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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Thomas Stewart, Jr.,

Plaintiff,

vs.

Charles Ryan, et al.,

Defendants.

) No. CV 09-2193-PHX-RCB (LOA)

) **ORDER**

Plaintiff Thomas Stewart, Jr., who is confined in the Arizona State Prison Complex-Eyman, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. On November 10, 2009, the Court denied the Application to Proceed with leave to re-file. On December 9, 2009, Plaintiff filed a new Application to Proceed *In Forma Pauperis* (Doc. 8). By Order filed January 20, 2010, the Court granted Plaintiff *in forma pauperis* status and dismissed the Complaint with leave to amend (Doc. 11).

After receiving an extension of time, Plaintiff filed a First Amended Complaint (Doc. 17) on March 22, 2010. On April 27, 2010, the Court dismissed the First Amended Complaint with leave to amend. On May 14, 2010, Plaintiff filed a Motion for Extension of Time to file a second amended complaint (Doc. 19). By Order filed May 25, 2010, the Court granted Plaintiff an additional 60 days to file a second amended complaint.

1 On July 12, 2010, Plaintiff filed a Motion for Writ of Habeas Corpus Order (Doc. 22).
2 On July 26, 2010, Plaintiff filed a Motion for Extension of Time to File a Second Amended
3 Complaint (Doc. 24) and a Motion for Preserving Videotape (Doc. 25). The Court denied
4 these Motions by Order filed August 3, 2010 (Doc. 26).

5 On August 13, 2010, Plaintiff filed a Second Amended Complaint (Doc. 27). On
6 September 24, 2010, the Court screened the Second Amended Complaint and required
7 service on Defendants Lockhart, Malcolm, Ryan, Gilbert, Currans, Barcklay, and Franco.

8 Pending before the Court are Plaintiff's September 13, 2010 Motion for
9 Reconsideration of Order Denying Motion to Preserve Video Recording (Doc. 29) and
10 September 13, 2010 Motion/Petition for an Alternative Writ (Doc. 30).

11 On August 3, 2010, the Court denied Plaintiff's Motion to Preserve Video Recording
12 because there was no complaint before the Court at that time. Although the Second
13 Amended Complaint is now before the Court, Plaintiff's Motion to Preserve is premature.
14 Defendants have not yet been served or filed an answer and the Court has not yet set a
15 schedule for the parties to conduct discovery. The Court will therefore deny the Motion for
16 Reconsideration.

17 In his "Motion for Alternative Writ," Plaintiff asks that the Court hold a hearing with
18 Plaintiff and Defendants Barcklay and Stewart present and that the Court order Plaintiff to
19 be held at a federal institution. Again, Defendants have not yet been served and Plaintiff's
20 motion is therefore not appropriately before the Court.

21 To the extent that he intends to seek preliminary injunctive relief, Plaintiff has not
22 made the necessary showing. To obtain a preliminary injunction, the moving party must
23 show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm
24 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
25 injunction is in the public interest." Winter v. Natural Resources Defense Council, Inc., 129
26 S. Ct. 365, 374 (2008). The moving party has the burden of proof on each element of the
27 test. Environmental Council of Sacramento v. Slater, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.
28 2000). Plaintiff's Motion does not address whether Plaintiff is likely to succeed on the

1 merits, whether Plaintiff is likely to suffer irreparable harm in the absence of preliminary
2 injunctive relief, whether the balance of equities tips in Plaintiff's favor, or whether an
3 injunction would be in the public interest. The Court will therefore deny the Motion.

4 **IT IS ORDERED:**

- 5 (1) Plaintiff's September 13, 2010 Motion for Reconsideration (Doc. 29) is **denied**.
6 (2) Plaintiff's September 13, 2010 Motion for an Alternative Writ (Doc. 30) is
7 **denied**.

8 DATED this 10th day of October, 2010.

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12 Robert C. Broomfield
13 Senior United States District Judge
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