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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAMELA KINCAID, et al.,  
Plaintiffs,  
v.  
CITY OF FRESNO, et al.,  
Defendants.

1:06-CV-1445 OWW SMS

MEMORANDUM DECISION AND ORDER  
DENYING DEFENDANT KEMPTON'S  
MOTION TO DISMISS, MOTION FOR  
A MORE DEFINITE STATEMENT, AND  
MOTION TO STRIKE

1. INTRODUCTION

This matter comes before the court on Defendant Will Kempton's ("Kempton") motion to dismiss Plaintiffs' claims against him under 42 U.S.C. § 1983. Plaintiffs' claims are brought against Kempton in his official capacity as the Director of the California Department of Transportation ("Caltrans"). Plaintiffs allege that Kempton, along with other named defendants, engaged in a pattern and practice of constitutional violations against Plaintiffs while conducting clean up efforts throughout the City of Fresno. Plaintiffs oppose Defendant Kempton's motion to dismiss.

2. PROCEDURAL BACKGROUND

Plaintiffs filed their initial complaint on October 17, 2006. (Doc. 1, Complaint.) Plaintiffs filed their Second Amended Complaint ("SAC") on March 1, 2007. (Doc. 113, SAC.)

1 Defendant Kempton filed a motion to dismiss the claims against  
2 him on January 12, 2007. (Doc. 96, Defendant's Motion to  
3 Dismiss.) Plaintiffs filed their opposition on February 23,  
4 2007. (Doc. 110, Opposition to Defendant's Motion to Dismiss.)  
5 Defendant Kempton filed his reply on March 2, 2007. (Doc. 115,  
6 Reply to Plaintiffs' Opposition.)

7 **3. FACTUAL BACKGROUND**

8 This case concerns a number of clean up operations conducted  
9 by Defendants. For more than a year, Defendants implemented a  
10 policy of taking and destroying personal property of homeless  
11 individuals in an effort to clean up the City of Fresno. (Doc.  
12 113, SAC, ¶ 38.) A number of these clean up efforts occurred on  
13 property belonging to Caltrans, including the raids on May 3,  
14 2006, May 25, 2006, June 22, 2006, and August 26, 2006.

15 Defendant Kempton is the Director of Caltrans. (Doc. 113,  
16 SAC, ¶ 25.) Kempton is responsible for the enforcement,  
17 operation, and execution of all duties vested by law in Caltrans.  
18 (*Id.*) Plaintiffs sue Kempton only in his official capacity and  
19 only for violation of federal law. (*Id.*)

20 Plaintiffs allege that Kempton's acts in his official  
21 capacity with Caltrans were executed under a custom, policy, and  
22 practice by the agency against Plaintiffs in violation of their  
23 Constitutional rights. (*Id.*, ¶ 30.) Plaintiffs allege that  
24 Kempton in his official capacity acted jointly or conspired with  
25 other defendants to authorize, acquiesce or set in motion  
26 policies and plans that led to unlawful conduct against  
27 Plaintiffs. (*Id.*) Plaintiffs further allege that Caltrans  
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1 officials and employees had prior knowledge of raids on Caltrans  
2 property from the City. (*Id.*, ¶ 46.) According to Plaintiffs'  
3 complaint, Defendant Capt. Garner notified Caltrans that any  
4 items belonging to the homeless found on Caltrans property will  
5 be taken as "trash" and disposed of. (*Id.*) The City's clean up  
6 operations resulted in the systematic and immediate destruction  
7 of Plaintiffs' personal property. On August 25, 2006, Caltrans  
8 issued an encroachment permit which authorized the City to  
9 conduct a cleanup operation and to construct a fence at the  
10 location where homeless individuals were staying. (*Id.*) This  
11 clean up operation resulted in the immediate destruction of  
12 property belonging to homeless individuals. (*Id.* at 47.)

