

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

Kevin Vanginderen, Plaintiff Pro Per  
637 Third Ave., Suite E1  
Chula Vista, CA 91910  
Telephone: (619) 585-7414

FILED

2008 JUN 13 AM 10:31

CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY YNY DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA


KEVIN VANGINDEREN,  
  
Plaintiff,  
  
v.  
  
CORNELL UNIVERSITY,  
BERT DEIXLER,  
  
Defendant.

Case No. 08-CV-00736-BTM-JMA  
Hon. Barry T. Moskowitz  
FIRST AMENDED COMPLAINT

Hearing Date: July 3, 2008  
Time: 11:00 a.m.  
Place: Courtroom 15

Whereas, Leave to Amend was granted on June 5, 2008, a First Amended Complaint is hereby submitted.

Dated: June 13, 2008

  
Kevin Vanginderen, Plaintiff in pro per

GR

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>Kevin Vanginderen</b> Attorney Kevin Vanginderen 637 3rd Avenue, Suite E-1 Chula Vista, CA 91910  TELEPHONE NO: (619) 585-7414      FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>
NAME OF COURT: United States District Court STREET ADDRESS: 880 Front Street, Room 4290 MAILING ADDRESS: 880 Front Street, Room 4290 CITY AND ZIP CODE: San Diego, CA 92101-8900 BRANCH NAME: Southern District of California	
PLAINTIFF: Kevin Vanginderen   DEFENDANT: Cornell University, Bert Deixler   <input type="checkbox"/> DOES IT TO _____	
<b>COMPLAINT — Personal Injury, Property Damage, Wrongful Death</b> <input checked="" type="checkbox"/> <b>AMENDED (Number):</b> 1 <b>Type (check all that apply):</b> <input type="checkbox"/> <b>MOTOR VEHICLE</b> <input checked="" type="checkbox"/> <b>OTHER (specify):</b> Public Disclosure <input type="checkbox"/> <b>Property Damage</b> <input type="checkbox"/> <b>Wrongful Death</b> Private Fact/Libel <input checked="" type="checkbox"/> <b>Personal Injury</b> <input checked="" type="checkbox"/> <b>Other Damages (specify):</b> loss of income, loss of reputation, mental anguish, punitive	
<b>Jurisdiction (check all that apply):</b> <input type="checkbox"/> <b>ACTION IS A LIMITED CIVIL CASE</b> Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> <b>ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)</b> <input type="checkbox"/> <b>ACTION IS RECLASSIFIED by this amended complaint</b> <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER: 08-CV-00736-BTM-JMA

1. PLAINTIFF (name): Kevin Vanginderen

alleges causes of action against DEFENDANT (name): Cornell University, Bert Deixler

2. This pleading, including attachments and exhibits, consists of the following number of pages: 13

3. Each plaintiff named above is a competent adult

a.  except plaintiff (name):

- (1)  a corporation qualified to do business in California
- (2)  an unincorporated entity (describe):
- (3)  a public entity (describe):
- (4)  a minor       an adult
  - (a)  for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
  - (b)  other (specify):
- (5)  other (specify):

b.  except plaintiff (name):

- (1)  a corporation qualified to do business in California
- (2)  an unincorporated entity (describe):
- (3)  a public entity (describe):
- (4)  a minor       an adult
  - (a)  for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
  - (b)  other (specify):
- (5)  other (specify):

Information about additional plaintiffs who are not competent adults is shown in Complaint — Attachment 3.

4.  Plaintiff (*name*):

is doing business under the fictitious name (*specify*):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a.  except defendant (*name*): Cornell University

(1)  a business organization, form unknown

(2)  a corporation

(3)  an unincorporated entity (*describe*):

(4)  a public entity (*describe*):

(5)  other (*specify*):

c.  except defendant (*name*):

(1)  a business organization, form unknown

(2)  a corporation

(3)  an unincorporated entity (*describe*):

(4)  a public entity (*describe*):

(5)  other (*specify*):

b.  except defendant (*name*):

(1)  a business organization, form unknown

(2)  a corporation

(3)  an unincorporated entity (*describe*):

(4)  a public entity (*describe*):

(5)  other (*specify*):

d.  except defendant (*name*):

(1)  a business organization, form unknown

(2)  a corporation

(3)  an unincorporated entity (*describe*):

(4)  a public entity (*describe*):

(5)  other (*specify*):

Information about additional defendants who are not natural persons is contained in Complaint — Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7.  Defendants who are joined pursuant to Code of Civil Procedure section 382 are (*names*):

8. This court is the proper court because

a.  at least one defendant now resides in its jurisdictional area.

b.  the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.

c.  injury to person or damage to personal property occurred in its jurisdictional area.

d.  other (*specify*):

9.  Plaintiff is required to comply with a claims statute, and

a.  plaintiff has complied with applicable claims statutes, or

b.  plaintiff is excused from complying because (*specify*):

