

1 AVENATTI & ASSOCIATES, APC
Michael J. Avenatti, CA State Bar No. 206929
2 Ahmed Ibrahim, CA State Bar No. 238739
3 520 Newport Center Drive, Suite 1400
Newport Beach, CA 92660
4 Telephone: 949.706.7000
5 Facsimile: 949.706.7050

6 Attorneys for Counter-Defendants

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 STEPHANIE CLIFFORD a.k.a. STORMY
DANIELS, an individual,

11 Plaintiff,

12 vs.

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14 KEITH .M DAVIDSON, an individual,
15 MICHAEL COHEN, an individual, and
16 DOES 1 THROUGH 10, inclusive

17 Defendants.

18
19 KEITH M. DAVIDSON, an individual,

20 Counter-Plaintiff,

21 vs.

22
23 STEPHANIE CLIFFORD (AKA STORMY
24 DANIELS), an individual; MICHAEL
25 AVENATTI, an individual; AVENATTI &
26 ASSOCIATES, A PROFESSIONAL
27 CORPORATION, a California Corporation;
EAGAN AVENATTI, LLP, a California
Corporation; et al.,

28 Counter-Defendants.

CASE NO.: 2:18-cv-05052 RSWL
(ASx)

Assigned for All Purposes to the
Honorable S. James Otero

**ANSWER OF STEPHANIE
CLIFFORD, MICHAEL
AVENATTI, AVENATTI &
ASSOCIATES, APC, AND
EAGAN AVENATTI, LLP TO
COUNTERCLAIM FILED BY
KEITH DAVIDSON**

**California Superior Court Action
Filed: June 6, 2018**

1 Counter-Defendants Stephanie Clifford. (“Clifford”), Michael Avenatti, Avenatti
2 & Associates, a Professional Corporation, and Eagan Avenatti, LLP (collectively
3 “Counter-Defendants”) hereby answer Defendant and Counterclaimant Keith M.
4 Davidson’s (“Davidson”) Counterclaim.¹ By doing so, Counter-Defendants do not waive
5 any objection or defense to the Counter-Claim, including, but not limited to, lack of
6 subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient
7 process, insufficient service of process, and failure to state a claim upon which relief can
8 be granted. See, e.g., Fed. R. Civ. P. 12(b), 12(h)(1)(B)(ii), 12(h)(3); see also Dkt No. 15
9 (Plaintiff’s Motion to Remand).

10 With regard to the unnumbered introductory paragraph of the Counterclaim,
11 Counter-Defendants admit only that the Counterclaim purports to name Counter-
12 Defendants as defendants to the Counterclaim. Except as expressly admitted, Counter-
13 Defendants deny the allegations in the unnumbered introductory paragraph.

14 **INTRODUCTION**

15 1. Counter-Defendants admit that Keith M. Davidson is an attorney who
16 formerly represented Clifford. Counter-Defendants admit that Avenatti is Clifford’s
17 current attorney. Except as expressly admitted, Counter-Defendants deny the allegations
18 in Paragraph 1.

19 2. Counter-Defendants admit that Clifford sued Davidson on June 6, 2018.
20 Counter-Defendants deny that Clifford has made more than 175 television appearances in
21 the first five months of 2018. Except as expressly admitted, Counter-Defendants deny
22 the allegations in Paragraph 2.

23 3. Counter-Defendants admit that Judge Wood has uttered the phrase
24 “publicity tour.” Except as expressly admitted, Counter-Defendants deny the allegations
25 in Paragraph 3.

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27 ¹ Except as expressly admitted herein, Counter-Defendants deny the allegations in
28 Davidson’s Counterclaims.

1 11. Counter-Defendants deny that this Court has subject matter jurisdiction
2 under U.S.C. § 1332. Counter-Defendants deny that the parties are citizens of different
3 states. Davidson, Michael Avenatti, Avenatti and Associates, APC, and Eagan Avenatti,
4 LLP are California residents. Therefore, Counter-Defendants deny that the Court has
5 subject matter jurisdiction over this counterclaim. Further, the Court does not have
6 subject-matter jurisdiction over this action for the reasons set forth in Clifford’s motion to
7 remand. [Dkt No. 15.] Counter-Defendants deny any other allegations in Paragraph 11.

8 12. Counter-Defendants lack sufficient information to admit or deny the
9 allegations in Paragraph 12.

10 **FIRST CAUSE OF ACTION**
11 **DEFAMATION PER SE**
12 **AGAINST ALL DEFENDANTS**

13 13. Counter-Defendants re-allege and incorporate by reference their response to
14 all prior paragraphs of the counterclaim as if fully set forth herein. Counter-Defendants
15 admit to a posting on Twitter by Michael Avenatti. Counter-Defendants deny Davidson
16 has reproduced the complete tweet. Except as expressly admitted, Counter-Defendants
17 deny any other allegation in Paragraph 13.

