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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 JEANNE E. CALDWELL,

16 Plaintiff,

17 v.

18 ROY L. CALDWELL, Ph.D., in his official
capacity as Director of the University of
19 California Museum of Paleontology; DAVID
LINDBERG, in his official capacity as Chair
20 of the Integrative Biology Department of the
University of California-Berkeley; and
21 MICHAEL D. PIBURN, in his official
capacity as Program Director for the National
22 Science Foundation,

23 Defendants.

Case No. C05-04166

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE**

Date: February 8, 2006
Time: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton

24
25 Plaintiffs cannot dispute the well-established principle that the Eleventh Amendment to
26 the U.S. Constitution limits the remedial power of federal courts in cases brought against state
27 officials in their official capacity to "prospective injunctive relief." *Edelman v. Jordan*, 415 U.S.
28 651, 676-77 (1973); *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Following this rule, courts have held

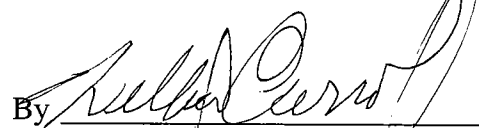
1 that awards of nominal damages – which under no definition can constitute “prospective
2 injunctive relief” – may not be awarded against defendants such as Roy L. Caldwell and David
3 Lindberg, who are sued in their capacity as state officials. *Simmons v. Conger*, 86 F.3d 1080,
4 1085 (11th Cir. 1996). In response, plaintiff fails to cite a single case holding that nominal
5 damages may be awarded against state officials notwithstanding the Eleventh Amendment.

6 Instead, plaintiffs refer to a number of cases in which nominal damages were awarded
7 against a public entity or its employees, presumably claiming that, although these cases do not
8 discuss the Eleventh Amendment issue, the fact that they award nominal damages must
9 demonstrate that the immunity is inapplicable to such awards. But in **every single case** that
10 plaintiffs cite, nominal damages were awarded against **municipal**, not state defendants. *See*
11 *Floyd v. Laws*, 929 F.2d 1390 (9th Cir. 1991) (City and police chief); *Gibeau v. Nellis*, 18 F.3d
12 107 (2d Cir. 1994) (county jail officer); *George v. City of Long Beach*, 973 F.2d 706 (9th Cir.
13 1992) (city and police officer); *Schnieder v. County of San Diego*, 285 F.3d 784 (9th Cir. 2000)
14 (county); *Wilks v. Reyes*, 5 F.3d 412 (9th Cir. 1993) (county park policy officer); *Wilcox v. City of*
15 *Reno*, 42 F.3d 550 (9th Cir. 1994) (city). The explanation for these awards – and the reason why
16 these cases are irrelevant to defendants’ Eleventh Amendment defense – is simple. The Eleventh
17 Amendment “bars suits against states, but not lesser entities. The immunity does not extend to
18 suits prosecuted against a municipal corporation or other entity that is not an arm of the state.”
19 *Alden v. Maine*, 527 U.S. 706, 756 (1999). Thus, the fact that nominal damages have been
20 awarded against municipalities or municipal officials implies nothing about the scope of the
21 Eleventh Amendment as applied to **state** entities, such as University of California or its officials.

22 Because plaintiff’s claim for nominal damages is not a request for “prospective injunctive
23 relief,” it is barred by the Eleventh Amendment. Defendants’ motion to strike must be granted.

24 DATED: January 25, 2006

MORGENSTEIN & JUBELIRER LLP

25
26 By 

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