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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 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 moves this Court pursuant to Federal Rules of  
24 Civil Procedure 12(f), 8(c)(2), and 12(b)(6) to strike the lengthy factual assertions  
25 and exhibits contained in Defendants’ Amended Answer, recharacterize those  
26 purported “affirmative defenses” as counterclaims, and dismiss them based on the  
27 arguments set forth in Plaintiff’s previously filed Motion to Dismiss (Dkt. 40).

**I. INTRODUCTION**

This motion addresses a blatant procedural shell game by the Defendants. Originally, Defendants filed an Answer and Counterclaim featuring two

1 counterclaims for Declaratory Judgment supported by 18 exhibits. After Plaintiff  
2 filed a Motion to Dismiss those counterclaims as redundant mirror images of  
3 Plaintiff's own defamation claims, Defendants filed an Amended Answer. In their  
4 Amended Answer, Defendants completely dropped the formal Counterclaim  
5 heading. However, they copy-pasted the exact same extensive factual allegations  
6 and exhibits into their "First Affirmative Defense." Moreover, Defendants expanded  
7 their exhibits to a total of 23, and their Prayer for Relief still explicitly asks this Court  
8 to award them "declaratory judgment" that they did not defame the Plaintiff.

9 Defendants cannot evade a motion to dismiss by simply changing the heading  
10 on their pleading. Lengthy factual narratives and 23 exhibits are highly improper for  
11 an affirmative defense, which requires only a short and plain statement giving fair  
12 notice. Because Defendants' "affirmative and other defenses" actually seek  
13 declaratory relief, they must be recharacterized as counterclaims under Rule 8(c)(2).  
14 Once properly recharacterized, they must be dismissed for the same reasons  
15 articulated in Plaintiff's pending Motion to Dismiss: they are redundant mirror  
16 images of the Complaint.

## 17 **II. ARGUMENT**

### 18 A. Defendants' Lengthy Factual Assertions and Exhibits Must Be Stricken Under 19 Rule 12(f)

20 Federal Rule of Civil Procedure 12(f) permits a court to "strike from a  
21 pleading an insufficient defense or any redundant, immaterial, impertinent, or  
22 scandalous matter." In the Ninth Circuit and the District of Nevada, courts apply a  
23 "fair notice" pleading standard to affirmative defenses. *ProDox, LLC v. Professional*  
24 *Document Services, Inc.*, 724 F.Supp.3d 1159, 1166 (D. Nev. 2024). This standard  
25 requires a "short and plain" statement describing the defense in general terms, not a  
26 vehicle for lengthy factual narratives or evidentiary exhibits. *Rosen v. Masterpiece*  
27

1 *Marketing Group, LLC*, 222 F.Supp.3d 793, 797 (C.D. Cal. 2016); *Barnes v. AT &*  
2 *T Pension Ben. Plan*, 718 F.Supp.2d 1167, 1170 (N.D. Cal. 2010).

3 Defendants’ “First Affirmative Defense” spans pages of factual narrative and  
4 attaches 23 exhibits ranging from YouTube screenshots to political op-eds. The  
5 Ninth Circuit has routinely struck affirmative defenses that consist of lengthy factual  
6 narratives or fail to comply with Rule 8’s “short and plain statement” requirement.  
7 *Barnes*, 718 F.Supp.2d at 1170. The inclusion of 23 exhibits at the pleading stage to  
8 argue that Plaintiff is a public figure is redundant and immaterial because Plaintiff  
9 has already accepted the pleading burden of actual malice in his Complaint.  
10 Furthermore, as argued in Plaintiff’s prior motion, these exhibits are impertinent and  
11 scandalous, having been selectively curated to smear Pastor Smothermon. Because  
12 Defendants’ affirmative defenses are improperly bloated with factual assertions and  
13 scandalous exhibits that go far beyond providing fair notice, they should be stricken  
14 under Rule 12(f).

