

ORIGINAL

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

NELSON E. ROTH, SBN 67350
ner3@cornell.edu
CORNELL UNIVERSITY
300 CCC Building
Garden Avenue
Ithaca, New York 14853-2601
Telephone: (607)255-5124
Facsimile: (607)255-2794

BERT H. DEIXLER, SBN 70614
bdeixler@proskauer.com
CLIFFORD S. DAVIDSON, SBN 246119
cdavidson@proskauer.com
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendant,
CORNELL UNIVERSITY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
08 APR 28 PM 1:17
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
JMD
DEPUTY

KEVIN VANGINDEREN,

Plaintiff,

v.

CORNELL UNIVERSITY, BERT
DEIXLER,

Defendants.

'08 CV 736 W JMA
Case No.

Hon.
**DECLARATION OF CLIFFORD
S. DAVIDSON IN SUPPORT OF
CORNELL'S NOTICE OF
REMOVAL**

[Notice of Removal and Defendant
Bert Deixler's Joinder filed
concurrently herewith]

(San Diego Superior Court, South
County Division
Case No. 37-2007-00076496-CU-DF-
SC)

Action Filed: April 8, 2008

1 6. Attached hereto as Exhibit D is a true and correct copy of the Summons
2 and Complaint that plaintiff Kevin Vanginderen filed against Cornell on October 1,
3 2007.

4 7. Attached hereto as Exhibit E is a true and correct copy of Defendant's
5 Notice of Special Motion to Strike and Special Motion to Strike Plaintiff's
6 Complaint Pursuant to Section 425.16 of the California Code of Civil Procedure,
7 filed on November 2, 2007 in Case No. 07-CV-2045-BTM-JMA.

8 8. This Notice of Removal is being filed within 30 days of April 15, 2008,
9 the date I am informed and believe that Cornell was served with the Summons and
10 Complaint, in which Plaintiff seeks \$10,000,000 in general and punitive damages.

11
12 I declare under penalty of perjury under the laws of the State of California
13 and the United States of America that the foregoing is true and correct.

14 Executed this 28th day of April, 2008, at Los Angeles, California.

15
16
17 
18 _____
19 Clifford S. Davidson

20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS OF EXHIBITS
(Local Civil Rule 5.1(e))

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

EXHIBIT A

Summons and Complaint (State Court Action) 3

EXHIBIT B

Notice to Adverse Party of Removal 22

EXHIBIT C

Notice to State Court of Removal 24

EXHIBIT D

October 1, 2007 Summons and Complaint. 26

EXHIBIT E

**Cornell's Notice of Special Motion to Strike and Special Motion to Strike
Plaintiff's Complaint Pursuant to Section 425.16 of the California Code of Civil
Procedure. 34**

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)
CORNELL UNIVERSITY

FILED
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2008 APR -8 AM 11:02

CLERK-CLERK COURT
SAN DIEGO COUNTY, CA

YOU ARE BEING SUED BY PLAINTIFF: KEVIN VANGINDEREN
(A Ud. le está demandando)

<p>You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.</p> <p>A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.</p> <p>If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.</p> <p>There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).</p>	<p>Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.</p> <p>Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.</p> <p>Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.</p> <p>Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).</p>
---	--

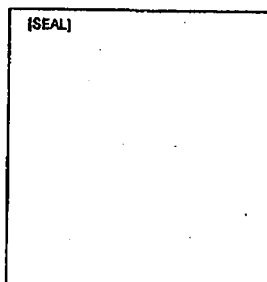
The name and address of the court is: (El nombre y dirección de la corte es)
Superior Court of California
500 Third Ave.
Chula Vista, CA 91910-5649

CASE NUMBER (Número del Caso)
37-2008-00069807-CU-DF-SC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
Kevin Vanginderen (619) 585-7414
Attorney Kevin Vanginderen
637 3rd Avenue, Suite E-1
Chula Vista, CA 91910

DATE: April 8, 2008
(Fecha)

