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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Howard Lee Mitchell,

10 Plaintiff,

11 v.

12 City of Scottsdale,

13 Defendant.
14

No. CV-15-00637-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff's "Emergency Motion/Request for
16 Emergency Injunction Secondary to Complaint" (Doc. 4). Plaintiff requests in this
17 document that the Court issue a preliminary injunction requiring Defendant and any other
18 custodians of his animals to "retain and provide proper care" during the duration of the
19 present case. (Doc. 4 at 5). Federal Rule of Civil Procedure ("Rule") 65 governs the
20 issuance of preliminary injunctions, and states that "[t]he court may issue a preliminary
21 injunction only on notice to the adverse party." Fed. R. Civ. P. 65(a)(1).

22 Plaintiff has filed a proof of service form with the Court that states, under penalty
23 of perjury, that he has served a summons on the City of Scottsdale. (Doc. 5). The Court
24 notes that Plaintiff's actions do not qualify as proper service under the Federal Rules of
25 Civil Procedure because a party to an action may not serve a summons and complaint.
26 *See* Fed. R. Civ. P. 4(c)(2). Nevertheless, the rules for a preliminary injunction require
27 only notice, not service. Because the City of Scottsdale must have notice and an
28 opportunity to respond to Plaintiff's motion for a preliminary injunction, the Court will

1 order Plaintiff to give a copy of this Order to the City of Scottsdale.

2 Plaintiff has not, however, provided notice to the other party sought to be
3 enjoined, the Arizona Humane Society. *See Parker v. Ryan*, 960 F.2d 543, 545 (5th Cir.
4 1992) (“When dealing with a preliminary injunction, the ‘adverse party’ means the party
5 adversely affected by the injunction, not the opponent in the underlying action.”); *see*
6 *also Washington v. Wa. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658,
7 692 n.32 (1979). Therefore, unless Plaintiff also gives notice to the Arizona Humane
8 Society and provides them with a copy of this Order, the Arizona Humane Society cannot
9 be the subject of an injunction.


10 For the foregoing reasons,

11 **IT IS ORDERED** that Plaintiff shall give the City of Scottsdale a copy of this
12 Order. Plaintiff shall file an affidavit describing the details of this service.

13 **IT IS FURTHER ORDERED** that the City of Scottsdale shall, within ten days
14 from the date on which it receives a copy of this Order, file a response to Plaintiff’s
15 motion for a preliminary injunction.

16 Dated this 14th day of April, 2015.

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James A. Teilborg
Senior United States District Judge