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 FILED
 San Francisco County Superior Court

NOV 22 2002

(Um)

BY: VERA M. MURK
 Deputy Clerk

5 Attorneys for Doe Defendant

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

10 VIROLOGIC, INC., a Delaware corporation,

Case No. CGC-02-407068

11 Plaintiff,

**[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**

12 v.

13 DOES 1 through 10, inclusive,

14 Defendants.

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 - 1 -

**[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.