



SEP 6 2022

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

RICK WARREN
COURT CLERK

108

CHRISTOPHER AVELLONE,

Plaintiff,

v.

KELLY RAE BRISTOL,

Defendant.

Case No. CJ-2021-4340

The Honorable Anthony L. Bonner

**PLAINTIFF/COUNTERDEFENDANT CHRISTOPHER AVELLONE'S REPLY TO
COUNTERCLAIMS OF DEFENDANT/COUNTERCLAIMANT KELLY RAE BRISTOL**

Plaintiff/Counterdefendant Christopher Avellone ("Avellone") respectfully submits his reply (answer) to the counterclaims ("Counterclaims") asserted by Defendant/Counterclaimant Kelly Rae Bristol ("Bristol").

1. Avellone denies each and every allegation in the Counterclaims except those allegations specifically admitted hereinafter.
2. Avellone admits the allegations in Paragraphs 88, 89 and 90 of the Counterclaims.
3. Avellone denies the allegations in Paragraph 91 of the Counterclaims, except Avellone admits the accuracy of the quoted excerpts to the extent they are complete, precise, unaltered and examined in the context of the entirety of the publication.
4. Avellone denies the allegations in Paragraph 92 of the Counterclaims, except Avellone admits that he posted "Ending Silence" on his Twitter account, @ChrisAvellone, on or about June 26, 2021.
5. Avellone admits the allegations in Paragraph 93 of the Counterclaims.
6. Avellone denies the allegations in Paragraph 94 of the Counterclaims, except Avellone admits the accuracy of the quoted excerpts to the extent they are complete, precise, unaltered and examined in the context of the entirety of the publication.

7. Avellone denies the allegations in Paragraph 95 of the Counterclaims, except Avellone admits the accuracy of the quoted excerpt to the extent it is complete, precise, unaltered and examined in the context of the entirety of the publication.

8. Avellone denies the allegations in Paragraphs 96, 97 and 98 of the Counterclaims.

9. In answer to Paragraph 99 of the Counterclaims, Avellone adopts and incorporates by reference his answers to Paragraphs 88 through 98.

10. Avellone denies the allegations in Paragraphs 100, 101, 102, 103, 104, 105, 106, 107 and 108 of the Counterclaims.

11. In answer to Paragraph 109 of the Counterclaims, Avellone adopts and incorporates by reference his answers to Paragraphs 88 through 108.

12. Avellone denies the allegations in Paragraphs 110, 111, 112, 113, 114, 115, 116, 117, 118 and 119 of the Counterclaims.

13. In answer to Paragraph 120 of the Counterclaims, Avellone adopts and incorporates by reference his answers to Paragraphs 88 through 119.

14. Avellone denies the allegations in Paragraphs 121, 122, 123, 124, 125 and 126 of the Counterclaims.

15. In answer to Paragraph 127 of the Counterclaims, Avellone adopts and incorporates by reference his answers to Paragraphs 88 through 126.

16. Avellone denies the allegations in Paragraphs 128 and 129 of the Counterclaims.

17. The statement in Paragraph 130 of the Counterclaims is a demand for jury trial to which no answer is required by law or made by Avellone.

18. In answer to the allegations in the unnumbered paragraph on page 13 of the Counterclaims, Avellone denies that Bristol is entitled to judgment or relief against Avellone in

any amount or of any type whatsoever, including, but not limited to, the relief sought in the Counterclaims.

AFFIRMATIVE DEFENSES

Pleading further and alternatively by way of affirmative defenses, Avellone alleges and states:

19. Bristol has failed to state a claim upon which relief can be granted.
20. Bristol is unable to establish a prima facie case for the essential elements of any and all of her Counterclaims.
21. Bristol's pleading does not provide fair notice of all claims and the grounds upon which they rest.
22. Bristol has failed to plead her claims for libel per se and false light invasion of privacy with sufficient particularity.
23. All or some of the Counterclaims are barred by the statute of limitations.
24. Avellone's statements are protected by the litigation privilege.
25. Avellone's statements are protected by the common law fair comment privilege.
26. Avellone's statements are protected by the common law fair report privilege.
27. Avellone's statements are protected by statutory privileges, including without limitation, privileges set forth in OKLA. STAT. tit. 12, § 1443.1.
28. All or some of the Counterclaims are barred because Avellone's statements are not libelous on their face.
29. All or some of the Counterclaims are barred because Avellone's statements are not reasonably susceptible of defamatory meaning.
30. All or some of the Counterclaims fail because Avellone's statements are protected by the "conditional privilege [that] attaches to statements, which would ordinarily be defamatory,

made in good faith on a subject in which the speaker has an interest or in reference to which he has or honestly believes he has a duty to perform.” *Thornton v. Holdenville Gen. Hosp.*, 2001 OK CIV APP ¶ 16, 36 P.3d 456, 461.