#### 13 **4. MOTION TO DISMISS**

14 Fed. R. Civ. P. 12(b)(6) provides that a motion to dismiss  
15 may be made if the plaintiff fails "to state a claim upon which  
16 relief can be granted." However, motions to dismiss under Fed.  
17 R. Civ. P. 12(b)(6) are disfavored and rarely granted. The  
18 question before the court is not whether the plaintiff will  
19 ultimately prevail; rather, it is whether the plaintiff could  
20 prove any set of facts in support of his claim that would entitle  
21 him to relief. See *Hishon v. King & Spalding*, 467 U.S. 69, 73  
22 (1984). "A complaint should not be dismissed unless it appears  
23 beyond doubt that plaintiff can prove no set of facts in support  
24 of his claim which would entitle him to relief." *Van Buskirk v.*  
25 *CNN, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002) (citations omitted).

26 In deciding whether to grant a motion to dismiss, the court  
27 "accept[s] all factual allegations of the complaint as true and  
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1 draw[s] all reasonable inferences" in the light most favorable to  
2 the nonmoving party. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th  
3 Cir. 1999); see also *Rodriguez v. Panayiotou*, 314 F.3d 979, 983  
4 (9th Cir. 2002). A court is not "required to accept as true  
5 allegations that are merely conclusory, unwarranted deductions of  
6 fact, or unreasonable inferences." *Spewell v. Golden State*  
7 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

8 **A. Discussion**

9 Defendant Kempton argues that Plaintiffs' complaint against  
10 him in his official capacity and against Caltrans should be  
11 dismissed for failure to state a claim upon which relief can be  
12 granted. Kempton argues that Plaintiffs have failed to allege  
13 any facts against him that his conduct was improper. Plaintiffs  
14 sue Defendant Kempton in his official capacity and not in his  
15 personal capacity. The Supreme Court explained the distinction  
16 in *Kentucky v. Graham*, 473 U.S. 159, 165 (1985):

17 "Personal capacity suits seek to impose personal  
18 liability upon a government official for actions he  
19 takes under the color of state law. Official capacity  
20 suits, in contrast generally represent only another way  
21 of pleading an action against an entity of which an  
22 officer is an agent. As long as the government entity  
23 receives notice and an opportunity to respond, an  
24 official capacity suit is, in all respects other than  
25 name, to be treated as a suit against the entity."

26 Thus, Plaintiffs' complaint need not allege facts regarding  
27 Defendant Kempton's conduct acting as an individual as Plaintiffs  
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1 bring the claim against Kempton only in his official capacity.  
2 Plaintiffs need only allege sufficient actions by Defendant  
3 Kempton in his capacity as the Director of Caltrans to state an  
4 official capacity claim.

5       Kempton also argues that Plaintiffs have failed to give fair  
6 notice of their claims against Kempton and have further failed to  
7 assert any grounds for the alleged wrong. The United States  
8 Supreme Court has rejected the application of a heightened  
9 pleading standard in 42 U.S.C. § 1983 actions alleging municipal  
10 liability. *Empress LLC v. City & County of San Francisco*, 419  
11 F.3d 1052, 1055 (9th Cir. 2005); *see also, Rodriguez v.*  
12 *California Highway Patrol*, 89 F. Supp. 2d 1131, 1137 (N.D. Cal.  
13 2000) (The Court rejects a judicially crafted heightened pleading  
14 standard for civil rights cases; instead such claims need only  
15 comply with Fed. R. Civ. P. 8(a).) The Supreme Court has stated  
16 that the common law developed a heightened pleading standard,  
17 which requires a plaintiff's complaint to state with factual  
18 detail and particularity the basis for the claim, cannot be  
19 reconciled with the Federal Rules' liberal system of notice  
20 pleading. *Id.* Heightened pleading standards should only be  
21 applied when required by the Federal Rules. *Id.*

22       Plaintiffs have alleged the following in their complaint:

- 23       1.   Kempton's acts in his official capacity with  
24           Caltrans were executed under a custom, policy, and  
25           practice by the agency against Plaintiffs in  
26           violation of their Fourth and Fourteenth Amendment  
27           rights.

