

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREGORY McKENNA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:09CV1113 CDP
)	
ST. LOUIS COUNTY POLICE DEPT. et al,)	
)	
Defendants.)	

DEFENDANT MARK A. KAPPELHOFF'S MOTION TO DISMISS

COMES NOW Defendant Mark A. Kappelhoff, in both his individual and official capacity, by and through his attorneys, Michael W. Reap, Acting United States Attorney for the Eastern District of Missouri, and Nicholas P. Llewellyn, Assistant United States Attorney for said District, pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted, and moves this Honorable Court for an Order dismissing Plaintiff's Amended Complaint, with prejudice.

Moreover, the United States should be substituted as the proper defendant in place of Defendant Kappelhoff, acting in his official capacity, and Plaintiff's Amended Complaint for alleged common law torts should be dismissed, with prejudice, for failure to exhaust administrative remedies.

An accompanying Memorandum of Law in support of this Motion is attached.

Respectfully submitted,

MICHAEL W. REAP
Acting United States Attorney

S/ Nicholas P. Llewellyn
NICHOLAS P. LLEWELLYN #52836
Assistant United States Attorney
Chief, Civil Division
Thomas F. Eagleton Courthouse
111 South 10th Street, Rm 20.333
St. Louis, Missouri 63102
(314) 539-2200
(314) 539-2777 Fax

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2009, the foregoing *Motion to Dismiss* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and sent by certified U.S. Mail to:

Gregory McKenna
Plaintiff *Pro Se*
9937 Young Drive, H
Beverly Hills, CA 90212

s/ Nicholas P. Llewellyn _____
NICHOLAS P. LLEWELLYN
Assistant United States Attorney