☐**FORM 1.2. DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND**

2023 NOV 21 AM 10:48

DATE FILED
November 21, 2023

District Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	Jefferson County, CO
Plaintiff(s): WILLIAM MONTGOMERY v. Defendant(s): BEST BUY STORES, L.P.	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery, 2443 S University Blvd # 129, Denver, CO, 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: N/A Atty. Reg. #: (pro se)	Case Number: 23CV226 6

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT AND JURY DEMAND

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR),, Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases or in Water (CW) proceedings subject to sections 37-92-302 to 37-92-305, C.R.S. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 **applies** to this case **unless** (check one box below if this party asserts that C.R.C.P. 16.1 **does not** apply):

   ☐ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**

   ☒ This party is seeking a monetary judgment against another party of more than $100,000.00, exclusive of interest and costs, as supported by the following certification:

   By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed $100,000.

   Or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☒ This party makes a **Jury Demand** at this time and pays the requisite fee. *See* C.R.C.P. 38. (Checking this box is optional.)

Date: 2023/11/21 William Montgomery

Signature of Party

Date: _____ _____

Signature of Attorney for Party (if any)

NOTICE

This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.

County Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
Plaintiff(s): WILLIAM MONTGOMERY v. Defendant(s): BEST BUY STORES, L.P. 9369 Sheridan Blvd, Westminster, CO 80031 (303) 426-4434	2023 NOV 21 AM 10:48 DATE FILED November 21, 2023 ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: N/A Atty. Reg. #: (pro se)	Case Number: 23CV226 Division 6 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. BEST BUY STORES, L.P., defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 9369 Sheridan Blvd, City of Westminster, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

On 2022/11/25, at 2:19pm, while standing outside their store, three Best Buy employees [Mahmoud, Shane, Unknown] approached me, surrounded me on all sides with my back against a wall, and wouldn't let me leave or go anywhere for 12 minutes while they falsely, loudly, rudely, and publicly accused me of stealing in front of many others. They also threatened to "jump" me around the corner and off camera. **CLAIMS: 1) FALSE IMPRISONMENT, 2) DEFAMATION *PER SE*, 3) ASSAULT.**

The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

Military status of Defendant is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd # 129, Denver, CO, 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

District Court, Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	2023 NOV 21 AM 10: 48 Filed Combined Court Jefferson County, CO DATE FILED November 21, 2023
Plaintiff(s): WILLIAM MONTGOMERY 2443 S University Blvd # 129 v. Denver, CO 80210 (970) 412-5463	▲ COURT USE ONLY ▲
Defendant(s): BEST BUY STORES, L.P. 9369 Sheridan Blvd, Westminster, CO 80031 (303) 426-4434	Case Number: 23CV226 Division: 6 Courtroom:

DISTRICT COURT CIVIL SUMMONS

TO THE ABOVE NAMED DEFENDANT: BEST BUY STORES, L.P.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court an answer or other response to the attached Complaint. If service of the Summons and Complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the Summons and Complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Complaint in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Complaint without further notice.

Dated: 2023/11/21

Liomi A. Sanafoma
Clerk of Court/Clerk

William Montgomery
Signature of Plaintiff

William Montgomery
Name of Plaintiff

2443 S University Blvd # 129, Denver, CO, 80210
Address of Plaintiff

(970) 412-5463
Phone # of Plaintiff

COMBINED COURT COLORADO SEAL JEFFERSON COUNTY

This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Complaint must be served with this Summons. This form should not be used where service by publication is desired.

WARNING: A valid summons may be issued by a lawyer and it need not contain a court case number, the signature of a court officer, or a court seal. The plaintiff has 14 days from the date this summons was served on you to file the case with the court. You are responsible for contacting the court to find out whether the case has been filed and obtain the case number. If the plaintiff files the case within this time, then you must respond as explained in this summons. If the plaintiff files more than 14 days after the date the summons was served on you, the case may be dismissed upon motion and you may be entitled to seek attorney's fees from the plaintiff.

TO THE CLERK: If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

County Court ☐ District Court ☐ Denver Juvenile Court ☐ Denver Probate Court

Jefferson County, Colorado

Court Address:

100 Jefferson County Parkway, Golden, CO 80401

2023 NOV 21 AM 10:48

DATE FILED
November 21, 2023

Filed
Combined Court
Jefferson County, CO

Plaintiff/Petitioner: William Montgomery

v.

