

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:08-CV-00116-FL

WARNER BROS. RECORDS, INC.	)	
<i>et al,</i>	)	
	)	
Plaintiffs,	)	<u>MOTION OF DEFENDANT TO DISMISS</u>
	)	<u>THE COMPLAINT, STRIKE THE</u>
vs.	)	<u>PLAINTIFFS' AFFIDAVIT, AND</u>
	)	<u>QUASH THE SUBPOENA</u>
JOHN DOE,	)	
	)	
Defendant.	)	

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NOW COMES Defendant and moves the Court to dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to F.R.Civ.P., Rule 12(b)(6), to strike the Plaintiffs' Affidavit pursuant to F.R.Civ.P., Rule 12(f), and to quash the subpoena pursuant to F.R.Civ.P., Rule 45(c)(3)(A)(iii). Further, the moving Doe Defendant respectfully requests that the Court stay enforcement of the subpoena addressed to North Carolina State University ("NCSU") and served upon NCSU. A draft order to stay enforcement is attached.

Respectfully submitted, this 10<sup>th</sup> day of June, 2008.

By: /s/ Stephen E. Robertson  
Stephen E. Robertson  
ROBERTSON, MEDLIN & BLOCKER, PLLC  
Attorney for DefendantN.C. State Bar No. 27608  
125 South Elm Street, Suite 100  
Greensboro, NC 27401  
Telephone: (336) 378-9881  
Facsimile: (336) 378-9886  
[srobertson@robertsonmedlin.com](mailto:srobertson@robertsonmedlin.com)

## CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of June, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Lacey M. Moore  
Nexsen Pruet Adams Kleemeier, PLLC  
210 South Tryon St.  
Suite 1200  
Charlotte, NC 28202  
lmoore@nexsenpruet.com

And I hereby certify that I will serve the document by e-mail to the following non-party:

David T. Drooz  
Senior Associate General Counsel  
North Carolina State University  
Box 7008  
Raleigh, NC 27695-7008  
dtdrooz@gw.fis.ncsu.edu

By: /s/ Stephen E. Robertson  
Stephen E. Robertson  
ROBERTSON, MEDLIN & BLOCKER, PLLC  
Attorney for Defendant  
N.C. State Bar No. 27608  
125 South Elm Street, Suite 100  
Greensboro, NC 27401  
Telephone: (336) 378-9881  
Facsimile: (336) 378-9886  
srobertson@robertsonmedlin.com