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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 PACIFIC BELL INTERNET SERVICES)

Case No. C-03-3560 (SI)

13 Plaintiff,)

DEFENDANT RECORDING INDUSTRY
ASSOCIATION OF AMERICA'S
OPPOSITION TO PBIS'S OBJECTIONS
TO INADMISSIBLE STATEMENTS IN
RIAA'S MOTION TO DISMISS

14 vs.)

15 RECORDING INDUSTRY ASSOCIATION)
16 OF AMERICA, INC., MEDIASENTRY, INC.,)
dba MEDIAFORCE, and IO GROUP, INC.,)
17 dba TITANMEDIA, TITANMEDIA.COM,)
and TITANMEN.COM,)

Date: November 21, 2003

Time: 9:00 a.m.

Dept.: 10, 19th Floor

18 Defendants.)
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1 Even if this were a summary judgment motion, PBIS's objections would still fail. Time and
2 again this Court has rejected motions to strike where the facts at issue were not outcome-
3 determinative. *See CFOs 2 Go, Inc. v. CFO 2 Go, Inc.*, No. C 97-4676 SI, 1998 WL 320821, *3
4 (N.D. Cal. June 5, 1998) (motion to strike and objections denied "since no facts essential to justify
5 [the] opposition are described") (internal quotation omitted); *Bains v. Schiltgen*, No. C 97-2573 SI,
6 1998 WL 204977, *2 n.3 (N.D. Cal. Apr. 21, 1998) (motion to strike denied because Court did not
7 rely on representation of facts). PBIS has not identified any manner in which it is prejudiced by the
8 challenged statements, nor could it. RIAA has not asked the Court to resolve them in its favor, but
9 has simply provided them so that the Court, which may not be familiar with the broader background
10 of this dispute, could have an appreciation of the larger context within which these subpoenas were
11 issued. But the Court can grant RIAA the relief it seeks without affirming these statements in the
12 brief or, for that matter, without even considering them at all. Indeed, as both parties here agree, the
13 Court *must* do so.²

14 "Motions to strike are generally viewed with disfavor and often considered time wasters."
15 *McNair v. Monsanto Co.*, No. 1: 02-CV-50-2 WLS, 2003 WL 22020733, *5 (M.D. Ga. Aug. 25,
16 2003) (internal quotation omitted). PBIS's latest "time waster" is just another effort to avoid its
17 inevitable duty under the D.C. subpoenas. The Court should not condone PBIS's needless delay.

18 CONCLUSION

19 The Court should overrule PBIS's objections and dismiss PBIS's claims against RIAA.

20 Respectfully submitted,

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22 Dated: November 7, 2003

23 _____
24 Howard A. Slavitt
25 Coblenz, Patch, Duffy & Bass LLP
26 Attorneys for the Recording Industry
27 Association of America

28 ² The same rule would apply even if PBIS could rely on Rule 12(f). "Given their disfavored status, courts often require a showing of prejudice by the moving party before granting [motions to strike]." *California Dep't of Toxic Substances Control v. Alco Pacific, Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002).