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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 **PASTOR STEVE**  
14 **SMOTHERMON,**

15 Plaintiff,

16 v.

17 **KEITH HODGE**, an individual;  
18 **KEVIN HODGE**, an individual;  
19 **HODGETWINS, LLC**, a Nevada  
20 limited liability company;

21 Defendants.

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

**PLAINTIFF’S REPLY IN**  
**SUPPORT OF THE MOTION TO**  
**STRIKE LENGTHY, SPEAKING**  
**AFFIRMATIVE DEFENSES AND**  
**EXHIBITS, TO**  
**RECHARACTERIZE DEFENSES**  
**AS COUNTERCLAIMS, AND TO**  
**DISMISS RECHARACTERIZED**  
**COUNTERCLAIMS**

22 Plaintiff Pastor Steve Smothermon (“Plaintiff”), by and through his  
23 undersigned counsel, respectfully submits this Reply in support of his Motion to  
24 Strike, Recharacterize, and Dismiss the purported “affirmative defenses” and  
25 exhibits contained in Defendants’ Amended Answer (ECF No. 45).

26 **I. INTRODUCTION**

27 Defendants’ Opposition (ECF No. 46) is a masterclass in deflection. Faced  
with a Motion to Dismiss their original, redundant Counterclaims, Defendants  
engaged in a blatant procedural shell game: they copy-pasted their entire

1 Counterclaim—along with a mountain of exhibits—into their Amended Answer,  
2 simply changing the heading to “First Affirmative Defense.”

3 When Plaintiff moved to strike this improper evidentiary dump, Defendants  
4 responded with mockery, claiming there is no rule against an affirmative defense  
5 being “too sufficient.” They further attempt to save their bloated pleading by eagerly  
6 pointing out that their amended Prayer for Relief only seeks the Court’s “approval”  
7 of their affirmative defenses – exactly the same declaratory relief sought through the  
8 ill-fated counterclaims Defendants conceded were improper. However, Defendants’  
9 rhetorical flair cannot overcome the Federal Rules of Civil Procedure. Rule 8  
10 demands a “short and plain” statement to provide “fair notice,” not a 10-page  
11 narrative accompanied by 23 evidentiary exhibits and a declaration purporting to  
12 authenticate and admit such evidence. Because Defendants are improperly  
13 attempting to backdoor summary judgment evidence into the pleading stage and  
14 litigate a mirror-image counterclaim under the guise of a defense, the Court should  
15 strike the exhibits and narrative, recharacterize the claim, and dismiss it.

## 16 **II. ARGUMENT**

### 17 **A. Defendants’ Lengthy Factual Narrative and 23 Exhibits Must Be Stricken**

#### 18 **Under Rule 12(f)**

19 Defendants argue that Rule 12(f) motions are “disfavored” and mock the idea  
20 that a defense can be stricken for being “too detailed.” However, the law in the Ninth  
21 Circuit and the District of Nevada strictly applies a fair notice standard to affirmative  
22 defenses, which requires a short and plain statement describing the defense in  
23 general terms. An affirmative defense is not a vehicle for lengthy factual narratives  
24 or evidentiary exhibits.

25 Courts in this Circuit routinely strike affirmative defenses that consist of  
26 lengthy factual narratives or fail to comply with Rule 8’s short and plain statement  
27 requirement. By attaching 23 exhibits—ranging from YouTube screenshots to

1 political op-eds—to an Answer, Defendants are improperly attempting to force an  
2 evidentiary review of Plaintiff’s public figure status at the pleading stage – a stage  
3 that deprives Plaintiff from responding. Defendants argue this evidence is highly  
4 relevant because Plaintiff has not formally stipulated to being a public figure. But  
5 “relevance” of evidence has no place in proper pleading practice. The pleading stage  
6 requires allegations, not proof.

