

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>Brett A. Berman (SBN 231490)</b> <b>THE BERMAN LAW GROUP, APC</b> <b>10100 Santa Monica Blvd., #300</b> <b>Los Angeles, CA 90067</b> TELEPHONE NO.: <b>310.788.3837</b> FAX NO.: ATTORNEY FOR (Name): <b>NICOLE PRAUSE</b>	FOR COURT USE ONLY
NAME OF COURT: <b>LASC</b> STREET ADDRESS: <b>111 N. Hill Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Los Angeles, CA 90012</b> BRANCH NAME: <b>Central - Stanley Mosk</b>	
CASE NAME: <b>PRAUSE v. WILSON</b>	CASE NUMBER: <b>20STR001022</b>
<p style="text-align: center;"><b>DECLARATION IN SUPPORT OF ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL—CIVIL</b></p>	HEARING DATE: <b>08/03/20</b> DEPT.: <b>22</b> TIME: <b>8:30 a.m.</b> BEFORE HON.: <b>Powell</b> DATE ACTION FILED: <b>2/13/20</b> TRIAL DATE: <b>08/06/20</b>

- Attorney and Represented Party.** Attorney (name): **Brett A. Berman** is presently counsel of record for (name of party): **Nicole Prause** in the above-captioned action or proceeding.
- Reasons for Motion.** Attorney makes this motion to be relieved as counsel under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1) for the following reasons (describe):  
**CRC Rule 1.16(b)(1) and CRC Rule 1.16(b)(4);**

See Declaration of Brett A. Berman

Continued on Attachment 2.

**3. Service**

**a. Attorney has**

- personally served the client with copies of the motion papers filed with this declaration. A copy of the proof of service will be filed with the court at least 5 days before the hearing.
- served the client by mail at the client's last known address with copies of the motion papers served with this declaration.

**b. If the client has been served by mail at the client's last known address, attorney has**

- confirmed within the past 30 days that the address is current
  - by mail, return receipt requested.
  - by telephone.
  - by conversation.
  - by other means (specify):

email to client's last known email as of July 30, 2020.

(Continued on reverse)

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3. b. (2)  been unable to confirm that the address is current or to locate a more current address for the client after making the following efforts:
- (a)  mailing the motion papers to the client's last known address, return receipt requested.
- (b)  calling the client's last known telephone number or numbers.
- (c)  contacting persons familiar with the client (*specify*):
- (d)  conducting a search (*describe*):
- (e)  other (*specify*):
- c. Even if attorney has been unable to serve the client with the moving papers, the court should grant attorney's motion to be relieved as counsel of record (*explain*):
4. The next hearing scheduled in this action or proceeding
- a.  is not yet set.
- b.  is set as follows (*specify the date, time, and place*):  
August 6, 2020, 8:30 a.m.; LASC Central, Department 22.
- c.  concerns (*describe the subject matter of the hearing*):  
Respondent's anti-SLAPP Motion; Trial on Petitioner's Petition for Restraining Order
- Continued on Attachment 4.
5. The following additional hearings and other proceedings (including discovery matters) are presently scheduled in this case (*for each, describe the date, time, place, and subject matter*):

Continued on Attachment 5.

6. Trial in this action or proceeding
- a.  is not yet set.
- b.  is set as follows (*specify the date, time, and place*):  
August 6, 2020.
7. **Other.** Other matters that the court should consider in determining whether to grant this motion are the following (*explain*):
- Petitioner has been operating under the advice of other counsel since at least July 29, 2020. Due to the filing of the anti-SLAPP, Petitioner was forced to defend the motion. Berman filed the opposition to the anti-SLAPP, but never confirmed representation to represent Petitioner at trial on her Petition. Subsequent to being provided a case analysis of her Petition, it was never confirmed whether Petitioner would go forward with the Trial and up until the relationship broke down, Berman had not been retained for such.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 1, 2020

Brett A. Berman

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

8. Number of pages attached:   3

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**ATTACHMENT 2**

**DECLARATION OF BRETT A. BERMAN**

I, Brett A. Berman declare as follows:

1. I am the Attorney for Petitioner NICOLE PRAUSE in this matter. I have personal knowledge of the facts set forth below, and if called upon to testify thereto, I could and would competently do so.

2. **PRIOR TO 10 A.M. ON JULY 31, 2020 I PROVIDED MS. PRAUSE AND RESPONDENT’S COUNSEL NOTICE OF THIS EX PARTE PROCEEDING BY EMAIL.**

Ms. Prause was served at her current email address and the same one which she has used for all prior email communications to and from my office. My last confirmed communication with Ms. Prause using the same email which was used for the notice was on July 30, 2020.