18 14. Counter-Defendants admit the complete and accurate version of the tweet
19 has been like more than 12,000 times and retweeted more than 4,300 times. Except as
20 expressly admitted, Counter-Defendants deny any other allegation in Paragraph 14.

21 15. The subject tweet links to a Daily Beast article stating Davidson was
22 suspected of extortion but not charged and that “[w]hen Houston handed Davidson and a
23 go-between the money, FBI agents stormed in with guns drawn, arresting the duo, states
24 a lawsuit filed by Hogan under his real name, Terry Bollea, in May 2016.” Except as
25 expressly admitted, Counter-Defendants deny the allegations in Paragraph 15.

26 16. Counter- Defendants deny the allegations in Paragraph 16.

27 17. Counter- Defendants deny the allegations in Paragraph 17.

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1 18. The subject tweet links to a Daily Beast article stating Davidson was
2 suspected of extortion but not charged and that “[w]hen Houston handed Davidson and a
3 go-between the money, FBI agents stormed in with guns drawn, arresting the duo, states
4 a lawsuit filed by Hogan under his real name, Terry Bollea, in May 2016.” Except as
5 expressly admitted, Counter-Defendants deny the allegations in Paragraph 18.

6 19. Counter-Defendants admit that Michael Avenatti has at least 525,000
7 Twitter followers. Except as expressly admitted, Counter-Defendants deny the
8 allegations in Paragraph 19.

9 20. Counter-Defendants deny the allegations in Paragraph 20.

10 21. Counter-Defendants deny the allegations in paragraph 21.

11 22. Counter-Defendants deny the allegations in paragraph 22.

12 23. Counter-Defendants deny the allegations in paragraph 23.

13 24. Counter-Defendants deny the allegations in paragraph 24.

14 **Prayer**

15 Insofar as a response is required, Counter-Defendants deny that Davidson is
16 entitled to any of the relief requested in his Prayer for Relief.

17
18 **AFFIRMATIVE DEFENSES**

19 Counter-Defendants deny all allegations in the Counterclaim that have not been
20 expressly admitted herein. By alleging the defenses set forth below, Counter-Defendants
21 do not concede that she has the burden of proof or persuasion with respect to any of these
22 issues.

23 **FIRST DEFENSE**

24 Davidson’s Counterclaim, and each and every count or cause of action therein,
25 fails to state a claim upon which relief may be granted against Counter-Defendants.

26 **SECOND DEFENSE**

27 Davidson’s claims are barred, in whole or in part, for lack of causation.
28

1 **THIRD DEFENSE**

2 Davidson's claims are barred, in whole or in part, to the extent there are
3 superseding and/or intervening causes for the damages, if any, incurred by Davidson.

4 **FOURTH DEFENSE**

5 Davidson's claims are barred, in whole or in part, to the extent they violate the free
6 speech guarantees of the First Amendment of the United States Constitution or any
7 analogous and applicable provision of state law.

8 **FIFTH DEFENSE**

9 Davidson's claims are barred, in whole or in part, because any conduct or actions
10 undertaken by Counter-Defendants concerning the allegations in the Counterclaim were
11 undertaken in good faith, were reasonable, and lacked malice.

12 **SIXTH DEFENSE**

13 Davidson's claims are barred, in whole or in part, to the extent any injury he
14 sustained was caused by his own wrongful conduct.

15 **SEVENTH DEFENSE**

16 Davidson's claims are barred, in whole or in part, because the damages sought by
17 Davidson are speculative, remote, and impossible to ascertain.

18 **EIGHTH DEFENSE**

19 Davidson's request for attorneys' fees is barred, in whole or in part, to the extent it
20 lacks any basis in law or contract.

21 **NINTH DEFENSE**

22 To the extent damaged at all, Davidson has failed to mitigate his damages.

23 **TENTH DEFENSE**

24 Davidson's claims are barred in whole or in part because they are premised on one
25 or more acts and omissions by persons or entities other than Counter-Defendants.

26 **ELEVENTH DEFENSE**

27 Davidson's claims are barred in whole or in part because any statements that form
28 the basis of his claims are substantially true.

1 **TWELFTH DEFENSE**

2 Davidson's claims are barred in whole or in part because any statements that form
3 the basis for his claims are opinion.

4 **THIRTEENTH DEFENSE**

5 Davidson's claims are barred in whole or in part because any statements that form
6 the basis for his claims are related to a matter of public concern and thus protected by
7 application of Cal. Civ. Proc. Code § 425.16.

8 **FOURTEENTH DEFENSE**

9 Davidson's claims are barred in whole or in part because he is a public figure or
10 limited purpose public figure.

11 **FIFTEENTH DEFENSE**

12 Davidson's claims are barred in whole or in part because the Court does not have
13 personal jurisdiction over Clifford for the counterclaims asserted against her.

