

1 GREGORY P. STONE (State Bar No. 78329)  
gregory.stone@mto.com  
2 STEVEN M. PERRY (State Bar No. 106154)  
3 steven.perry@mto.com  
4 ELIZABETH A. LAUGHTON (State Bar No. 305800)  
5 elizabeth.laughton@mto.com  
6 MUNGER, TOLLES & OLSON LLP  
350 South Grand Avenue, 50th Floor  
7 Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
8 Attorneys for Defendants  
9 FLEX LOGIX TECHNOLOGIES, INC.  
10 DR. DEJAN MARKOVIC  
DR. CHENG WANG

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 KONDA TECHNOLOGIES, INC., a  
17 California corporation,

18 Plaintiff,

19 vs.

20 FLEX LOGIX TECHNOLOGIES, INC., a  
Delaware Corporation; DEJAN  
21 MARKOVIC, PH.D., an individual; and  
CHENG C. WANG, PH.D., an individual,

22 Defendants.  
23  
24

Case No. 5:18-cv-07581-LHK

**DEFENDANT FLEX LOGIX  
TECHNOLOGIES, INC.'S  
OPPOSITION TO PLAINTIFF'S  
COUNSEL'S MOTION TO  
WITHDRAW**

Judge: Lucy H. Koh

Ctrm.: 8, 4th Floor

Initial Case Management Conference:

Date: April 3, 2019

Time: 2:00 p.m.

1 **I. INTRODUCTION**

2 Defendant Flex Logix Technologies, Inc. (“Flex Logix”) respectfully submits this  
3 memorandum in opposition to the motion by counsel for plaintiff Konda Technologies, Inc.  
4 (“Konda Tech”) to withdraw as counsel. Dkt. 44. Counsel’s motion provides no  
5 substantive rationale for the request to withdraw. Moreover, counsel’s proposed order will  
6 prejudice defendant Flex Logix and benefit Konda Tech, by delaying the resolution of  
7 defendants’ motions to dismiss the First Amended Complaint and by allowing Konda Tech  
8 over 100 days in which to prepare an opposition to defendants’ motions to dismiss. Finally,  
9 Konda Tech’s counsel acted in bad faith by not informing defense counsel about the  
10 withdrawal for three full weeks, from March 4, 2019 to March 25, 2019, during which time  
11 defense counsel: (1) prepared and filed the motion to dismiss the First Amended Complaint  
12 (at significant cost to Flex Logix); (2) agreed, at the request of plaintiff’s counsel, to accept  
13 service of process for the two new individual defendants (the founders of Flex Logix); and  
14 (3) devoted significant time to preparing the Initial Case Management Statement, due today.  
15 The Court should deny the motion.

16 **II. ARGUMENT**

17 **A. Counsel For Konda Tech Has Not Provided A Legally Sufficient**  
18 **Rationale For Withdrawing As Counsel**

19 The California Rules of Professional Conduct outline several reasons for permissive  
20 withdrawal, including that the client refuses to pay the lawyer’s bills, or the client insists  
21 upon presenting a claim that is not supported by the law, or the client seeks to pursue an  
22 illegal course of conduct. *See* Rule 1.16(b)(1)-(3). Plaintiff’s counsel does not rely on any  
23 of those rationales and instead cites Rule 1.16(b)(4), which allows withdrawal (with the  
24 Court’s consent) if a client’s conduct “renders it unreasonably difficult” for the lawyer to  
25 represent the client. Neither counsel’s declaration nor the motion describe the purportedly  
26 difficult conduct in question, even in vague terms. Counsel also cites to Rule 1.16(b)(5),  
27 which allows counsel to withdraw (with the Court’s consent) if the client has breached a  
28 material term of the engagement agreement. Again, neither counsel’s declaration nor the

1 motion explains, even in vague terms, the nature of the purported breach, although the  
2 motion does acknowledge that the client, Konda Tech, does *not* agree that it has materially  
3 breached that agreement. Dkt. 44-1 at 3:7-8.

4 The Court cannot grant this motion without understanding “the reason counsel seeks  
5 to withdraw.” *Sebastian Brown Prods. LLC v. Muzooka Inc.*, No. 15-CV-01720-LHK, 2016  
6 WL 9115950, at \*2 (N.D. Cal. Aug. 23, 2016). Judge Armstrong denied counsel’s motion  
7 to withdraw in similar circumstances in *BSD, Inc. v. Equilon Enterprises, LLC*, No. C 10-  
8 5223 SBA, 2013 WL 942578, at \*3 (N.D. Cal. Mar. 11, 2013):

9 In support of its motion to withdraw, Bleau Fox did not articulate with  
10 sufficient specificity the reasons it seeks to withdraw. Rather, Bleau Fox  
11 simply states that the relationship between Youstine and the law firm “has  
12 significantly deteriorated” to the point that it is “impossible” for the firm to  
13 “take the necessary litigation strategies and steps to continue to diligently  
14 pursue and protect [Youstine’s] best interests.” Bleau ¶ 4; Fox Decl. ¶ 3.