- 1           2.    Kempton in his official capacity acted jointly or  
2                    conspired with other defendants to authorize,  
3                    acquiesce or set in motion policies and plans that  
4                    led to unlawful conduct against Plaintiffs.
- 5           3.    Caltrans officials and employees, including  
6                    Kempton, had prior knowledge of raids on Caltrans  
7                    property from the City and that such raids  
8                    resulted in the immediate destruction of property  
9                    belonging to Plaintiffs.
- 10          4.    A number of the City's clean up efforts occurred  
11                    on property belonging to Caltrans, including  
12                    the raids on May 3, 2006, May 25, 2006, June 22,  
13                    2006, and August 26, 2006.
- 14          5.    Despite knowledge of the destruction, Defendant  
15                    Kempton acting on behalf of Caltrans issued an  
16                    encroachment permit which authorized the City to  
17                    conduct the clean up operations and to construct a  
18                    fence at the location where homeless individuals  
19                    were residing.
- 20          6.    Caltrans actions pursuant to this pattern and  
21                    practice were in violation of Plaintiffs' Fourth  
22                    and Fourteenth Amendment rights.

23           Plaintiffs provide sufficient factual allegations of  
24 Defendant Caltrans' involvement in the alleged Fourth and  
25 Fourteenth Amendment deprivations suffered by Plaintiffs to  
26 satisfy Rule 8(a). The claims adequately state that Defendant  
27 Caltrans and Kempton ratified with knowledge the collection and  
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1 destruction of Plaintiffs' property. Plaintiffs only sue  
2 Defendant Caltrans for equitable relief, seeking to enjoin future  
3 unconstitutional actions by the agency and its employees. If the  
4 evidence establishes that it was Caltrans' custom or practice to  
5 request, or authorize, or acquiesce in the City's clean up  
6 operation on Caltrans property, this could provide the basis for  
7 equitable relief under the facts alleged in the complaint.  
8 However, under Rule 8(a) and its liberal pleading standards,  
9 Plaintiffs have sufficiently stated a claim for equitable relief  
10 against Defendant Kempton in his official capacity for Fourth and  
11 Fourteenth amendment violations.

12 Defendant Kempton's motion to dismiss for failure to state a  
13 claim under Rule 8(a) is **DENIED**.

14 **B. Eleventh Amendment**

15 The Eleventh Amendment provides:

16 The Judicial power of the United States shall not be  
17 construed to extend to any such suit in law or equity,  
18 commenced or prosecuted against one of the United  
19 States by Citizens of another State, or by the Citizens  
20 or Subjects of any Foreign State.

21 U.S. Const. amend. XI. The Eleventh Amendment bars suits against  
22 a state for damages or injunctive relief, unless the state has  
23 consented to or waived immunity, or Congress has validly  
24 abrogated the same. *Seminole Tribe of Fla. v. Florida*, 517 U.S.  
25 44, 54-55 (1996); *In re Harleston*, 331 F.3d 699, 701 (9<sup>th</sup> Cir.  
26 2003). The Eleventh Amendment's "reference to actions against  
27 one of the United States encompasses not only actions in which a  
28 State is actually named as the defendant, but also certain  
actions against state agents and state instrumentalities."  
*Regents of the Univ. of Calif. v. Doe*, 519 U.S. 425, 429 (1997);

1 see also *Ulaleo v. Paty*, 902 F.2d 1395, 1398 (9th Cir. 1990).  
2 Caltrans is an arm of the State of California entitled to  
3 immunity. See *Natural Resources Defense Council v. California*  
4 *Department of Transportation*, 96 F. 3d 420, 423 (9th Cir. 1996).