Clerk, by C. Riedel, Deputy
(Actuario) (Delegado)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
 other:
- by personal delivery on (date):

Form Adopted by Rule 992
Judicial Council of California
992(a)(9) (Rev. January 1, 1984)
Mandatory Form

(See reverse for Proof of Service)
SUMMONS

Legal
Solutions
& Plus

CCP 412.20

SUMMONS
(CITACION JUEICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)
BERT DEIXLER

FILED
SOUTH COUNTY FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
2008 APR -8 AM 11:02
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

YOU ARE BEING SUED BY PLAINTIFF: KEVIN VANGINDEREN
(A Ud. le está demandando)

<p>You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.</p> <p>A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.</p> <p>If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.</p> <p>There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).</p>	<p>Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DÍAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.</p> <p>Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.</p> <p>Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.</p> <p>Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).</p>
--	---

The name and address of the court is: (El nombre y dirección de la corte es)
Superior Court of California
500 Third Ave.
Chula Vista, CA 91910-5649

CASE NUMBER (Número del Caso)
37-2008-00069807-CU-DE-SC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
Kevin Vanginderen (619) 585-7414
Attorney Kevin Vanginderen
637 3rd Avenue, Suite E-1
Chula Vista, CA 91910

DATE: April 8, 2008
(Fecha)

Clerk, by _____ Deputy
(Actuario) (Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify) **Cornell University**
under: CCP 416.10 (corporation) CCP 416.80 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)
 other:
4. by personal delivery on (date):

Form Accepted by Rule 652
Judicial Council of California
962(a)(10) (Rev. January 1, 1994)
Mandatory Form

(See reverse for Proof of Service)
SUMMONS

Legal Solutions & Plus

CCP 416.20

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

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):

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

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: April 8, 2006

Kevin Vanginderen

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

1st _____ 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

2nd (number) CAUSE OF ACTION - Intentional Tort Page 5

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 12, 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 12, 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

3rd

(NUMBER)

CAUSE OF ACTION - Intentional Tort

Page 5

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): 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 12, 2007

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

(description of reasons for liability):

On December 12, 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

4th (number) CAUSE OF ACTION - Intentional Tort Page 7

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 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

5th

(PARTIAL)

CAUSE OF ACTION - Intentional Tort

Page 8

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 12, 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 12, 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

5th (number) CAUSE OF ACTION - Intentional Tort Page 9

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): 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 12, 2007

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

(description of reasons for liability):

On December 12, 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

7th (number) CAUSE OF ACTION - Intentional Tort Page 10

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)*: 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

8th (Number) CAUSE OF ACTION - Intentional Tort

Page 11

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): 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER	CASE NUMBER:
--	--------------

9th _____ CAUSE OF ACTION - Intentional Tort Page 12
(number)

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): 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 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.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY, BERT DEIXLER

CASE NUMBER:

10th
(number)

CAUSE OF ACTION - Intentional Tort

Page 13

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): 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 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.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 500 Third Avenue	
MAILING ADDRESS: 500 Third Avenue	
CITY AND ZIP CODE: Chula Vista, CA 91910-5649	
BRANCH NAME: South County	
TELEPHONE NUMBER: (619) 691-4400	
PLAINTIFF(S) / PETITIONER(S): KEVIN VANGINDEREN	
DEFENDANT(S) / RESPONDENT(S): CORNELL UNIVERSITY et.al.	
VANGINDEREN VS. CORNELL UNIVERSITY	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00069807-CU-DF-SC

Judge: William S. Cannon

Department: S-04

COMPLAINT/PETITION FILED: 04/08/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00069807-CU-DF-SC