Defendant/Respondent/Co-Petitioner: Best Buy Stores

COURT USE ONLY

Case Number: 23CV226

Division 6 Courtroom

FINDING AND ORDER CONCERNING PAYMENT OF FILING FEES

Name of Party filing Motion: William Montgomery on 11/21/2023 (Date).

Upon review of the attached Motion, the above party is:

☒ Eligible to proceed without payment of the following filing fee(s):
☐ complaint ☐ petition ☐ answer
☐ response ☐ motion to modify ☐ other: _____

☐ Eligible to have the filing fee of $_____ paid in ☐ two ☐ three payments, with the first payment due by _____(date) and the final payment due by _____(date).

☐ Not Eligible to proceed. Party is responsible for payment of the filing fees.

Date: 11/21/2023 Lori A. Langford
Signature of Eligibility Investigator, Clerk of Court, Judge/Magistrate

COMBINED COURT COLORADO SEAL JEFFERSON COUNTY

ORDER

Specialist

The Court has reviewed the Motion (JDF 205) and so orders:

☒ As indicated above.

☐ The specified party is ordered to pay $_____ by _____ (Date) to cover filing fees.

☐ Other _____

☐ If the Court finds that by allowing a party to proceed with a payment plan, the party has agreed to pay the fee as listed above. Failure to pay will result in collection against the party. Costs associated with collection will be assessed.

A subsequent motion to proceed without payment of filing fees must be filed upon order of the court or anytime the case is re-opened. Pursuant to §13-16-103, C.R.S., in the event the party who receives a waiver of costs prosecutes or defends an action or proceeding successfully, there shall be a judgment entered in his/her favor in the amount of the court costs and the party shall, upon collecting such court costs, remit them to the Court.

☐ The Court orders the appointment of counsel for appeal purposes.

Date: 11/21/2023

☐ Judge ☐ Magistrate

Supervisor

COMBINED COURT COLORADO SEAL JEFFERSON COUNTY

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
WILLIAM MONTGOMERY v. BEST BUY STORES L.P.	DATE FILED November 22, 2023 10:29 AM ⚠ COURT USE ONLY ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Civil Procedure Order

THIS MATTER was assigned to this Division. The Court issues the following Order regarding case procedure. The Court will follow the deadlines set forth in C.R.C.P. 16 and 16.1. Please note the significant amendments made to C.R.C.P. 16, 26 and other rules effective July 1, 2015. Please also note significant amendments made to C.R.C.P. 16.1, effective September 1, 2018.

1. Deadline Changes: All civil courtrooms are on a delay reduction docket. Deadlines will not be extended merely based on a stipulation between parties. If a motion is filed, the parties should proceed as if the extension request will be denied.

2. Service of Process: Returns of Service on all defendants shall be filed **within 63 days** after the date of the filing of the complaint. *See* C.R.C.P. 4(m).

3. Default: Application for default shall be filed **within 21 days** after default has occurred.

4. Affirmative Defenses: Please note the 2015 Comment to Rule 12: "The practice of pleading every affirmative defense listed in Rule 8(c), irrespective of a factual basis for the defense, is improper under C.R.C.P. 11(a)."

5. Case Management Under C.R.C.P 16.1: The parties need not prepare a case management order or attend a case management conference under Simplified Procedure, unless a request is submitted. Only a Certificate of Compliance must be filed. *See* C.R.C.P. 16.1(h).

6. Initial Case Management Conference Under C.R.C.P. 16: The Responsible Attorney must file and serve a Notice To Set the initial case management conference **within 7 days** after the At Issue Date. *See* C.R.C.P. 16(b).

a. This case management conference must be held **within 49 days** after the case is at issue.

b. When setting the conference, the parties are encouraged to agree also on a trial setting as part of preparing the proposed Case Management Order (JDF 622). If not agreed, the parties must be prepared to set the trial date at the Initial Case Management Conference. Unless extraordinary circumstances exist, trials shall be held **within 1 year** of the case filing date.

c. If monetary relief is sought by any party, the proportionality analysis required in paragraph 6 of the proposed Case Management Order must include estimated dollar amounts for all damages categories, including economic, non-economic, attorney fees and costs.

d. A joint request to dispense with the case management conference must provide complete and detailed information required by C.R.C.P. 16(d)(3), including an analysis of the proportionality of the proposed discovery in light of the damage categories and damage computations disclosed under C.R.C.P 26(a)(1)(C) and a trial setting.

