IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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| ROGER ARDEN ELSETH; PATRICIA ANN ELSETH; and ALLEN ELSETH by his guardian ad litem ROGER ARDEN ELSETH AND PATRICIA ANN ELSETH, Plaintiffs, v. VERNON SPEIRS, Chief Probation Officer of the County of Sacramento; DAVID GORDON, Superintendent Sacramento County Department of Education; SHERIFF of the County of Sacramento, Deputy Sheriff TAM; Deputy Sheriff ALLENGUIRY; and DR. SAXTON, M.D., Defendants. | 2:08-cv-2890-GEB-KJM<br>ORDER* |

Defendant David Gordon ("Gordon") moves for dismissal of Plaintiffs' only claim against him, arguing *inter alia* since the claim is alleged against him only in his official capacity as the Sacramento County Superintendent of Schools, he is shielded from this damage

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

claim under Eleventh Amendment immunity. Plaintiffs rejoin requesting leave to correct the nature of their suit against Gordon stating they should allege Gordon is sued in his "individual capacity." (Pls. Opp'n at 3:8-11). Since this claim only seeks damages against Gordon in his official capacity, Gordon's dismissal motion is granted. See Eaglesmith v. Ward, 73 F.3d 857, 859-60 (9th Cir. 1995)(holding a county superintendent of schools sued in his official capacity was entitled to Eleventh Amendment immunity because a California county office of education is a state agency).

Plaintiffs' request for leave to file a Second Amended Complaint in which they allege their claim against Gordon in his "individual capacity" is granted, provided the Second Amended Complaint is filed within ten days from the date on which this Order is filed.

Dated: April 9, 2009

GARLAND E. BURRELL, JR.
United States District Judge