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8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 KEVIN VANGINDEREN,
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 Plaintiff,
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 v.
 13 CORNELL UNIVERSITY, BERT DEIXLER,
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 Defendants.
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) Case No. 08-CV-736 BTM(JMA)
)
) Hon. Barry T. Moskowitz
)
) **NOTICE OF BERT DEIXLER'S**
) **SPECIAL MOTION AND BERT**
) **DEIXLER'S SPECIAL MOTION TO**
) **STRIKE PLAINTIFF'S FIRST**
) **AMENDED COMPLAINT PURSUANT**
) **TO SECTION 425.16 OF THE**
) **CALIFORNIA CODE OF CIVIL**
) **PROCEDURE**
)
) [Per chambers, no oral argument unless
) requested by the Court]
)
) [Memorandum of Points and Authorities,
) Stanley Declaration and Davidson
) Declaration filed concurrently]
)
) Hearing Date: August 22, 2008
) Time: 11:00 a.m.
) Place: Courtroom 15
)
) Action Filed: April 8, 2008

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1 TO DEFENDANT AND HIS ATTORNEYS OF RECORD, IF ANY:

2 PLEASE TAKE NOTICE that on August 22, 2008, at 11 a.m., or as soon thereafter as
3 counsel may be heard in the United States District Court for the Southern District of California,
4 Courtroom 15, located at 940 Front Street, San Diego, California 92101, defendant Bert Deixler
5 (“Deixler”) will and hereby does move for an order striking the First Amended Complaint
6 (“FAC”) of plaintiff Kevin Vanginderen (“Plaintiff”) in its entirety, with prejudice and without
7 leave to amend, and further awarding Deixler his reasonable attorneys’ fees and costs incurred in
8 bringing this special motion to strike.

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

10 In 2007, Plaintiff sued defendant Cornell University (“Cornell”) for defamation and
11 disclosure related to a 1983 newspaper report of Plaintiff’s criminal activities (the “2007 Action”).
12 Cornell removed the 2007 Action to this Court. Deixler served as lead counsel in the 2007 Action.
13 In defending Cornell in the 2007 Action, Cornell, through Deixler, submitted to this Court
14 unsealed records that contained Cornell’s investigation and report to police of Plaintiff’s criminal
15 activities in 1983 (the “Unsealed Records”). On April 8, 2008, Plaintiff filed an additional lawsuit
16 against Cornell based on alleged libelous information contained in the Unsealed Records and
17 against Deixler for his role in filing them. On May 5, 2008, Cornell and Deixler filed Special
18 Motions to Strike Plaintiff’s Complaint. On June 5, 2008, the Court granted Plaintiff leave to file
19 an amended complaint, which Plaintiff filed on June 13, 2008.

20 Through the FAC, Plaintiff indisputably has filed a “strategic lawsuit against public
21 participation” (“SLAPP”) that is barred by the anti-SLAPP statute, California Code of Civil
22 Procedure § 425.16. Plaintiff’s allegations against Deixler arise entirely from his role in
23 submitting the Unsealed Records to this Court. *See* Cal. Code Civ. Pro. § 425.16(e).

24 Because Plaintiff has filed a SLAPP lawsuit, section 425.16(b)(1) and relevant Ninth
25 Circuit authorities require that the FAC be stricken unless Plaintiff makes a prima facie showing
26 that his claims are legally and factually sufficient. Plaintiff cannot show either because, as set
27 forth in detail in Deixler’s accompanying Memorandum of Points and Authorities, Deixler’s
28 submission of the Unsealed Records to this Court in the 2007 Action is protected by the litigation

1 privilege (Cal. Civ. Code § 47(b)) and the Noerr-Pennington Doctrine. Further, the contents of the
2 Unsealed Records were factually accurate.

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

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

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18 DATED: June 30, 2008

Lary Alan Rappaport
Clifford S. Davidson
PROSKAUER ROSE LLP

19
20 /s/ -- Clifford S. Davidson
21 Clifford S. Davidson

22 Attorneys for Defendant,
23 BERT DEIXLER
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