

1 Lary Alan Rappaport, SBN 87614  
 e-mail: bdeixler@proskauer.com  
 2 Clifford S. Davidson, SBN 246119  
 e-mail: cdavidson@proskauer.com  
 3 PROSKAUER ROSE LLP  
 2049 Century Park East, 32nd Floor  
 4 Los Angeles, CA 90067-3206  
 Telephone: (310) 557-2900  
 5 Facsimile: (310) 557-2193

6 Attorneys for Defendant,  
 BERT DEIXLER  
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8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 KEVIN VANGINDEREN,  
 11  
 Plaintiff,  
 12  
 v.  
 13 CORNELL UNIVERSITY, BERT DEIXLER,  
 14  
 Defendants.  
 15

) Case No. 08-CV-736-W-JMA

) Hon. Barry T. Moskowitz

) **NOTICE OF BERT DEIXLER'S**  
 ) **SPECIAL MOTION AND BERT**  
 ) **DEIXLER'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  
 )

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 Bert Deixler (“Deixler”) will and hereby does  
6 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 Deixler 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. Plaintiff’s allegations against Deixler arise entirely  
23 from his role in submitting the Unsealed Records to this Court. *See* Cal. Code Civ.  
24 Pro. § 425.16(e).

25 Because Plaintiff has filed a SLAPP lawsuit, section 425.16(b)(1) and  
26 relevant Ninth Circuit authorities require that the Complaint be stricken unless  
27 Plaintiff makes a prima facie showing that his claims are legally and factually  
28 sufficient. Plaintiff cannot show either because, as set forth in detail in Deixler’s

1 accompanying Memorandum of Points and Authorities, Deixler's submission of the  
2 Unsealed Records to this Court in the 2007 Action is protected by the litigation  
3 privilege (Cal. Civ. Code § 47(b)) and the Noerr-Pennington Doctrine. Further, the  
4 contents of the Unsealed Records were factually accurate.

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

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

20  
21 DATED: May 5, 2008

Lary Alan Rappaport  
Clifford S. Davidson  
PROSKAUER ROSE LLP

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

25 Attorneys for Defendant,  
26 BERT DEIXLER  
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