

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

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**Plaintiff's Motion to Permit Discovery**

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. 26(d)(1) permitting Plaintiff to conduct discovery in this action and directing the Defendants to provide the initial disclosures specified in Fed. R. Civ. P. 26(a)(1)(A).

In support of this motion, Plaintiff submits that the First Amended Complaint, [Doc. 25], the Defendants' answer to the First Amended Complaint, [Doc. 26], the declaration of Plaintiff's counsel, [Doc. 36], and certain e-mail correspondence between Plaintiff's counsel and the defendants' counsel show that the Defendants have denied at least 3 specific factual allegations in the First Amended Complaint where the facts conveyed by their counsel clearly show that those allegations should have been admitted in part and denied in part rather than denied as a whole, and that these failures to properly admit in part those factual allegations that the Defendants and their counsel knew were true suggest a significant probability of additional denials of factual allegations in the First Amended Complaint that did not comply with Fed. R. Civ. P. 8(b)(2) and (4) and 11(b)(4).

Given this Court's reliance upon *Catlin v. Ambach*, 820 F.2d 588, 591 n. 2 (2d Cir. 1987) (“We deem abstention preferable to use of the new certification procedure because the resolution of the state law issue might require factfinding in the state courts.”), [Doc. 27] at 7; [Doc. 30] at 7 (amended order), a position with which Plaintiff strenuously objects, [Doc. 34] at 5-7, the present record of improper denials of key factual allegations in the pleadings demands that Plaintiff have an opportunity to conduct discovery. Without an opportunity to conduct discovery, Plaintiff will be unable to identify any other issues where the pleadings may, on their face, indicate some possibility of a factual dispute that may require factfinding by this Court where, in truth, there is no genuine issue of material fact to be tried. Plaintiff hopes this Court will not tolerate the Defendants' false denials of factual allegations in the First Amended Complaint—some of which have been admitted by their counsel in his e-mail correspondence with Plaintiff's counsel—and the Defendants' ongoing reliance on this Court's apparent eagerness to wash its hands of this case by whatever means necessary to avoid confronting the merits of this case.

For these reasons, Plaintiff respectfully requests that this Court enter an order pursuant to Fed. R. Civ. P. 26(d)(1) permitting Plaintiff to conduct discovery in this action and directing the Defendants to provide the initial disclosures specified in Fed. R. Civ. P. 26(a)(1)(A).

Dated this 28<sup>th</sup> day of September, 2011,

s/ James M. Mullins, Jr.  
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**Certificate of Service**

I hereby certify that on September 28, 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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