Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendants,
Keith Hodge, Kevin Hodge, and Hodgetwins, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; KEVIN HODGE, an individual; HODGETWINS, LLC, a limited liability company,

Defendants.

Case No. 2:25-cv-01858-APG-BNW

DEFENDANTS' OPPOSITION TO MOTION TO STRIKE

Defendants Keith Hodge, Kevin Hodge, and Hodgetwins, LLC (collectively, "Defendants") file their Opposition to Plaintiff Steve Smothermon's "Motion to Strike Lengthy, Speaking Affirmative Defenses and Exhibits, to Recharacterize Defenses as Counterclaims, and to Dismiss Recharacterized Counterclaims" (ECF No. 45) (the "Motion").

1.0 INTRODUCTION AND BACKGROUND

On March 17, 2026, Defendants filed an Amended Answer. ECF No. 43. Plaintiff immediately sought to strike the Amended Answer on grounds that are quite novel. ECF No. 45. This is a SLAPP suit designed to extract a payment from Defendants when there is no valid claim against them. When confronted with the expense of litigation, though, sometimes defendants simply throw money at the plaintiff to make the trouble of litigation go away. Plaintiff Steve Smothermon seems to think this is a good strategy because we have not even gotten past the

pleading stage, and we're already plagued with vexatious motions. As Magistrate Judge Koppe expertly put it last September:

> The federal case reporters abound with pronouncements that motions to strike are highly disfavored, *e.g., Petrie v. Elec. Game Card, Inc.,* 761 F.3d 959, 965 (9th Cir. 2014), rarely granted, *e.g., Stanbury Law Firm v. I.R.S.,* 221 F.3d 1059, 1063 (8th Cir. 2000) (per curiam), and commonly viewed as "time-wasters," *e.g., Gaines v. AT&T Mobility Servs., LLC,* 424 F. Supp. 3d 1004, 1014 (S.D. Cal. 2019).

Brown v. Las Vegas Metro. Police Dep't, 2025 U.S. Dist. LEXIS 172247, at *1-2 (D. Nev. Sept. 3, 2025).

What is the purpose of Smothermon's Motion, if not to simply waste time? The title itself compounds the confusion: "**PLAINTIFF'S MOTION TO STRIKE LENGTHY, SPEAKING AFFIRMATIVE DEFENSES AND EXHIBITS, TO RECHARACTERIZE DEFENSES AS COUNTERCLAIMS, AND TO DISMISS RECHARACTERIZED COUNTERCLAIMS**."

Plaintiff wants to strike the affirmative defenses because they are apparently too detailed for his tastes. He then wants the Court to call the defenses counterclaims, and then strike them. To what end? Before we even start with the legal standards, what would be the result? Defendants would then have no affirmative defenses? The defenses have to be pled with less specificity? Does Plaintiff believe there is an unstated Goldilocks zone where an affirmative defense must be detailed, but not so detailed that it bothers a plaintiff that they have to show their client what they're factually up against?

To the extent the Court can discern what Plaintiff is requesting in his Motion, it should deny that request. The affirmative defenses stated in the Amended Answer are proper, relevant, and more than adequately supported. There is no basis for striking, recharacterizing, transmogrifying, or dismissing them.

2.0 LEGAL STANDARD

Fed. R. Civ. P. 12(f) provides that a court "may strike from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The essential function of such a motion is to "avoid the expenditure of time and money that may

