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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA

7 MICHELLE RIVAS AND THOMAS KASCHAK,  
8 *et al.*,

9 Plaintiffs,

10 v.

11 CALIFORNIA FRANCHISE TAX BOARD, *et*  
12 *al.*,

13 Defendants.

1:08-CV-00942 OWW SMS

MEMORANDUM DECISION  
GRANTING DEFENDANTS'  
UNOPPOSED MOTION TO DISMISS  
AND VACATING HEARING (DOC.  
28).

14 I. INTRODUCTION

15 This case arises out of a search of Plaintiffs' Michelle  
16 Rivas' ("Rivas") and Thomas Kaschak's ("Kaschak") residence,  
17 conducted by California Franchise tax Board ("FTB") agents on  
18 February 23, 2006, and Kaschak's January 9, 2007 arrest on  
19 charges of tax evasion. Plaintiffs' original complaint was  
20 dismissed with leave to amend on December 23, 2008. Kaschak  
21 filed a First Amended Complaint ("FAC") on May 15, 2009. Doc.  
22 26. The First Cause of Action alleges the FTB and Defendant Slue  
23 Railsback ("Railsback"), an FTB Senior Special Agent, violated  
24 his Fourth Amendment right to be free from unreasonable search  
25 during the February 23, 2006 search and his January 9, 2007  
26 arrest. FAC ¶¶ 22-31. The Second Cause of Action alleges that  
27 Defendant John Chiang ("Chiang"), the California State Controller  
28 and Chairman of the FTB, violated his Fourth Amendment right to

1 be free from the excessive use of force during the February 23,  
2 2006 search. FAC ¶¶ 32-40.

3 Defendants move to dismiss the First Cause of Action as to  
4 the FTB on Eleventh Amendment grounds, and the Second Cause of  
5 Action against Chiang on statute of limitations grounds. Doc. 28  
6 at 2-3. Plaintiff filed a statement of non-opposition, reserving  
7 the right to pursue his claims against Slue Railsback. Doc. 30.

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9 Accordingly:

10 (1) As to Defendant FTB, the First Cause of Action is  
11 DISMISSED WITH PREJUDICE. As to Defendant Railsback, this claim  
12 survives.

13 (2) The Second Cause of Action, which only names Chiang, is  
14 DISMISSED WITH PREJUDICE in its entirety.

15 (3) The hearing on this motion to dismiss, currently set for  
16 October 19, 2009 at 10:00 a.m. is VACATED. Counsel need not  
17 appear.

18  
19 SO ORDERED

20 Dated: October 16, 2009

21 /s/ Oliver W. Wanger  
22 Oliver W. Wanger  
23 United States District Court  
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