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 CORNELL UNIVERSITY

8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 KEVIN VANGINDEREN,
 11 Plaintiff,
 12 v.
 13 CORNELL UNIVERSITY, BERT DEIXLER,
 14 Defendants.

) Case No. 08-cv-00736 BTM(JMA)

) Hon. Barry T. Moskowitz

) **DECLARATION OF BERT H.
 DEIXLER IN SUPPORT OF
 CORNELL'S MOTION FOR
 ATTORNEYS' FEES**

) [Per chambers, no oral argument unless
 requested by the Court]

) [Notice of Motion and Motion and
 Davidson Declaration filed concurrently
 herewith]

) Hearing Date: March 13, 2009

) Time: 11:00 a.m.

) Place: Courtroom 15

) Action Filed: April 8, 2008

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DECLARATION OF BERT H. DEIXLER

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2 I, Bert H. Deixler, declare under penalty of perjury under the laws of the United States of
3 America as follows:

4 1. I am an attorney admitted to the Bar of this Court and am a partner at Proskauer
5 Rose LLP ("Proskauer"), counsel of record for defendant Cornell University ("Cornell"). I was a
6 defendant in this action. The following is personally known to me and I could and would testify
7 competently thereto if called as a witness.

8 2. In my role as head of Proskauer's Los Angeles office, I am familiar with the rates
9 charged by Proskauer attorneys. Also, I am familiar with, and keep abreast of, the Southern
10 California market for legal fees.

11 3. I have practiced law as a federal prosecutor and business trial lawyer in Los
12 Angeles for over 30 years. I have litigated on behalf of individuals and entities in all aspects of
13 the entertainment industry, including motion pictures, television, music and new technologies;
14 copyright and trademark law; employment law; and a wide variety of commercial disputes. In
15 November 2004, I successfully argued before the United States Supreme Court a civil rights case,
16 *Johnson v. California*, 543 U.S. 499 (2005), which forced the racial integration of the California
17 prisons.

18 4. The following is a list of reported decisions in which I was either lead trial or
19 appellate counsel (or both):

20 *Johnson v. California*, 543 U.S. 499, 125 S. Ct. 1141 (2005).

21 *Young v. City of Simi Valley*, 216 F.3d 807 (2000).

22 *Classic Auto Refinishing Inc. v. Marino*, 181 F.3d 1142 (1999).

23 *Sloman v. Tadlock*, 21 F.3d 1462 (9th Cir. 1994).

24 *Times Mirror Co. v. United States*, 873 F.2d 1210 (9th Cir. 1989).

25 *Cinevision Corp. v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984).

26 *Young v. City of Simi Valley*, 977 F. Supp. 1017 (C.D. Cal. 1997).

27 *Morrill v. Smashing Pumpkins*, 157 F. Supp. 120 (C.D. Cal. 2000).

28 *United States v. Halbert*, 640 F.2d 100 (9th Cir. 1981).

1 *United States v. Gardner*, 611 F.2d 770 (9th Cir. 1980).
 2 *United States v. Vasquez*, 597 F.2d 192 (9th Cir. 1979).
 3 *United States v. General Dynamics Corp.*, 644 F. Supp. 1497 (1986).
 4 *Litton Intl. Dev. Corp. v. City of Simi Valley*, 616 F. Supp. 275 (1985).
 5 *Watermark, Inc. v. United Stations, Inc.*, 219 U.S.P.Q. (1982).
 6 *United States v. Seide*, 492 F. Supp. 164 (1980).
 7 *In re Williams*, 7 Cal. 4th 572, 870 P.2d 1072 (1994).
 8 *People v. Williams*, 44 Cal. 3d 1127, 751 P.2d 901 (1988).
 9 *Third Story Music, Inc. v. Waits*, 1995 Cal. App. (1995).
 10 *Pulskamp v. Martinez*, 2 Cal. App. 4th 954 (1992).
 11 *Ersa Grae Corp. v. Fluor Corp.*, 1 Cal. App. 4th 613 (1991).
 12 *Lincoln Natl. Bank v. Dworsky*, 218 Cal. App. 3d 852 (1990).
 13 *All Points Traders, Inc. v. Barrington Assocs.*, 211 Cal. App. 3d 723 (1989).
 14 *Rodie v. Max Factor & Co.*, 207 Cal. App. 3d 1509 (1989).
 15 *Beverly Glen Music, Inc. v. Warner Communs., Inc.*, 178 Cal. App. 3d 1142 (1986).
 16 *O'Connor v. Superior Court of Kern County*, 177 Cal. App. 3d 1013 (1986).