7. Form of Pleadings: Each motion must be filed in separate pleading. All proposed orders, such as the proposed Case Management Order, shall be filed electronically in editable format. All parties must follow the Mandatory Document Filing Standards contained in Chief Judge Order 2017-1, including using a document title that is appropriately descriptive of that pleading or exhibit. http://tinyurl.com/zsrkxhy For example, simply using "Exhibit A" is not an appropriate title; rather, "Exhibit A to MSJ Car Photo" complies.

8. Mediation: Pursuant to C.R.S. §13-22-311, all parties are ordered to participate in mediation. If C.R.C.P. 16 applies, the parties shall also include the following mediation sentences in paragraph 7 or 17 of the proposed Case Management Order:

Within 35 days after filing of the proposed Case Management Order, the parties shall schedule mediation with a mediator of their choice and file a Notice of Mediation Setting that provides the name of the mediator and the date of the scheduled mediation. **Within 14 days** after mediation, a Notice of Mediation Completion shall be filed that contains a status report regarding mediation. The Court will consider extending these time periods and/or waiving the mediation requirement upon timely filing of a motion showing good cause.

9. Settlement: If the parties settle the case after trial has been set, the Court will not vacate the trial until the parties have filed a stipulation to dismiss the case with prejudice.

10. Contact Information: Parties shall contact the Court's Division Clerk for scheduling matters at 720-772-2627. The Division's setting dates and hours are Wednesday and Thursday, 10:00 a.m. 12:00 p.m. For other inquiries, contact the Division's Law Clerk at 720-772-2628.

11. Related Cases: Any attorney entering an appearance in this case who is aware of a past or present related case is ordered to complete and file an Information Regarding Related Case(s). http://tinyurl.com/q56s394

12. Service of Order: Plaintiff shall send a copy of this Order to all other parties who enter an appearance, and shall file a Certificate of Service of Civil Procedural Order **within 7 days** after the At Issue Date.

Issue Date: 11/22/2023



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED January 24, 2024 9:23 AM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Delay Prevention Order

1. Plaintiff filed the Complaint on November 21, 2023.

2. Pursuant to C.R.C.P. 4(m), proof of service on all defendants must be filed **within 63 days** after filing the Complaint.

3. To date, the Court has not received proof of service with respect to Defendant.

4. **REQUIRED ACTION**

Plaintiff is hereby ORDERED to take the following action in this matter:

a. __X__ **Complete service on all defendants and file proof of service**, **or advise the Court in writing why other action is appropriate**.

5. **FAILURE TO RESPOND TO ORDER**

In the event a party does not respond to this Order **within thirty-five (35) days**, the Court will dismiss the claim, cross-claim, or counterclaim of the party failing to respond without prejudice pursuant to C.R.C.P. 121, Section 1-10(2).

Issue Date: 1/24/2024



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED February 08, 2024 12:36 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Defendant Best Buy L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio Chase Bell Jones, LLP 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6

DEFENDANT BEST BUY STORES, L.P. ANSWER TO PLAINTIFF'S COMPLAINT AND JURY DEMAND UNDER SIMPLIFIED CIVIL PROCEDURE

Best Buy Stores, L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Glenn D. Germany at Montgomery Amatuzio Chase Bell Jones, LLP, hereby responds to Plaintiff William Montgomery ("Plaintiff") Complaint and Jury Demand Under Simplified Civil Procedure ("Complaint") as follows:

RESPONSE TO GENERAL ALLEGATIONS

1. Best Buy asserts that the Complaint, and the resolution of the same, are not subject to the Simplified Procedure proscribed by C.R.C.P. 16.1 as they do not apply to the allegations in the Complaint. Plaintiff, by his own admission in the Case Cover Sheet, admits that C.R.C.P. 16.1 does not apply because Plaintiff is seeking a monetary judgment against Defendant of more than $100,000.00, exclusive of interest and costs.

2. Defendant admits that it operates a store located at 9369 Sheridan Blvd, Westminster, CO 80031 ("the store").

3. As to the allegation that Plaintiff was at the store on November 25, 2022, Defendant is without knowledge or information sufficient to form a belief regarding the truth of the allegations and, accordingly, denies the same.

4. As to the False Imprisonment allegation wherein Plaintiff claims he was approached and surrounded by three Best Buy employees that did not allow Plaintiff to leave the store premises for 12 minutes, Defendant is without knowledge or information sufficient to form a belief regarding the truth of the allegations and, accordingly, denies the same.

5. As to the Defamation *Per Se* allegation wherein Plaintiff claims the three Best Buy employees falsely, loudly, rudely, and publicly accused Plaintiff of stealing in front of many others, Defendant is without knowledge or information sufficient to form a belief regarding the truth of the allegations and, accordingly, denies the same.