5 "However, under *Ex Parte Young*, 209 U.S. 123, 52 L. Ed. 714,  
6 28 S. Ct. 441 (1908), 'a state official in his or her official  
7 capacity, when sued for injunctive relief, [is] a person under §  
8 1983, because official capacity actions for prospective relief  
9 are not treated as actions against the State.'" *Wolfe v.*  
10 *Strankman*, 392 F.3d 358, 365 (9th Cir. 2004). "The *Ex parte*  
11 *Young* doctrine is founded on the legal fiction that acting in  
12 violation of the Constitution or federal law brings a state  
13 officer into conflict with the superior authority of the  
14 Constitution, and he is in that case stripped of his official or  
15 representative character and is subjected in his person to the  
16 consequences of his individual conduct." *Cardenas v. Anzai*, 311  
17 F.3d 929, 936 (9th Cir. 2002) In determining whether the  
18 doctrine of *Ex parte Young* avoids the Eleventh Amendment bar to  
19 suit against a state, a court need only conduct a straightforward  
20 inquiry into whether the complaint alleges an ongoing violation  
21 of federal law and seeks relief properly characterized as  
22 prospective. *Idaho v. Couer d'Alene Tribe of Idaho*, 521 U.S.  
23 261, 296 (1997); see also, *Acs of Fairbanks, Inc. v. GCI Commun.*  
24 *Corp.*, 321 F.3d 1215, 1216 (9th Cir. 2003). The inquiry into  
25 whether suit can be maintained under *Ex parte Young* does not  
26 include an analysis of the merits of the claim. *Couer d'Alene*,  
27 521 U.S. at 281. An allegation of an ongoing violation of federal  
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1 law is ordinarily sufficient. *Id.*

2 Defendant Kempton argues that Plaintiffs' suit against him  
3 is barred by the jurisdictional bar of the Eleventh Amendment.  
4 However, Plaintiffs have sued Defendant Kempton in his official  
5 capacity for prospective injunctive and declaratory relief.  
6 Plaintiffs do not seek damages. Plaintiffs' claims against  
7 Kempton fall within the *Ex Parte Young* exception to sovereign  
8 immunity and are properly brought under § 1983. *see, Wolfe*, 392  
9 F.3d at 365. Plaintiffs allege that they have suffered ongoing  
10 constitutional violations as a result of Defendant Kempton's  
11 actions in his official capacity as the Director of Caltrans. In  
12 their complaint, Plaintiffs seek to enjoin Kempton, as well as  
13 the actions of other named Defendants, from allegedly seizing and  
14 permanently destroying their property. These allegations are  
15 sufficient to invoke the *Ex parte Young* exception.

16 Defendant Kempton's motion to dismiss based on Eleventh  
17 Amendment sovereign immunity is **DENIED**.

18 **C. Unclean Hands**

19 The unclean hands doctrine is based on the equitable maxim  
20 that denies equitable relief to one who has engaged in bad faith  
21 or inequitable behavior with respect to the subject matter of the  
22 claims. *EEOC v. Recruit U.S.A., Inc.*, 939 F.2d 746, 752 (9th  
23 Cir. 1999). This maxim has not been applied where Congress  
24 authorizes broad equitable relief to serve important national  
25 policies. *McKennon v. Nashville Banner Publ. Co.*, 513 U.S. 352,  
26 360 (1995). "The clean hands doctrine should not be strictly  
27 enforced when to do so would frustrate a substantial public  
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1 interest." *Recruit U.S.A., Inc.*, 939 F.2d at 753. "The maxim  
2 that he who comes into equity must come with clean hands is not  
3 applied by way of punishment for an unclean litigant but upon  
4 considerations that make for the advancement of right and  
5 justice." *Id.* The unclean hands doctrine is not a doctrine that  
6 is applied strictly, but rather a formula left to the discretion  
7 of the court. *Id.*

8 Defendant Kempton argues that to permit the relief sought by  
9 Plaintiffs would cede the state's authority to maintain its  
10 rights of way to trespassers and to safely manage state highways  
11 and adjoining rights of way. According to Defendant, the state  
12 must be able to maintain its property in a manner that insures  
13 safety for the homeless, motorists, and its own employees.  
14 However, Defendant Kempton does not argue that Plaintiffs acted  
15 in bad faith or violated conscience with their conduct. *see,*  
16 *Bennett v. Lew*, 151 Cal. App. 3d 1177, 1187 (Cal. Ct. App.  
17 1984) (traditionally, the doctrine of unclean hands is invoked  
18 when one seeking relief in equity has violated conscience, good  
19 faith or other equitable principles in his prior conduct.)

