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 13 BERT DEIXLER

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

16 KEVIN VANGINDEREN,  
 Plaintiff,  
 17  
 v.  
 18 CORNELL UNIVERSITY, BERT DEIXLER  
 19 Defendants.  
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 21  
 22  
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 25  
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) Case No. 08-cv-00736 BTM(JMA)  
 )  
 )  
 ) **DEFENDANTS' EVIDENTIARY**  
 ) **OBJECTIONS TO AFFIDAVIT OF**  
 ) **PLAINTIFF KEVIN VANGINDEREN**  
 ) **IN SUPPORT OF PLAINTIFF'S**  
 ) **MEMORANDUM OF POINTS AND**  
 ) **AUTHORITIES IN OPPOSITION OF**  
 ) **DEFENDANTS' SPECIAL MOTIONS**  
 ) **TO STRIKE PLAINTIFF'S**  
 ) **COMPLAINT**  
 )  
 ) [Per chambers, no oral argument unless  
 ) requested by the Court]  
 )  
 ) Hearing Date: July 3, 2008  
 ) Time: 11:00 a.m.  
 ) Place: Courtroom 15  
 )  
 ) Action Filed: April 8, 2008

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1 Defendants Cornell University (“Cornell”) and Bert Deixler (“Deixler”) respectfully make  
2 the following objections to the Affidavit of Plaintiff Kevin Vanginderen in Support of Plaintiff’s  
3 Memorandum of Points and Authorities in Opposition of Defendant’s Motion to Strike Plaintiff’s  
4 Complaint (“Affidavit”).

### 5 INTRODUCTION

6 In his Affidavit, Plaintiff fails to identify, much less authenticate or lay foundation for, any  
7 of the exhibits or their contents attached to his Affidavit. These exhibits should not be considered  
8 by the Court. The remainder of the Affidavit consists almost entirely of improper legal  
9 argumentation, hearsay, irrelevant information, speculation and statements for which Plaintiff  
10 lacks foundation.

### 11 EVIDENTIARY OBJECTIONS

12 **Objected to Portion:** All exhibits attached to the Affidavit.

13 **Objection:** Lack of authentication (Fed. R. Evid. 901); hearsay (Fed. R. Evid. 801 and  
14 802).

15 Defendants object to the purported exhibits on the ground that the Affidavit does not  
16 include evidence sufficient to support a finding that the purported attached exhibits, and the  
17 contents thereof, are what they claim to be. Plaintiff’s Affidavit does not identify any actual  
18 exhibits and provides no foundation for the contents thereof, and none of the purported exhibits is  
19 self-authenticating.

20 Defendants further object to the purported exhibits as hearsay, to the extent that Plaintiff  
21 relies on them to prove the truth of the matters asserted therein. The manner in which Plaintiff  
22 purports to incorporate the exhibits is unintelligible and therefore Defendants are unable to  
23 decipher with certainty what those matters asserted might be and the propositions those exhibits  
24 are intended to support.

25 **Objection to Portion:** page 1, paragraph 3 in its entirety: “The causes of action  
26 originate from a libelous article published in the *Cornell Chronicle* by Cornell University  
27 (Defendant) regarding an arrest and a single charge brought against myself in March of 1983, and  
28 the subsequent litigation as a result of that article.”

1           **Objection:**    Best evidence rule (Fed. R. Evid. 1002 and 1003); lack of foundation (Fed.  
2 R. Evid. 602); inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703); relevance  
3 (Fed. R. Evid. 402).

4           Defendants object to this portion on the ground that it violates the best evidence rule. The  
5 *Chronicle* article itself is the best evidence of the contents of the *Chronicle* article.

6           Defendants further object to this portion on the ground that Plaintiff has not established the  
7 foundation for his assertion that the *Chronicle* publication was based on “a single specific  
8 incident.”

9           Defendants further object to this portion on the ground that it contains legal argumentation,  
10 specifically, that the *Chronicle* article was “libelous.”

11           Defendants further object to this portion on the ground that it is irrelevant as it does not  
12 have any tendency to make the existence of any fact that is of consequence to the determination of  
13 the action more probable or less probable than it would be without the portion.

14           **Objection to Portion:**   page 2, paragraph 9, portion: “I first learned that a libelous article  
15 regarding myself was contained within the March 17, 1983 edition of the *Cornell Chronicle* . . . .”

16           **Objection:**    Inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703)

17           Defendants object to this portion on the ground that it contains legal argumentation,  
18 specifically, that the *Chronicle* article was “libelous.”

19           **Objection to Portion:**   page 2, paragraph 12 in its entirety: “On October 30, 2007,  
20 Defendant Bert Deixler placed a phone call to myself during which he stated that if the underlying  
21 original claim was not dismissed forthright, this matter would lead to further publicity of the  
22 circumstances regarding the original Private Disclosure of Public Facts claim. He reiterated this  
23 not so veiled threat in a written correspondence to myself dated October 31, 2007.”

24           **Objection:**    Relevance (Fed. R. Evid. 402); best evidence rule (Fed. R. Evid. 1002 and  
25 1003).

