

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE V. HAHN and COLDSTREAM Case No. 2:09-cv-01479-JAM-GGH  
ADVENTURES UNLIMITED, INC., ORDER GRANTING DEFENDANTS'  
Plaintiffs, MOTION TO DISMISS

v.

CALIFORNIA DEPARTMENT OF PARKS  
AND RECREATION, PAM ARMAS,  
SIERRA DISTRICT SUPERINTENDENT,  
DONALD K. SCHMIDT, TARA LYNCH,  
DEAN OERTLE, MARK MCGOVERN,  
STEVE MICHAELS, MARK ROMINGER,  
and DOES 1 through 100,  
inclusive,

## Defendants.

This matter is before the Court on Defendants California Department of Parks and Recreation ("the State" or "Parks"), Pam Armas, Donald K Schmidt, Tara Lunch, Dean Oertle, Steve Michaels and Mark Rominger's (collectively "Parks Employees") motions to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and to strike the First Amended Complaint ("FAC")

pursuant to California Code of Civil Procedure Section 425.16. Doc. # 7. Plaintiffs Lawrence Hahn and Coldstream Adventures Unlimited, Inc. (collectively "Hahn") oppose the motions. Doc. # 8. For the reasons set forth below, Defendants' motion to dismiss is GRANTED.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Hahn asserts that since August 1994 he has owned estates in real property, all within Placer County, consisting of approximately a 59-acre parcel of land located at 8975 Coldstream Road, as well as two recorded easements across parcels. Pl's FAC, Doc. # 6 ("FAC"), ¶ 48. Hahn alleges the easements entitle him to access areas within both Coldstream Canyon and Emigrant Canyon, via portions of Coldstream Road, for any lawful purpose, including, but not limited to commercial activities. FAC ¶ 48. Hahn asserts he has operated a snowmobile tour business, as well as other commercial activities on and around his property. FAC ¶ 46. In 1996, Defendants installed a gate on Coldstream Road, at the entrance of Donner Memorial State Park ("DMSP"). FAC ¶ 53. In 1997, Defendants began periodically locking the gate on Coldstream Road, which, in turn, obstructed the general public's use of the road. FAC ¶ 55.

Plaintiff's First Amended Complaint alleges fourteen claims for relief: (1) Violation of the Fourth Amendment under 42 U.S.C. § 1983; (2) Violation of the First Amendment under 42 U.S.C. § 1983; (3) Violation of Civil/Liberty Rights, Due Process Violations under 42 U.S.C. § 1983; (4) Violation of Civil/Property Rights, Due Process Violations under 42 U.S.C. §

1 1983; (5) Equal Protection Violations under 42 U.S.C. § 1983;  
2 (6) Inverse Condemnation under California Constitution Article  
3 1, Section 19; (7) Continuing Breach of Contract; (8) Continuing  
4 Public Nuisance; (9) Continuing Private Nuisance; (10) Malicious  
5 Prosecution; (11) Abuse of Process; (12) Defamation of  
6 Character/Slander Per Se; (13) Declaratory Relief; and (14)  
7 Injunctive Relief.

8 On September 9, 2009, a hearing was held in this Court on  
9 the motion to dismiss. In Hahn's Opposition Brief and at the  
10 hearing, Hahn conceded that the Ninth through Twelfth claims for  
11 relief (for malicious prosecution, defamation of  
12 character/slander per se, abuse of process, and private  
13 nuisance) in the FAC should be dismissed on the basis that the  
14 State and Parks Employees are absolutely immune from suit  
15 pursuant to Government Code Sections 821.6 and 815.2. See Pl's  
16 Opp., Doc. # 8, 8-9. As such, this Court dismissed claims Nine  
17 through Twelve of Plaintiff's FAC with prejudice at the  
18 September 9, 2009 hearing. The remaining claims were taken  
19 under submission and are the subject of this written order.  
20 Further, the Court stated at the hearing that it will focus on  
21 the merits of the motion to dismiss rather than the motion to  
22 strike. As discussed below, the Court need not rule on the  
23 motion to strike at this time.

24 II. OPINION

25 A. Legal Standard

26 On a motion to dismiss, the allegations of the complaint  
27 must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322  
28 (1972). The court is bound to give the plaintiff the benefit of

1 every reasonable inference to be drawn from the "well-pleaded"  
2 allegations of the complaint. Retail Clerks Int'l Ass'n v.  
3 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff  
4 need not necessarily plead a particular fact if that fact is a  
5 reasonable inference from facts properly alleged. See id.

6 Nevertheless, it is inappropriate to assume that the  
7 plaintiff "can prove facts which it has not alleged or that the  
8 defendants have violated the . . . laws in ways that have not  
9 been alleged." Associated Gen. Contractors of Calif., Inc. v.  
10 Calif. State Council of Carpenters, 459 U.S. 519, 526 (1983).  
11 Moreover, the court "need not assume the truth of legal  
12 conclusions cast in the form of factual allegations." United  
13 States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th  
14 Cir. 1986). Indeed, "[t]hreadbare recitals of the elements of a  
15 cause of action, supported by mere conclusory statements, do not  
16 suffice." Ashcroft v. Iqbal, U.S. , 129 S. Ct. 1937, 173  
17 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, at \*29 (May, 18,  
18 2009)(citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555  
19 (2007)).

