

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

West Virginia Citizens Defense League, Inc.,

Plaintiff,

Civil Action No. 3:11-cv-5-JPB

(Bailey, C.J.)

v.

City of Martinsburg, *et al.*, Defendants

**Plaintiff's Motion to Strike Certain Insufficient Defenses or, in the
Alternative, Test Certain Defenses in the Defendants' Answer**

The Plaintiff, West Virginia Citizens Defense League, Inc., by and through its undersigned counsel, hereby moves that this Honorable Court enter an order pursuant to Fed. R. Civ. P. 12(f) striking or, in the alternative, testing pursuant to Fed. R. Civ. P. 12(i) the following defenses alleged in the Defendants' answer to the First Amended Complaint, [Doc. 26]:

1. The first through sixth defenses and the eighth defense in their entirety. [Doc. 26] at 2, 10.
2. The unqualified denials in Paragraphs 33, 34, and 45 of the Seventh Defense, [Doc. 26] at 6, 8, in response to the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint.

The Plaintiff further moves that this Court direct the Defendants to file an amended answer to Plaintiff's First Amended Complaint that responds to the allegations in Paragraphs 33, 34, and 45 of the First Amended Complaint with greater particularity in light of the Defendants' obligation to "fairly respond to the substance of the allegation." Fed. R. Civ. P. 8(b)(2); *see also* Fed. R. Civ. P. 8(b)(4) ("A party that intends in good faith to deny only part of an allegation

must admit the part that is true and deny the rest.”); Fed. R. Civ. P. 11(b)(4) (“By presenting to the court a pleading . . . — whether by signing, filing, submitting, or later advocating it — an attorney . . . certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the denials of factual contentions are warranted on the evidence”). The Plaintiff further moves that this Court direct the Defendants and their counsel, prior to filing the amended answer, to examine their denials of those factual allegations in the First Amended Complaint denied in whole by the Defendants and correct any other instances of blanket denials of allegations that Fed. R. Civ. P. 8(b)(2) and (4) and 11(b)(4) require the Defendants to admit in part and deny in part.

Dated this 27th day of September, 2011,

s/ James M. Mullins, Jr.

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Certificate of Service

I hereby certify that on September 27, 2011, I electronically filed the foregoing document with the Clerk of the Court, which will send electronic notification of such filing to the following

CM/ECF participant:

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