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 CORNELL UNIVERSITY

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

) Case No. 08-cv-00736 BTM(JMA)
)
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **CORNELL’S MOTION FOR**
) **ATTORNEYS’ FEES**
)
) [Per chambers, no oral argument unless
) requested by the Court]
)
) [Notice of Motion and Motion, Declarations
) of Bert H. Deixler and Clifford S. Davidson,
) and [Proposed] Order filed concurrently
) herewith]
)
) Hearing Date: March 13, 2009
) Time: 11:00 a.m.
) Place: Courtroom 15
)
) Action Filed: April 8, 2008
)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 As documented in Exhibit A to the concurrently-filed Declaration of Clifford S. Davidson
3 (“Davidson Declaration”),¹ Cornell incurred 101.75 hours in attorneys’ fees in bringing and
4 winning its and Deixler’s anti-SLAPP motions, and 10.25 hours preparing its Bill of Costs and
5 Motion for Attorneys’ Fees. A chart summarizing these fees is attached to the Davidson
6 Declaration as Exhibit B. A chart summarizing the time Cornell spent drafting the Bill of Costs
7 and Motion for Attorneys’ Fees associated with the anti-SLAPP motions² is attached to the
8 Davidson Declaration as Exhibit C. Based upon the hours reflected in the Davidson Declaration,
9 and the \$350/hour flat rate charged to Cornell as described in the concurrently filed Declaration of
10 Bert H. Deixler (“Deixler Declaration”), Cornell respectfully requests that the Court award to
11 Cornell attorneys’ fees in the amount of \$38,380.

12 The \$38,380 figure is based on the number of hours worked by Defendants’ attorneys on
13 the anti-SLAPP motions multiplied by the \$350 rate at which those attorneys worked. “District
14 courts must calculate awards for attorneys’ fees using the ‘lodestar method The ‘lodestar’ is
15 calculated by multiplying the number of hours the prevailing party reasonably expended on the
16 litigation by a reasonable hourly rate.” *Camacho v. Bridgeport Fin. Inc.*, 523 F.3d 973, 978 (9th
17 Cir. 2008); *see also Espinoza v. City of Imperial*, 2008 U.S. Dist. LEXIS 45611, *16-17 (S.D. Cal.
18 June 6, 2008) (“The lodestar method applies to the determination of a proper attorneys' fees award
19 for an Anti-SLAPP prevailing party.”). “The amount awarded must be reasonable, and it must

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21 ¹ Exhibit A is a collection of all bills sent to Cornell, prepared with the assistance of Proskauer’s
22 Accounting Department. Davidson Decl. ¶ 3. Exhibit A is sufficient to support this motion. *See*
23 *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545, 1557 (9th Cir. 1989) (holding
24 timesheets not per se required if other documentation presented).

25
26 ² Cornell is entitled to both its fees in prosecuting the anti-SLAPP motion and the fees it incurred
27 in applying for costs and fees. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001) (holding the
28 fee award in anti-SLAPP cases “should ordinarily include compensation for *all* the hours
reasonably spent, including those relating solely to the fee.”).

1 also adequately compensate the [prevailing party] for the expense of responding to a baseless
2 suit." *Silverstein v. E360insight, LLC*, 2008 U.S. Dist. LEXIS 36858, *22 (C.D. Cal. May 5,
3 2008) (internal quotations and citations omitted) (awarding attorneys' fees on anti-SLAPP
4 motion). "A reasonable hourly rate is that prevailing in the community for similar work."
5 *Kearney v. Foley & Lardner*, 2008 U.S. Dist. LEXIS 21115, *12 (S.D. Cal. Mar. 18, 2008)
6 (awarding fees to defendant prevailing in anti-SLAPP motion). The reasonableness of a fees
7 award is "to be determined from a consideration of such factors as the nature of the litigation, the
8 complexity of the issues, the experience and expertise of counsel and the amount of time
9 involved." *Id.* This Court held, in related case *Vanginderen v. Cornell University*, 07-cv-2045
10 BTM(JMA), that a \$350 hourly rate is reasonable.

11 As described in the Deixler Declaration, the rates charged by Proskauer attorneys to
12 Cornell are consistent with (and in fact lower than) prevailing rates among attorneys of similar
13 caliber, education and experience in the community. Deixler Decl. ¶¶ 10, 11. Further, Cornell's
14 \$38,380 request is reasonable and consistent with awards for successful defendants in other anti-
15 SLAPP cases. For example, in *Premier Medical Mgmt. Sys. v. California Ins. Guar. Ass'n*, the
16 California Court of Appeal affirmed an award of \$165,000 in attorneys' fees to a defendant in that
17 case after successful prosecution of an anti-SLAPP motion. 163 Cal. App. 4th 550, 556 (2008).
18 Cornell also does not seek fees for the time expended by Nelson E. Roth, Esq. and other lawyers
19 and legal assistants in Cornell's Office of General Counsel.

20 Because Plaintiff sued Deixler based on his representation of Cornell in related case
21 *Vanginderen v. Cornell University*, 07-cv-2045 BTM(JMA), Cornell has paid for Deixler's legal
22 representation in this matter. Proskauer Rose LLP accordingly has billed Cornell for time
23 expended by Proskauer attorneys and legal assistants in defending both Cornell and Deixler.
24 (Deixler Decl. ¶ 13). The Court should award to Cornell the attorneys' fees it incurred pursuing
25 its own and Deixler's claims. See *Ramona Unified Sch. Dist. v. Tsiknas*, 135 Cal. App. 4th 510,
26 525 (2005) (awarding fees in anti-SLAPP case to attorney and her co-defendants "[b]ecause an
27 attorney-client relationship existed between the prevailing defendants and [the attorney-
28 defendant].").

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For the foregoing reasons, Cornell respectfully requests that the Court award to Cornell,
and tax against Plaintiff, its attorneys' fees in the amount of \$38,380.

DATED: January 20, 2009

Bert H. Deixler
Clifford S. Davidson
PROSKAUER ROSE LLP

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

Attorneys for Defendant,
CORNELL UNIVERSITY