7 Furthermore, Defendants claim Plaintiff suffers no prejudice from this tactic.  
8 The prejudice is severe: permitting 23 exhibits to remain attached to an Answer  
9 bloats the record, bypasses the discovery process, deprives Plaintiff of any right to  
10 respond, and deprives Plaintiff any ability to litigate the admissibility and weight of  
11 summary judgment evidence via the pleadings. The narrative and exhibits should be  
12 stricken as immaterial and improper under Rule 12(f).

13 B. The Court Must Look to Substance Over Form and Recharacterize the Defense

14 Under Rule 8(c)(2)

15 Defendants dedicate much of their Opposition to celebrating the fact that  
16 when they copied/pasted their counterclaims under the heading of affirmative  
17 defense, they scrubbed the specific phrase “declaratory judgment” from the Prayer  
18 for Relief. But they do not concede that they still asked the Court for the very same  
19 relief by asking that the Court “approve” of their affirmative defenses – asking the  
20 Court to find in their favor on the overlength and spurious factual allegations instead  
21 of the short, plain affirmative defense. Courts do not “approve” of affirmative  
22 defenses in a jury tried case; asking the Court to do so is declaratory, equitable relief  
23 and Defendants simply are entitled to neither. Defendants argue that  
24 recharacterization under Rule 8(c)(2) is impossible, and they mock the 1937 Ninth  
25 Circuit precedent *Tavitoff v. Stepovich* as a “derelict on the sea of jurisprudence.”

26 Defendants miss the forest for the trees. Federal Rule of Civil Procedure  
27 8(c)(2) explicitly directs that if a party mistakenly designates a counterclaim as a

1 defense, “the court must, if justice requires, treat the pleading as though it were  
2 correctly designated.” As the Nevada District Court held in *VFS Financial, Inc. v.*  
3 *Specialty Finance Corp.*, the “label ‘counterclaim’ has no magic,” and “[w]hat is  
4 really an answer or defense to a suit does not become an independent piece of  
5 litigation because of its label.” The inverse is equally true: what is truly an  
6 independent, mirror-image claim for relief does not become a valid affirmative  
7 defense merely because Defendants strategically changed the heading to avoid a  
8 Rule 12(b)(6) dismissal.

9 The substance of Defendants’ First Affirmative Defense is a nearly verbatim  
10 recitation of their previously abandoned Declaratory Judgment Counterclaim.  
11 Defendants are using this defense not merely to defeat Plaintiff’s claims, but to  
12 affirmatively establish their own version of the facts regarding their editorial  
13 process, their Google search, and their ultimate lack of liability. Because the  
14 substance of the pleading operates as a redundant, mirror-image counterclaim, the  
15 Court has the discretion and authority to redesignate it as a counterclaim under Rule  
16 8(c)(2) regardless of the hide-the-ball declaratory request in the prayer for relief.  
17 Once properly redesignated, it must be dismissed because it serves no useful,  
18 independent purpose beyond duplicating the inverse of Plaintiff’s defamation  
19 Complaint.

### 20 **III. CONCLUSION**

21 Defendants cannot shield redundant counterclaims and premature evidentiary  
22 exhibits from judicial scrutiny by hiding them under the label of an “Affirmative  
23 Defense.” For the foregoing reasons, Plaintiff respectfully requests that the Court  
24 strike the lengthy factual allegations and exhibits, recharacterize the substance of the  
25 defense as a counterclaim, and dismiss it with prejudice.

1 Respectfully submitted this 23rd day of March, 2026.

2  
3 /s/ Nicole A. Westbrook  
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8 *Smothermon*

9 **CERTIFICATE OF SERVICE**

10 I HEREBY CERTIFY that on March 23, 2026, I caused the foregoing  
11 document to be electronically filed with the Clerk of the Court using CM/ECF. I  
12 further certify that a true and correct copy of the foregoing document was served  
13 on all counsel of record via transmission of Notices of Electronic Filing generated  
14 by CM/ECF.

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