15 B. The Court Should Recharacterize the “Affirmative Defenses” as Counterclaims  
16 Under Rule 8(c)(2).

17 Federal Rule of Civil Procedure 8(c)(2) provides that “[i]f a party mistakenly  
18 designates a defense as a counterclaim, or a counterclaim as a defense, the court  
19 must, if justice requires, treat the pleading as though it were correctly designated...”  
20 Nevada federal courts follow the principle that affirmative defenses challenge  
21 underlying liability, while counterclaims are separate claims independent of the  
22 plaintiff’s underlying claim that seek affirmative relief. *F.D.I.C. v. F.S.S.S.*, 829  
23 F.Supp. 317, 321-22 (D. Alaska 1993). When a pleading is “designated as an  
24 affirmative defense and concluded it with a prayer for a judgment granting the  
25 desired relief,” it becomes “recognizable as a counterclaim.” *Tavitoff v. Stepovich*,  
26 91 F.2d 106, 110-11 (9th Cir. 1937).  
27

1 Here, the Defendants’ own Prayer for Relief gives away their procedural  
2 game. Despite labeling their allegations as “Affirmative Defenses,” Defendants  
3 expressly ask the Court to “award Keith Hodge, Kevin Hodge, and Hodgetwins,  
4 LLC declaratory judgment that they did not defame Pastor Steve Smothermon by  
5 posting his photograph with the Facebook Post” and “declaratory judgment that they  
6 did not defame Pastor Steve Smothermon by posting that Steve Smotherman was an  
7 executive with Cracker Barrel.” Because Defendants are actively seeking affirmative  
8 declaratory relief, their “defenses” are actually counterclaims. The Court should  
9 exercise its discretion under Rule 8(c)(2) to look past the label, examine the  
10 substance of the pleading, and recharacterize the First Affirmative Defense as a  
11 Counterclaim for Declaratory Judgment.

12 C. The Recharacterized Counterclaims Should Be Dismissed as Redundant Mirror  
13 Images

14 Once the Court properly recharacterizes the affirmative defenses as  
15 counterclaims, they must be dismissed pursuant to Rule 12(b)(6). As briefed  
16 extensively in Plaintiff’s pending Motion to Dismiss Counterclaims (ECF No. 40)  
17 and incorporated by reference as if fully restated herein, Nevada federal courts  
18 consistently dismiss declaratory counterclaims that constitute “direct mirror images”  
19 of a plaintiff’s complaint. *Flynn v. Love*, 653 F.Supp.3d 823, 828 (D. Nev. 2023);  
20 *BOKF, NA v. Estes*, 2018 WL 10517233, at \*1 (D. Nev. 2018).

21 A counterclaim must serve a “useful purpose in clarifying and settling the  
22 legal relations in issue.” *Flynn*, 653 F.Supp.3d at 828. Defendants’ recharacterized  
23 requests for declaratory judgment—asking the Court to declare that their post and  
24 use of the photo were not defamatory—are exact, inverse mirror images of Plaintiff’s  
25 defamation complaint. If the jury finds for Plaintiff on the Complaint, the  
26 declarations automatically fail; if the jury finds for Defendants, the declarations are  
27

1 automatically established. Because these claims serve no independent purpose and  
2 present a complete identity of factual and legal issues with the Complaint, they must  
3 be dismissed.

4 **III. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that this Court strike  
6 the lengthy factual allegations and exhibits from Defendants' Amended Answer,  
7 recharacterize the requests for declaratory relief as counterclaims, and dismiss those  
8 counterclaims with prejudice.

9 Respectfully submitted this 18th day of March, 2026.

10  
11 /s/ Nicole A. Westbrook

12 Nicole A. Westbrook

13 G. Michael Jackson Esq.

14 **JONES, DAVIS & JACKSON, P.C.**

15 *Attorneys for Pastor Steve*

16 *Smothermon*

17 **CERTIFICATE OF SERVICE**

18  
19 I HEREBY CERTIFY that on March 18, 2026, I caused the foregoing  
20 document to be electronically filed with the Clerk of the Court using CM/ECF. I  
21 further certify that a true and correct copy of the foregoing document was served  
22 on all counsel of record via transmission of Notices of Electronic Filing generated  
23 by CM/ECF.

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