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7   IN THE UNITED STATES DISTRICT COURT

8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

9   SAN JOSE DIVISION

10   Leonardo Espinoza, et al.,   NO. C 08-01522 JW

11   Plaintiff,   **ORDER GRANTING DEFENDANT C&C
        v.   SECURITY PATROL, INC.'S MOTION
12   FOR LEAVE TO FILE ANSWER**
     C & C Security Patrol, Inc., et al.,

13
               Defendants.
14   _____/

15   Presently before the Court is Defendant C&C Security Patrol, Inc.'s ("C&C") Motion for

16   Leave to File Answer. (Docket Item No. 16.) C&C moves for leave to file an Answer after it has

17   revived its corporate status.[1]

18   Under Cal. Rev. & Tax. Code § 23301,

19   the corporate powers, rights and privileges of a domestic tax payer, may be
           suspended, and the exercise of the corporate powers, rights and privileges of a
20   foreign taxpayer in this state may be forfeited if any of the following conditions
           occur: (a) If any tax, penalty or interest, or any portion thereof, which is due and
21   payable . . . is not paid . . . or (b) If any tax, penalty or interest, or any portion
           thereof, due and payable upon notice and demand from the Franchise Tax Board,
22   or due and payable under Section 25936 is not paid . . . .

23   "It is well-settled that a delinquent corporation may not bring suit and may not defend a legal

24   action." United States v. 2.61 Acres of Land, 791 F.2d 666, 668 (9th Cir. 1985) (citing Reed v.

25   Norman, 48 Cal. 2d 338, 343 (1957)). "However, once the corporate powers are reinstated, the

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28   [1] Leonardo Espinoza and Sergio Roque ("Plaintiffs") did not file an opposition to this
     motion.

1 corporation may defend an action." Id. (citing Traub Co. v. Coffee Break Service, Inc., 66 Cal. 2d

2 368, 371 (1967).

3   Until a suspended corporation has been revived, it may appear before a court for the limited

4 purpose of requesting a continuance to enable its revival. Schwartz v. Magyar House, Inc., 168 Cal.

5 App. 2d 182, 188 (1959). In deciding whether to grant such a continuance a court may consider (1)

6 the moving party's diligence; (2) the usefulness of the continuance in allowing the moving party to

7 revive itself; (3) the inconvenience of a continuance to the court and the parties; and (4) the

8 prejudice to either party of granting a continuance. See 2.61 Acres, 791 F.2d at 671-72.

9   C&C's corporate status was suspended under Cal. Rev. & Tax. Code § 23301 because it

10 failed to provide a current Statement of Information and has a "tax issue" with California's

11 Franchise Tax Board. (Declaration of Frank Russow in Support of Defendant C&C Security Patrol,

12 Inc's Motion for Order for Leave to File Answer ¶ 2, Docket Item No. 16-2.) Accordingly, C&C is

13 unable to file an Answer to Plaintiff's First Amended Complaint.

14   The Court finds the potential prejudice to C&C to be the critical factor. If leave for C&C to

15 file its Answer at a later date is not granted, C&C will be unable to take action to prevent default

16 proceedings in this matter. In light of the fact that C&C filed its intended Answer with the Court

17 along with this motion, the Court finds that Plaintiffs will not be substantially prejudiced by further

18 delay in receiving C&C's pleading.

19   Accordingly, the Court GRANTS C&C's Motion for Leave to File Answer. C&C shall file

20 its Answer on the earlier of (10) ten days following revival of its corporate status; or (2) **November**

21 **25, 2008**.

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23 Dated: October 2, 2008

    JAMES WARE
24   United States District Judge

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THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Sejal Ojha sxo@mmker.com

Dated: October 2, 2008   **Richard W. Wieking, Clerk**

By: **/s/ JW Chambers**
          Elizabeth Garcia
          Courtroom Deputy