6. As to the Assault allegation wherein Plaintiff clams the three Best Buy employees threatened to "jump" Plaintiff around the corner and off camera, Defendant is without knowledge or information sufficient to form a belief regarding the truth of the allegations and, accordingly, denies the same.

AFFIRMATIVE DEFENSES

Having fully answered Plaintiff's Complaint, Best Buy pleads the following defenses and/or affirmative defenses, without waiving any argument that it may be entitled to assert regarding the burden of proof, legal presumptions, or other legal characterizations.

1. Plaintiff's Complaint fails to state a claim against Best Buy upon which relief can be granted.

2. Plaintiff's claims are substantially frivolous, groundless, and vexatious and, as such, the Complaint lacks substantial justification. Therefore, Defendant requests the court award reasonable attorney fees against Plaintiff pursuant to C.R.S. § 13-17-102 et seq. See **Exhibit 1**, *Montgomery v. Walmart*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023).

3. Plaintiff entered Best Buy with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the shopkeepers' privilege created by C.R.S. § 18-4-407. Defendant cannot be found liable for false imprisonment or defamation.

4. Defendant's employees' statements, if any were made, pertained to a potential criminal activity and thus were a matter of public concern and subject to a qualified privilege. See *Lawson v. Stow*, 2014 COA 26, ¶ 18.

5. Plaintiff may have failed to take reasonable steps under the circumstances to minimize, avoid, or mitigate whatever damages, if any, he may have sustained.

6. Any liability or fault assessed against Best Buy must be reduced pursuant to the *pro rata* liability provisions of C.R.S. § 13-21-111.5.

7. Best Buy reserves the right, and affirmatively requests leave of the Court to add, delete, or amend its affirmative defenses in this case as investigation and discovery are completed.

WHEREFORE, having fully answered Plaintiffs' Complaint, Best Buy prays that the Complaint against it be dismissed with prejudice and the relief requested herein denied, for judgment for costs and fees against Plaintiffs, and for such other and further relief as the court may deem just and proper.

DEFENDANT BEST BUY DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Filed on February 8, 2024.

MONTGOMERY AMATUZIO
CHASE BELL JONES, LLP

By: *s/ Lori K. Bell*
Lori K. Bell
Glenn D. Germany

Attorneys for Defendant Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on February 8, 2024, a true and correct copy of the foregoing was **DEFENDANT BEST BUY STORES, L.P. ANSWER TO PLAINTIFF'S COMPLAINT AND JURY DEMAND UNDER SIMPLIFIED CIVIL PROCEDURE** prepared for service to the following in the manner indicated below:

Per Se:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☒ U.S. Mail ☐ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

COLORADO COURT OF APPEALS

DATE FILED
February 08, 2024 12:36 PM

Court of Appeals No. 22CA0625
Arapahoe County District Court Nos. 20CV148, 20CV184, 20CV209, 20CV217, 21CV1 & 21CV235
Honorable Peter F. Michaelson, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart, Inc. and Alberto Carlos Cordero Duarte,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE GROVE
Dailey and Gomez, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 1, 2023

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Rachelle J. Veikune, Denver, Colorado, for Defendants-Appellants

EXHIBIT 1

¶ 1 Plaintiff, William Montgomery, appeals the district court's judgment in favor of defendants, Walmart Stores, Inc., and Albert Carlos Cordero Duarte (collectively, Walmart). We affirm.

I. Background

¶ 2 This consolidated case is one of several in which Montgomery has gone to Denver-area Walmart stores to, as the district court put it, "sting[]" them "so he can sue them for false arrest." The cases generally follow the same pattern: Montgomery buys items from the store (or enters the store with items that he has previously purchased), declines a bag "for environmental reasons," and then walks out of the store carrying the items in his hand and without a visible receipt. If he is stopped and asked for his receipt, he refuses to provide it until after he is detained, and in some cases arrested.

¶ 3 After some of these encounters (including the incidents underlying this appeal), Montgomery has sued Walmart and/or its employees for, among other things, false imprisonment, malicious prosecution, and defamation. *See Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)) (*Montgomery I*).

¶ 4 Montgomery has also filed many federal civil rights lawsuits against law enforcement officers who have taken action against him on suspicion of shoplifting. *See, e.g.*, *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB-MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

¶ 5 Based on our review of the record and the district court's summary judgment order, the consolidated cases before us in this appeal are generally similar to those cited above. In each incident, all of which Montgomery audio recorded, store employees stopped Montgomery when exiting a Walmart while carrying merchandise in his hands or on his person (but not in a bag) and asked for his receipt. Even though he had receipts for his purchases,

Montgomery refused to provide them. Walmart's loss-prevention officers then called the police, who responded, and in some cases, detained and/or arrested Montgomery on suspicion of shoplifting. Only then did Montgomery produce receipts demonstrating that he had purchased, rather than stolen, the items he was carrying.