arise from litigating spurious issues by dispensing with those issues prior to trial." *Fantasy, Inc. v. Fogerty,* 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517, 114 S. Ct. 1023, 127 L. Ed. 2d 455 (1994). This Circuit construes Rule 12(f) narrowly, finding it improper to strike portions of the pleading if those portions are not: (1) an insufficient defense; (2) redundant; (3) immaterial; (4) impertinent; or (5) scandalous. *Whittlestone, Inc. v. Handi-Craft Co*., 618 F.3d 970, 973-74 (9th Cir. 2010); *see also Agape Family Worship Ctr., Inc. v. Gridiron*, 2016 U.S. Dist. LEXIS 19328, at *16 (C.D. Cal. Feb. 16, 2016) (citing *Whittlestone*). Rule 12(f) motions are generally disfavored and should be infrequently granted. *Petrie v. Elec. Game Card, Inc.,* 761 F.3d 959, 965 (9th Cir. 2014); *Roadhouse v. Las Vegas Metropolitan Police Dept.,* 290 F.R.D. 535, 543 (D. Nev. 2013) (Mahan, J.).

"Immaterial matter is that which has no essential or important relationship to the claim for relief or the defenses being pled." *Fogerty*, 984 F.2d at 1527. "A scandalous allegation is one that reflects unnecessarily on the defendant's moral character, or uses repulsive language that detracts from the dignity of the court." *Brady v. Basic Research L.L.C.*, 101 F. Supp. 3d 217, 225 (E.D.N.Y. 2015) (citation omitted); *Mazzeo v. Gibbons*, 649 F. Supp. 2d 1182, 1202 (D. Nev. 2009) (granting motion to strike because a significant portions of complaint "appears calculated to cast Defendants in a derogatory light and is full of wholly irrelevant material").

"To prevail on a 12(f) motion, the moving party must demonstrate that: '(1) no evidence in support of the allegations would be admissible; (2) that the allegations have no bearing on the issues in the case; and (3) that to permit the allegations to stand would result in prejudice to the movant.'" *Brady*, 101 F. Supp. 3d at 225 (*quoting Roe v. City of New York,* 151 F. Supp. 2d 495, 510 (S.D.N.Y. 2001)). A showing of prejudice is a necessary part of a Rule 12(f) motion to strike. *Roadhouse,* 290 F.R.D. at 543 ("Given their disfavored status, courts often require a showing of prejudice by the moving party before granting the requested relief"); *Gssime v. Nassau County*, No. 09-cv-5581 (JS)(ARL), 2014 U.S. Dist. LEXIS 26122, *4-5 (E.D.N.Y. Feb. 28, 2014).

3.0 ARGUMENT

3.1 There is No Basis to Strike the Affirmative Defenses

Smothermon claims the defenses are redundant, immaterial, impertinent, *and* scandalous. However, what Plaintiff says and what Plaintiff means seem to be two different things. What seems to be the real problem is that the Answer is too sufficient. Usually, 12(f) motions are aimed at defenses raised that are insufficient. *See, e.g., Next United States Ins. Co. v. Edouard,* No. 2:25-cv-01909-GMN-NJK, 2026 U.S. Dist. LEXIS 8925, *2 (D. Nev. Jan. 15, 2026) ("The pending motion focuses mostly on asserting that the affirmative defenses to the counterclaim are not stated with sufficient elaboration"). There do not seem to be any cases supporting the notion that defenses should be stricken because they are *too sufficient.*

Smothermon claims Defendants' first affirmative defense runs afoul of Fed. R. Civ. P. 8's "short and plain statement" requirement because affirmative defenses are "not a vehicle for lengthy factual narratives or evidentiary exhibits." But none of his cases support this proposition. *Rosen v. Masterpiece Mktg. Grp., LLC*, 222 F. Supp. 3d 793, 802 (C.D. Cal. 2016), merely concluded that affirmative defenses do not need to satisfy the *Iqbal/Twombly* standard and partly granted a motion to strike insufficient defenses. There was no discussion about the defenses being *too* sufficient. Similarly, the court in *Barnes v. AT&T Pension Benefit Plan*, 718 F. Supp. 2d 1167 (N.D. Cal. 2010), struck affirmative defenses for being insufficiently pled. There is no authority to support Smothermon's claim that an affirmative defense should be struck for being too specific.

