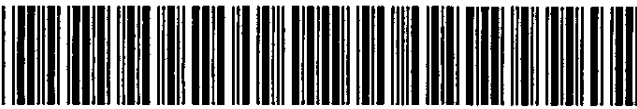
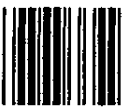


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3:01-CV-01752 BOSLEY MEDICAL V. KREMER

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M.

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 2 Public Citizen Litigation Group
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 4
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 600 West Broadway, Suite 2600
 6 San Diego, California 92101-3391
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 7 Fax No. (619) 232-8311

FILED
 JAN - 6 2004
 CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY _____ DEPUTY

8 Attorneys for Michael Kremer

9 UNITED STATES DISTRICT COURT
 10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 BOSLEY MEDICAL INSTITUTE,) No. 01 CV 1792- ¹ WOH
12 Plaintiff,) District Judge Keep
13) NOTICE OF DEFENDANT'S MOTION TO
14 v.) DISMISS, TO STRIKE THE COMPLAINT,
15) AND FOR PARTIAL SUMMARY
16 MICHAEL STEVEN KREMER,) JUDGMENT
17 Defendant.) DATE: December 15, 2003
) TIME: 11:00 A.M.
) PLACE: Courtroom 16

18
 19 Please take notice that at 11:00 A.M. on December 15, 2003, in Courtroom 16 on the Fifth
 20 Floor of the United States District Court for the Southern District of California, pursuant to Rules
 21 12(b)(6) and 56 of the Federal Rules of Civil Procedure, and to Section 425.16 of the California Code
 22 of Civil Procedure, and based on the attached memorandum of law, and on the affidavit and exhibits
 23 attached hereto, as well as the affidavit and exhibits previously filed in this case, defendant Kremer
 24 will move the Court to dismiss all Counts for failure to state a claim upon which relief can be granted;
 25 to grant summary judgment dismissing all claims for failure to show use in commerce or commercial
 26 use of plaintiff's trademarks; and to strike Counts V, VI, and VII because they are barred by
 27 California's anti-SLAPP statute, Code of Civil Procedure Section 425.16.

OK PER COURT TO BE TREATED AS ORIGINAL.

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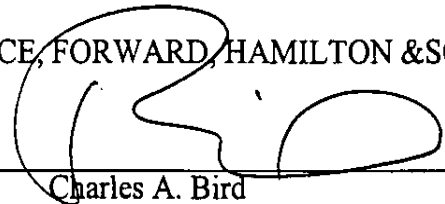
Respectfully submitted,

PAUL ALAN LEVY
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LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By



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(619) 236-1414
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Dated: November 3, 2003

1 PROOF OF SERVICE

2 *Bosley Medical Institute, Inc. v. Michael Steven Kremer,*
3 Case No. 01-CV-1752 JNK (JMA) Judge: District Judge Keep

4 I am employed with the law firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600
5 West Broadway, Suite 2600, San Diego, California 92101-3372. I am over the age of eighteen
6 years, and am not a party to this action. On November 3, 2003, I served the following:

6 **NOTICE OF DEFENDANT'S MOTION TO DISMISS, TO STRIKE THE
7 COMPLAINT, AND FOR PARTIAL SUMMARY JUDGMENT**

8 **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS, TO
9 STRIKE THE COMPLAINT, AND FOR PARTIAL SUMMARY JUDGMENT**

10 **DEFENDANT'S UNOPPOSED EX PARTE MOTION FOR LEAVE TO FILE
11 OVERLENGTH MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, TO
12 STRIKE THE COMPLAINT, AND FOR PARTIAL SUMMARY JUDGMENT**

11 **SECOND AFFIDAVIT OF MICHAEL STEVEN KREMER**

12
13 on the interested parties in this action as follows:

14 X **U. S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) with
15 postage fully prepaid, and addressed as follows for collection and mailing on the below
16 indicated day pursuant to the ordinary business practices at Luce, Forward, Hamilton &
Scripps LLP which is that correspondence for mailing is collected and deposited with
United States Postal Service on the same day in the ordinary course of business.

17 G. Peter Albert, Jr.
18 Foley & Lardner
11250 El Camino Real, Suite 200
19 San Diego, California 92130
Tel: (858) 847-6700
20 Fax: (858) 792-6773
Attorneys for Plaintiffs
21 BOSLEY MEDICAL INSTITUTE, INC.
and BOSLEY MEDICAL GROUP, S.C.

22 _____ **(STATE):** I declare under penalty of perjury under the laws of the State of California
23 that the foregoing is true and correct.

24 X **(FEDERAL):** I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

25 Executed at San Diego, California on November 3, 2003.

26
27 
28 Patricia Kemper