20 Plaintiffs bring a § 1983 action for violation of Fourth and  
21 Fourteenth Amendment rights resulting from alleged unlawful  
22 destruction of their personal property. Plaintiffs have alleged  
23 that Defendant Kempton in his official capacity was jointly  
24 involved with other named Defendants in implementing a custom,  
25 pattern, and practice of discrimination that resulted in the  
26 illegal seizure and destruction of their personal property.  
27 Plaintiffs allege that Caltrans allowed and authorized the clean  
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1 up efforts on its property with knowledge that these efforts  
2 would result in the immediate seizure and destruction of  
3 Plaintiffs' property. Plaintiffs do not dispute that they were  
4 present on Caltrans property. However, it would be inequitable  
5 for Plaintiffs' unauthorized presence on Caltrans property to  
6 result in the divestiture of their right to pursue a claim for  
7 alleged Constitutional violations. A determination on the merits  
8 of Plaintiffs allegations serves an important policy interest.  
9 To dismiss the claims against Defendant Kempton at this stage  
10 based on the maxim of unclean hands would frustrate the purpose  
11 of § 1983. The unclean hands defense, if applicable, is  
12 inherently factual and cannot be decided on a pleading motion.

13 Defendant Kempton's motion to dismiss based on unclean hands  
14 is **DENIED**.

#### 15 **5. MOTION FOR A MORE DEFINITE STATEMENT**

16 If a complaint "is so vague or ambiguous that a party cannot  
17 reasonably be required to frame a responsive pleading, the party  
18 may move for a more definite statement before interposing a  
19 responsive pleading. The motion shall point out the defects  
20 complained of and the details desired." Fed. R. Civ. P. 12(e).  
21 A Rule 12(e) motion for a more definite statement must be  
22 considered in light of the liberal pleading standards set forth  
23 in Fed. R. Civ. P. 8(a)(2). *See, e.g., Bureerong v. Uvawas*, 922  
24 F. Supp 1450, 1461 (C.D. Cal. 1996) (citing *Sagan v. Apple*  
25 *Computer, Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994)  
26 ("Motions for a more definite statement are viewed with disfavor  
27 and are rarely granted because of the minimal pleading  
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1 requirements of the Federal Rules.") The Court must deny the  
2 motion if the complaint is specific enough to notify defendant of  
3 the substance of the claim being asserted. See *Bureerong*, 922 F.  
4 Supp. at 1461; see also *San Bernardino Pub. Employees Ass'n v.*  
5 *Stout*, 946 F. Supp. 790, 804 (C.D. Cal. 1996) ("A motion for a  
6 more definite statement is used to attack unintelligibility, not  
7 mere lack of detail...."). Whether to grant a Rule 12(e) motion  
8 for a more definite statement lies within the discretion of the  
9 district court. See *Stout*, 946 F. Supp. at 804.

10 Defendant Kempton argues that Plaintiffs' allegations are so  
11 vague and ambiguous that he cannot reasonably be required to  
12 frame a responsive pleading absent a more definite statement of  
13 the allegation against him. At a minimum, Defendant argues that  
14 Plaintiffs should be required to provide a more definite  
15 statement of their allegations against Defendant Kempton.

16 However, Plaintiffs only sue Defendant Kempton in his  
17 official, not individual, capacity. Plaintiffs have alleged that  
18 Kempton's acts in his official capacity with Caltrans were  
19 executed under a custom, policy, and practice by the agency  
20 against Plaintiffs. Plaintiffs have also alleged that Caltrans  
21 officials and employees, including Kempton, had prior knowledge  
22 of raids on Caltrans property from the City, that such raids  
23 resulted in the immediate destruction of Plaintiffs' property,  
24 and that, despite this knowledge, authorized and permitted the  
25 City to continue to conduct the raids and destroy Plaintiffs'  
26 property. Plaintiffs' allegations are sufficient to put  
27 Defendant Kempton on notice regarding the substance of the claims  
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1 against him in his official capacity.