"[A]ffirmative defenses are pled in an effort to put the opposing party on notice of possible defenses likely to be developed during discovery, at which point the opposing party will have had enough time and information to analyze and, potentially, rebut them." *Summers Mfg. Co., Inc. v. Tri-Cty. AG, LLC*, 300 F. Supp. 3d 1025, 1044 (S.D. Iowa 2017). Plaintiffs in general (not here) have a point when they seek to strike affirmative defenses that *fail* to tell them what they might be up against. There is hypothetical prejudice when a plaintiff confronts a threadbare affirmative defense, where no allegations support it, so the plaintiff is simply left to guess at what cards the defendant intends to play. Smothermon's gripe here seems to be as if he sat down at a poker table,

and his opponent decided to just play his cards open, removing the potential to bluff. One must question what the real purpose of this motion was.

Smothermon then pivots to other portions of Rule 12(f), claiming the evidence in support of the first affirmative defense "is redundant and immaterial because Plaintiff has already accepted the pleading burden of actual malice in his Complaint." ECF No. 45 at 3. It is unclear what Smothermon means by "*accepting the pleading burden*." He presents this as if it was a voluntary act of nobility that he pled something that he has to plead. Nevertheless, "*accepting a pleading burden*" is not the same as making a factual nor a legal concession. He has not conceded he is a public figure for purposes of his claims against Defendants, and so his status as a public figure is still central to each of his claims. He has not agreed that in order to prevail on his claims, he will need to prove actual malice with clear and convincing evidence. However, Supreme Court precedent requires that. *Bose Corp. v. Consumers Union*, 466 U.S. 485, 513 (1984). If he were to affirmatively concede that he is a public figure for this suit and waive any argument to the contrary, then maybe he would have a rhetorical point. He does not do so. The exhibits to the Amended Answer relate to "disputed and substantial issues." *Flynn v. Love,* No. 3:19-cv-00239-MMD-CLB, 2020 U.S. Dist. LEXIS 171848, at *5 (D. Nev. Sep. 18, 2020) (citations and quotes omitted). Plaintiff cannot hope to articulate a good-faith argument to the contrary.

Smothermon claims, without explanation, that Defendants' exhibits have "been selectively curated to smear" him. ECF No. 45 at 3. This seems to be an attempt to render the Amended Answer and defenses "scandalous." This is baffling because where is this "smear?" This evidence merely shows his pervasive fame, which is perhaps the most key issue in this entire case. The exhibits are largely either from Smothermon or his ministry itself (ECF Nos. 43-1 to 43-8) or are from positive media coverage of them. ECF Nos. 43-9 to 43-20. It is not a "smear" to use someone's own public relations materials to accurately point out that a person is well-known. Smothermon's entire theory of damages is based on alleged harm to his reputation but he now wants to run from his existing reputation as a "smear?" Why would Smothermon be embarrassed at anything he published, his own interviews, or his prior attempts to vindicate his

rights in court? ECF Nos. 43-16 to 43-19. Further, at least one exhibit that he wants to strike is one that *Smothermon himself suggested Defendants should have included*. *See* ECF 40 at 4. So they did! In the absence of any explanation as to how this evidence is inaccurate, misleading, or even has a tendency to lower the public's regard of Plaintiff, there is no basis to strike anything.

If Smothermon finds his own public relations materials or his own statements or his own voluntary media appearances to be damaging, perhaps he should sue himself for publishing them. Mainstream news articles about him, which are not even particularly unflattering, are not "scandalous" material. "Scandalous" does not mean "tends to show that my case is frivolous or at least very difficult to win." To be scandalous, the material must "reflect cruelly" on the plaintiff's moral character, use "repulsive language" or "detract from the dignity of the court." *Flynn v. Love*, 2020 U.S. Dist. LEXIS 171848, at *5 (D. Nev. Sep. 18, 2020). But even if it does that, it stays in if it is relevant. *See, e.g., Broadrick v. Gilroy*, 786 F. Supp. 3d 487 (D. Conn. 2025) (in a case involving nonconsensual pornography, quoting the defendant's vulgar language about masturbating to the Plaintiff's pain was deemed relevant and pertinent; 12(f) motion was denied).

