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15 Attorneys for Plaintiff

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18 **IN THE UNITED STATES DISTRICT COURT**  
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
20

21 JEANNE E. CALDWELL,

22 Plaintiff,

23 v.

24 ROY L. CALDWELL, PH.D., in his  
25 official capacity as Director of the  
26 University Of California Museum Of  
27 Paleontology; DAVID LINDBERG, in his  
28 official capacity as Chair of the Integrative  
Biology Department of the University of  
California-Berkeley; and MICHAEL D.  
PIBURN, in his official capacity as  
Program Director for the National Science  
Foundation,

Defendants.

CASE NO. C05-04166 PJH

**OBJECTIONS TO DEFENDANTS'  
REQUEST FOR JUDICIAL NOTICE**

1 Attorneys for Plaintiff respectfully submit the following objections to the REQUEST  
2 FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' ROY L. CALDWELL, Ph.D.,  
3 AND DAVID LINDBERG'S MOTION TO DISMISS.

4 **Item:** Defendants Roy Caldwell and David Lindberg (collectively referred to as  
5 "Berkley Defendants") seek judicial notice of the UC Berkeley Museum of Paleontology  
6 website, <http://www.ucmp.berkeley.edu/museum/museum.php>, including that portion of the site  
7 entitled "Understanding Evolution." <http://evolution.berkeley.edu/>.

8 **Objection:** Relevance (Federal Rule 402) Plaintiff objects to including the website for  
9 purposes of providing evidence which contradicts the four corners of the complaint, including  
10 Exhibit 2. In determining the propriety of a Rule 12(b) dismissal, a court may not look beyond  
11 the complaint. *Schneider v. California Dept. of Corrections*, 151 F.3d 1194 (9<sup>th</sup> Cir. 1998).

12 Plaintiffs do not object to the request for judicial notice for the following purpose:

- 13 1. Proof that the website has been changed since the filing of the complaint;
- 14 2. Proof that the website is not a "static display" *Lynch v. Donnelly*, 463 U.S. 783  
15 (1983); *County of Allegheny v. ACLU*, 492 U.S. 573 (1989); *Van Orden v. Perry*, \_\_\_  
16 U.S. \_\_\_, S. Ct. 2854 (2005)

17 **Objection:** (1) Confusion of Issues and (2) needless presentation of cumulative  
18 evidence. (Federal Rule 403) Plaintiff objects to including the website for purposes of providing  
19 evidence which contradicts the four corners of the complaint, including Exhibit 2. In  
20 determining the propriety of a Rule 12(b) dismissal, a court may not look beyond the complaint.  
21 *Schneider v. California Dept. of Corrections*, 151 F.3d 1194 (9<sup>th</sup> Cir. 1998).

