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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 JEANNE E. CALDWELL,

17 Plaintiff,

18 v.

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

24 Defendants.

Case No. C05-04166

**DEFENDANTS ROY L. CALDWELL,  
Ph.D. AND DAVID LINDBERG'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO STRIKE**

[Fed. R. Civ. Proc. 12(f)]

Date: January 25, 2006  
Time: 9:00 a.m.  
Judge: Hon. Phyllis J. Hamilton

25  
26 **I. INTRODUCTION**

27 Plaintiff Jeanne E. Caldwell ("plaintiff") has sued Roy L. Caldwell, Ph.D. and David  
28 Lindberg (collectively "defendants") in their official capacities as, respectively, the Director of

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SAN FRANCISCO

1 the University of California Museum of Paleontology and the Chair of the Integrative Biology  
2 Department at the University of California at Berkeley. Such official capacity claims are in all  
3 respects the equivalent of claims directly against The Regents of the University of California, an  
4 instrumentality of the State of California. It is well-settled that the Eleventh Amendment to the  
5 United States Constitution bars suits for damages against an instrumentality of a state, including  
6 suits against state officials in their official capacities. Therefore, defendants respectfully request  
7 that the Court strike plaintiff's prayer for "nominal damages in the sum of \$100," as set forth in  
8 paragraph 40(C) on page 15, lines 1 and 2 of the complaint.

9 **II. ARGUMENT**

10 **A. An Improper Prayer For Relief Is Subject To a Motion To Strike under**  
11 **Rule 12(f).**

12 Federal Rule of Civil Procedure 12(f) provides that upon a party's motion, "the court may  
13 order stricken from any pleading any insufficient defense or any redundant, immaterial,  
14 impertinent, or scandalous matter." Fed. R. Civ. Proc. 12(f). Rule 12(f) is the proper vehicle to  
15 attack a prayer for relief where the damages plaintiff seeks are not recoverable as a matter of law.  
16 *See, e.g., Tapley v. Lockwood Green Engineers, Inc.*, 502 F.2d 559, 560 (8th Cir. 1974) (motion  
17 to strike granted where prayer for damages in wrongful death action exceeded maximum  
18 permitted by statute); *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1479 n.34 (C.D. Cal. 1996)  
19 (motion to strike is proper means of challenging prayer for punitive damages, treble damages and  
20 liquidated damages).

21 **B. The Court Should Strike Plaintiff's Prayer For "Nominal Damages."**

22 The Eleventh Amendment to the United States Constitution provides in relevant part:  
23 "The Judicial power of the United States shall not be construed to extend to any suit in law or  
24 equity, commenced or prosecuted against one of the United States by Citizens of another  
25 State. . . ." U.S. Const. Amend. XI. The Eleventh Amendment, therefore, limits the relief federal  
26 courts may award against states or state officials: "A federal court's remedial power, consistent  
27 with the Eleventh Amendment is necessarily limited to prospective injunctive relief . . . and may  
28 not include a retroactive award which requires the payment of funds from the state treasury."

1 *Edelman v. Jordan*, 415 U.S. 651, 677 (1973) (internal citation omitted). “[A] suit against a state  
2 official in his or her official capacity is not a suit against the official but rather is a suit against the  
3 official’s office,” and, “as such, it is no different from a suit against the State itself.” *Will v.*  
4 *Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989); *see also Hafer v. Melo*, 502 U.S. 21, 25  
5 (1991). Accordingly, a federal court may not impose an award of damages, even so-called  
6 “nominal damages,” against a state official in his or her official capacity. *Simmons v. Conger*, 86  
7 F.3d 1080, 1084-85 (11th Cir. 1996) (reversing award of \$100 in “nominal damages” against state  
8 official in his official capacity).

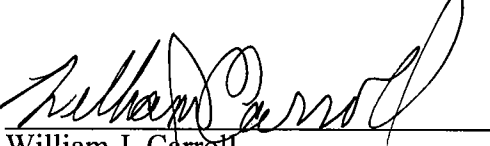
9 It is well-established that the University of California is the “state” for Eleventh  
10 Amendment purposes. *See, e.g., Armstrong v. Meyers*, 964 F.2d 948, 949 (9th Cir. 1992);  
11 *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989). Therefore, the Eleventh  
12 Amendment bars claims for damages against its officials in their official capacities as a matter of  
13 law, and plaintiff’s prayer for damages should be stricken.

14 **III. CONCLUSION**

15 Based on the foregoing, defendants respectfully request that the Court strike plaintiff’s  
16 prayer for nominal damages in paragraph 40(C), on page 15, lines 1 and 2 of the complaint.

17  
18 DATED: December 19, 2005

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19  
20 By   
21 William J. Carroll  
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