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a.  Motor Vehicle  
 b.  General Negligence  
 c.  Intentional Tort  
 d.  Products Liability  
 e.  Premises Liability  
 f.  Other (*specify*):

11. Plaintiff has suffered

- a.  wage loss  
 b.  loss of use of property  
 c.  hospital and medical expenses  
 d.  general damage  
 e.  property damage  
 f.  loss of earning capacity  
 g.  other damage (*specify*): loss of reputation, mental anguish, punitive

12.  The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a.  listed in Complaint — Attachment 12.  
 b.  as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. PLAINTIFF PRAYS for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1)  compensatory damages  
 (2)  punitive damages  
 b. The amount of damages is (*you must check (1) in cases for personal injury or wrongful death*):  
 (1)  according to proof  
 (2)  in the amount of: \$ 10,000,000.00

15.  The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: June 13, 2008

Kevin Vanginderen

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

1st

(number)

**CAUSE OF ACTION - Intentional Tort**

Page 4

ATTACHMENT TO  Complaint  Cross-Complaint

*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (*name*): Kevin Vanginderen

alleges that defendant (*name*): Cornell University

Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (*date*): March 8, 1983,

at (*place*): Cornell University, Ithaca, NY

*(description of reasons for liability):*

On March 8, 1983, Barbara Bourne, an employee and agent of the Defendant Cornell University, wrote defamatory and libelous statements about the plaintiff which she communicated to other individuals. A report written by Ms. Bourne on that date alleged that the plaintiff was responsible for fifteen separate crimes although she had never ascertained that fifteen individual crimes had ever occurred, nor did she ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents.

As a result of the defendant's tortious actions of Libel, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendant and requests general and punitive damages in the amount of \$1,000,000.

2nd

(number)

**CAUSE OF ACTION - Intentional Tort**Page 5ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (name): Kevin Vanginderen

alleges that defendant (name): Cornell University and Bert Deixler

 Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): December 14, 2007,

at (place): United States District Court, Southern District of  
California and everywhere the Internet is available  
(description of reasons for liability):

On March 8, 1983, Barbara Bourne, an employee and agent of the Defendant Cornell University, wrote defamatory and libelous statements about the plaintiff which she communicated to other individuals. A report written by Ms. Bourne on that date alleged that the plaintiff was responsible for fifteen separate crimes although she had never ascertained that fifteen individual crimes had ever occurred, nor did she ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents.

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University republished this report onto the Internet by submitting it to United States District Court, Southern District of California, with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site. The defendants were aware at the time of submission to the court file that the libelous report was both defamatory and inadmissible as evidence.

As a result of the defendants' tortious actions of Libel, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

3rd

(number)

**CAUSE OF ACTION - Intentional Tort**Page 6ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (name): Kevin Vanginderen

alleges that defendant (name): Bert Deixler and Cornell University.

 Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): December 14, 2007

at (place): United States District Court, Southern District of  
California and everywhere the Internet is available  
(description of reasons for liability):

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University declared in writing that the Plaintiff was charged in connection with fifteen separate crimes although he had never ascertained that fifteen individual crimes had ever occurred, nor did he ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents. Defendant Bert Deixler subsequently republished his libelous statement onto the Internet by submitting it to United States District Court, Southern District of California, with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site.

As a result of the defendants' tortious actions of Libel, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

4th

(number)

## CAUSE OF ACTION - Intentional Tort

Page 7ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*IT-1. Plaintiff (*name*): Kevin Vanginderenalleges that defendant (*name*): Cornell University Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (*date*): March 8, 1983,at (*place*): Cornell University, Ithaca, NY*(description of reasons for liability):*

On March 8, 1983, Barbara Bourne, an employee and agent of the Defendant Cornell University, wrote false statements about the plaintiff that portrayed the plaintiff in a false light which she communicated to other individuals. A report written by Ms. Bourne on that date alleged that the plaintiff was responsible for fifteen separate crimes although she had never ascertained that fifteen individual crimes had ever occurred, nor did she ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents.

As a result of the defendant's tortious actions of Placing Plaintiff in False Light, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendant and requests general and punitive damages in the amount of \$1,000,000.



5th

(number)

**CAUSE OF ACTION - Intentional Tort**Page 8ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (name): Kevin Vanginderen

alleges that defendant (name): Cornell University and Bert Deixler

 Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): December 14, 2007,

at (place): United States District Court, Southern District of California and everywhere the Internet is available  
(description of reasons for liability):

On March 8, 1983, Barbara Bourne, an employee and agent of the Defendant Cornell University, wrote false statements about the plaintiff that portrayed the plaintiff in a false light which she communicated to other individuals. A report written by Ms. Bourne on that date alleged that the plaintiff was responsible for fifteen separate crimes although she had never ascertained that fifteen individual crimes had ever occurred, nor did she ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents.