CASE TITLE: VANGINDEREN vs. CORNELL UNIVERSITY

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR - i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) **CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute - the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) **JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) **SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) **OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 428-3200.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 500 Third Avenue MAILING ADDRESS: 500 Third Avenue CITY, STATE, & ZIP CODE: Chula Vista, CA 91910-5649 BRANCH NAME: South County		FOR COURT USE ONLY
PLAINTIFF(S): KEVIN VANGINDEREN		
DEFENDANT(S): CORNELL UNIVERSITY et.al.		
SHORT TITLE: VANGINDEREN VS. CORNELL UNIVERSITY		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)		CASE NUMBER: 37-2008-00069807-CU-DF-SC

Judge: William S. Cannon

Department: S-04

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff _____

Name of Defendant _____

Signature _____

Signature _____

Name of Plaintiff's Attorney _____

Name of Defendant's Attorney _____

Signature _____

Signature _____

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 04/08/2008

 JUDGE OF THE SUPERIOR COURT

1 NELSON E. ROTH, SBN 67350
2 CORNELL UNIVERSITY
3 300 CCC Building
4 Garden Avenue
5 Ithaca, New York 14853-2601
6 Telephone: (607)255-5124
7 Facsimile: (607)255-2794

8 BERT H. DEIXLER, SBN 70614
9 CLIFFORD S. DAVIDSON, SBN 246119
10 PROSKAUER ROSE LLP
11 2049 Century Park East, 32nd Floor
12 Los Angeles, CA 90067-3206
13 Telephone: (310) 557-2900
14 Facsimile: (310) 557-2193

15 Attorneys for Defendant,
16 CORNELL UNIVERSITY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO
13 SOUTH COUNTY DIVISION

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

) Case No. 37-2008-00069807-CU-DF-
SC
)
) Hon. William S. Cannon
) Department S-04

) **NOTICE TO ADVERSE PARTY OF**
) **DEFENDANT'S FILING OF NOTICE**
) **OF REMOVAL TO UNITED STATES**
) **DISTRICT COURT FOR THE**
) **SOUTHERN DISTRICT OF**
) **CALIFORNIA**

) Action Filed: April 8, 2008

1 TO PLAINTIFF KEVIN VANGINDEREN AND HIS ATTORNEYS OF RECORD, IF ANY:

2 PLEASE TAKE NOTICE that a Notice of Removal of this action was filed in the United
3 States District Court for the Southern District of California on April 28, 2008, bearing Case No.
4 _____, by defendant Cornell University.

5 A true and correct copy of the Notice of Removal is attached to this Notice as Exhibit A,
6 and is served and filed herewith.

7

8

9 DATED: April 28, 2008

NELSON E. ROTH
CORNELL UNIVERSITY

10

BERT H. DEIXLER
CLIFFORD S. DAVIDSON
PROSKAUER ROSE LLP

11

12

13

Clifford S. Davidson

14

Attorneys for Defendant,
CORNELL UNIVERSITY

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT B

Page 23

1

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

NELSON E. ROTH, SBN 67350
CORNELL UNIVERSITY
300 CCC Building
Garden Avenue
Ithaca, New York 14853-2601
Telephone: (607)255-5124
Facsimile: (607)255-2794

BERT H. DEIXLER, SBN 70614
CLIFFORD S. DAVIDSON, SBN 246119
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, CA 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

Attorneys for Defendant,
CORNELL UNIVERSITY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
SOUTH COUNTY DIVISION**

KEVIN VANGINDEREN,

Plaintiff,

v.

CORNELL UNIVERSITY, BERT DEIXLER

Defendants.

) Case No. 37-2008-00069807-CU-DF-SC
)
) Hon. William S. Cannon
) Department S-04

) **NOTICE TO STATE COURT OF**
) **DEFENDANT'S FILING OF NOTICE**
) **OF REMOVAL TO UNITED STATES**
) **DISTRICT COURT FOR THE**
) **SOUTHERN DISTRICT OF**
) **CALIFORNIA**

Action Filed: April 8, 2008

1 TO THE HONORABLE WILLIAM S. CANNON, JUDGE OF THE SUPERIOR COURT OF
2 THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO, SOUTH COUNTY
3 DIVISION:

4 PLEASE TAKE NOTICE that on April 28, 2008, defendant Cornell University filed a
5 Notice of Removal of the above-entitled action, pursuant to 28 U.S.C. § 1441(b), in the United
6 States District Court for the Southern District of California, bearing Case No. _____.
7 Defendant Bert Deixler consented to said removal

8 A true and correct copy of the Notice of Removal filed with the United States District
9 Court for the Central District of California is attached hereto as Exhibit A. Pursuant to 28 U.S.C.
10 § 1446(d), the action in this Court "shall proceed no further unless and until the case is remanded."

