

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

BENJAMIN BURRUSS,)
)
 Plaintiff,)
)
 v.)
)
 GARNETT (CHIP) RILEY, et al.)
)
 Defendants.)
 _____)

Case No. 3:15-cv-00065

PLAINTIFF’S MOTION FOR LEAVE TO AMEND THE COMPLAINT

COMES NOW the Plaintiff, Benjamin Burruss, by and through the undersigned attorney, and moves pursuant to Fed. R. Civ. P. 15(a)(2) for leave to amend the Complaint to name as Defendants to the claims set forth in the Complaint persons previously unknown to the Plaintiff and identified in the Complaint as “John Does” Defendants, and to clarify Plaintiff’s allegations concerning the facts surrounding the issuance of the ECO. As ground for this motion, the Plaintiff alleges and avers as follows:

1) The events giving rise to the claims set forth in the Complaint occurred on November 21, 2013. On January 10, 2014, the Plaintiff, through counsel, filed a request with Defendant Albemarle County for records pertaining to the Plaintiff’s arrest and detention pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700, et seq.;

2) In response, Defendant Albemarle County provided records identifying law enforcement officers named in the Complaint, but withheld records identifying other officers involved in the arrest and detention of the Plaintiff on November 21, 2013;

3) The Plaintiff diligently sought records identifying the other involved officers, including appealing Defendant Albemarle County's withholding of records to the Supreme Court of Virginia, but Defendant Albemarle County did not release records which would have allowed the Plaintiff to identify the other involved officers;

4) On November 1, 2016, the Defendants provided responses to the Plaintiff's Request for Production of Documents which included the identities of the other officers who were involved in the arrest and detention of the Plaintiff and were named as "John Doe" Defendants in the Complaint;

5) The proposed First Amended Complaint, a copy of which accompanies this Motion, substitutes the additional persons identified in the Defendants' responses to the Plaintiff's Request for Production of Documents as involved in the arrest and detention of the Plaintiff for the "John Doe" Defendants, asserts the same claims made in the original Complaint, and makes no additional substantive changes to the Complaint;

6) The Defendants added to the action by the proposed First Amended Complaint had notice of the filing of the Complaint, knew that they would have been included as Defendants but for the failure of Defendant Albemarle County to reveal their identities, and will not be prejudiced by defending the claims on the merits;

7) The additional information included in the First Amended Complaint at Paragraph 51 is included to comport the pleadings to the evidence which will be offered at trial, and will clarify Plaintiff's contention that the ECO was issued on the strength of the officer's investigation and observations alone, and that there were two ECOs on the day in question: the one which was issued orally by the magistrate and executed by the Defendants, and a later one which was

reduced to writing and served on Plaintiff without the sworn petition to which it refers as its support.

WHEREFORE, the Plaintiff respectfully requests that leave be granted to amend the Complaint pursuant to Fed. R. Civ. P. 15(a)(2), and that the proposed First Amended Complaint be filed and substituted as the operative complaint in this action.

Respectfully submitted,

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