13 . . .

14 While the Court recognizes that Bleau Fox is concerned, and rightly so,  
15 about disclosing attorney-client privileged information, it nonetheless must  
16 provide the Court with an adequate factual basis for its request to withdraw  
17 as counsel of record for Youstine. This requires Bleau Fox to provide the  
18 Court with a general explanation of what Youstine has done that has caused  
19 the “significant deterioration” of the attorney client relationship, including a  
20 description of the nature of the “differences of opinion” and examples of  
21 Youstine’s failure to cooperate, e.g., failure to communicate, refusal to  
22 follow advice.

23 Because plaintiff’s counsel’s motion to withdraw does not provide sufficient  
24 information for the Court to undertake the required analysis of the rationale for withdrawal,  
25 the motion should be denied. *Id.*<sup>1</sup>

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26 <sup>1</sup> Flex Logix also notes that although counsel’s declaration states that Konda Tech  
27 “consents to this Motion,” Dkt. 44-2 (Singh Decl.) ¶ 7, counsel provides no declaration by  
28 a Konda Tech officer or employee to that effect. In any event, “the consent of the client is  
not dispositive.” *Id.* at \*2 (quoting *Robinson v. Delgado*, No. CV 02-1538 NJV, 2010 WL  
3259384, at \*2 (N.D. Cal. Aug. 18, 2010)).

1           **B. Counsel's Tactics And Proposed Sudden Withdrawal Have**  
2           **Prejudiced And Will Prejudice The Defendants In This Case**

3           The Court must also consider the possible prejudice caused to defendant Flex Logix  
4 by counsel's withdrawal. *Ibid.* This is not a case where prejudice is merely possible.  
5 Instead, counsel's conduct with respect to the motion to withdraw was clearly intended to,  
6 did, and will prejudice Flex Logix.

7           Counsel for Konda Tech concedes that he notified Konda Tech on March 4, 2019,  
8 the same day that Konda Tech filed its First Amended Complaint, that counsel was going to  
9 withdraw from this case. Dkt. 44-1 at 2:19-21. Counsel also concedes that he did not notify  
10 Flex Logix's counsel about the withdrawal until three weeks later, on March 25, 2019. *Id.*  
11 at 3:5-6. Indeed, counsel for Konda Tech provided a draft joint case management statement  
12 to Flex Logix on March 22, 2019 that made no mention of any withdrawal or the impact any  
13 such withdrawal might have on the case schedule.

14           Counsel's proposed order allowing withdrawal makes it clear that counsel's three-  
15 week silence was intended to prejudice Flex Logix and to benefit Konda Tech. Plaintiff's  
16 counsel proposes that the Court stay all proceedings in this case for ninety days. Dkt. 44-1  
17 at 4:23-27. That would mean that Konda Tech would have over 100 days to respond to Flex  
18 Logix's motion to dismiss. That delay would also mean that a new motion hearing date  
19 would be required. Konda Tech should not be allowed to manipulate the briefing schedule  
20 in this manner.

21           Moreover, in that three-week period of silence, counsel for Flex Logix prepared and  
22 filed a motion to dismiss the First Amended Complaint, Dkt. 38, at considerable expense to  
23 the client. Counsel for Flex Logix also spent hours working on the Joint CMC Statement,  
24 due to be filed today, March 27, 2019. In addition, at the request of Konda Tech's counsel,  
25 counsel for Flex Logix agreed to accept service of the First Amended Complaint on behalf  
26 of Flex Logix's two founders, Drs. Markovic and Wang, who had been added as defendants  
27 in the First Amended Complaint. The undersigned counsel for Flex Logix would not have  
28

1 accepted service on the part of Flex Logix’s founders if counsel for Konda Tech had not  
2 concealed his intention to withdraw.

3 Local Rule 11-5 is clear: “[c]ounsel may not withdraw from an action” unless  
4 “written notice has been given reasonably in advance to the client and *to all other parties*  
5 *who have appeared in the case.*” Civil L.R. 11-5. That did not happen. Instead, by  
6 concealing his plans, Konda Tech’s counsel (1) caused Flex Logix to incur substantial  
7 expense with respect to the motion to dismiss and the CMC statement and (2) effected  
8 service of the First Amended Complaint on Flex Logix’s founders.

9 **III. CONCLUSION**

10 The Court should deny counsel’s motion to withdraw and should order Konda Tech  
11 to respond to Flex Logix’s motion to dismiss on the schedule that the parties stipulated to  
12 and the Court ordered. *See* Dkts. 29-30. The Court should also order that counsel for the  
13 parties appear at the Initial Case Management Conference on April 3, 2019.

14  
15 DATED: March 27, 2019

MUNGER, TOLLES & OLSON LLP

16  
17 By:                   /s/ Steven M. Perry

STEVEN M. PERRY

18 Attorneys for Defendants  
19 FLEX LOGIX TECHNOLOGIES, INC.,  
20 DR. DEJAN MARKOVIC and DR. CHENG WANG

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