11 DATED: April 28, 2008

NELSON E. ROTH
CORNELL UNIVERSITY

BERT H. DEIXLER
CLIFFORD S. DAVIDSON
PROSKAUER ROSE LLP

12
13
14
15
16 _____
Clifford S. Davidson

17 Attorneys for Defendant,
18 CORNELL UNIVERSITY

19
20
21
22
23
24
25
26
27 EXHIBIT C
28 Page 25



**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
CORNELL UNIVERSITY

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
KEVIN VANGINDEREN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate those nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Diego
500 3rd Ave.
Chula Vista, CA 91910-5649

CASE NUMBER:
(Número del Caso):
37-2007-00076496-CU-DF-SC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kevin Vanginderen
637 Third Ave., Ste. E1, Chula Vista, CA 91910

DATE:
(Fecha) OCT 01 2007

Clerk, by _____, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
American LegalNet, Inc. www.JSCourtForms.com

EXHIBIT D
Page 26

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin Vanginderen 637 Third Ave., Ste. E-1 Chula Vista, CA 91910 TELEPHONE NO.: (619) 585-7414 FAX NO.: ATTORNEY FOR (Name): plaintiff in pro per		FOR COURT USE ONLY CASE NUMBER: 37-2007-00076496-CU-DF-SC JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 500 3rd Ave. MAILING ADDRESS: 500 3rd Ave. CITY AND ZIP CODE: Chula Vista, CA 91910-5649 BRANCH NAME: South County Division		
CASE NAME: VANGINDEREN v. CORNELL UNIVERSITY		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input checked="" type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Libel, Public Disclosure of Private Facts**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 1, 2007
 Kevin Vanginderen
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state, number, and address):</p> <p>Kevin Vanginderen 637 3rd Avenue, Suite E-1 Chula Vista, CA 91910</p> <p>TELEPHONE NO: (619) 585-7414 FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name):</p>	<p>FOR COURT USE ONLY</p>
<p>NAME OF COURT: Superior Court of California, San Diego County STREET ADDRESS: 500 Third Ave. MAILING ADDRESS: 500 Third Ave. CITY AND ZIP CODE: Chula Vista, CA 91910-5649 BRANCH NAME: South County</p>	
<p>PLAINTIFF: Kevin Vanginderen</p> <p>DEFENDANT: Cornell University</p> <p><input type="checkbox"/> DOES 1 TO _____</p>	
<p>COMPLAINT — Personal Injury, Property Damage, Wrongful Death</p> <p><input type="checkbox"/> AMENDED (Number): _____</p> <p>Type (check all that apply):</p> <p><input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Public Disclosure of <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death Private Fact/Libel <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): loss of reputation, mental anguish</p>	
<p>Jurisdiction (check all that apply):</p> <p><input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000</p> <p><input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)</p> <p><input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p>	<p>CASE NUMBER: 37-2007-00076496-CU-DF-SC</p>

1. PLAINTIFF (name): Kevin Vanginderen
- alleges causes of action against DEFENDANT (name): Cornell University
2. This pleading, including attachments and exhibits, consists of the following number of pages: 2
3. Each plaintiff named above is a competent adult
- a. except plaintiff (name): Cornell University
- (1) a corporation qualified to do business in California
 - (2) an unincorporated entity (describe):
 - (3) a public entity (describe): a public university
 - (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): Kevin Vanginderen
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):

- (1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):

