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

AARON TOBEY,)	
)	
Plaintiff,)	
)	
V.)	Civil Action No. 3:11cv154-HEH
)	
JANET NAPOLITANO, et al.,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO EXTEND TIME TO MOVE FOR JOINDER OF ADDITIONAL PARTY DEFENDANTS

COMES NOW Plaintiff Aaron Tobey, by counsel, and herewith respectfully requests, pursuant to Local Rule 7(I), that the Court grant an extension of the time set forth in the Scheduling Order entered on July 5, 2011, in which to join additional party Defendants, and for his reasons states as follows:

The Scheduling Order entered by the Court on July 5, 2011 (docket #37) requires Plaintiff to move for joinder of additional parties within twenty-one (21) days of the entry of the Order, or by July 26, 2011. Although Defendants have disclosed the names of certain additional "John Doe" and "John Smith" defendants, the disclosure of the facts and the scope and extent of the involvement of the individual defendants has been extremely limited, particularly in the case of the Federal defendants, and the twenty-one (21) day cut-off for joinder of additional party Defendants does not provide Plaintiff with an adequate opportunity to obtain the necessary information to determine constitutional liability of all persons for the injuries inflicted on Plaintiff.

Because of the fact-bound nature of this action, Plaintiff's counsel is concerned

that while discovery (which has yet to commence) may very well yield additional information justifying the addition of unknown defendant(s), Plaintiff would not have the opportunity to add such parties to the action since the current Scheduling Order does not allow any time for such discovery and/or joinder.

Plaintiff therefore requests amendment of the Scheduling Order either (1) to include "joinder of additional parties on or before twenty (20) days prior to the discovery cutoff" so that motions for joinder of additional parties, if any, would be required to be filed on or before twenty (20) days prior to discovery cutoff, or (2) in the alternative, to set a trial date further out as to allow a longer period of time for joinder prior to the discovery cutoff, so that additional defendants may be added with adequate time and fair opportunity to defend.

It is respectfully submitted that the requested extension would allow Plaintiff a reasonable, fair and just opportunity to conduct discovery relating to the identity of potential additional defendants and to join additional parties in the event that discovery identifies the involvement of additional parties in the sequence of events culminating in the violation of his rights. Further, such an extension is justified by the fact-specific nature of the claims made in this litigation, the important constitutional interests alleged, and the due process principles inherent in the provisions of Fed.R. Civ. P. Rule 15 permitting liberal amendment or supplementation of pleadings when justice so requires.

Plaintiff further avers that this proposed amendment to the Scheduling Order allows sufficient and appropriate time for Defendants to make necessary preparations to their case because Plaintiff will be compelled to raise any necessary motions for joinder of necessary parties at least seventy-five (75) days prior to trial.

WHEREFORE, for the reasons stated herein, Plaintiff respectfully requests that the Court extend the time in which Plaintiff may move for the joinder of additional party Defendants, if any.

Dated this 22nd of July, 2011

Respectfully submitted,

By: /s/ James J. Knicely_

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Attorneys for Plaintiff, AARON TOBEY

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2011, the foregoing Plaintiff's Motion to Extend Time for Joinder of Additional Party Defendants was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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