

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASHKAN RAJAEE,

Plaintiff,

V.

KRESSES AND PIASECKI LEGAL, PC,
et al.

Defendants.

Case No.: 22-CV-0895 W (MDD)

**ORDER GRANTING ATTORNEY'S
MOTION TO WITHDRAW AS
COUNSEL FOR PLAINTIFF
[DOC. 4]**

Pending before the Court is Brown Neri Smith & Khan's motion to withdraw as attorney of record for Plaintiff Ashkan Rajae. Plaintiff opposes the motion.

The Court decides the matter on the papers submitted and without oral argument. See Civ.L.R. 7.1.d.1. For the reasons set forth below, the Court **GRANTS** the motion [Doc. 4].

I. DISCUSSION

On June 20, 2022, Brown Neri Smith & Khan (“BNSK”) filed this lawsuit on behalf of Plaintiff Ashkan Rajaee. The Complaint asserts one cause of action for professional negligence against Plaintiff’s former attorneys. (*Compl.* [Doc. 1] ¶¶ 9–12.)

1 Since the Complaint was filed, little activity has taken place in this case. The only
 2 activity reflected on the docket is BNSK's motion to withdraw filed on October 10, 2022
 3 (*Notice of Motion to Withdraw* [Doc. 4]) and Defendants' motion to dismiss for lack of
 4 subject matter or personal jurisdiction filed on November 14, 2022 (*Defs' MTD* [Doc. 8]).

5 An attorney may not withdraw as counsel except by leave of court. Darby v. City
 6 of Torrance, 810 F.Supp. 275, 276 (C.D.Cal.1992); Civ.L.R. 83.3.f.3. “The grant or
 7 denial of an attorney’s motion to withdraw in a civil case is a matter addressed to the
 8 discretion of the trial court....” Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081,
 9 1087 (7th Cir. 1982). Factors considered in evaluating the motion are “1) the reasons
 10 why withdrawal is sought; 2) the prejudice withdrawal may cause to other litigants; 3) the
 11 harm withdrawal might cause to the administration of justice; and 4) the degree to which
 12 withdrawal will delay the resolution of the case.” CE Resource, Inc. v. Magellan Group,
 13 LLC, 2009 WL 3367489, at *2 (E.D.Cal. 2009) (citing Canandaigua Wine Co., Inc. v.
 14 Moldauer, 2009 WL 89141, at *1 (E.D.Cal. 2009)).

15 Withdrawal of counsel is governed by the standards of professional conduct
 16 required of members of the State Bar of California. See Nehad v. Mukasey, 535 F.3d
 17 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to attorney
 18 withdrawal). Here, BNSK seeks to withdraw under Rule 1.16(b)(4), which provides that
 19 an attorney may withdraw if “the client by other conduct renders it unreasonably difficult
 20 for the lawyer to carry out the representation effectively.” (*P&A* [Doc. 4-1] 3–6.) Citing
 21 this rule, BNSK argues the attorney-client relationship with Plaintiff “is irreconcilably
 22 broken at this point, and BNSK cannot adequately or sufficiently represent” him. (*P&A*
 23 [Doc. 4-1] 1:3–6; *Reply* [Doc. 7] 2:16–19.) In his opposition, Plaintiff disputes that there
 24 has been a breakdown of the relationship (*Opp'n* [Doc.6] 8:12–13), but then proceeds to
 25 establish that the relationship is irreparably broken.

26 In his opposition, Plaintiff contends that in addition to this case, BNSK represents
 27 him in a number of related complex lawsuits involving “immigration laws and
 28 international laws with thousands of documents being produced in the related matters.”

1 (*Opp'n* 2:12–22.) It is the related cases that appear to have led to the deterioration of the
 2 attorney-client relationship. While BNSK is representing Plaintiff in this case on a
 3 contingency basis (*id.* 9:9–11), Plaintiff alleges the firm holds an “\$1,000,000 secured
 4 promissory note and registered lien agreement toward their fees” in the other cases. (*Id.*
 5 2:8–9.) Plaintiff alleges that BNSK willfully misled him into providing the security and
 6 “dishonestly promised, signed and secured” the line of credit. (*Id.* 11:9–18.) Plaintiff
 7 further alleges that in September of 2022, after the “credit facility reached over \$500,000
 8 of the \$1,000,000,” he became “concerned about the volume of billings and started
 9 asking the firm for an attorney-by-attorney breakdown of my invoices.” (*Id.* 5:17–23.)
 10 At the same time, Plaintiff alleges he began “digging into BNSK work product and
 11 discovered some glaring issues in their handling of the cases.” (*Id.* 5:26–6:1.) In
 12 particular, he contends he discovered that the “firm was missing critical documents or did
 13 not review critical orders from the arbitration proceedings that resulted in great harm to
 14 my case.” (*Id.* 5:26–6:4.)

15 Plaintiff asserts that after raising additional questions with the firm, they advised
 16 him that they were “adverse” and “the firm is going to withdraw from all my cases....”
 17 (*Opp'n* 6:11–16.) Thereafter, the firm filed motions to withdraw in the related cases, at
 18 least one of which has been granted. (*Reply* [Doc. 7] 2:2–3.) Plaintiff further alleges that
 19 the firm’s “conduct has created a near impossible scenario that only benefits and profits
 20 BNSK to the tune of \$1,000,000 while completely causing additional hardship and case
 21 prejudice for my family.” (*Opp'n.* 8:5–9.) Plaintiff asserts that “BNSK’s conduct goes
 22 against my understanding of public policy rules established by the State Bar of
 23 California” (*id.* 2:6–8) and he contends he has filed a complaint against BNSK with the
 24 State Bar (*id.* 4:6–8).

25 Plaintiff’s opposition to BNSK’s motion to dismiss establishes that there has been
 26 a complete breakdown of the attorney-client relationship in the related cases and,
 27 accordingly, in this case as well. Additionally, given the early posture of this case, there
 28 is nothing in the record suggesting that BNSK’s withdrawal will prejudice the litigants in

1 this matter, will harm the administration of justice or unduly delay the resolution of this
2 case. For these reasons, the Court will grant BNSK's motion.

3

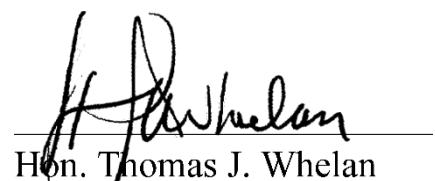
4 **II. CONCLUSION & ORDER**

5 For all the reasons set forth above, the Court **GRANTS** BNSK's motion to
6 withdraw as attorney of record for Plaintiff Ashkan Rajaee [Doc. 4] and **ORDERS** as
7 follows:

- 8 • BNSK shall serve a copy of this order on Plaintiff Ashkan Rajaee and
9 Defendants and shall file the proof of service.
- 10 • On or before **December 5, 2022**, Plaintiff Ashkan Rajaee shall file a notice
11 with this Court listing the mailing address for service of process.
- 12 • In light of this order, the Court **CONTINUES** Defendants' motion to
13 dismiss [Doc. 8] to **January 23, 2023** to allow Plaintiff an opportunity to
14 find new counsel. Accordingly, Plaintiff's opposition to Defendants' motion
15 to dismiss is now due on or before **January 9, 2023** and Defendants' reply is
16 due on or before **January 17, 2023**. Upon submission of the briefing, there
17 shall be no oral argument on Defendants' motion to dismiss. See Civ.L.R.
18 7.1d1.

19 **IT IS SO ORDERED.**

20 Dated: November 21, 2022

21 
22 Hon. Thomas J. Whelan
23 United States District Judge