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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joe Newman,

10 Plaintiff,

11 v.

12 Show Low Police Department, et al.,

13 Defendants.

No. CV-13-08005-PCT-JAT

ORDER

14 Pending before the Court are Plaintiff's motion to compel and for release of part of
15 the record, captioned as "Plaintiffs' Motion Rule 37(a)(2) Disclosure Discovery" (Doc.
16 52), and Plaintiff's second motion to compel, captioned as "Amend Complaint" (Doc.
17 53).

18 **I. Motion to Compel**

19 In its Rule 16 Scheduling Order, the Court prohibited discovery motions and in the
20 event of a discovery dispute, required the parties to jointly contact the Court via
21 conference call to request a telephonic conference. (Doc. 51 at 4). Plaintiff's motion to
22 compel discovery is a discovery dispute filed in violation of the Court's Order and will be
23 denied.

24 Defendants point out in their response to Plaintiff's motion that Plaintiff has
25 repeatedly filed motions for what he perceives to be the "unedited" car cam video footage
26 in contravention of the Court's rulings denying his motions. (Doc. 55 at 2). Defendants
27 ask the Court to issue an order permitting Defendants to "not expend the time and
28 resources to respond to any further discovery requests or motions filed by Plaintiff with

1 respect to production of the car cam video.” (*Id.*) Defendants also ask for an award of
2 attorneys’ fees and costs in responding to the present motion. (*Id.* at 2-3). Because
3 Plaintiff is pro se and may not have understood the effects of the Court’s prior rulings,
4 the Court declines to grant Defendants’ requests at this time. However, **Plaintiff is**
5 **admonished that the Court will consider any future requests for the unedited car**
6 **cam video, absent a showing on new evidence that such video is relevant to this**
7 **action, to be a purposeful disregard of the Court’s prior rulings and an abuse of**
8 **Court resources and the discovery process. Such requests may result in the**
9 **imposition of monetary sanctions upon Plaintiff. Plaintiff is also advised that the**
10 **Court may sanction Plaintiff for any future violations of either the Federal Rules of**
11 **Civil Procedure or any of the Court’s prior orders, including the Rule 16 Scheduling**
12 **Order (Doc. 51).**

13 Plaintiff’s motion to compel also asks the Court to return to Plaintiff two videos
14 that Plaintiff previously filed with the Court. (Doc. 52 at 1). Once filed, these videos
15 became part of the official public record of this case and the Court will not compromise
16 that record by appropriating a portion of it to Plaintiff.

17 **II. Second Motion to Compel**

18 Plaintiff has also filed a document that he labels as an “amend [sic] complaint” but
19 which actually asks the Court “to order the defendant(s) to release this discoverable
20 evidence to the Plaintiff to enable discovery.” (Doc. 53 at 1). The evidence to which
21 Plaintiff refers is the “car cam video” of his arrest and the surrounding timeframe. (*Id.*)
22 Because this is a discovery motion filed without leave of court, it will be denied for the
23 same reasons as Plaintiff’s other motion to compel.¹

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25 ¹ Plaintiff’s filing contains a single paragraph of text in which Plaintiff asks for
26 discovery and complains that Defendants have withheld discoverable evidence.
27 Considering that an amended complaint supersedes the original, *Valadez-Lopez v.*
28 *Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011), treating Plaintiff’s filing as an amended
complaint would eliminate all of Plaintiff’s constitutional claims against Defendants and
assert only a claim for a discovery violation. The latter is not an independent cause of
action, and so Plaintiff would be left with no claims against Defendants. The Court
presumes Plaintiff did not intend this outcome, and concludes that the filing is more
appropriately treated as a motion to compel.

1 Defendants have chosen to treat Plaintiff's second motion to compel as an
2 amended complaint and have filed an answer. (Doc. 54). Because Plaintiff's filing was
3 ambiguous, the Court understands that Defendants felt it prudent to answer Plaintiff's
4 filing to avoid default in the event the Court treated it as an amended complaint.
5 However, because the Court construes Plaintiff's filing as a motion to compel and not as
6 an amended complaint, the Court will strike Defendants' answer.

7 **III. Conclusion**

8 For the foregoing reasons,

9 **IT IS ORDERED** denying Plaintiff's motion to compel (Doc. 52).

10 **IT IS FURTHER ORDERED** denying Plaintiff's motion for release of part of
11 the record (Doc. 52).

12 **IT IS FURTHER ORDERED** denying Plaintiff's second motion to compel (Doc.
13 53).

14 **IT IS FURTHER ORDERED** striking Defendants' Answer to Plaintiff's
15 "Amend Complaint" Filed June 11, 2014 (Doc. 54).

16 Dated this 26th day of June, 2014.

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21 James A. Teilborg
22 Senior United States District Judge
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