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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 is Defendants' Motion to Strike Plaintiff's "Amend
15 Complaint" Filed July 1, 2014 (Doc. 63). The Court now rules on the motion.

16 **I. Background**

17 On July 1, 2014, Plaintiff filed a document titled "Amend Complaint," the
18 substance of which was to "enter new evidence" that Plaintiff had complied with the
19 commands of the Show Low Police Department officers during his arrest. (Doc. 58 at 1).
20 Plaintiff offered as new evidence the "car cam" video documenting Plaintiff's arrest as
21 well as a "trial video" and a police report. (*Id.*)

22 Defendants now move to strike Plaintiff's filing on the basis that it is an amended
23 complaint filed in violation of Federal Rules of Civil Procedure 15 and 16. (Doc. 63 at 1-
24 2).

25 **II. Analysis**

26 Although Defendants analyze the timeliness and propriety of Plaintiff's filing
27 under the standards for an amended complaint, (*id.* at 1-3), the Court construes the filing
28 as a miscellaneous notice and not as an amended complaint. "There is no controlling

1 magic in the title, name, or description which a party litigant gives to his pleading. The
2 substance rather than the name or denomination given to a pleading is the yardstick for
3 determining its character and sufficiency.” *Rubenstein v. United States*, 227 F.2d 638,
4 642 (10th Cir. 1955); *see also Alerus Fin., N.A. v. Lamb*, 2003 ND 158, ¶ 7, 670 N.W.2d
5 351 (2003) (“ . . . we will consider the motion’s substance rather than its title to determine
6 the proper nature of the pleading.”); *Boise Cascade Corp. v. State ex rel. Oregon State*
7 *Bd. of Forestry*, 991 P.2d 563, 571 (Or. Ct. App. 1999).

8 Because the substance of Plaintiff’s July 1 filing is clearly to provide notice of
9 certain items of evidence, the Court will not construe it as an amended complaint and
10 Defendants need not file an answer.

11 **III. Conclusion**

12 For the foregoing reasons,

13 **IT IS ORDERED** denying Defendants’ Motion to Strike Plaintiff’s “Amend
14 Complaint” Filed July 1, 2014 (Doc. 63).

15 **IT IS FURTHER ORDERED** that Defendants shall not file an answer or other
16 responsive pleading to Plaintiff’s July 1, 2014 “Amend Complaint” (Doc. 58), which the
17 Court deems not to be an amended complaint.

18 Dated this 31st day of July, 2014.

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23 James A. Teilborg
24 Senior United States District Judge
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