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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JESUS JAVIER ORTEGA, JR.,

Plaintiff,

vs.

CHULA VISTA POLICE DEPARTMENT;  
et al.,

Defendants.

CASE NO. 10-CV-0162 BEN (JMA)

ORDER GRANTING MOTION TO  
DISMISS

[Docket No. 10]

Before this Court is a civil rights Complaint under 42 U.S.C. § 1983 filed by Plaintiff, a state inmate currently incarcerated at Utah State Prison and proceeding pro se. Plaintiff initiated this action on January 14, 2010, alleging Defendants injured Plaintiff when they failed to follow proper procedure to "apprehend a civilian." (Docket No. 1)

On June 7, 2010, Defendants City of Chula Vista and Matthew Coulson (erroneously sued as Doug Coulson) filed a Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6). (Docket No. 10.) Because Defendant Chula Vista Police Department lacks capacity to be sued under Section 1983, the Court construes the Motion as being filed by all named defendants in this action. *United States v. Kama*, 394 F.3d 1236, 1239-40 (9th Cir. 2005) (Ferguson, J., concurring); *Chadwick v. San Diego Police Dept.*, No. 09-CV-0946, 2010 WL 883839, \*6 (S.D. Cal. March 8, 2010) (holding that a municipal police or law enforcement department is not a "person" subject to suit under Section 1983).

Despite being served with the Motion (Docket No. 10-3), Plaintiff has not filed an opposition

1 or other response to the Motion. Pursuant to Civil Local Rule 7.1.e.2, Plaintiff's opposition or other  
2 response, if any, was due no later than June 22, 2010.

3 Civil Local Rule 7.1.f.3.c provides,

4 If an opposing party fails to file the papers in the manner required by  
5 Civil Local Rule 7.1.e.2, that failure may constitute a consent to the  
granting of a motion or other request for ruling by the court.

6 As Plaintiff has failed to file an opposition or other response to the Motion as required by Local  
7 Rule 7.1.e.2, the Court hereby **GRANTS** Defendants' Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6)  
8 (Docket No. 10). All Defendants named in Plaintiff's Complaint are **DISMISSED** without prejudice.  
9 The hearing scheduled for July 6, 2010 on Defendant's Motion is vacated. The Clerk is instructed to  
10 close the file in this case.

11 **IT IS SO ORDERED.**

12 Date: 6/29/2010

  
13 Hon. Roger T. Benitez  
14 Judge, United States District Court  
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