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12 UNITED STATES DISTRICT COURT  
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 KEVIN VANGINDEREN,  
 15 Plaintiff,  
 16 v.  
 17 CORNELL UNIVERSITY, BERT DEIXLER,  
 18 Defendants.

) Case No. 08-CV-736-W-JMA  
 )  
 ) Hon. Barry T. Moskowitz  
 )  
 ) **NOTICE OF CORNELL'S SPECIAL**  
 ) **MOTION AND CORNELL'S SPECIAL**  
 ) **MOTION TO STRIKE PLAINTIFF'S**  
 ) **COMPLAINT PURSUANT TO**  
 ) **SECTION 425.16 OF THE**  
 ) **CALIFORNIA CODE OF CIVIL**  
 ) **PROCEDURE**  
 )  
 ) [Per chambers, no oral argument unless  
 ) requested by the Court]  
 )  
 ) [Memorandum of Points and Authorities,  
 ) Davidson Declaration and Stanley  
 ) Declaration filed concurrently]  
 )  
 ) Hearing Date: July 3, 2008  
 ) Time: 11:00 a.m.  
 ) Place: Courtroom 15  
 )  
 ) Action Filed: April 8, 2008

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1 TO DEFENDANT AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 3, 2008, at 11 a.m., or as soon  
3 thereafter as counsel may be heard in the United States District Court for the  
4 Southern District of California, Courtroom 15, located at 940 Front Street, San  
5 Diego, California 92101, defendant Cornell University (“Cornell”) will and hereby  
6 does move for an order striking the Complaint of plaintiff Kevin Vanginderen  
7 (“Plaintiff”) in its entirety, with prejudice and without leave to amend, and, further  
8 awarding Cornell its reasonable attorneys’ fees and costs incurred in bringing this  
9 special motion to strike.

10 This special motion to strike will be and is made upon the following grounds.

11 In 2007, Plaintiff sued defendant Cornell University (“Cornell”) for  
12 defamation and disclosure related to a 1983 newspaper report of Plaintiff’s criminal  
13 activities (the “2007 Action”). Cornell removed the 2007 Action to this Court.  
14 Deixler served as lead counsel in the 2007 Action. In defending Cornell in the 2007  
15 Action, Cornell, through Deixler, submitted to this Court unsealed records that  
16 contained Cornell’s investigation and report to police of Plaintiff’s criminal  
17 activities in 1983 (the “Unsealed Records”). Plaintiff now has filed an additional  
18 lawsuit against Cornell based on alleged libelous information contained in the  
19 Unsealed Records and against Deixler for his role in filing them.

20 Plaintiff indisputably has filed a “strategic lawsuit against public  
21 participation” (“SLAPP”) that is barred by the anti-SLAPP statute, California Code  
22 of Civil Procedure § 425.16. Because the Complaint is a SLAPP lawsuit, section  
23 425.16(b)(1) and relevant Ninth Circuit authorities require that the Complaint be  
24 stricken unless Plaintiff makes a prima facie showing that his claims are legally and  
25 factually sufficient. Plaintiff cannot show either because, as set forth in detail in  
26 Cornell’s accompanying Memorandum of Points and Authorities, both Cornell’s  
27 report to the police and Cornell’s filings to this Court in the 2007 Action are  
28 protected by the litigation privilege (Cal. Civ. Code § 47(b)) and the Noerr-

1 Pennington Doctrine. Further, the investigation and report to the police were  
2 factually accurate.

3 As the Complaint is a SLAPP lawsuit unsupported by law or fact, Cornell is  
4 entitled to recover from Plaintiff Cornell's reasonable attorneys' fees and costs  
5 incurred in bringing this special motion to strike, pursuant to California Code of  
6 Civil Procedure section 425.16(c) and relevant Ninth Circuit authorities.

7 This special motion to strike will be and is based upon this Notice, the  
8 accompanying Memorandum of Points and Authorities; the Declaration of Clifford  
9 S. Davidson; the Declaration of Timothy Stanley; the Notice of Bert Deixler's  
10 Special Motion and Bert Deixler's Special Motion to Strike Plaintiff's Complaint  
11 Pursuant to Section 425.16 of the California Code of Civil Procedure; the  
12 Memorandum of Points and Authorities in Support of Bert Deixler's Special Motion  
13 to Strike Plaintiff's Complaint Pursuant to Section 425.16 of the California Code of  
14 Civil Procedure; the records and files in this action; the records and files in related  
15 case *Kevin Vanginderen v. Cornell University*, Case No. 07-CV-2045-BTM-JMA  
16 pending before this Court; and upon such further oral and documentary evidence as  
17 may be presented at or before the hearing on this special motion to strike.

18  
19 DATED: May 5, 2008

Nelson E. Roth  
CORNELL UNIVERSITY

Bert H. Deixler  
Clifford S. Davidson  
PROSKAUER ROSE LLP

23 /s/ -- Clifford S. Davidson  
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Clifford S. Davidson

25 Attorneys for Defendant,  
26 CORNELL UNIVERSITY  
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