

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-3910-GW(ASx)	Date	January 19, 2017
Title	<i>Winston Smith, et al. v. Chapter 4 Corp., et al.</i>		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE		
Javier Gonzalez	None Present		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
None Present	None Present		

**PROCEEDINGS (IN CHAMBERS): ORDER RE: MOTION TO INTERVENE**

On December 8, 2016, the Court denied a motion to dismiss in this action, in the process of its analysis determining that Dead Kennedys/Decay Music is a “required party” under Rule 19(a)(1) of the Federal Rules of Civil Procedure. *See* Docket No. 35, at pgs. 1, 5 of 5. Decay Music, d.b.a. Dead Kennedys (“Decay”) now moves to intervene, both as of right and permissively, under Rule 24 of the Federal Rules of Civil Procedure. No party has opposed the motion, and its merits seem obvious to this Court both with respect to intervention-as-of-right and permissive intervention (and – to the extent it is required – there is an independent basis for subject matter jurisdiction over Decay’s first counterclaim, and supplemental jurisdiction over the remainder). As such, the Court will grant the motion. The only question is how Decay will be aligned and whether it may file an Answer and Counterclaim or whether – as plaintiff Winston Smith (“Plaintiff”) asserts – it must instead file a Complaint-in-Intervention and no Answer.

Decay is clearly to be aligned with the present defendants, for the reasons the Court addressed in resolving the earlier motion to dismiss. *See* Schwarzer, Tashima, et al., California Practice Guide: Federal Civil Procedure Before Trial (2012) § 7:263, at 7-101. There is further no question that Decay may intervene as a defendant. *See, e.g., id.* (2013) § 7:262, at 7-100. Intervening as a defendant, the Court sees no prejudice to Plaintiff from allowing Decay to file an Answer to Plaintiff’s Complaint and a “Counterclaim” even though Plaintiff’s Complaint does not make any allegations against Decay and the “Counterclaim” therefore would not traditionally be regarded as such. As Decay points out, at the very least, its filing of an Answer allows it to ensure that it will not waive any defenses it believes it may have in this action as it progresses.

As such, the Court grants Decay’s motion, deems its proposed Answer and Counterclaim filed as

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of this day, and allows Plaintiff his requested 20 days in which to respond. The hearing scheduled for January 26, 2017, at 8:30 a.m. is vacated. See Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15 (“The Court may dispense with oral argument on any motion except where an oral hearing is required by statute, the F.R.Civ.P., or these Local Rules.”).

Deputy Clerk \_\_\_\_\_

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