2 Defendant's motion for a more definite statement pursuant to  
3 Rule 12(e) is **DENIED**.

4 **6. MOTION TO STRIKE**

5 Fed. R. Civ. P. 12(f) provides that "redundant, immaterial,  
6 impertinent, or scandalous matters" may be "stricken from any  
7 pleading." Fed. R. Civ. P. 12(f). "[O]nly pleadings are  
8 subject to motions to strike." See *Sidney-Vinsein v. A.H.*  
9 *Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). However, a  
10 "motion to strike" materials that are not part of the pleadings  
11 may be regarded as an "invitation" by the movant "to consider  
12 whether [proffered material] may properly be relied upon."  
13 *United States v. Crisp*, 190 F.R.D. 546, 551 (E.D. Cal. 1999)  
14 (quoting *Monroe v. Board of Educ.*, 65 F.R.D. 641, 645 (D. Conn.  
15 1975).

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17 Motions to strike are disfavored and infrequently granted.  
18 See *Pease & Curran Ref., Inc. v. Spectrolab, Inc.*, 744 F. Supp.  
19 945, 947 (C.D. Cal. 1990), abrogated on other grounds by *Stanton*  
20 *Road Ass'n v. Lohrey Enters.*, 984 F.2d 1015 (9th Cir. 1993).  
21 "[M]otions to strike should not be granted unless it is clear  
22 that the matter to be stricken could have no possible bearing on  
23 the subject matter of the litigation. *Colaprico v. Sun*  
24 *Microsystems, Inc.*, 758 F. Supp. 1335, 1339 (N.D. Cal. 1991)  
25 (citation omitted).

26 Kempton argues that he should be stricken from the  
27 Plaintiffs' second amended complaint because he is an immaterial  
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1 and impertinent party to this action and because Plaintiffs have  
2 made no charging allegations against him. According to Kempton,  
3 Plaintiffs admit that he had no involvement in the controversy  
4 because Plaintiffs did not involve him or Caltrans in the TRO or  
5 Preliminary Injunction proceedings.

6 Plaintiffs have sufficiently alleged facts against Kempton  
7 in his official capacity, including knowledge and ratification of  
8 unconstitutional seizures. The fact that Plaintiffs did not  
9 involve Kempton or Caltrans in the TRO or Preliminary Injunction  
10 proceedings does not constitute an admission that Kempton had no  
11 involvement in the controversy. Plaintiffs have alleged that  
12 Kempton's acts in his official capacity with Caltrans were  
13 executed under a custom, policy, and practice by the agency in  
14 affirming violation of Plaintiffs constitutional rights.  
15 Plaintiffs allegations are sufficient to put Defendant Kempton on  
16 notice of the claims against him in his official capacity. It  
17 cannot be said that Defendant Kempton's actions have no possible  
18 bearing on the subject matter of this litigation.

19 Defendant Kempton's motion to strike is **DENIED**.

## 20 **7. CONCLUSION**

21 Defendant Kempton's motion to dismiss for failure to state a  
22 claim under Rule 8(a) is **DENIED**.

23 Defendant Kempton's motion to dismiss based on Eleventh  
24 Amendment sovereign immunity is **DENIED**.

25 Defendant Kempton's motion to dismiss based on unclean hands  
26 is **DENIED**.

1 Defendant's motion for a more definite statement pursuant to  
2 Rule 12(e) is **DENIED**.

3 Defendant Kempton's motion to strike pursuant to Rule 12(f)  
4 is **DENIED**.

5 IT IS SO ORDERED.

6 **Dated: March 16, 2007**  
7 dd010

/s/ Oliver W. Wanger  
8 UNITED STATES DISTRICT JUDGE

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