20 Ultimately, the court may not dismiss a complaint in which  
21 the plaintiff alleged "enough facts to state a claim to relief  
22 that is plausible on its face." Ashcroft v. Iqbal, U.S. ,  
23 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, at \*29  
24 (May, 18, 2009)(citing Bell Atlantic Corp. v. Twombly, 550 U.S.  
25 544, 570 (2007)). Only where a plaintiff has failed to "nudge  
26 [his or her] claims across the line from conceivable to  
27 plausible," is the complaint properly dismissed. Id. When  
28 there are well-pleaded factual allegations, "a court should

1 assume their veracity and then determine whether they plausibly  
2 give rise to an entitlement to relief." Id.

3 **B. Eleventh Amendment**

4 Defendants move the Court to dismiss this action in its  
5 entirety based upon Eleventh Amendment immunity. Pls' Mot.,  
6 Doc. # 7. Defendants argue the Eleventh Amendment bars takings  
7 claims and 42 U.S.C. § 1983 claims against a state and thus,  
8 Parks, a state agency, is protected from suit under the Eleventh  
9 Amendment. Pls' Mot. at 6-7. In addition Defendants argue  
10 Parks Employees are sued in their official capacities and thus  
11 the Eleventh Amendment bars takings claims and § 1983 claims  
12 against them as well. Id. at 7. Plaintiff contends that Parks  
13 and Parks Employees are not immune from suit under the Eleventh  
14 Amendment "because the State of California is not immune under  
15 California law for uncompensated takings of private property."  
16 Defs' Opp., Doc. # 8, at 2.

17 "The Eleventh Amendment has been authoritatively construed  
18 to deprive federal courts of jurisdiction over suits by private  
19 parties against unconsenting States." Seven Up Pete Venture v.  
20 Schweitzer, 523 F.3d 948, 956 (9th Cir. 2009), citing Seminole  
21 Tribe v. Florida, 517 U.S. 44, 54 (1996). The Eleventh  
22 Amendment bars a suit in which a state agency, such as Parks, is  
23 named as a defendant regardless of the relief sought. Pennhurst  
24 State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). The  
25 Eleventh Amendment applies to suits seeking injunctive relief  
26 against the State or its agency as well as to suits for damages.  
27 Id. at 101-102. Eleventh Amendment immunity also generally  
28 applies to officials of the State sued in their official

1 capacity because "a suit [brought] against a state official in  
2 his or her official capacity is not a suit against the official  
3 but rather is a suit against the official's office. As such, it  
4 is no different from a suit against the State itself." Will v.  
5 Mich. Dep't of State Police, 491 U.S. 58, 71 (1989).

6 Here, Hahn has sued Parks for damages, declaratory and  
7 injunctive relief. Hahn admits in his FAC that he sues Parks as  
8 an agency of the state. FAC ¶ 5. As a state agency, Parks is  
9 protected by the Eleventh Amendment and cannot be sued in  
10 federal court for any of the claims for relief sought in Hahn's  
11 FAC. Further, Hahn sues the Parks Employees in their official  
12 capacities. His claims against Parks Employees as currently  
13 pled are either for damages, or for violations of various state  
14 laws. These claims are therefore barred by the Eleventh  
15 Amendment.

16 Plaintiffs' argument that under California law the State  
17 and Parks Employees are not immune from suit for an  
18 uncompensated taking of private property is unpersuasive. The  
19 Ninth Circuit has held that the Eleventh Amendment bars takings  
20 claims brought in federal court. Seven Up Pete Venture v.  
21 Schweitzer, 523 F.3d 948, 956 (9th Cir. 2009). In addition, the  
22 Ninth Circuit specifically held in Seven Up Pete Venture that  
23 the Eleventh Amendment barred reverse condemnation actions  
24 brought in federal court against state officials in their  
25 official capacities. Id. Even if Hahn can pursue an inverse  
26 condemnation claim under California Constitution Article 1,  
27 Section 19 in state court, Hahn cannot proceed on such a claim  
28 in this Court. It has been consistently held that "a State's

1 waiver of sovereign immunity in its own courts is not a waiver  
2 of the Eleventh Amendment immunity in federal courts. See,  
3 e.g., Florida Dept. of Health and Rehabilitative Services v.  
4 Florida Nursing Home Assn., 450 U.S. 147, 150 (1981).

5 Plaintiffs also rely on Hafer v. Melo, 502 U.S. 21 (1991)  
6 in support of their argument against the motion to dismiss based  
7 on Eleventh Amendment immunity. However, as the court in Hafer  
8 explains, naming a government official individually in a lawsuit  
9 is not sufficient to convert an action against the state entity  
10 into one against the official in a personal capacity. The  
11 distinction is "more than just a pleading device. Id. at 27,  
12 citing, Will v. Michigan Dept. of State Police, 491 U.S. 58, 71  
13 (1989). State officers sued for damages in their official  
14 capacity are not "persons" for purposes of the suit because they  
15 assume the identity of the government that employs them. Id.  
16 By contrast, officers sued in their personal capacity come to  
17 court as individuals. Id. Hahns' FAC names each Park Employee  
18 in his/her official capacity. FAC ¶¶ 8-13. Therefore, Hahn's  
19 reliance on Hafer is misplaced because Hahn has not properly  
20 alleged claims against the Park Employees in their individual  
21 capacities.

