

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<p><b>AARON TOBEY,</b></p> <p style="padding-left: 40px;"><b>Plaintiff,</b></p> <p style="padding-left: 40px;"><b>v.</b></p> <p><b>JANET NAPOLITANO, et al.,</b></p> <p style="padding-left: 40px;"><b>Defendants.</b></p> <hr style="width: 100%;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Civil Action No. 3:11cv154-HEH</b></p>
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**CONSENT MOTION TO EXTEND TIME AND TO FILE AMENDED COMPLAINT**

COMES NOW Plaintiff Aaron Tobey, by counsel, and Janet Napolitano, Secretary of the Department of Homeland Security, and John Pistole, Administrator of the Transportation Security Administration (hereinafter collectively referred to as the "Official Federal Defendants"), by Robin P. Meier, Assistant United States Attorney for the Eastern District of Virginia, and, pursuant to Fed. R. Civ. P. 6(b) and 15(a)(2), herewith seeks leave of court for Plaintiff to file an Amended Complaint, and for the Official Federal Defendants to be granted an extension of sixty days from the date Plaintiff serves an Amended Complaint in which to file the federal Defendants' Response to Plaintiff's Complaint, based upon the following:

1. Plaintiff filed his Complaint against the Official Federal Defendants on or about March 10, 2011. The Official Federal Defendants' response to the Complaint is due to be filed on May 16, 2011. In addition to naming the Official Federal Defendants, Plaintiff also identified "John Smith," a Transportation Security Officer (TSO) who plaintiff purported to sue in his individual capacity.
  
2. The defendants Capital Region Airport Commission, Victor Williams and Calvin

Vann ("Official Airport Defendants") filed their Answer and Affirmative Defenses, and their Motion to Partially Dismiss Complaint on May 13, 2011. In addition to naming the Official Airport Defendants, Plaintiff also identified John Doe # 1 and John Doe #2 who plaintiff purported to sue in their official and individual capacities.

3. On April 19, 2011, Plaintiff's counsel requested that the defendant Airport Commission provide the names of the individuals identified in the Complaint as John Doe # 1 and John Doe #2 in lieu of Plaintiff's filing a motion for expedited discovery and subsequently, on April 27, 2011, the defendant Airport Commission provided such information.

4. On April 19, 2011, Plaintiff's counsel requested that the United States provide the name of the individual under pseudonym "John Smith," in lieu of Plaintiff's filing a motion for expedited discovery and subsequently, on April 28, 2011, Plaintiff's counsel informed counsel for the United States that the individual TSO was female, not male. In response to a request from the United States for additional information about the TSO whom Plaintiff intended to make a claim against, Plaintiff's counsel forwarded both a physical description of a female TSO as well as a description of some events relating to Plaintiff's claims on May 11, 2011.

5. After receiving this information, counsel for the United States, Carlotta Wells, informed Plaintiff's counsel, during a telephone conversation on May 12, 2011, that the actions described could be attributed to more than one, most likely three, TSOs and that TSA needed some additional time to make sure that the correct individuals are identified. Ms. Wells further explained that, at the current time, the individual TSOs are not represented and described the representation request process that would ensue once the appropriate individuals are identified.

6. Ms. Wells proposed that (1) TSA will provide Plaintiff's counsel with the names

of the individual TSOs in sufficient detail to permit plaintiff to file an Amended Complaint, but with the identification of the names of the TSO to be subject to a Stipulated Protective Order to be submitted to the Court; (2) Plaintiff will then file an Amended Complaint; (3) if authorized, Ms. Wells will accept service on behalf of all the federal defendants, sued in their official and individual capacities; and (4) the federal defendants will respond to the Amended Complaint within 60 days from the date of its filing.

7. TSA has informed Ms. Wells that, in a manner consistent with the terms of the Privacy Act, 5 U.S.C. § 552a, the agency should be able to provide the information, including names, regarding the individual TSOs to Plaintiff's counsel by no later than May 23, 2011.

8. Plaintiff expects to file the requested Amended Complaint within a few days after the receipt of the information from Ms. Wells for the sole purpose of identifying the one or more persons each now described under the pseudonyms "John Smith" and "John Doe #1" and "John Doe #2."

9. The Official Airport Defendants shall be permitted to file an Amended Answer within the time permitted by Fed. R. Civ. P. 15(a)(3), and counsel for the Official Airport Defendants have agreed to accept service on behalf of all the Airport defendants sued in their official and individual capacities, except if any of the Airport defendants other than the Official Airport Defendants are not to be represented by counsel for the Official Airport Defendants, the said Airport defendants will respond to the Amended Complaint within the time specified under Fed. R. Civ. P. 4. As the Plaintiff represents that the sole purpose of the amendment with respect to the Official Airport Defendants is to identify the pseudonym parties John Doe #1 and John Doe #2 and not to otherwise alter its allegations contained in the Complaint as originally filed,

Counsel for the Official Airport Defendants has agreed that it will rely on its Motion to Dismiss and the amendment will not alter in any way the schedule set forth in the rules for briefing and consideration of such motion. The Official Airport Defendants reserve their rights to present any defense or motion as appropriate with respect to the "John Does."

10. The Official Federal Defendants and the Official Airport Defendants hereby acknowledge that the proposed Amended Complaint is being filed to expedite the judicial process and the consent to do so shall not, in and of itself, be used against the Plaintiff as a reason to oppose any further request by Plaintiff to amend the Amended Complaint.

11. The Official Federal Defendants have been authorized by counsel for Plaintiff and for the Official Airport Defendants to state that, subject to the foregoing terms, Plaintiff and the Official Airport Defendants and their respective counsel have no objections to this motion and the terms and conditions stated herein.

WHEREFORE, for the reasons stated herein, and subject to the terms and conditions stated herein, the parties hereby acknowledge that the proposed actions will assist in the expeditious resolution of issues in this case, and accordingly, Plaintiff hereby respectfully requests leave of Court to amend the Complaint to the extent described herein, and Official Federal Defendants respectfully request the Court to grant the Federal Defendants an extension of



