. Campbell and Mr. Wagner from using TBO’s marks without
15 permission) was filed soon thereafter on April 8, 2022.

16 As noted in the Complaint (¶¶ 10–12) and in a joint stipulation filed in this matter
17 on March 23, 2023 (Doc. #25), while this matter has been pending, the Campbell/Doney
18 dissolution action has been proceeding in the Los Angeles County Superior Court, Case
19 No. 21CHFL00463. One of the primary issues in the dissolution involves the valuation
20 and distribution of TBO as a community asset. At present, that issue has not yet been
21 resolved by the family court, and the matter is not currently set for trial.

22 Nevertheless, the parties in this federal action have engaged in extensive
23 settlement discussions. Those discussions appeared to bear fruit, with the parties recently
24 reaching an agreement in principal to resolve this matter.

25 Unfortunately, although a *general* agreement was reached, the parties were unable
26 to agree on various specific details, resulting in an impasse which has proven impossible
27 to resolve. Because of this, and other reasons explained below, Plaintiffs’ counsel now
28 moves to withdraw from this matter.

II. STANDARDS FOR WITHDRAWAL

As the Court is aware, withdrawal is controlled by Local Rule L.R. 83–2.3.2 as shown below:

L.R. 83-2.3.2 Motion for Withdrawal. An attorney may not withdraw as counsel except by leave of court. A motion for leave to withdraw must be made upon written notice given reasonably in advance to the client and to all other parties who have appeared in the action. The motion for leave to withdraw must be supported by good cause. Failure of the client to pay agreed compensation is not necessarily sufficient to establish good cause.

Based on the Rule’s “good cause” requirement, for many years District Courts have considered a variety of factors, such as: “(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and, (4) the degree to which withdrawal will delay the resolution of the case.” *Soles v. United Airlines, Inc.*, 2017 WL 10562538, at *2 (C.D. Cal. Apr. 11, 2017) (quoting *Stewart v. Boeing Co.*, 2013 WL 3168269, at *1 (C.D. Cal. Jun. 19, 2013) (citing *Beard v. Shuttermart of Cal., Inc.*, 2008 WL 410694, at *2 (S.D. Cal. Feb. 13, 2008)). In addition, “Federal courts also often look to applicable state rules in determining whether adequate grounds exist to excuse counsel from further representation.” *Stewart*, 2013 WL 3168269, at *1 (C.D. Cal. June 19, 2013). For example, “Withdrawal of counsel is permitted under Rule 1.16 of the California Rules of Professional Conduct where the client’s conduct makes it ‘unreasonably difficult’ for an attorney to carry out their duty of representation.” *Tater v. City of Huntington Beach*, 2022 WL 9537881, *1 (C.D. Cal. Oct. 12, 2022).

With those points in mind, to establish good cause, counsel seeking withdrawal have typically supported their motions with detailed declarations explaining the circumstances of their request. *See, e.g., Soles*, 2017 WL 10562538, at *3 (referencing

counsel's declaration and noting, "Plaintiff's Counsel explains that there has been a breakdown in communications between Soles or Counsel. Despite Counsel's attempts to contact Plaintiff by phone, letter, and email, Plaintiff allegedly has failed to communicate with her Counsel to provide input, reaction to the Motion to Transfer, and for assistance." (cleaned up).

Each of these points/rules are well-established and clear enough. However, there is a fairly recent wrinkle — on November 1, 2018, the California Supreme Court adopted an entirely new set of Rules of Professional Conduct, some of which greatly limit a lawyer's ability to disclose information relating to his/her representation of a client. Specifically, among others, one of the new ethical rules adopted by the Supreme Court is Rule 1.6 which provides, in relevant part:



The State Bar of California

Rule 1.6 Confidential Information of a Client (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent,* or the disclosure is permitted by paragraph (b) of this rule.
- (b) A lawyer may, but is not required to, reveal information protected by Business and Professions Code section 6068, subdivision (e)(1) to the extent that the lawyer reasonably believes* the disclosure is necessary to prevent a criminal act that the lawyer reasonably believes* is likely to result in death of, or substantial* bodily harm to, an individual, as provided in paragraph (c).

For its part, Cal. Bus. & Prof. Code § 6068(e)(1) (incorporated in Rule 1.6) broadly requires all lawyers: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

Thus, while Central District Local Rule L.R. 83–2.3.2 requires lawyers to explain the reasons for withdrawal in order to establish good cause, which has traditionally included a declaration from counsel detailing the circumstances, the new California Rules of Professional Conduct forbid lawyers from revealing virtually *anything* about their attorney/client relationship. How can a lawyer, or court, resolve this conflict?

1 For this Court's information, undersigned counsel has practiced law in California
 2 since 2002, but his practice is primary based in Phoenix, Arizona, where the undersigned
 3 has been licensed since 2004. This point is mentioned because the new California Rules
 4 of Professional Conduct are largely based on the ABA Standard Rules, which Arizona
 5 has followed for many years.

