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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KRISTI VERMA, et al.,  
Plaintiffs,  
v.  
EFRAT OKEV, et al.,  
Defendants.

No. 2:13-cv-00865-MCE-EFB

**MEMORANDUM AND ORDER**

This case arises from a dispute between two married couples who are also sole shareholders of a close corporation. Kristi Verma, Vishal Verma and Zentek Corporation (“Zentek”) (collectively, “Plaintiffs”) allege fourteen causes of action against Efrat Okev, Lloyd Burton, and Augzenta, Inc. (“Augzenta”) (collectively “Defendants”) for: (1) Breach of Fiduciary Duty; (2) Misappropriation of Corporate Assets; (3) Interference with Contract; (4) Interference with Prospective Economic Advantage; (5) Unfair, Unlawful and Fraudulent Acts and Practices; (6) Conversion; (7) Breach of Covenant of Good Faith and Fair Dealing; and (8) Conspiracy. ECF No. 37. Currently before the Court is Plaintiffs’ Motion to Appoint a Provisional Director (ECF No. 57), by which they seek an order appointing an additional director to Zentek’s board to break a deadlock between

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1 existing directors over whether to revive the currently suspended corporation. For the  
2 reasons set forth below, Plaintiffs' Motion is DENIED.<sup>1</sup>

### 4 **BACKGROUND<sup>2</sup>**

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6 The individual Plaintiffs and individual Defendants, two married couples, had been  
7 close friends for many years. On or about August 1, 2005, they entered into an  
8 agreement to start an IT consulting business and subsequently formed Zentek. It was  
9 implicit in their agreement that no party would start a competing IT consulting and  
10 management service company.

11 Zentek is a California corporation with its principal place of business in California.  
12 The two wives were elected as its directors. Kristi Verma ("Verma") is Chief Executive  
13 Officer and President, and Efrat Okev ("Okev") is Chief Financial Officer and Secretary.  
14 The corporation's stock was split 26% to each wife and 24% to each husband, and the  
15 parties ran a profitable business for many years. Since then, however, Zentek ceased  
16 operations and has been suspended by both the California Secretary of State and the  
17 Franchise Tax Board for failing to file required documents and failing to meet tax  
18 requirements. Verma Decl., ECF No. 56-1, ¶ 7; Mot., ECF No. 57, at 2.

19 Recently, Plaintiffs discovered that the individual Defendants had started  
20 Augzenta, a new IT consulting and management firm. Augzenta is a Missouri  
21 corporation with its principal place of business in St. Louis, Missouri. Augzenta claims  
22 that it has conducted no business in California and has no California customers.  
23 Plaintiffs nonetheless allege that the individual Defendants used Zentek's customer lists,  
24 intellectual property, confidential trade information and secrets, and other corporate  
25 assets to start Augzenta. Additionally, current Zentek customers and key employees

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26 <sup>1</sup> Because oral argument will not be of material assistance, the Court ordered this matter  
27 submitted on the briefs. E.D. Cal. Local Rule 230(g); ECF No. 67.

28 <sup>2</sup> Unless otherwise noted, the following facts are taken from Plaintiffs' First Amended Complaint.  
ECF No. 37.

1 were purportedly solicited to work with and for Augzenta as well. Augzenta also uses  
2 Zentek's name and logo and represents on its website that it is Zentek's successor.

3 As is relevant to Plaintiffs' current motion, Zentek's only two directors, Verma and  
4 Okev, disagree as to whether to revive Zentek as a corporation. Verma Decl. at  
5 ¶¶ 10-11. Accordingly, Plaintiffs filed this motion pursuant to California Corporations  
6 Code section 308 seeking the appointment of a provisional director to break this  
7 deadlock.

### 8 9 ANALYSIS

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11 The purpose of California Corporations Code section 308 is to ensure that a  
12 corporation's ability to transact business is not compromised as a result of a deadlock  
13 between corporate directors. Section 308(a) states:

14 If a corporation has an even number of directors who are equally  
15 divided and cannot agree as to the management of its affairs, so  
16 that its business can no longer be conducted to advantage or so that  
17 there is danger that its property and business will be impaired or  
lost, the superior court of the proper county may . . . appoint a  
provisional director pursuant to this section.

18 Cal. Corp. Code § 308(a).<sup>3</sup>

19 Pursuant to this section, court intervention may be appropriate when it is clear  
20 that the deadlock would have an adverse effect on the ability of the corporation to  
21 operate effectively. See, e.g., In re ANNRHON, Inc., 17 Cal. App. 4th 742, 754 (5th Dist.  
22 1993) (holding the director deadlock over whether to expand the business or sell out  
23 reflected a degree of dissension that prevented any movement on the issues). The party  
24 requesting the appointment of a provisional director under section 308 must prove either:  
25 (1) that "business can no longer be conducted to advantage"; or (2) that "there is a

26 <sup>3</sup> The Court notes that section 308(a) specifically provides that the "superior court of the proper  
27 county" may appoint a provisional director. Though not critical to the Court's decision, based on this  
28 language, it is not clear whether Plaintiffs have pursued their current request in the proper court. Indeed,  
they cite no authority for the proposition that this Court rather than the superior court may grant the relief  
requested pursuant to that section.

1 danger that its property and business will be impaired or lost.” Cal. Corp. Code § 308(a).  
2 Plaintiffs fail to meet this burden here.

3 As a threshold matter, Plaintiffs do not identify how Zentek’s business is being  
4 impaired by the disagreement about whether to revive the corporation since Zentek  
5 apparently ceased operating over two years ago. There is thus no ongoing business for  
6 the corporation to conduct. Similarly, since Zentek already ceased operations, and is in  
7 fact suspended, it is unclear how there is any danger that “its property and business will  
8 be impaired or lost.”<sup>4</sup> In sum, California Corporations Code section 308 is designed to  
9 ensure the continued vitality of a corporation, not to revive a suspended corporation  
10 where no current or future prospects of conducting business have been alleged.  
11 Accordingly, Plaintiffs have failed to satisfy the statutory requirements of section 308,  
12 and their Motion is DENIED.

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14 **CONCLUSION**

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16 For the reasons stated above, Plaintiffs’ Motion to Appoint a Provisional Director  
17 (ECF No. 57) is DENIED.

18 IT IS SO ORDERED.

19 Dated: January 28, 2015

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23 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
24 UNITED STATES DISTRICT COURT

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26 <sup>4</sup> Moreover, Plaintiffs again fail to cite any relevant authority standing for the proposition that this  
27 court may appoint a provisional director to serve an already suspended corporation in the first place.  
28 Under California law, a suspended corporation is disqualified from exercising any right, power, or privilege,  
including prosecuting or defending an action, or appealing a judgment. Timberline, Inc. v. Jaisinghani,  
54 Cal. App. 4th 1361, 1365 (2d Dist. 1997). Absent some authority to the contrary, then, the Court finds it  
unlikely a provisional director may be appointed in this context either.