

1 Aaron Greenspan (*Pro Se*)
2 956 Carolina Street
3 San Francisco, CA 94107-3337
4 Phone: +1 415 670 9350
5 Fax: +1 415 373 3959
6 E-Mail: aaron.greenspan@plainsite.org

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10 AARON GREENSPAN,

11 Plaintiff,

12 v.

13 OMAR QAZI, SMICK ENTERPRISES, INC.,
14 ELON MUSK, and TESLA, INC.,

15 Defendants.

Case No. 3:20-cv-03426-JD

**PLAINTIFF'S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
APPLICATION FOR DEFAULT
AND/OR MOTION FOR
DEFAULT JUDGMENT ON
SMICK ENTERPRISES, INC.**

Judge: Hon. James Donato
SAC Filed: August 26, 2020

1 Pursuant to Civil Local Rule 7-11 and this Court’s September 2, 2020 Order Re Default
2 and Civility (ECF No. 72), Plaintiff Aaron Greenspan respectfully requests leave to file an
3 Application for Default and/or Motion for Default Judgment against Defendant Smick
4 Enterprises, Inc. only.

5 As described in the initial Complaint (ECF No. 1) in this action at ¶ 11, the First
6 Amended Complaint (ECF No. 20) at ¶ 13, and the Second Amended Complaint (ECF No. 70) at
7 ¶ 15, “Defendant Smick Enterprises, Inc. is a Delaware corporation unregistered with the
8 California Secretary of State or Franchise Tax Board, but nonetheless operating...” Therefore,
9 the “dereliction of duty or inexcusable neglect” referenced as a necessary prerequisite for default
10 judgment in the Court’s Order on Default and Civility took place not in July 2020 surrounding
11 service of the First Amended Complaint, but during the years leading up to that moment when
12 the principal(s) of Smick Enterprises, Inc., including Defendant Omar Qazi, *actively* chose not to
13 register the corporation in California to avoid paying “\$800...EVERY YEAR” in taxes. Second
14 Amended Complaint ¶ 291.


15 “The purpose of Revenue and Taxation Code section 23301 is to ‘prohibit the delinquent
16 corporation from enjoying the ordinary privileges of a going concern,’ to pressure it into paying
17 its taxes. (*Peacock Hill Assn. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal.3d 369, 371.)... The
18 same rule applies to corporations suspended for failure to file a statement of information.” *Adly*
19 *Enterprises, LLC v. Action a Parent & Teen Support Program, Inc. et al*, Case No. B282578
20 (Cal. App. August 27, 2018). The fact that even seven months after this action was filed, Smick
21 Enterprises, Inc. is *still* unregistered with the California Secretary of State and California
22 Franchise Tax Board does indeed constitute both “dereliction of duty” and “inexcusable
23 neglect.” In the past, courts have also sanctioned law firms that knowingly represented
24 companies not in good standing, as counsel Kronenberger Rosenfeld LLP has here. *Id.* Indeed,
25 no company called Smick Enterprises, Inc. has ever filed a required Statement of Information
26 with the California Secretary of State under California Corporations Code § 1502.

Pursuant to *Palm Valley Homeowners Assn., Inc. v. Design MTC* (2000), “[A] corporation suspended under the Corporations Code, like a corporation suspended under the Revenue and Taxation Code, is also disabled from participating in litigation activities.” 85 Cal.App.4th 553, 556, 560. Defendant Smick Enterprises, Inc. has never even made an attempt to comply with the California Corporations Code; it therefore is also disabled from participating in litigation activities in California and cannot defend itself in this lawsuit. It is also an open question as to how a corporation required to “transact no business of any kind,” at least while delinquent, can retain paid counsel to “represent” the delinquent corporation, which is necessary under Civil Local Rule 3-9(b). *Id.* See also *Nickerman v. Remco Hydraulics, Inc.*, Case No. 3:06-cv-02555-SI at footnote 3 (N.D. Cal. August 8, 2006) (corporations that fail to pay taxes “may not prosecute or defend an action”). There is no question of Defendant Smick Enterprises, Inc. reviving corporate powers here because it has never had any corporate powers in California to begin with.¹ And Defendant Qazi has openly admitted that Smick Enterprises, Inc. is paying a significant portion, if not all, of Kronenberger Rosenfeld LLP’s attorney’s fees to represent both parties in this case.

