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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICARDO ZEPEDA,  
Plaintiff,  
v.  
WALTER N. SCHULD, et al.,  
Defendants.

Case No. [4:13-cv-05761-KAW](#)

**ORDER GRANTING DEFENDANT  
SCHULD'S MOTION TO DISMISS THE  
THIRD AMENDED COMPLAINT**

Re: Dkt. No. 88

On July 27, 2017, Defendant Walter N. Schuld filed a motion to dismiss Plaintiff Ricardo Zepeda's third amended complaint on the grounds that the complaint fails to state a claim upon which relief can be granted. (Def.'s Mot., Dkt. No. 88.)

On October 5, 2017, the Court held a hearing, and, for the reasons set forth below, GRANTS Defendant's motion to dismiss the third amended complaint with prejudice.

**I. BACKGROUND**

Plaintiff Ricardo Zepeda alleges civil rights violations in connection with various contacts with law enforcement agencies and personnel, including the San Pablo Police Department, the Richmond Police Department, and the Contra Costa County Sheriff's Department. (Third Am. Compl., "TAC," Dkt. No. 87.)

In dismissing the second amended complaint with leave to amend, the Court advised Plaintiff that the third amended complaint was his final opportunity to amend, and that "any future dismissals [would] be with prejudice, which would likely result in his case being dismissed." (Dkt. No. 84 at 12.) Plaintiff was also reminded that the third amended complaint would supersede all previous complaints and must be complete in itself without reference to the prior or superseded pleading, and the undersigned again referred Plaintiff to the Federal Pro Bono Project's Help Desk

1 to obtain free legal assistance. *Id.*

2 On July 27, 2017, Defendant Walter N. Schuld, Chief of the San Pablo Police Department,  
3 filed a motion to dismiss Plaintiff’s third amended complaint. (Def.’s Mot., Dkt. No. 88.) Plaintiff  
4 did not file a timely opposition, so the Court issued an order to show cause on August 24, 2017,  
5 and again advised Plaintiff that the Federal Pro Bono Project’s Help Desk was available to assist  
6 him in complying with the order to show cause. (8/24/17 Order to Show Cause, Dkt. No. 96 at 1-  
7 2.) Plaintiff was cautioned that the failure to timely respond separately to the order to show cause  
8 would result in the dismissal of this action with prejudice as to all defendants. *Id.* at 2.

9 On September 8, 2017, Plaintiff filed an opposition, but did not respond to the order to  
10 show cause. (Pl.’s Opp’n, Dkt. No. 98.) Chief Schuld filed a reply on September 14, 2017. (Def.’s  
11 Reply, Dkt. No. 99.)

12 **II. DISCUSSION**

13 Defendant Chief Schuld moves to dismiss the third amended complaint with prejudice as  
14 to himself and all San Pablo Defendants. (Def.’s Mot. at 1.)

15 As an initial matter, Chief Schuld notes that Officer Brian Bubar was not named as a  
16 defendant in the caption or the body of the third amended complaint, and should be dismissed.  
17 (Def.’s Mot. at 2.) The Court agrees, and all claims against Officer Bubar are dismissed with  
18 prejudice.

19 Additionally, Chief Schuld argues that Plaintiff does not assert any causes of action against  
20 him in the operative complaint or against the San Pablo Police Department. *Id.* Indeed, the San  
21 Pablo Police Department is only mentioned in paragraphs 15 and 17, and no facts pertaining to  
22 Chief Schuld or the Department are provided in connection to any of the asserted claims or the  
23 alleged incidents. (TAC ¶¶ 15 & 17.) In opposition, Plaintiff argues that San Pablo Police  
24 Department officers were members of Westnet, who seized guns pursuant to an allegedly “fake”  
25 warrant, and arrested Plaintiff. (Pl.’s Opp’n, Dkt. No. 98 at 3; *see* TAC ¶¶ 14-15.) These facts,  
26 however, are not clearly articulated in the third amended complaint. Instead, Plaintiff vaguely  
27 names the Richmond Police Officers of Westnet as defendants, while omitting San Pablo officers.  
28 (See TAC ¶ 1.) Moreover, the first incident only involved the Richmond Police Department and

1 not Westnet. (*See* TAC ¶ 8.) Plaintiff was advised that this was his final opportunity to amend his  
2 complaint, and repeatedly advised to avail himself of the free legal services provided to pro se  
3 litigants, in the hopes that his amended complaint would allege cognizable causes of action.  
4 Instead, the third amended complaint is even more deficient than prior versions. Here, there is no  
5 denying that Plaintiff’s third amended complaint fails to allege any causes of action against Chief  
6 Schuld or any other members of the San Pablo Police Department. Thus, all claims against Chief  
7 Schuld and any doe defendant SPPD officers are dismissed with prejudice.<sup>1</sup>

8 **III. CONCLUSION**

9 In light of the foregoing, the Court GRANTS Defendant Schuld’s motion to dismiss, such  
10 that the claims against Defendants Schuld, Bubar, and all unnamed San Pablo Police Departments  
11 are dismissed with prejudice.

12 IT IS SO ORDERED.

13 Dated: October 5, 2017

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15 KANDIS A. WESTMORE  
16 United States Magistrate Judge  
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28 <sup>1</sup> Alternatively, Plaintiff’s lawsuit is subject to dismissal for failure to respond to the August 24,  
2017 order to show cause.