22 Accordingly, the State's motion to dismiss all claims in  
23 the FAC on the ground of Eleventh Amendment immunity is GRANTED  
24 WITH PREJUDICE. Likewise, the Park Employees' motion to dismiss  
25 all claims in the FAC as presently alleged against them in their  
26 official capacities, on the basis of Eleventh Amendment immunity  
27 is GRANTED WITHOUT PREJUDICE. Hahn is given leave to attempt to  
28

1 amend his complaint to properly allege Section 1983 claims  
2 against Park Employees in their individual capacities.

3 C. Statute of Limitations

4 In addition to being barred by the Eleventh Amendment,  
5 Hahn's claims based on federal law as currently pled are also  
6 barred by the statute of limitations. The statute of  
7 limitations for all actions brought under 42 U.S.C. § 1983 is  
8 the forum state's statute of limitations for personal injury  
9 actions. Wilson v. Garcia, 471 U.S. 261, 276 (1985). In  
10 California, the statute of limitations for personal injury  
11 actions is two years. Cal. Code Civ. Proc. § 335.1. Hahn does  
12 not dispute that the applicable statute of limitations for his  
13 42 U.S.C. § 1993 claims is two years. Most of Hahn's claims are  
14 based on actions that occurred before June 11, 2007, more than  
15 two years before the filing of this suit. However, Hahn argues  
16 that Parks should be equitably estopped from asserting the  
17 statute of limitations to these claims.

18 In order to establish esoppel, also referred to as  
19 "fraudulent concealment," the plaintiff must demonstrate that he  
20 relies on the defendant's misconduct in failing to file in a  
21 timely manner and must plead with particularity the facts which  
22 give rise to the claim of fraudulent concealment." Guerrero v.  
23 Gates, 442 F.3d 697, 706-707 (9th Cir. 2006). A defendant must  
24 take active steps to prevent the plaintiff from suing on time,  
25 such as by promising to not plead the statute of limitations.  
26 Santa Monica v. Pacific Bell, 22 F.3d 1170, 1176 (9th Cir.  
27 2000).  
28

1       Federal courts have applied California law in determining  
2 equitable estoppel. Lukovsky v. City and County of San  
3 Francisco, 535 F.3d 1044, 1054 (9th Cir. 2008). Under  
4 California law, a Plaintiff must allege the following four  
5 elements: (1) that a party to be estopped must be apprised of  
6 the facts; (2) he must intend that his conduct shall be acted  
7 upon, or must so act that the party asserting the estoppel has a  
8 right to believe it was so intended; (3) the other party must be  
9 ignorant of the true state of facts; and (4) he must rely upon  
10 the conduct to his injury. Id. at 1051-1052. In evaluating  
11 these factors, the plaintiff's reliance on the other party's  
12 actions must be reasonable. Santa Monica v. Pacific Bell, 202  
13 F.3d 1170, 1177 (9th Cir. 2000).

14       Here, Hahn has not established fraudulent concealment or  
15 reasonable reliance upon Park's representations. The FAC  
16 presents no such facts of culpable or unconscionable conduct on  
17 the part of Defendants. The alleged delay in Parks responding  
18 to Hahn's requests and the allegations of ongoing negotiations  
19 with representatives from Parks does not establish that Parks  
20 acted in an unconscionable manner or took unfair advantage of  
21 Hahn. Hahn had every opportunity to research the facts and file  
22 a timely suit, yet he failed to do so. As such, Hahn's claims  
23 in the first through fifth claims for relief as currently pled  
24 are barred by the statute of limitations.

### III. ORDER

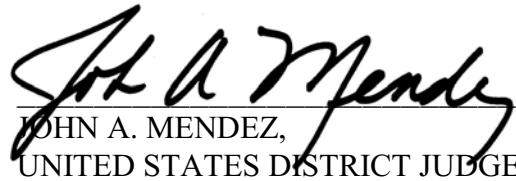
26 For the foregoing reasons, the Court makes the following  
27 orders:

1       1. California Department of Parks and Recreation's motion  
2       to dismiss all claims against it on the basis of  
3       Eleventh Amendment immunity is GRANTED WITH PREJUDICE.  
4       2. Park Employees' motion to dismiss all claims, based on  
5       Eleventh Amendment immunity and the first through fifth  
6       claims on statute of limitations grounds is GRANTED  
7       WITHOUT PREJUDICE.

8       Plaintiffs are ordered to file and serve their second  
9       amended complaint no later than twenty (20) days from the date  
10      of this order. Defendants are ordered to file their responses  
11      no later than twenty (20) days after service thereof.

12      IT IS SO ORDERED.

13      Dated: September 17, 2009



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE