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EMPOWERED  
FILED  
San Francisco County Superior Court

NOV 22 2002 (Um)

BY: VERA M. MURKIN  
Deputy Clerk

7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
8 COUNTY OF SAN FRANCISCO  
9 UNLIMITED JURISDICTION

10 VIROLOGIC, INC., a Delaware corporation,

11 Plaintiff,

12 v.

13 DOES 1 through 10, inclusive,

14 Defendants.

Case No. CGC-02-407068

**[PROPOSED] ORDER GRANTING  
SPECIAL MOTION TO STRIKE,  
DENYING MOTION FOR ORDER  
PERMITTING VIROLOGIC'S  
OUTSIDE COUNSEL TO DISCLOSE  
TO OFFICERS AND EMPLOYEES OF  
VIROLOGIC THE INFORMATION  
DISCOVERED IN THE DEPOSITION  
OF DEFENDANT DOE, AND  
DENYING AS MOOT DEFENDANTS'  
DEMURRER AND MOTION TO  
QUASH SUBPOENA AND DENY ALL  
DISCOVERY**

DATE: SEPTEMBER 10, 2002

TIME: 9:30 A.M.

DEPT: 320

JUDGE: HON. JAMES ROBERTSON, II

COMPLAINT FILED: APRIL 23, 2002

TRIAL DATE: NOT SET

22 Defendant's special motion to strike and plaintiff's motion for order permitting  
23 Virologic's outside counsel to disclose to officers and employees of Virologic the information  
24 discovered in the deposition of Defendant Doc, came on for hearing on the above date. Although  
25 not on calendar, at the request of Defendant, the Court also ruled on Defendant's Demurrer to  
26 Plaintiff ViroLogic, Inc.'s First Amended Complaint, and on Defendant's Motion to Quash  
27 ViroLogic's Subpoena to Yahoo!, Inc. and to Stay all Discovery. Matthew Brown of Cooley  
28

**[PROPOSED] ORDER GRANTING SPECIAL MOTION TO STRIKE,  
DENYING MOT. TO DISCLOSE, DEMURRER, MOTION TO QUASH**  
139135v1

Case No. CGC-02-407068

1 Godward LLP appeared on behalf of Plaintiff, and Joshua Koltun of Steinhart & Falconer LLP  
2 appeared on behalf of Defendant. The Court has considered all of the papers filed in support of  
3 and in opposition to each motion, the arguments of counsel, and, as appropriate, the papers on  
4 file in this case. IT IS HEREBY ORDERED:

5 1. Defendant's special motion to strike ViroLogic's First Amended Complaint under  
6 Code of Civil Procedure § 425.16 is hereby GRANTED, on the following grounds:

7 a. The causes of action in this suit arise from acts of Defendant in  
8 furtherance of defendant's right of petition or free speech in connection with public issues,  
9 specifically, Defendant's "written or oral statement[s] or writing[s] made in a place open to the  
10 public or a public forum in connections with ... issue[s] of public interest," and "conduct in  
11 furtherance of the constitutional right of petition or the constitutional right of free speech in  
12 connection with ... public issue[s] or ... issue[s] of public interest." C.C.P. § 425.16(e)(3),(4).

13 b. Plaintiff has failed to show a probability of prevailing on its claim. C.C.P.  
14 § 425.16(b)(1).

15 2. Plaintiff's motion for order permitting Virologic's outside counsel to disclose to  
16 officers and employees of Virologic the information discovered in the deposition of Defendant  
17 Doe is DENIED, on the grounds that good cause therefor has not been shown, C.C.P. §  
18 425.16(g).

19 3. Defendant's demurrer is DENIED on the grounds that it is moot.

20 4. Defendant's motion to quash the subpoena and stay all discovery is DENIED on  
21 the grounds that it is moot.

22 5. Pursuant to C.C.P. § 425.16(c), Defendant is entitled to recover its reasonable  
23 attorneys fees and costs; the amount thereof shall be determined upon the filing of a motion for  
24 attorneys' fees and/or a memorandum of costs.

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6. Accordingly, plaintiff's First Amended Complaint is hereby DISMISSED WITH PREJUDICE, and judgment shall be entered in favor of Defendant and for reasonable attorneys' fees in an amount to be determined in a subsequent proceeding.

Dated: November 20, 2002

A. JAMES ROBERTSON, II  
A. JAMES ROBERTSON, II  
Judge of the Superior Court

Approved as to form:

COOLEY GODWARD LLP



Matthew Brown  
Attorneys for Plaintiff ViroLogic, Inc.