

1 STEINHART & FALCONER LLP
2 JOSHUA KOLTUN (SBN: 173040)
3 HENRY M. BURGOYNE, III (SBN: 203748)
4 333 Market Street, Thirty-Second Floor
San Francisco, CA 94105-2150
Telephone: (415) 777-3999
Facsimile: (415) 442-0856

5 Attorneys for Doe Defendant

FILED
San Francisco County Superior Court

NOV 22 2002

GORDON PARK-LI, Clerk
BY: [Signature]
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 Doe, 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

1 Godward LLP appeared on behalf of Plaintiff, and Joshua Koltun of Steinbart & 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

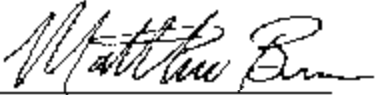
6. Accordingly, plaintiff's First Amended Complaint is hereby DISMISSED WITH PREJUDICE, and judgment shall be entered in favor of Defendant and for reasonable attorneys' fees in an amount to be determined in a subsequent proceeding.

Dated: November 20, 2002

407068


A. JAMES ROBERTSON, II
Judge of the Superior Court

Approved as to form:

COOLEY GODWARD LLP

Matthew Brown
Attorneys for Plaintiff ViroLogic, Inc.