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

(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

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

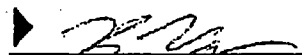
- a. (1) compensatory damages
 (2) punitive damages
 b. The amount of damages is (you must check (1) in cases for personal injury or wrongful death):
 (1) according to proof
 (2) in the amount of: \$ 1,000,000.00

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

Date: October 1, 2007

Kevin Vanginderen

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY

CASE NUMBER:

1

(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 Univeristy

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 17 1983, September 2, 2007, and continuing
at (place): Cornell Univeristy, Chula Vista, CA, and to all national
and international internet service protocol adresses
(description of reasons for liability):

On March 17, 1983, a publication funded and operated by the defendant named the "Cornell Chronicle", was published with defamatory and libelous information about the plaintiff. The publication stated that an incorrect criminal charge was brought against the plaintiff, it misstated the basis for the actual charge brought against him and further portrayed the plaintiff as the likely perpetrator and suspect of numerous crimes he was never investigated for, charged with, nor had any involvement in. Sometime in the year 2007, the defendant republished this article onto the internet by placing it in the public domain on the defendant's library website for the first time, which was over twenty four years after its first more limited publication.

On September 2, 2007, the plaintiff first became aware of the original publication when he conducted an annual "google search" of his name on the internet. The false statements became prominently available to the plaintiff and all others running a similar commonly conducted search. The defendant was informed of these circumstances by the plaintiff on that date and asked to correct it, however, the defendant has refused to delete this information from the public domain resulting in potentially infinite occurences of new counts of liability for libel.

The defendant is liable for damages for multiple counts of Libel dating back over twenty four years. The plaintiff has suffered extreme emotional distress and loss of reputation from the conduct of the defendant and requests general and punitive damages in the amount of \$1,000,000.

SHORT TITLE: VANGINDEREN V. CORNELL UNIVERSITY

CASE NUMBER:

2

(number)

CAUSE OF ACTION - Intentional Tort

Page 5

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 Univeristy

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): September 2, 2007, and continuing

at (place): Chula Vista, CA, and to all national and international internet service protocol addresses

(description of reasons for liability):

On March 17, 1983, a publication funded and operated by the defendant named the "Cornell Chronicle", was published with information which stated that a criminal charge was brought against the plaintiff and that he was the likely perpetrator and suspect of numerous crimes that he was never charged with. Sometime in the year 2007, the defendant republished this article onto the internet by placing it in the public domain on the defendant's library website for the first time, twenty four years after its first limited publication.

On September 2, 2007, the plaintiff first became aware of the original publication when he conducted an annual "google search" of his name on the internet. The defendant's statements from 1983 regarding the plaintiff have now for the first time become prominently available to the plaintiff and all others running a similar commonly conducted search. The information stating that a charge had been brought against the plaintiff in 1983 was first made available by the defendant in a prominent manner on the internet over twenty four years after the event. The defendant was informed of these circumstances by the plaintiff on that date and asked to delete it, however, the defendant has refused to delete this information from the public domain resulting in potentially infinite occurrences of new counts of liability for Public Disclosure of Private Facts.

The defendant is liable for damages for multiple counts of tortious Public Disclosure of Private Facts for disclosing private information dating back over twenty four years. The plaintiff has suffered extreme emotional distress and loss of reputation from the conduct of the defendant and requests general and punitive damages in the amount of \$1,000,000.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 500 Third Avenue	
MAILING ADDRESS: 500 Third Avenue	
CITY AND ZIP CODE: Chula Vista, CA 91910-5649	
BRANCH NAME: South County	
TELEPHONE NUMBER: (619) 691-4400	
PLAINTIFF(S) / PETITIONER(S): KEVIN VANGINDEREN	
DEFENDANT(S) / RESPONDENT(S): Cornell University	
VANGINDEREN VS. CORNELL UNIVERSITY	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00076496-CU-DF-SC

Judge: William S. Cannon

Department: S-04

COMPLAINT/PETITION FILED: 10/01/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