6 Like California's new Rule 1.6, Arizona's Ethical Rules contain a similar
 7 provision (Arizona's ER 1.6(a)) which shields *all* client-related information, even when
 8 the information is not privileged; "(a) A lawyer shall not reveal information relating to
 9 the representation of a client unless the client gives informed consent, the disclosure is
 10 impliedly authorized in order to carry out the representation or the disclosure is permitted
 11 or required by paragraphs (b), (c) or (d) or ER 3.3(a)(3)." Ariz. Sup. Ct. R. 42, ER 1.6(a).
 12 This rule strictly prohibits the disclosure of *any* information relating to client, absent the
 13 client's consent; "The confidentiality rule, for example, applies not only to matters
 14 communicated in confidence by the client but also to all information relating to the
 15 representation, whatever its source. A lawyer may not disclose such information except
 16 as authorized or required by the Rules of Professional Conduct or other law." Cmt. 3,
 17 Ariz. Sup. Ct. R. 42, ER 1.6 (emphasis added).

18 Because Arizona's ER 1.6 is so strict, the State Bar of Arizona has issued
 19 guidance for attorneys wishing to withdraw from a case but who do not have client
 20 consent to reveal the reasons for withdrawal. Specifically, [Arizona Bar Formal Ethics](#)
 21 [Opinion No. 09-02](#) advises that even when a court inquires about the reasons for
 22 withdrawal, a lawyer's statement that "professional considerations require termination of
 23 the representation ordinarily *should be accepted as sufficient.*" (emphasis added).

24
 25 ER 1.16 does not relieve the withdrawing lawyer from the duties of confidentiality set forth in
 26 ER 1.6. This Committee cautions the withdrawing lawyer to carefully review and follow ER 1.6
 27 during the withdrawal process. Comment [3] to ER 1.16 addresses the practical problem that a
 28 lawyer seeking to withdraw may face questions from the tribunal about the reasons for
 withdrawal: "The court may request an explanation for the withdrawal, while the lawyer may be
 bound to keep confidential the facts that would constitute such an explanation. The lawyer's
 statement that professional considerations require termination of the representation ordinarily
 should be accepted as sufficient."

Here, undersigned counsel understands and is aware Local Rule L.R. 83–2.3.2 requires a showing of good cause before withdrawal is permitted. At the same time, undersigned counsel notes Plaintiffs (TBO and Ms. Doney) have not authorized the undersigned to release any information regarding this request. Given the circumstances, the undersigned believes seeking informed consent from the clients for such disclosure would be contrary to their best interests.

For those reasons, the undersigned avows to the Court that professional considerations require termination of the representation between the undersigned and Plaintiffs. To the extent the Court feels more information is needed before ruling on this request, the undersigned will provide additional information subject to a protective order issued pursuant to Fed. R. Civ. P. 26(c)(1) shielding such information from disclosure to any third parties, including Defendants and other counsel.

The undersigned further avows that written notice of this Motion has been provided to Plaintiffs via email, and that Plaintiffs (and Ms. Doney specifically) have been advised of the following deadlines as previously set by the Court in the order issued March 27, 2023 (Doc. 26):

Event	Date
Trial documents (set one): File memo of contentions of fact and law, LR 16-4; Exhibit & witness lists, LR 16-5 6; Status report regarding settlement; Motions in limine (no more than 5 per side without Court permission)	August 30, 2023
Trial documents (set two): Lodge pretrial conference order, LR 16-7; File oppositions to motions in limine	September 6, 2023
Pretrial Conference, LR 16; Hearing on motions in limine	September 20, 2023 at 10:00 AM
Jury Trial (Est. 1-3 days)	October 10, 2023 at 8:30 AM

The undersigned notes that although this matter is currently set for trial in October, that proximity should not prevent withdrawal. *See Anhing Corp. v. Thuan Phong Co. Ltd.*, 2014 WL 12591456, at *2 (C.D. Cal. Dec. 2, 2014) (allowing counsel to withdraw

1 two weeks before trial, and explaining, “the Court notes that, while withdrawal may
 2 slightly prejudice Anhing by causing a delay in the trial date, courts have permitted
 3 withdrawal in similar circumstances despite the close proximity of trial.”) (citing
 4 *Canandaigua Wine Co. v. Edwin Moldauer*, 2009 WL 89141, at *2 (E.D. Cal. Jan. 14,
 5 2009) (granting motion to withdraw less than one month before trial where defendant's
 6 counsel declared “that his client has repeatedly refused to accept his advice as to trial
 7 strategy or pay his fees”); *Pension Plan v. Yubacon Inc.*, 2014 WL 1101659, at *1–3
 8 (N.D. Cal. Mar. 18, 2014) (permitting withdrawal three months before trial); *Ortega v.*
 9 *Giammalvo*, 2010 WL 3489396, at *1 (N.D. Cal. Sept. 2, 2010) (allowing withdrawal
 10 pending an *in camera* hearing less than one week before the set trial date)).

11 Finally, the undersigned avows Ms. Doney has been informed that because TBO is
 12 a limited liability company, it cannot proceed *pro se*, nor may TBO be represented by
 13 Ms. Doney; it may only be represented by licensed counsel. *See United States v. High*
 14 *Country Broadcasting Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (“A corporation may
 15 appear in federal court only through licensed counsel.”)

16 III. CONCLUSION

17 DATED July 3, 2023.

18 GINGRAS LAW OFFICE, PLLC

19 /S/ David Gingras

20 David S. Gingras

21 Attorney for

22 Plaintiffs/Counterdefendants

23 The Blacklist Online, LLC and

24 Shalon Doney

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2023 I transmitted the foregoing to the clerk's office for filing via ECF and for service to:

LAW OFFICE OF DANIEL S. MILLER

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