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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

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19 **JEANNE E. CALDWELL,**)
20)
21 **Plaintiff/Appellant,**)
22)
23 **v.**)
24)
25 **ROY L. CALDWELL, PH.D., in his**)
26 **official capacity as Director of the**)
27 **University Of California Museum**)
28 **Of Paleontology; DAVID**)
LINDBERG, in his official capacity)
as Chair of the Integrative Biology)
Dept., University of California,)
Berkeley; and MICHAEL PIBURN)
in his official capacity as Program)
Director for the National Science)
Foundation,)
Defendants/Appellees.)

No.
Dist. Ct. No. C05-04166 PJH

APPELLANT'S NOTICE AND STATEMENT OF ISSUES

1 Plaintiff and appellant, Jeanne E. Caldwell ("Appellant"), identifies the following
2 issues on appeal:

3 1. Whether the District Court abused its discretion in granting defendants
4 and appellees Roy L. Caldwell and David Lindberg's Motion to Dismiss pursuant to
5 Federal Rule of Civil Procedure 12(b)(6) with prejudice, without granting Appellant
6 leave to amend her Complaint to address the alleged legal deficiencies identified in
7 the motion.

8 2. Whether the District Court abused its discretion in ruling on and
9 granting defendant and appellee Michael D. Piburn's Motion to Dismiss pursuant to
10 Federal Rule of Civil Procedure 12(b)(6) with prejudice two days before the
11 scheduled hearing date for the motion, without prior notice to Appellant, after
12 Appellant had notified the court of her intention to file an Amended Complaint to
13 address the alleged legal deficiencies identified in the defendants' respective
14 motions to dismiss..

15 3. Whether the District Court abused its discretion in granting defendant
16 and appellee Michael D. Piburn's Motion to Dismiss pursuant to Federal Rule of
17 Civil Procedure 12(b)(6) without prejudice, granting Appellant leave to amend her
18 Complaint to address the alleged legal deficiencies identified in the motion.

19 4. Whether the allegations in Appellant's Complaint, and in her proposed
20 amendment to the Complaint, stated injury in fact by Appellant sufficient to give
21 Appellant standing to assert a claim against defendants and appellees Roy L.
22 Caldwell and David Lindberg for violation of the Establishment Clause


23 5. Whether the District Court abused its discretion in granting Roy L.
24 Caldwell and David Lindberg's Motion to Strike the prayer for nominal damages
25 from plaintiff's Complaint, pursuant to Federal Rule of Civil Procedure 12(f), based
26 on Eleventh Amendment immunity;

27 6. Whether the allegations in Appellant's Complaint, and in her proposed
28 amendment to the Complaint, stated injury in fact by Appellant sufficient to give

1 Appellant standing to assert a claim against defendant and appellee Michael D.
2 Piburn for violation of the Establishment Clause.

3 PACIFIC JUSTICE INSTITUTE

4 Dated: April 7, 2006

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6 By: 
7 Kevin T. Snider
8 Attorneys for plaintiff Jeanne E. Caldwell
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