26           Defendants object to this portion on the ground that it is irrelevant as it does not have any  
27 tendency to make the existence of any fact that is of consequence to the determination of the  
28 action more probable or less probable than it would be without the portion.

1 Defendants further object to this portion on the ground that Deixler's letter is the best  
2 evidence of the contents of that letter.

3 **Objection to Portion:** page 2, paragraph 14 in its entirety: "On October 29, 2007, two  
4 days prior to the Defendants' ultimatum to drop the initial case, the Internet profile of myself  
5 included no offending statements other than the original libelous account posted by the Cornell  
6 library web site."

7 **Objection:** Relevance (Fed. R. Evid. 402); lacks foundation (Fed. R. Evid. 602);  
8 inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703).

9 Defendants object to this portion on the grounds that it is conclusory and lacks foundation  
10 and consists of subjective belief, opinion, speculation and argument that are irrelevant and  
11 inadmissible, and does not have any tendency to make the existence of any fact that is of  
12 consequence to the determination of the action more probable or less probable than it would be  
13 without the portion.

14 Defendants further object to this portion on the ground that it contains legal argumentation,  
15 specifically, that the *Chronicle* article was "libelous."

16 **Objection to Portion:** page 3, paragraph 15 in its entirety: "On December 15, 2007, I  
17 first learned that the Defendants had obtained from numerous sources the entire formerly sealed  
18 record of the incident that was reported in the *Cornell Chronicle* edition dated March 17, 1983,  
19 and then published the entire record upon the Internet, on the Web Site Justia.com."

20 **Objection:** Lacks foundation; lack of personal knowledge; speculation (Fed. R. Evid.  
21 602); inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703).

22 Defendants object to this portion on the grounds that it is conclusory and lacks foundation  
23 and consists of subjective belief, opinion, speculation and argument that are irrelevant and  
24 inadmissible.

25 Defendants further object to this portion on the ground that it contains improper legal  
26 argumentation, specifically, the assertion that Defendants "published" the entire record.  
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1           **Objection to Portion:** page 3, paragraph 16 in its entirety: “On December 15, 2007, I  
2 first learned of a libelous report regarding myself produced by Barbara Bourne dated March 8,  
3 1983, when it was delivered to me by the Defendant Bert Deixler in a court filing.”

4           **Objection:** Lacks foundation; lack of personal knowledge; speculation (Fed. R. Evid.  
5 602); inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703).

6           Defendants object to this portion on the grounds that it is conclusory and lacks foundation  
7 and consists of subjective belief, opinion, speculation and argument that are irrelevant and  
8 inadmissible. Plaintiff has no personal knowledge as to whether Barbara Bourne produced the  
9 alleged report.

10           Defendants further object to this portion on the ground that it contains improper legal  
11 argumentation, specifically, the assertion that the report was “libelous.”

12           **Objection to Portion:** page 3, paragraph 18 in its entirety: “On March 24, 2008, it  
13 became apparent to me that the Defendant Bert Deixler had thoroughly polluted my Internet  
14 profile with references to virtually nothing other than the entire previously sealed record.”

15           **Objection:** Lacks foundation; lack of personal knowledge; speculation (Fed. R. Evid.  
16 602); Inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703); relevance (Fed. R.  
17 Evid. 402).

18           Defendants object to this portion on the grounds that it is conclusory and lacks foundation  
19 and consists of subjective belief, opinion, speculation and argument that are irrelevant and  
20 inadmissible.

21           Defendants further object to this portion on the ground that it does not have any tendency  
22 to make the existence of any fact that is of consequence to the determination of the action more  
23 probable or less probable than it would be without the portion.

24           **Objection to Portion:** page 3, paragraph 19 in its entirety: “The publication of the  
25 entire sealed record of this incident upon the Internet has resulted in great emotional distress to  
26 myself and has caused my business to suffer greatly. I have signed ninety percent fewer clients at  
27 my business since these disclosure became public in 2007.”

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1           **Objection:**   Lacks foundation; lack of personal knowledge; speculation (Fed. R. Evid.  
2 602); inadmissible opinion and legal argument (Fed. R. Evid. 701, 702, 703); relevance (Fed. R.  
3 Evid. 402).

4           Defendants object to this portion on the grounds that it is conclusory and lacks foundation  
5 and consists of subjective belief, opinion, speculation and argument that are irrelevant and  
6 inadmissible. Plaintiff presents no evidence linking the alleged “publication” to the suffering of  
7 his business. Further, even if true, such information does not have any tendency to make the  
8 existence of any fact that is of consequence to the determination of the action more probable or  
9 less probable than it would be without that information.

10           Defendants further object to this portion on the ground that it contains improper legal  
11 argumentation, specifically, the assertion that the record was “sealed” and that the records were  
12 “published.”

14 DATED: June 26, 2008

Nelson E. Roth  
CORNELL UNIVERSITY

Bert H. Deixler  
Clifford S. Davidson  
PROSKAUER ROSE LLP

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

Attorneys for Defendant,  
CORNELL UNIVERSITY

21 DATED: June 26, 2008

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Clifford S. Davidson  
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