

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN AMES BROWN,

No C 08-2348 VRW

Plaintiff,

ORDER

v

ANDREW B STROUD, an individual  
and STROUD PRODUCTIONS AND  
ENTERPRISES INC,

Defendant.

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STROUD PRODUCTIONS AND  
ENTERPRISES, INC and ANDREW B  
STROUD,

No C 09-3796 VRW

Plaintiffs,

v

CASTLE ROCK ENTERTAINMENT, INC,  
WARNER BROS ENTERTAINMENT, INC  
and WARNER INDEPENDENT PICTURES,  
INC,

Defendants.

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1 Andrew B Stroud moves for leave to amend a portion of his  
2 counterclaims under FRCP 15(a)(2), Doc #103, and for a continuance  
3 of all outstanding deadlines, Doc #128. Steven Ames Brown opposes  
4 both motions. Doc #115; #127. For the following reasons, Stroud's  
5 motion for leave to amend his counterclaims is DENIED and Stroud's  
6 motion for a continuance of all outstanding deadlines is GRANTED.

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8 I

9 Under FRCP 15(a)(2), after the time to amend a pleading  
10 as a matter of course has expired, "a party may amend its pleading  
11 only with the opposing party's written consent or the court's  
12 leave." While determination of whether leave to amend should be  
13 given rests in the sound discretion of the district court, Swanson  
14 v United States Forest Service, 87 F3d 339, 343 (9th Cir 1996),  
15 leave should be freely given unless the opposing party shows bad  
16 faith on the part of the moving party or that the motion would  
17 result in undue prejudice to the opposing party. Foman v Davis,  
18 371 US 178, 182 (1962).

19 Stroud proposes the following amendments, marked by  
20 underlined text:

21 18. Counterclaimants own all right, title and interest in the  
22 disputed recordings and the embodiments thereof, and  
23 therefore, should be adjudged the owners of the  
copyrights and master physical embodiments of said  
recordings.

24 19. Furthermore, Sony Music Entertainment and BMG Music has  
25 [sic] withheld and is withholding royalties from Stroud  
26 that are being generated pursuant to the producer  
27 agreement ("Stroud Producer Agreement"), dated May 1,  
28 1968, entered into by Counterclaimant Stroud and RCA  
Records, a predecessor-in-interest to BMG Music.  
Sony/BMG has [sic] advised that the royalties have  
instead been paid for the benefit of the Estate of Nina  
Simone and that Counter-defendants seek to have future

1 royalties that are being held paid to them. Rather than  
2 the Estate, Stroud is entitled to payment of all future  
3 Stroud Production account royalties by Sony Music  
4 Entertainment and BMG Music.

5 20. Counterclaimants are entitled to a declaration of rights,  
6 damages resulting from Counter- defendants' [sic]  
7 conduct, all future royalties pursuant to the Stroud  
8 Producer Agreement, an injunction from future  
9 interference, and direction that Sony may release the  
10 master recordings to Counterclaimant Stroud.

11 Doc #103 at 3.

12 Brown argues that the proposed amendment seeks to  
13 transform and expand the issues before the court to encompass an  
14 issue - royalty payments - that is the subject of an ongoing  
15 dispute filed by Stroud in New York state court in 2005. Doc #115  
16 at 2. Brown argues that Stroud's motion is in bad faith and that  
17 Stroud "has been dilatory for years and to grant [Stroud's] motion  
18 would unduly prejudice Brown." Id at 10. Stroud contends that the  
19 "limited scope" of the proposed amendment reflects that it is not  
20 made in bad faith. Doc #116 at 2.

21 It is clear that Stroud is not seeking to add a novel  
22 claim to this litigation. Rather, he seeks to inject the issue of  
23 royalty payments, which has been before the New York state court  
24 for at least two years, see Doc #115 at 15-21 (dated March 7,  
25 2008), into this matter. Clearly Brown, who represents that he has  
26 hired counsel in the New York action, has expended time and money  
27 litigating that action. To allow Stroud to wipe out years of New  
28 York state court proceedings and to litigate, as part of this  
dispute, the very issues involved in the New York case, would not,  
despite Stroud's assertion, serve the interest of judicial economy.  
Rather, such a course would result in Brown suffering undue  
prejudice.

1 Furthermore, as Brown points out, the claim that Stroud  
2 seeks to amend is a declaratory judgment claim. As the Supreme  
3 Court observed long ago, “[o]rdinarily it would be uneconomical as  
4 well as vexatious for a federal court to proceed in a declaratory  
5 judgment suit where another suit is pending in a state court  
6 presenting the same issues, not governed by federal law, before the  
7 same parties.” Brillhart v Excess Ins Co of America, 316 US 491,  
8 495 (1942). Stroud, in his reply, does not address Brillhart or  
9 discuss any other cases concerning the appropriateness of  
10 litigating the royalty dispute, which appears to be an issue  
11 between Stroud and Brown, among others, and concerns New York state  
12 law. The court, therefore, has no reason to disagree with Brown’s  
13 submission that to resolve the royalty dispute as part of this  
14 action would be an inappropriate use of the court’s declaratory  
15 judgment jurisdiction.

16 For these reasons, Brown has met his burden of showing  
17 that he would suffer undue prejudice should the court grant  
18 Stroud’s motion for leave to amend. Stroud’s motion, Doc #103,  
19 therefore is DENIED. The hearing scheduled for April 8, 2010 is  
20 HEREBY VACATED.

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22 II

23 Stroud also has asked the court, in light of his  
24 attorneys’ recent withdrawal, for additional time to respond to two  
25 orders to show cause issued by the court on March 26, 2010. Doc  
26 #128. While Brown opposes Stroud’s request, Doc #127, a short  
27 continuance will enable Stroud to hire a new attorney and to  
28 respond timely to the court’s orders. The deadlines set forth in

1 the court's March 26 orders to show cause, Doc #121, are HEREBY  
2 TERMINATED. Stroud shall file his responses to the court's orders  
3 to show cause in writing on or before April 20, 2010. Failure to  
4 file responses by April 20 will result in the court (i) granting  
5 Brown's request to file a motion to compel and (ii) staying Stroud  
6 v Castle Rock Entertainment, Inc, et al, 09-3796 VRW, pending the  
7 outcome of Brown v Stroud, 08-2348 VRW.

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9 IT IS SO ORDERED.

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12 VAUGHN R WALKER

13 United States District Chief Judge  
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