

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 WESTERN DIVISION

NO. 5:08-CV-115-FL

ELECTRA ENTERTAINMENT)	
GROUP INC, CAPITOL RECORDS)	
INC., SONY BMG MUSIC)	
ENTERTAINMENT, UMG)	
RECORDINGS, INC, WARNER)	ORDER
BROS. RECORDS INC.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
JOHN DOE,)	
)	
Defendant.)	

This matter comes now before the court upon several motions. Defendant herein, named defendant with many others in court file number 5:07-CV-298, assigned to the Honorable W. Earl Britt, Senior United States District Judge, was severed from that action by order entered February 27, 2008. Plaintiffs have filed nearly identical complaints against this defendant, and others named as defendants in the prior pending action, and many of these actions have been assigned now to me. In this case, and one other, bearing court file number 5:08-CV-116, defendant has moved to dismiss, to strike plaintiffs' affidavit, to quash subpoena, and to stay enforcement of the subpoena addressed to North Carolina State University.

In furtherance of dismissal, defendant in court file number 5:08-CV-115 seeks the court where plaintiffs' agent is asserted to have engaged in criminal activity, to strike "the second-hand [Carlos] Linares Declaration and Plaintiff's Exhibit 1 that it supports," and, where "[t]he remaining

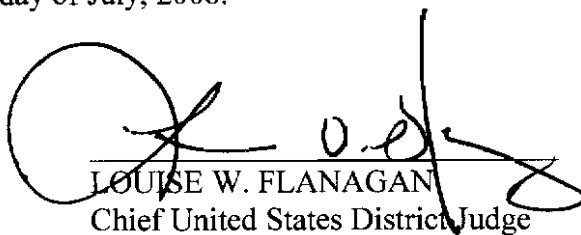
bare allegations are not enough to survive the Twombly standard,” to dismiss the action. Similar argument is offered in court file number 5:08-CV-116. Urging First Amendment anonymity interests, defendant in each case seeks for the court to quash the subpoena at issue. In the interim, prior to decision on the motions, defendant in each case seeks the court to relieve North Carolina State University of any responsibility to respond to the subpoena.

In all cases before this court, the undersigned has allowed plaintiffs’ expedited motion for discovery. Several of the cases assigned to me, all originating out of the prior pending action, recently have been closed upon voluntary dismissal.

For good cause shown, the motion to stay enforcement of subpoena addressed to North Carolina State University, served upon David Drooz, Associate General Counsel, is ALLOWED pending decision on remaining motions.

While motion to dismiss was raised on behalf of defendants denominated as Does #1, #18, #19, #26, #31, #33, #35, and #38, and denied, it is unclear whether defendant in either court file number 5:08-CV-115 or court file number 5:08-CV-116, were among those Does in the prior action, and, moreover, the basis for dismissal pursuant to Rule 12 is argued in these cases on grounds not fully raised in court file number 5:07-CV-298. Accordingly, a fresh look at the arguments in support of and in opposition to the motion to dismiss before the court, and attendant motion to strike, is called for. The court refers pretrial motions pending in this case to Magistrate Judge James E. Gates, for decision on the motion to quash and for memorandum and recommendation on the motion to dismiss and attendant motion to strike.

SO ORDERED, this the 2nd day of July, 2008.


LOUISE W. FLANAGAN
Chief United States District Judge