¹ In *Senah, Inc. v. Xi’an Forstar S&T Co., Ltd.*, Case No. 5:13-cv-04254-BLF (N.D. Cal. July 3, 2014), the Court addressed a similar situation where a foreign corporation unregistered in California, having failed to meet the requirements of California Corporations Code § 2105, purported to have the right to defend itself in California courts. First, the Court in *Senah* erred by relying upon outdated precedent from 1969 and 1996, whereas the opinion in *Palm Valley*, *supra*, issued in 2000. The Court in *Senah* never considered *Palm Valley*’s holdings. Second, this case is distinguishable because in *Senah*, the Court found that “Plaintiff’s citation to *Reed v. Norman* is inapposite to the question presented here. In *Reed*, the corporation had its corporate rights suspended by the state due to its failure to pay taxes. See *Reed*, 48 Cal. 2d 338, 343. Nowhere in Plaintiff’s briefing does it argue that Defendant has failed to pay any necessary state taxes...” Yet in this case, Plaintiff *has* highlighted Defendant Smick Enterprises, Inc.’s failure to pay “necessary state taxes” repeatedly. Third, Xi’an Forstar S&T Co., Ltd. is a Chinese corporation with its primary place of business in Xi’an, China, which might plausibly explain why it did not pay taxes in California. In contrast, Defendant Smick Enterprises, Inc. is a Delaware corporation *with its primary place of business in San Francisco, California*.

1 Accordingly, pursuant to Federal Rule of Civil Procedure 55(a), the Clerk of Court
2 should enter default against Defendant Smick Enterprises Inc. as it has “failed to plead or
3 otherwise defend,” and Plaintiff should be permitted to file a motion requesting that judgment be
4 entered in full against Defendant Smick Enterprises, Inc. Or, in the alternative, since technically
5 Defendant Smick Enterprises, Inc. is unable to respond to this motion or any other, the Court
6 should enter judgment against Defendant Smick Enterprises, Inc. on its own motion.

7
8 Dated: December 28, 2020

9
10 

11 Aaron Greenspan
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AARON GREENSPAN,

Plaintiff,

v.

OMAR QAZI, SMICK ENTERPRISES, INC.,
ELON MUSK, and TESLA, INC.,

Defendants.

Case No. 3:20-cv-03426-JD

**DECLARATION OF AARON
GREENSPAN IN SUPPORT OF
PLAINTIFF'S ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
APPLICATION FOR DEFAULT
AND/OR MOTION FOR
DEFAULT JUDGMENT ON
SMICK ENTERPRISES, INC.**

I, Aaron Greenspan, declare as follows:

1. I have consulted the California Secretary of State's Business Search database at <https://businesssearch.sos.ca.gov> on a number of occasions, most recently today, to check for the status of Smick Enterprises, Inc.

2. At no point has Smick Enterprises, Inc. ever been registered with or filed a Statement of Information with the California Secretary of State, or by extension, a tax return or payment with the California Franchise Tax Board.

3. At no point have Smick Enterprises, Inc. or its principal Omar Qazi ever argued that Smick Enterprises, Inc. was, in fact, registered to do business or paying taxes in California.

4. The closest matching company, Smick, Inc., was dissolved in 2006.

5. As Exhibit A, I have attached a true and correct copy of the California Secretary of State's Business Search results page at

1 <https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=CORP&SearchCriteria=smick&SearchSubType=Keyword> accessed today, reflecting no company named Smick
2 Enterprises, Inc. as of December 28, 2020.
3

4 6. As Exhibit B, I have attached a true and correct copy of my correspondence with
5 opposing counsel regarding this motion. Although it is my understanding Smick Enterprises,
6 Inc. cannot defend itself in this lawsuit in any way, pursuant to Civil Local Rule 7-11(a), I
7 requested that Defendants Smick Enterprises, Inc. and Omar Qazi stipulate to this filing.
8 Counsel responded by asking for citations to legal precedent, but did not definitively respond to
9 my question regarding stipulation. Even if counsel had responded in a clear manner, it is not
10 clear to me that his response would have any legal effect under *Palm Valley Homeowners Assn.,*
11 *Inc. v. Design MTC*, 85 Cal.App.4th 553, 556, 560 (2000).

12 7. As Exhibit C, I have attached a true and correct copy of an image posted by
13 Defendant Omar Qazi on his personal website on December 25, 2020, depicting a payment
14 request from Kronenberger Rosenfeld LLP to Smick Enterprises, Inc. for several legal bills in
15 connection with this litigation, at [https://i0.wp.com/wholemars.net/wp-](https://i0.wp.com/wholemars.net/wp-content/uploads/2020/12/Screen-Shot-2020-12-25-at-7.14.27-AM.png?resize=768%2C740&ssl=1)
16 [content/uploads/2020/12/Screen-Shot-2020-12-25-at-7.14.27-](https://i0.wp.com/wholemars.net/wp-content/uploads/2020/12/Screen-Shot-2020-12-25-at-7.14.27-AM.png?resize=768%2C740&ssl=1)
17 [AM.png?resize=768%2C740&ssl=1](https://i0.wp.com/wholemars.net/wp-content/uploads/2020/12/Screen-Shot-2020-12-25-at-7.14.27-AM.png?resize=768%2C740&ssl=1).