1 NELSON E. ROTH, SBN 67350
 ner3@cornell.edu
 2 CORNELL UNIVERSITY
 300 CCC Building
 3 Garden Avenue
 Ithaca, New York 14853-2601
 4 Telephone: (607)255-5124
 Facsimile: (607)255-2794
 5
 BERT H. DEIXLER, SBN 70614
 6 bdeixler@proskauer.com
 CHARLES S. SIMS, New York Attorney Registration No. 1535640
 7 admitted *pro hac vice*
 csims@proskauer.com
 8 CLIFFORD S. DAVIDSON, SBN 246119
 cdavidson@proskauer.com
 9 PROSKAUER ROSE LLP
 2049 Century Park East, 32nd Floor
 10 Los Angeles, CA 90067-3206
 Telephone: (310) 557-2900
 11 Facsimile: (310) 557-2193
 12 Attorneys for Defendant,
 CORNELL UNIVERSITY

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 KEVIN VANGINDEREN,
 16 Plaintiff,
 17
 v.
 18 CORNELL UNIVERSITY,
 19 Defendant.
 20
 21
 22
 23
 24
 25
 26

Case No. 07-CV-2045-BTM-JMA
 Hon. Barry T. Moskowitz
 DEFENDANT'S NOTICE OF
 SPECIAL MOTION TO STRIKE
 AND 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]

[Request for Judicial Notice filed
 concurrently]

Hearing Date: December 21, 2007
 Time: 11:00 a.m.
 Place: Courtroom 15

Action Filed: October 1, 2007

NOTICE OF SPECIAL MOTION TO STRIKE AND SPECIAL MOTION TO STRIKE

1 TO DEFENDANT AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 21, 2007, 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 Plaintiff filed this action after discovering in the electronic archives of the
12 Cornell University Library a 24-year-old report in the *Cornell Chronicle* that
13 described Plaintiff's criminal activities as a Cornell undergraduate. Plaintiff alleges
14 that the news account is libelous and reflects public disclosure of private facts.

15 The Complaint is indisputably a "strategic lawsuit against public
16 participation" ("SLAPP") that is barred by the anti-SLAPP statute, California Code
17 of Civil Procedure § 425.16. The Complaint's allegations arise entirely out of
18 Cornell's actions in furtherance of the right to engage in "conduct in furtherance of
19 the exercise of the . . . constitutional right of free speech in connection with a public
20 issue or an issue of public interest." Cal. Code Civ. Pro. § 425.16(e)(4).

21 Because the Complaint is a SLAPP lawsuit, Section 425.16(b)(1) and relevant
22 Ninth Circuit authorities require that the Complaint be stricken unless Plaintiff
23 makes a prima facie showing that his claims are legally and factually sufficient.
24 Plaintiff cannot show either because, as set forth in detail in Cornell's
25 accompanying Memorandum of Points and Authorities, the *Cornell Chronicle* report
26 on Plaintiff's criminal activities is fair and true and any claim would be time-barred.
27 A simple examination of the records of the Ithaca City Court, attached as Exhibit A

28

1 to the concurrently filed Request for Judicial Notice, demonstrates the truth of the
2 news account of the criminal proceedings.

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 § 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 accompanying Request
9 for Judicial Notice and exhibits attached thereto, the Declarations of Valerie Cross
10 Dorn and Anne Richardson Kenney, the records and files in this action and upon
11 such further oral and documentary evidence as may be presented at or before the
12 hearing on this special motion to strike.

13
14 DATED: November 2, 2007

BERT H. DEIXLER
CHARLES S. SIMS
CLIFFORD S. DAVIDSON
PROSKAUER ROSE LLP

NELSON E. ROTH
CORNELL UNIVERSITY

15
16
17
18
19 s/Bert H. Deixler
20 Bert H. Deixler

21 Attorneys for Defendant,
22 CORNELL UNIVERSITY
23
24
25
26
27
28