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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN VANGINDEREN,  
  
vs.  
  
CORNELL UNIVERSITY,  
  
Plaintiff,  
  
Defendant.

CASE NO. 07cv2045 BTM(JMA)  
  
**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
ATTORNEYS' FEES**

Defendant Cornell University ("Defendant" or "Cornell") has filed a motion for attorney's fees. For the reasons discussed below, Defendant's motion is **GRANTED IN PART** and **DENIED IN PART**.

**I. BACKGROUND**

On October 1, 2007, Plaintiff commenced this action in state court. Plaintiff asserted claims of libel and public disclosure of private facts against Cornell. The claims arose out of a 1983 Cornell Chronicle article that referenced a criminal charge against Plaintiff. The article was subsequently digitized by the Cornell University Library and stored in eCommons, an online archive.

On October 29, 2007, Cornell removed the action to this Court. Cornell subsequently brought a special motion to strike ("anti-SLAPP motion") pursuant to Cal. Civ. Proc. Code § 425.16. In an order filed on June 3, 2008, the Court granted Cornell's anti-SLAPP motion

1 and dismissed the Complaint with prejudice. The Court ordered that any motion by Cornell  
2 for attorney's fees be brought within 30 days.

## 3 4 **II. DISCUSSION**

5 As the prevailing party on its special motion to strike, Cornell is entitled to reasonable  
6 attorney's fees and costs. Cal. Civ. Proc. Code § 425.16(c). Cornell seeks recovery of a  
7 total of \$66,961.25 in fees.

8 As a preliminary matter, the Court rejects Plaintiff's suggestion that Cornell's motion  
9 for attorney's fees is improper due to the appeal pending before the Ninth Circuit Court of  
10 Appeals. An award of attorney's fees is a collateral matter over which a district court retains  
11 jurisdiction even when a notice of appeal has been filed. In re Elias, 188 F.3d 1160, 1164  
12 (9th Cir. 1999).

13 Turning to the substance of Cornell's motion, the amount of the prevailing party's  
14 reasonable attorney's fees is calculated by utilizing the lodestar method. Camacho v.  
15 Bridgeport Financial, Inc., 523 F.3d 973, 978 (9th Cir. 2008). To calculate the "lodestar," the  
16 court multiplies the number of hours the prevailing party reasonably expended on the  
17 litigation by a reasonable rate. Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir.  
18 1996). There is a strong presumption that the lodestar figure represents a reasonable fee.  
19 Harris v Marhoefer, 24 F.3d 16, 18 (9th Cir. 1994).

20 However, courts may adjust the lodestar figure upward or downward based upon the  
21 following factors enunciated in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir.  
22 1975): (1) the time and labor required, (2) the novelty and difficulty of the questions involved,  
23 (3) the skill requisite to perform the legal service properly, (4) the preclusion of other  
24 employment by the attorney due to acceptance of the case, (5) the customary fee, (6)  
25 whether the fee is fixed or contingent, (7) time limitations imposed by the client or the  
26 circumstances, (8) the amount involved and the results obtained, (9) the experience,  
27 reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature  
28 and length of the professional relationship with the client, and (12) awards in similar cases.

1 “Among the subsumed factors presumably taken into account in either the reasonable hours  
2 component or the reasonable rate component of the lodestar calculation are: (1) the novelty  
3 and complexity of the issues, (2) the special skill and experience of counsel, (3) the quality  
4 of representation (4) the results obtained and (5) the contingent nature of the fee agreement.”  
5 Morales, 96 F.3d at 364 n. 9.

6 Cornell’s attorneys’ hourly rate is \$350 per hour. Cornell has established that this  
7 blended rate for partners and associates is reasonable. The Court also finds that the hourly  
8 paralegal rate of \$95 per hour is reasonable.

9 Cornell seeks recovery for 191.25 attorney hours and .25 paralegal hours.<sup>1</sup> Plaintiff  
10 contends that the number of hours sought by Cornell is excessive. According to Plaintiff,  
11 Nelson Roth, an attorney in Cornell’s Office of General Counsel, could have handled the  
12 case with just a single week’s worth of effort. Plaintiff argues that since the Court’s order  
13 granting the anti-SLAPP motion was based on the unsealed County Court records and the  
14 truthfulness of the statements made in the Cornell Chronicle article, Cornell should not be  
15 compensated for the substantial amount of time its attorneys spent on the issue of whether  
16 the digitization of the article and storage of the article on eCommons constitutes a  
17 republication.