18 I declare under penalty of perjury under the laws of the United States that the above
19 statements are true and correct and that this declaration was executed on December 28, 2020 in
20 San Francisco, California.
21

22 Dated: December 28, 2020
23

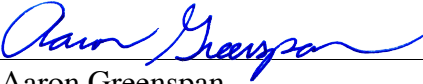
24 
25 Aaron Greenspan
26
27
28

EXHIBIT A

California Secretary of State Business Search Results Page as of December 28, 2020

Alex Padilla
California Secretary of State

Business Search - Results







The California Business Search is updated daily and reflects work processed through Sunday, December 27, 2020. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

- Select an entity name below to view additional information. Results are listed alphabetically in ascending order by entity name, or you can select a column title to change the sort order.
- To refine the search results, enter a word or a string of words in the "Narrow search results" box. The "Narrow search results" will search on all fields of the initial search results.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on requesting a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

Results of search for Corporation Name keyword "smick" returned 4 entity records (out of 4 records found).

Show entities per page

Narrow search results:

Entity Number 	Registration Date 	Status 	Entity Name 	Jurisdiction 	Agent for Service of Process 
C0996272	08/27/1980	FTB SUSPENDED	<u>LARRY B. SMICK, D. O. INC.</u>	CALIFORNIA	WILLIAM MORTLAND
C1094638	10/30/1981	FTB SUSPENDED	<u>LORRELL D. SMICK, D.D.S., INC.</u>	CALIFORNIA	LOREELL D SMICK
C0789728	12/23/1976	DISSOLVED	<u>SMICK, INC.</u>	CALIFORNIA	NAOMI CHERI SMITH
C3530590	12/18/2012	FTB SUSPENDED	<u>THE ALEXANDER SMICK MEMORIAL FOUNDATION</u>	CALIFORNIA	LEGALZOOM.COM, INC. (C2967349)

Showing 1 to 4 of 4 entities

Previous

1

Next

Modify Search

New Search

EXHIBIT B

E-Mail Correspondence with Karl Kronenberger Regarding Motion for Leave To File

From: Aaron Greenspan aaron.greenspan@PLAINSITE.ORG

Subject: Civil Local Rule 7-11 Stipulation Request

Date: December 25, 2020 at 4:05 PM

To: Karl Kronenberger karl@krinternetlaw.com

Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Karl,

I plan to file an administrative motion for leave to file an application for default and/or motion for default judgment on Smick Enterprises, Inc., which is not registered to do business in California and has not paid taxes in California and is therefore unable to defend against a lawsuit.

Pursuant to Civil Local Rule 7-11(a), please let me know if you stipulate to this filing.

Aaron

PlainSite I <https://www.plainsite.org>

From: Aaron Greenspan aaron.greenspan@plainsite.org
Subject: Fwd: Civil Local Rule 7-11 Stipulation Request
Date: December 28, 2020 at 3:03 PM
To: Karl Kronenberger karl@krinternetlaw.com
Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Karl,

I will be filing this today. Please advise.

Aaron

PlainSite | <https://www.plainsite.org>

Begin forwarded message:

From: Aaron Greenspan <aaron.greenspan@plainsite.org>
Subject: Civil Local Rule 7-11 Stipulation Request
Date: December 25, 2020 at 4:05:41 PM PST
To: Karl Kronenberger <karl@krinternetlaw.com>
Cc: Jeff Rosenfeld <jeff@krinternetlaw.com>, Liana Chen <liana@krinternetlaw.com>, Kate Hollist <kate@krinternetlaw.com>

Karl,

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Pursuant to Civil Local Rule 7-11(a), please let me know if you stipulate to this filing.

Aaron

PlainSite | <https://www.plainsite.org>

From: Karl Kronenberger <karl@krinternetlaw.com>
Subject: RE: Civil Local Rule 7-11 Stipulation Request
Date: December 28, 2020 at 3:06 PM
To: Aaron Greenspan <aaron.greenspan@plainsite.org>
Cc: Jeff Rosenfeld <jeff@krinternetlaw.com>, Liana Chen <liana@krinternetlaw.com>, Kate Hollist <kate@krinternetlaw.com>

Hello,

Will you explain what your legal argument is for this motion?

Sincerely,

Karl

From: Aaron Greenspan <aaron.greenspan@plainsite.org>
Sent: Monday, December 28, 2020 3:03 PM
To: Karl Kronenberger <karl@krinternetlaw.com>
Cc: Jeff Rosenfeld <jeff@krinternetlaw.com>; Liana Chen <liana@krinternetlaw.com>; Kate Hollist <kate@krinternetlaw.com>
Subject: Fwd: Civil Local Rule 7-11 Stipulation Request

Karl,

I will be filing this today. Please advise.