17 In addition, I have served as:

- 18 • Consultant, Los Angeles Ethics Commission ("Cowan Commission");
- 19 • Counsel, Independent Commission on the Los Angeles Police Department ("Christopher Commission");
- 20 • Counsel, Special Advisor to the Board of Police Commissions ("Judge Webster Study");
- 21
- 22 • Member, Los Angeles County District Attorney's Task Force on Workers' Compensation Fraud;
- 23
- 24 • Deputy General Counsel, Rampart Independent Review Panel ("LAPD Rampart Investigation");
- 25
- 26 • Member, Federal Civil Rights Panel, Central District of California;
- 27 • Member, Board of Directors, Western Justice Center Foundation; and
- 28 • Instructor, National Institute of Trial Advocacy.

1 5. Although my standard billing rate is \$805 per hour, I billed my time to Cornell at
2 \$350 per hour in this matter. Further, all attorney work performed in this matter was billed to
3 Cornell at a rate of \$350 per hour, although all of the attorneys who worked on this case regularly
4 bill at considerably higher hourly rates.

5 6. Proskauer has represented Cornell against Mr. Vanginderen since October of 2007,
6 and in this particular litigation since April 2008. In addition to myself, the Proskauer attorneys
7 who worked on this matter include Lary Alan Rappaport and Clifford S. Davidson.

8 7. Mr. Rappaport is a partner in Proskauer's Los Angeles office with over 25 years'
9 litigation experience. He has litigated a wide variety of commercial, entertainment, intellectual
10 property and sports disputes, and represents lawyers and law firms in litigation, employment
11 disputes and ethical matters. He has represented clients in a wide variety of intellectual property
12 matters, including trademark and copyright. Mr. Rappaport also has experience defending against
13 SLAPP suits. Mr. Rappaport's standard billing rate is \$660 per hour, but Proskauer billed Cornell
14 at \$350 per hour for his work in this matter.

15 8. Mr. Davidson is a third-year associate. He was graduated from Harvard College
16 and the University of Michigan Law School. He has litigated a variety of matters involving
17 intellectual property, real estate, breaches of contract, class action defense, privacy law and white
18 collar matters. When Mr. Davidson became involved in this litigation, his rate was \$350 per hour.
19 On May 1, 2008, Mr. Davidson's rate increased to \$390 per hour. On November 1, 2008, Mr.
20 Davidson's rate increased to \$405 per hour. Nevertheless, all time he has spent on this matter has
21 been (and will be) billed to Cornell at \$350 per hour. Mr. Davidson was primarily responsible for
22 the drafting and research in this matter.

23 9. Proskauer's attorneys were assisted in this matter by Legal Assistant Ivania
24 Munguia, whose time was billed to Cornell at a rate of \$95 per hour.

25 10. On July 2, 2008, I spoke with Robert S. Brewer, Jr., Managing Partner of the San
26 Diego office of McKenna Long & Aldridge LLP and my former colleague at the Office of the
27 United States Attorney for the Central District of California. Mr. Brewer and I discussed the
28 typical billing rate in the Southern District of California for attorneys of my age, experience and

1 expertise. We discussed the hourly rates of partners in Mr. Brewer's office, as well as law firms
2 such as DLA Piper, Latham & Watkins LLP and Morrison & Foerster LLP. Mr. Brewer informed
3 me that partners at the San Diego offices of those firms generally charge from \$600 to \$750 per
4 hour. On this basis, I conclude that the \$350 per hour charged for all attorney time in this matter
5 is unreasonably low and below a market rate.

6 11. In the summer of 2004, in connection with another matter in which I was involved,
7 I investigated the rates charged by partners at law firms comparable to Proskauer by contacting
8 partners at Gibson, Dunn & Crutcher; Sullivan & Cromwell; Latham & Watkins; Munger, Tolles
9 & Olson; O'Melveny & Myers; Manatt, Phelps & Phillips; Jeffer Mangels Butler & Marmaro;
10 Greenberg Glusker Fields Claman Machtinger & Kinsella; Irell & Manella; and McDermott Will
11 & Emery. Rates charged by the partners with experience and backgrounds comparable to mine at
12 these firms in the summer of 2004 ranged from \$585 to \$800. These rates were for work
13 nationwide, including work in San Diego. The \$350 rate charged by Proskauer attorneys in this
14 matter therefore is significantly below that charged in the relevant market.

15 12. For a detailed description of the work performed in this matter, please see the
16 concurrently-filed Declaration of Clifford S. Davidson.

17 13. As the Court is aware, I am named in the Complaint and First Amended Complaint
18 based on my representation of Cornell in related Case No. 07-cv-2045 BTM(JMA). Because I
19 acted on Cornell's behalf in that matter, and because of the issues of law and fact common to the
20 claims alleged against me and Cornell, Cornell has indemnified me for the legal defense costs I
21 otherwise would have incurred in the present matter. Cornell therefore has incurred – and paid –
22 attorneys' fees for work performed on my behalf by my Proskauer colleagues, including Mr.
23 Rappaport, Mr. Davidson and Ms. Munguia. The bills Proskauer sent to Cornell are attached as
24 exhibits to Mr. Davidson's declaration filed concurrently herewith.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that I executed this declaration this 20th day of January, 2009, in
3 Los Angeles, California.

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