18 Although the Court did not ultimately reach the republication issue, it was proper for  
19 Cornell’s attorneys to raise the argument. Therefore, the Court will allow compensation for  
20 the time spent researching and briefing the issue.

21 However, the Court finds that the number of hours requested is excessive. As a  
22 preliminary matter, the Court notes that Cal Civ. Proc. Code § 425.16(c) does not apply to  
23 the entire action, but, rather, the motion to strike only. S.B. Beach Properties v. Berti, 39 Cal.

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25 <sup>1</sup> Cornell’s papers state that Cornell incurred 150.50 hours in attorney’s fees in  
26 connection with bringing the anti-SLAPP motion. However, Cornell is actually claiming 171.5  
27 attorney hours and .25 paralegal hours in connection with this work. (Cornell’s hour  
28 calculation (Ex. B to the Motion for Attorney’s Fees) erroneously omits the December hours  
for Bert Deixler, Joseph Wright, and Ivania Munguia.) Cornell claims an additional 15.75  
hours for preparation of the Bill of Costs and Motion for Attorney’s Fees and 4 hours for  
preparation of the reply in support of the Motion for Attorney’s Fees. Therefore, the total  
hours claimed by Cornell is 191.25 attorney hours and .25 paralegal hours.

1 4th 374, 384 (2006). Therefore, the Court limits its award to work performed in connection  
2 with the motion to strike. bill of costs, and motion for attorney's fees.

3 Cornell's attorneys billed approximately 79.75 hours for the preparation of the moving  
4 papers (not including research).<sup>2</sup> Upon review of the moving papers and supporting  
5 documentation, the Court concludes that 40 hours would have been sufficient to prepare the  
6 papers. In addition to these 40 hours, the Court will allow recovery of 10.75 hours for legal  
7 research in connection with the moving papers and 8.5 hours for analyzing and investigating  
8 the case (including conferences between the attorneys and communications with the client).

9 Cornell's attorneys billed approximately 48.25 hours for preparing the reply papers  
10 and Supplemental Request for Judicial Notice (not including research). The paralegal billed  
11 .25 hours. Upon reviewing the reply papers, the Court concludes that 25 attorney hours  
12 would have been sufficient to complete the task. Therefore, the Court awards 25 hours for  
13 the preparation and filing of the reply papers. The Court also awards 7.25 hours for analysis  
14 and investigation in connection with the reply and 12 hours for legal research.

15 In addition, the Court awards the 15.75 hours billed for preparation of the Bill of Costs  
16 and Motion for Attorney's Fees and the 4 hours billed for preparation of the reply in support  
17 of the Motion for Attorney's Fees.

18 In sum, the Court will allow recovery for 123.25 hours at the rate of \$350 per hour and  
19 .25 paralegal hours at the rate of \$95 per hour. No upward or downward adjustment of the  
20 lodestar figure is warranted. Therefore, the total amount of the attorney's fee award is  
21 \$43,161.25.

### 22 23 **III. CONCLUSION**

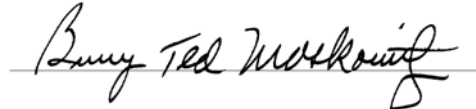
24 For the reasons discussed above, Cornell's motion for attorney's fees is **GRANTED**  
25 **IN PART** and **DENIED IN PART**. The Court awards attorney's fees in the amount of  
26 \$43,161.25. The Clerk shall enter judgment accordingly. However, the Court **STAYS**

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28 <sup>2</sup> Some of the individual time entries include multiple tasks without specifying what  
portion of the billed time can be allocated to the various tasks. Therefore, the actual time  
spent preparing the moving papers and reply papers is a little less than the time noted above.

1 enforcement of the judgment pending the appeal of this case.

2 **IT IS SO ORDERED.**

3 DATED: December 31, 2008

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5 Honorable Barry Ted Moskowitz  
6 United States District Judge

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