Aaron

PlainSite I <https://www.plainsite.org>

Begin forwarded message:

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Subject: Civil Local Rule 7-11 Stipulation Request
Date: December 25, 2020 at 4:05:41 PM PST
To: Karl Kronenberger <karl@krinternetlaw.com>
Cc: Jeff Rosenfeld <jeff@krinternetlaw.com>, Liana Chen <liana@krinternetlaw.com>, Kate Hollist <kate@krinternetlaw.com>

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Pursuant to Civil Local Rule 7-11(a), please let me know if you stipulate to this filing.

Aaron

PLAIN

PlainSite | <https://www.plainsite.org>

From: Aaron Greenspan aaron.greenspan@PLAINSITE.ORG
Subject: Re: Civil Local Rule 7-11 Stipulation Request
Date: December 28, 2020 at 3:13 PM
To: Karl Kronenberger karl@krinternetlaw.com
Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Karl,

Pursuant to *Palm Valley Homeowners Assn., Inc. v. Design MTC* (2000), "[A] corporation suspended under the Corporations Code, like a corporation suspended under the Revenue and Taxation Code, is also disabled from participating in litigation activities." 85 Cal.App.4th 553, 556, 560. Smick Enterprises, Inc. ("Smick") has never even made an attempt to comply with the California Corporations Code; it therefore is also disabled from participating in litigation activities in California and cannot defend itself in this lawsuit. *See also Nickerman v. Remco Hydraulics, Inc.*, Case No. 3:06-cv-02555-SI at footnote 3 (N.D. Cal. August 8, 2006) (corporations that fail to pay taxes "may not prosecute or defend an action").

To the extent there may be cases where unregistered, as opposed to suspended, foreign corporations in California have alleged that they do have the right to defend themselves in court, those cases have not involved allegations that the corporation was delinquent insofar as taxes are concerned. Here, the allegations that Smick has not paid its taxes are explicit. And in fact, Smick has not paid its taxes.

Aaron

PlainSite | <https://www.plainsite.org>

From: Karl Kronenberger karl@krinternetlaw.com
Subject: RE: Civil Local Rule 7-11 Stipulation Request
Date: December 28, 2020 at 3:42 PM
To: Aaron Greenspan aaron.greenspan@plainsite.org
Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Aaron,

What is the docket number of the document to which you are referring in the *Nickerman* case below? There are 220 entries.

Sincerely,

Karl

From: Aaron Greenspan <aaron.greenspan@plainsite.org>
Sent: Monday, December 28, 2020 3:13 PM
To: Karl Kronenberger <karl@krinternetlaw.com>
Cc: Jeff Rosenfeld <jeff@krinternetlaw.com>; Liana Chen <liana@krinternetlaw.com>; Kate Hollist <kate@krinternetlaw.com>
Subject: Re: Civil Local Rule 7-11 Stipulation Request

Karl,

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To the extent there may be cases where unregistered, as opposed to suspended, foreign corporations in California have alleged that they do have the right to defend themselves in court, those cases have not involved allegations that the corporation was delinquent insofar as taxes are concerned. Here, the allegations that Smick has not paid its taxes are explicit. And in fact, Smick has not paid its taxes.

Aaron

PlainSite | <https://www.plainsite.org>

From: Aaron Greenspan aaron.greenspan@PLAINSITE.ORG

Subject: Re: Civil Local Rule 7-11 Stipulation Request

Date: December 28, 2020 at 3:43 PM

To: Karl Kronenberger karl@krinternetlaw.com

Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Karl,

I'm not sure, but only one of entries should be a court order that corresponds to the date in the citation, August 8, 2006.

Aaron

PlainSite | <https://www.plainsite.org>

From: Aaron Greenspan aaron.greenspan@PLAINSITE.ORG 
Subject: Re: Civil Local Rule 7-11 Stipulation Request
Date: December 28, 2020 at 3:52 PM
To: Karl Kronenberger karl@krinternetlaw.com
Cc: Jeff Rosenfeld jeff@krinternetlaw.com, Liana Chen liana@krinternetlaw.com, Kate Hollist kate@krinternetlaw.com

Karl,

It's Document 49, attached.

Aaron

PlainSite | <https://www.plainsite.org>



gov.uscourts.ca
nd.178...9.0.pdf

EXHIBIT C

Image Posted By Omar Qazi Depicting Request for Smick Enterprises, Inc. To Pay
Kronenberger Rosenfeld LLP \$31,397.08

Kronenberger Rosenfeld LLP

Dear Smick Enterprises, Inc.,

Your bill is ready. You can see your account summary below.

Thank you for your business.

Account summary

Amount due on Bill 22083 (Download)	\$9,228.88
--	-------------------

Due date: 01/22/2021

Amount due on 2 other bills	\$22,168.20
------------------------------------	--------------------

Total amount due	\$31,397.08
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Pay online now

The payment link will expire in 90 days upon receipt.