Smothermon cannot win this case under the actual malice standard. While he has "accepted the pleading burden," a key fight in this case will be Smothermon trying to evade the fact that he is a public figure. He can't just "*accept a pleading burden*" without actually pleading the fact. If his complaint said "Smothermon is a public figure," then we might not be here. If he had stipulated to that fact, even now on his second go-round in a 12(f) motion, that might clear things up. But his approach to this makes it apparent that we are going to be wasting time fighting about whether he is a public figure or not. The information was relevant when it was filed, but this Motion makes it more relevant, not less.

3.2 There is No Basis to Recharacterize the Affirmative Defenses

Smothermon asks the Court to recharacterize the affirmative defenses as counterclaims in order to dismiss them, which would have the effect of stripping Defendants of their defenses. This is a clever ruse to try and shift the playing field at the pleading stage, but not quite clever enough. To support this request, Smothermon relies on a case from nearly a century ago stating that a

pleading "designated as an affirmative defense and concluded it with a prayer for a judgment granting the desired relief" becomes "recognizable as a counterclaim." *Tavitoff v. Stepovich*, 91 F.2d 106, 110-11 (9th Cir. 1937). If that were the situation, we *might* have something to talk about. Although, a case that was decided before anyone involved in *Iqbal/Twombly* were even born is probably not controlling over this issue. Further, *Tavitoff* has the honor of existing for 89 years, without a *single case ever citing to it.* That said, even if we sent out the precedential coast guard to tow this derelict on the sea of jurisprudence into port, we would see that it contains nothing meriting the rescue. *Tavitoff* involved a court construing an affirmative defense as a counterclaim over the objection of the plaintiff, because there would have been an inequitable result, prejudicing the defendant, if it did not do so. *Tavitoff*, if it still stands for anything, stands for the proposition that a poorly-articulated counterclaim can still preserve counterclaim rights. *See also, CMF Va. Land, L.P. v. Brinson,* 806 F. Supp. 90, 95 (E.D. Va. 1992) ("realigning" an affirmative defense as a compulsory counterclaim to preserve defendant's right to entitlement to certain affirmative relief).

But we do not need to get into that legal debate, because there is an easier route: Smothermon's factual basis for this request is a clear material falsehood: Smothermon claims that the Amended Answer "expressly ask[s] the Court to 'award Keith Hodge, Kevin Hodge, and Hodgetwins, LLC declaratory judgment that they did not defame Pastor Steve Smothermon by posting his photograph with the Facebook Post' and 'declaratory judgment that they did not defame Pastor Steve Smothermon by posting that Steve Smotherman [sic] was an executive with Cracker Barrel." ECF No. 45 at 4. The problem with Smothermon's argument is that *this language appears nowhere in the Amended Answer*, which contains neither a request for declaratory judgment nor even the term "declaratory judgment."

Smothermon's entire argument for this request is based on a material falsehood, and so the Court should summarily deny it. Even if the language did appear, this would be insufficient to strike the answer or the defenses. But the language isn't there. Not at all. This isn't just a

dispute over an interpretation. He made it up. With no basis to recharacterize the affirmative defenses as counterclaims, there is no basis to dismiss them.

4.0 CONCLUSION

The Court should deny Plaintiff Smothermon's Motion in its entirety.

Dated: March 19, 2026.

Respectfully Submitted,
/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
8991 W. Flamingo Rd., Ste. B
Las Vegas, NV 89147

Attorneys for Defendants,
Keith Hodge, Kevin Hodge, and
Hodgetwins, LLC

Case No. 2:25-cv-01858-APG-BNW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Marc J. Randazza
MARC J. RANDAZZA