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University republished this report onto the Internet by submitting it to United States District Court, Southern District of California, with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site. The defendants were aware at the time of submission to the court file that the false statements in the report portrayed the plaintiff in a false light and was inadmissible as evidence.

As a result of the defendants' tortious actions of Placing Plaintiff in False Light, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

6th

(number)

**CAUSE OF ACTION - Intentional Tort**Page 9ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*IT-1. Plaintiff (*name*): Kevin Vanginderenalleges that defendant (*name*): Bert Deixler and Cornell University Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (*date*): December 14, 2007

at (*place*): United States District Court, Southern District of California and everywhere the Internet is available  
(*description of reasons for liability*):

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University wrote a false statement about the plaintiff that portrayed the plaintiff in a false light when he declared in writing that the Plaintiff was charged in connection with fifteen separate crimes although he had never ascertained that fifteen individual crimes had ever occurred, nor did he ever possess a scintilla of evidence that the plaintiff was responsible for even half that number of alleged incidents. Defendant Bert Deixler subsequently republished his false statement onto the Internet by submitting it to United States District Court, Southern District of California, with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site.

As a result of the defendants' tortious actions of Placing Plaintiff in False Light, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

7th

(number)

## CAUSE OF ACTION - Intentional Tort

Page 10ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*IT-1. Plaintiff (*name*): Kevin Vanginderenalleges that defendant (*name*): Cornell University and Bert Deixler Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (*date*): November 2, 2007,at (*place*): United States District Court, Southern District of California*(description of reasons for liability):*

On November 2, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University published sealed records pertaining to the plaintiff into a public forum by submitting them to United States District Court, Southern District of California with the knowledge that the records were sealed.

As a result of the defendants' tortious actions of Public Disclosure of Private Facts for disclosing private information dating back over twenty four years, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

8th

(number)

**CAUSE OF ACTION - Intentional Tort**Page 11ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*IT-1. Plaintiff (*name*): Kevin Vanginderenalleges that defendant (*name*): Cornell University and Bert Deixler Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (*date*): November 2, 2007,

at (*place*): United States District Court, Southern District of California and everywhere the Internet is available

(*description of reasons for liability*):

On November 2, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University published sealed records pertaining to the plaintiff onto the Internet by submitting them to United States District Court, Southern District of California, with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site and with the knowledge that the records were sealed.

As a result of the defendants' tortious actions of Public Disclosure of Private Facts for disclosing private information dating back over twenty four years, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Kevin Vanginderen

alleges that defendant (name): Cornell University and Bert Deixler

Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): December 14, 2007,

at (place): United States District Court, Southern District of California  
(description of reasons for liability):

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University published previously sealed records pertaining to the plaintiff into a public forum by submitting them to United States District Court, Southern District of California with the knowledge that the majority of these records are inadmissible on grounds of privacy, attorney client privilege, and lack of authenticity and/or relevance.

As a result of the defendants' tortious actions of Intrusion Into Private Affairs by disclosing private and privileged information dating back over twenty four years, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

10th

(number)

**CAUSE OF ACTION - Intentional Tort**Page 13ATTACHMENT TO  Complaint  Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

IT-1. Plaintiff (name): Kevin Vanginderen

alleges that defendant (name): Cornell University and Bert Deixler

 Does \_\_\_\_\_ to \_\_\_\_\_

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): December 14, 2007,

at (place): United States District Court, Southern District of California and everywhere the Internet is available  
(description of reasons for liability):

On December 14, 2007, Defendant Bert Deixler acting as an agent of Defendant Cornell University republished previously sealed records pertaining to the plaintiff into a public forum by submitting them to United States District Court, Southern District of California with the knowledge, intent and purpose that it would immediately appear world wide upon the the Justia.com Web site and with the knowledge that the majority of these records are inadmissible on grounds of privacy, attorney client privilege, and lack of authenticity and/or relevance.

As a result of the defendants' tortious actions of Intrusion Into Private Affairs for disclosing and publishing upon the Internet private and privileged information dating back over twenty four years, the plaintiff has suffered extreme emotional distress, a loss of reputation and a loss of income from the conduct of the defendants and requests general and punitive damages in the amount of \$1,000,000.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing \_\_\_\_\_ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF San Diego

I am employed in the county of San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 637 Third Avenue, Suite E-1, Chula Vista, CA 91910

On, June 13, 2008 I served the foregoing document described as A copy of the First Amended Complaint

on Defendant Attorneys in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows: Clifford Davidson, Esq., Proskauer Rose LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206 Nelson Roth, Esq., Office of University Counsel, 300 CCC Building, Garden Ave., Ithaca, New York 14853

BY MAIL

I deposited such envelope in the mail at Post Office, Third Avenue, Chula Vista, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Juan Ramirez

Type or Print Name

Signature

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions & Plus