31. All or some of the Counterclaims fail because Avellone’s statements were made on matters of public concern and are protected under the First Amendment to the United States Constitution and Article 2, § 22 of the Oklahoma Constitution.

32. All or some of the Counterclaims fail because Bristol is a limited purpose public figure for this particular controversy.

33. All or some of the Counterclaims fail because Bristol has not pled and cannot prove that Avellone acted with actual malice.

34. Bristol cannot circumvent the actual malice standard applicable to her claims of libel per se and false light invasion of privacy by asserting a negligence claim.

35. Each and every statement by Avellone was either true, substantially true, and/or a statement of opinion.

36. All or some of the Counterclaims fail because Bristol cannot prove that Avellone was negligent.

37. All or some of the Counterclaims fail because they are based on, relate to or are in response to Avellone’s exercise of the right of free speech, right to petition and/or right of association.

38. Bristol’s claims are barred by the Oklahoma Citizens Participation Act, OKLA. STAT. tit. 12, §§ 1430 *et seq.*

39. Bristol’s Counterclaims are contrived, frivolous, retaliatory and brought to deter or prevent Avellone from exercising his constitutional rights, to harass Avellone, to cause unnecessary delay, and to increase the costs of this litigation.

40. Avellone owed no duty to Bristol.
41. Avellone did not breach any duty owed to Bristol.
42. Avellone acted appropriately at all relevant times and in conformance with all applicable laws.
43. Bristol has failed to allege and cannot meet the required evidentiary standard for each essential element of her Counterclaims.
44. The statements made by Avellone were not intended to, nor did they, cause any harm to Bristol.
45. Bristol has suffered no damages as a factual, legal or proximate result of any action or omission of Avellone.
46. Avellone's acts or omissions, if any, were not the proximate cause of Bristol's alleged damages.
47. Bristol has failed to mitigate her alleged damages.
48. Bristol's alleged damages were caused by persons other than Avellone and are attributable to economic events not under the control of Avellone.
49. Bristol's alleged damages were the result of an intervening or superseding cause and were unforeseeable.
50. Bristol's alleged damages were the result of her own conduct or actions.
51. Bristol's right to relief is barred because the fault of Bristol is equal to or greater than the alleged fault, if any, of Avellone.
52. Avellone has a right of setoff or offset as to any damages alleged by Bristol by virtue of his claims against her and the injuries, damages and losses that Bristol caused Avellone.
53. Mitigating circumstances reduce and completely eliminate any and all damages alleged by Bristol.

54. Bristol is estopped from asserting the Counterclaims.

55. The Counterclaims are barred, in whole or in part, by the doctrine of waiver.

56. The Counterclaims are barred by the doctrine of unclean hands.

57. Bristol has failed to allege and cannot prove the stringent legal standard required for the imposition of punitive or exemplary damages.

58. Avellone reserves the right to supplement or amend his list of affirmative defenses at any time in the future.

59. Avellone demands trial by jury.

WHEREFORE, Avellone demands that Bristol take nothing by her Counterclaims; that judgment be entered in favor of Avellone and against Bristol on the Counterclaims and all claims that Avellone asserts against Bristol in his Amended Petition; and that Avellone be awarded court costs, expenses and attorney fees, together with punitive and exemplary damages and additional sanctions, and such other and further legal or equitable relief that the Court deems just and appropriate.

Respectfully submitted,



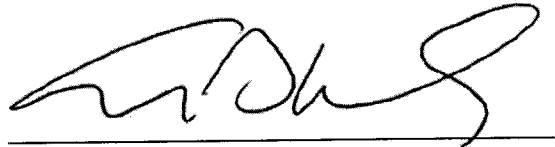
Eric D. Wade, OBA No. 19249
ROSENSTEIN FIST & RINGOLD
525 South Main, Suite 700
Tulsa, Oklahoma 74103-4508
(918) 585-9211 (Telephone)
(918) 583-5617 (Facsimile)
ericw@rflaw.com

ATTORNEY FOR PLAINTIFF,
CHRISTOPHER AVELLONE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 2022, I caused to be mailed a true, complete, and correct copy of the foregoing document, via U.S. Certified Mail, return receipt requested, with proper postage thereon fully prepaid, to:

Scott E. Kiplinger
GABLE GOTWALS
499 W. Sheridan Avenue, Suite 2200
Oklahoma City, Oklahoma 73102

A handwritten signature in black ink, appearing to read "Eric D. Wade", is written over a horizontal line.

Eric D. Wade