14 **SIXTEENTH DEFENSE**

15 Davidson's claims are barred in whole or in part because Davidson has not served
16 Michael Avenatti, Avenatti & Associates, or Eagan Avenatti, LLP with a copy of the
17 summons and counterclaim filed by Davidson in accordance with the Federal Rules of
18 Civil Procedure.

19 **SEVENTEENTH DEFENSE**

20 Davidson's claims are barred in whole or in part because the allegedly defamatory
21 statement constitutes hyperbole.

22 **EIGHTEENTH DEFENSE**

23 Davidson's claims are barred in whole or in part because the allegedly defamatory
24 statement is privileged under the common law right of fair comment, litigation privilege,
25 and section 47 of the California Civil Code.

26 **NINETEENTH DEFENSE**

27 Davidson's claims against Clifford are barred because Davidson fails to allege any
28 wrongful act or omission attributed to Clifford that gives rise to liability.

1 **TWENTIETH DEFENSE**

2 Davidson’s claims are barred in whole or in part because the Court does not have
3 subject matter jurisdiction over this action, including Davidson’s counterclaims.

4 **TWENTY-FIRST DEFENSE**

5 Davidson’s claims are barred in whole or in part by the common law right to fair
6 comment.

7 **TWENTY-SECOND DEFENSE**

8 Mitigating circumstances reduce or eliminate any damages Davidson has suffered.
9 See Cal. Civ. Proc. Code § 461 (establishing a defendant’s right to allege mitigating
10 circumstances in answer). Plaintiff alleges the following mitigating circumstances:

- 11 • Any allegedly defamatory statement was made in good faith reliance on the
12 accuracy of news articles about Davidson, including the Daily Beast article
13 Avenatti linked to at the end of the tweet.
- 14 • Davidson’s reputation was already abysmal at the time the alleged defamation
15 occurred.

16 **TWENTY-THIRD DEFENSE**

17 Davidson’s claims are barred in whole or in part by the fair reporting privilege.

18 **TWENTY-FOURTH DEFENSE**

19 Davidson’s claims pertain to a tweet posted by Avenatti and allege in a conclusory
20 manner that Counter-Defendants and Davidson “conspired to” defame Davidson.
21 Defendant has not sufficiently alleged the requisite elements of a conspiracy under
22 California law. Among other deficiencies, Davidson does not claim that Clifford was
23 aware that Avenatti planned to defame Davidson and that Clifford agreed with Davidson
24 and intended that Davidson be defamed. Therefore Clifford cannot be liable under a
25 conspiracy theory.

26 **TWENTY-FIFTH DEFENSE**

27 Davidson’s claims are barred, in whole or in part, by the doctrine of waiver,
28 estoppel, and acquiescence.

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TWENTY-SIXTH DEFENSE

To the extent that Davidson’s claims against Clifford are premised on using some theory other than conspiracy to hold Clifford liable for Avenatti’s actions, no theory is alleged in the Davidson’s Counterclaim. Therefore Clifford cannot be liable.

TWENTY-SEVENTH DEFENSE

Davidson’s claims are barred in whole or in part under the libel-proof plaintiff doctrine.

TWENTY-EIGHTH DEFENSE

Davidson’s claims are barred in whole or in part because the allegedly defamatory statements were about matters of a public concern.

TWENTY-NINTH DEFENSE

This Court lacks subject matter jurisdiction over Davidson’s permissive counterclaim because complete diversity is not present.

THIRTIETH DEFENSE

Counter-Defendants have insufficient information available upon which to form a belief as to whether it has available additional, as yet unstated, affirmative defenses. Counter-Defendants specifically reserve all affirmative or other defenses as may become available or appear upon further developments in this case.

WHEREFORE, in addition to or in lieu of the relief requested in Clifford’s motion to remand, Counter-Defendants respectfully request entry of judgment granting the following relief:

- (a) dismissal of Davidson’s counterclaims for lack of subject-matter jurisdiction;
- (b) dismissal of Davidson’s counterclaims with prejudice for failure to state a claim upon which relief can be granted;
- (c) dismissal of Davidson’s counterclaims against Clifford for lack of personal jurisdiction;

1 (d) dismissal of Davidson’s counterclaims against Michael Avenatti, Avenatti &
2 Associates, and Eagan Avenatti, LLP for insufficient process and/or insufficient service
3 of process;

4 (e) dismissal of Davidson’s counterclaims with prejudice;

5 (f) awarding the costs of defending this action, including attorneys’ fees, costs
6 and disbursements; and/or

7 (g) granting such further relief as this Court may deem just and proper.
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9 **JURY DEMAND**

10 Counter-Defendants demand a trial by jury on all issues so triable.
11

12 **DATED: JULY 2, 2018**

AVENATTI & ASSOCIATES, APC

13
14 /s/ Michael J. Avenatti
15 MICHAEL J. AVENATTI
16 Attorneys for Counter-Defendants
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