3. Mr. Coffee responded to the Notice by email explaining:

- a. He would appear at the hearing;
- b. He would not oppose the request to withdraw;
- c. He would oppose the request to continue the calendared matters.

Based on facts known to me prior to serving this notice, I am aware that Ms. Prause intends to oppose.

4. There are two pending matters in this case to be heard on August 6, 2020: Hearing on Respondent’s anti-SLAPP motion and Trial on the Petition for Retraining Order filed by Petitioner in pro per.

5. Within the past week circumstances have arisen creating the necessity that I withdraw as counsel. In general terms, after filing Petitioner’s Opposition to the anti-SLAPP motion, communications between client and I became hostile such that she and I will not be able to effectively communicate in order to prepare for either hearing, and should I proceed, it will be under the threat of litigation. It is of my further understanding that since at least Wednesday, July 29, 2020, Ms. Prause has been operating with advice of other counsel, yet it appears she does not intend to formally retain him until after August 6, 2020.

1           6.       Based on the grounds present, I must seek mandatory, or in the alternative,  
2 permissive withdrawal as:

3           a.       Based on circumstances occurring within the past week, I have reached the  
4 conclusion that I must seek permissive withdraw from one or both  
5 procedures as I conclude the client insists upon presenting a claim or  
6 defense in litigation, or asserting a position or making a demand in a non-  
7 litigation matter, that is not warranted under existing law and cannot be  
8 supported by good faith argument for an extension, modification, or  
9 reversal of existing law [CRC Rule 1.16(b)(1)];

10          b.       Based on circumstances occurring within the past week, I have reached the  
11 conclusion that I must seek permissive withdraw from one or both  
12 procedures as the client by other conduct renders it unreasonably difficult  
13 for the lawyer to carry out the representation effectively: also referred to as  
14 the breakdown in the attorney-client relationship. [CRC Rule 1.16(b)(4)];

15          7.       By bringing this motion as soon as possible once these facts have been known to  
16 me, I am taking all necessary reasonable steps to avoid reasonably foreseeable prejudice to the  
17 client's rights.

18          8.       I have submitted Opposition to Respondent's anti-SLAPP motion and there is  
19 nothing to add or argue outside that submitted filing.

20          9.       Based on my knowledge, since at least Wednesday, July 29, Petitioner has been  
21 consulting with another attorney and acting upon said attorney's advice.

22          10.       Based on facts known to me, I have formed the conclusion that Petitioner will seek  
23 to file suit against me and that any further representation will be done under duress of the threat of  
24 a lawsuit.

25          11.       Based on initial analysis of Petitioner's Petition for Restraining Order presented to  
26 her in writing on or about June 9, 2020, I had not yet decided that I would represent Petitioner at  
27 Trial on the Petition. This situation became unique because, within hours of discussing the  
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1 analysis, Petitioner was served with the anti-SLAPP motion. When such a motion is filed, the  
2 motion on the anti-SLAPP proceeds regardless of whether the targeted pleading or petition  
3 remains in place or is withdrawn. Therefore, given the circumstances, the scope of my  
4 representation was only to defend the anti-SLAPP motion. Should it be the case that Petitioner be  
5 determined to proceed with the underlying Petition, whether I would represent her for that  
6 proceeding would be the subject of a further communication and, if necessary, meeting.

7 12. In addition to requesting permissive withdrawal as Petitioner's attorney of record, I  
8 also request a continuance of the August 6 matters out of an abundance of caution, even though  
9 Petitioner has been acting under a separate attorney's instructions since July 29.

10 **NEITHER PARTY WILL BE PREJUDICED**

11 **SHOULD THE REQUESTED CONTINUANCE BE GRANTED**

12 13. It is my opinion that should the request herein be granted, that neither party would  
13 suffer prejudice as the matter will be heard on the merits with proper opportunity for each side to  
14 prepare their case.

15 14. Further, there were no temporary orders issued pending the Trial, so neither party is  
16 under a restraint.

17 **NOTICE PROVIDED ACCORDING TO LOCAL RULES**

18 15. As stated in Paragraph 2, I provided all parties with notice.

19  
20 I declare under the penalty of perjury that the foregoing is true and correct and that this  
21 declaration was executed on July 31, 2020, Los Angeles, California

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Brett A. Berman