

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-01129-NYW-SKC

ERIC COOMER, PH.D.,

Plaintiff,

v.

MICHAEL J. LINDELL, FRANKSPEECH  
LLC, AND MY PILLOW, INC.,

Defendants.

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**MOTION TO WITHDRAW AS COUNSEL**

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The undersigned attorneys, Andrew D. Parker, Jesse H. Kibort, Ryan P. Malone, and Abraham S. Kaplan, for good cause and pursuant to D.C.COLO.LAttyR 5(b), hereby submit this Motion to Withdraw as Counsel for Defendants Michael J. Lindell, Frankspeech LLC, and My Pillow, Inc. (collectively “Defendants”). The undersigned attorneys state as follows in support of this Motion:

1. The undersigned have appeared in this action as counsel for Defendants. (ECF Nos. 13, 16, 17, 23).
2. The undersigned are attorneys with the law firm of Parker Daniels Kibort LLC (“PDK”). (Parker Decl., ¶¶ 1-2).
3. In April 2022, PDK was retained by Defendants Michael J. Lindell (“Lindell”), My Pillow, Inc. (“MyPillow”), and Frankspeech LLC (“Frankspeech”) to defend against all allegations in the above-captioned case. (Id., ¶ 3).
4. At the time of PDK’s retention, PDK had also been retained by Lindell and by MyPillow to defend against allegations of defamation in *Smartmatic USA Corp., et al. v. Lindell*,

*et al.*, No. 22-cv-00098-WMW-JFD, venued in the District of Minnesota, and in *US Dominion, Inc., et al. v. My Pillow, Inc., et al.*, No. 1:21-cv-00445-CJN, venued in the District of Columbia. (Id., ¶ 4).

5. The Plaintiffs in the *Smartmatic* and *Dominion* matters have alleged over \$1 billion in damages against Lindell and MyPillow in each matter. (Id., ¶ 5).

6. The above-captioned matter along with the *Smartmatic* and *Dominion* matters will be collectively referred to as the “Litigations.” (Id., ¶ 6).

7. Since the date of PDK’s retention, PDK has diligently and aggressively defended all Defendants in the Litigations. (Id., ¶ 7).

8. PDK’s work on behalf of all Defendants in the Litigations has included the following:

- a. collecting and producing hundreds of thousands of pages of documents using the services of various contractors, including ESI discovery platforms;
- b. receiving production of millions of pages of documents from the various plaintiffs and from non-parties, incurring costs associated with hosting the documents on litigation management software platforms, and paying contract document reviewers as well as its own attorneys to review the documents;
- c. extensive motion practice;
- d. defending many hours of depositions for Defendants and taking many hours of deposition testimony of opposing parties and non-parties;
- e. retaining and working with experts to obtain important information about the issues in the Litigations and to obtain expert reports in support of the Defendants’ defenses;
- f. communication with opposing counsel and non-party witnesses;

g. factual investigation and legal research regarding the issues in each of the Litigations;  
and

h. many other litigation administration tasks and obligations.

(Id., ¶ 8).

9. For the work PDK has completed on behalf of Defendants in the Litigations to this point, Defendants have incurred millions of dollars in fees and costs. (Id., ¶ 9).

10. Defendants regularly paid PDK in a timely manner (within 30 days of invoicing) all amounts owed for representation in the above-captioned case, up to the end of 2022. In 2023, Defendants' payments began to slow. In addition, around this time, total litigation fees and costs in the Litigations dramatically increased. In May 2023 payments slowed to more than 60 days and began to be only partial payments. (Id., ¶ 10).

11. No payment has been made for PDK's July 2023 and August 2023 invoices in the above-captioned case. A similar situation exists in the *Dominion* and *Smartmatic* cases. (Id., ¶ 11).

12. PDK has worked with Defendants over the past few months in hopes that Defendants would find a way to secure the financing to pay their debts to PDK and pay for PDK's continued representation. (Id., ¶ 12).

13. Beginning in August 2023 and again in September 2023, PDK warned Defendants that if they did not pay the outstanding invoices and continue to pay new invoices as they came due, PDK would have to withdraw its representation of Defendants. Two relatively small payments were made in August 2023 and two relatively small payments were made in September 2023, but these were only a fraction of the total owed. (Id., ¶ 13).

14. During the week of September 25, 2023, PDK engaged in further discussions with Defendants concerning the debt. PDK again warned Defendants that PDK would have to withdraw

its representation if the outstanding invoices were not paid. On October 2, 2023, PDK was informed by Defendants that they are not able to get caught up with or make any payment on the large amount they owe in arrears nor pay for anywhere near the estimated expense of continuing to defend against the lawsuits going forward, including either the legal fees or litigation costs. (Id., ¶ 14).

15. At this time, Defendants are in arrears millions of dollars to PDK. (Id., ¶ 15).

16. PDK is a small, 16-attorney litigation law firm in Minneapolis, MN. (Id., ¶ 16).

17. PDK cannot afford to carry this large of a debt nor to finance Defendants' defense in the Litigations going forward. (Id., ¶ 17).

18. If forced to continue its representation in the above-captioned case, PDK would be required to fund all personnel and payroll costs, as well as the costs and fees associated with the remaining motion practice, document review, and depositions. These costs would of course be in addition to all costs associated with potential trial preparation and attendance in Colorado next year. (Id., ¶ 18).

19. Future fees and costs in the above-captioned case may amount to hundreds of thousands of dollars in addition to the millions of dollars already owed throughout the Litigations. (Id., ¶ 19).

20. Forcing PDK to continue funding Defendants' defense in the above-captioned matter would place PDK in serious financial risk and could threaten the very existence of the firm. (Id., ¶ 20).

21. Defendants have been made fully aware of this filing by PDK. Defendants have indicated that they understand PDK's position, do not object, and are in the process of finding new counsel. (Id., ¶ 21).

22. Good cause exists under the circumstances described above to permit the undersigned attorneys to withdraw as counsel.

23. Pursuant to D.C.COLO.LAttyR 5(b), the undersigned attorneys have filed this Motion with the Court's ECF system, which will electronically serve all counsel of record.

24. The undersigned attorneys further affirm that this Motion will be served on all Defendants in this action.

25. Defendant Lindell has been advised that he is responsible for complying with all court orders and time limitations under applicable rules. (Parker Decl., ¶ 22).

26. Defendants MyPillow, Inc. and Frankspeech LLC have been advised that these entities may not appear without counsel admitted to the bar of the U.S. District Court for the District of Colorado, and that absent prompt appearance of substitute counsel, pleadings and papers may be stricken, and default judgment or other sanctions may be imposed against these entities. (Id., ¶ 23).

### **CONCLUSION**

For all reasons set forth above, the undersigned attorneys respectfully request that they be permitted to withdraw from this action and that their representation of Defendants Michael J. Lindell, Frankspeech LLC, and My Pillow, Inc.

### **CERTIFICATE OF CONFERRAL**

PDK contacted Plaintiff's counsel regarding this Motion via telephone on October 5, 2023. Plaintiff's counsel stated they do not oppose our motion to withdraw to the extent that we are not requesting any deadlines to change.

DATED: October 5, 2023

**PARKER DANIELS KIBORT LLC**

By: /s/ Andrew D. Parker

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