¶ 6 Montgomery sued Walmart in six different cases. Only one complaint is in the record before us (and even that one has virtually no detail), but in a case management order consolidating five of the cases, the district court categorized each case as a separate "claim for relief." The case management order listed the "claims for relief" as follows:

- Claim 1: 2020CV148: False imprisonment;
- Claim 2: 2020CV184: Malicious prosecution;
- Claim 3: 2020CV209: False imprisonment, assault, and defamation;
- Claim 4: 2020CV217: Malicious prosecution; and
- Claim 5: 2021CV1: False imprisonment, defamation, false arrest, and malicious prosecution.

¶ 7 A sixth case (Claim 6: 2021CV235) alleging false imprisonment and slander was added at some point after the cases were

consolidated. The complaint for Claim 6 does not appear in the record, but the parties addressed it in their summary judgment briefing.

¶ 8 After the cases were consolidated, and as relevant here, Walmart moved to dismiss Claim 3.[1] The court granted the motion in a written order, concluding that it was barred by the statute of limitations. Montgomery does not challenge that order on appeal, so we do not consider it further.

¶ 9 Both parties later moved for summary judgment on the remaining Claims. In a detailed written order, the court granted Walmart's motion and denied Montgomery's. As relevant here, the court ruled as follows:

- Montgomery abandoned the cause of action for false arrest in Claim 5.
- Walmart was entitled to summary judgment on the false imprisonment causes of action in Claims 1, 5, and 6

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[1] Walmart's motion to dismiss Claim 3 is not in the record before us. Nor is Montgomery's response, if any was filed. But the court's order granting Walmart's motion to dismiss Claim 3 with prejudice is part of the appellate record.

because the undisputed facts showed that its employees "would have reasonable grounds . . . to find probable cause existed to detain and question Montgomery in order to ascertain whether he had committed a theft by, in a reasonable manner, asking to see his receipts."

- Walmart was entitled to summary judgment on the malicious prosecution causes of action in Claims 2, 4, and 6 because he failed to allege the elements that were necessary for him to prevail.[2]
- Walmart was entitled to summary judgment on Montgomery's defamation causes of action in Claims 5 and 6 because the employees' statements were protected by qualified privilege,[3] and "Montgomery has

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[2] We note that the court's consolidation order indicated that Montgomery's Claim 5 also included a malicious prosecution cause of action. Because the complaint for Claim 5 is not in the record before us, we cannot confirm that this is accurate. However, assuming that Claim 5 included a malicious prosecution cause of action, the court's summary judgment order did not specifically rule on it. On appeal, however, Montgomery does not address this omission or otherwise suggest that he was entitled to relief on that specific cause of action. We therefore consider it abandoned.

[3] The district court erroneously referred to the qualified *privilege* associated with statements involving matters of public concern as

000018 EXHIBIT 1

shown no evidence to overcome the presumption that there was an absence of malice."

II. Standard of Review

¶ 10 We review de novo a district court's order granting summary judgment. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 11 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact, and there is a clear showing that the moving party is entitled to summary judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001). The moving party bears the burden of showing the absence of a genuine issue of fact. *Id.* The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere

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qualified *immunity*. Walmart repeats this mistake in its answer brief.

allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27.

III. False Imprisonment

¶ 12 The district court rejected Montgomery's false imprisonment causes of action (which appeared in Claims 1, 5, and 6) on two distinct grounds: (1) Montgomery was not confined because he "knew that he could escape without causing an unreasonable risk of harm to him[self] . . . by merely presenting his receipt to Walmart employees"; and (2) in each case, "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store," thus triggering the "shopkeepers' privilege" created by section 18-4-407, C.R.S. 2022. We agree with both facets of the court's reasoning.

¶ 13 First, when faced with this precise question in *Montgomery I*, the division affirmed the district court's conclusion that "showing the receipt was a reasonable means of leaving the store, and Montgomery was aware of that fact." *Montgomery I*, slip op. at 5. As support for this proposition, the *Montgomery I* division relied on

a comment to section 36(2) of the Restatement (Second) of Torts, which says that "it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

¶ 14 Montgomery disagrees with the division's reliance on this comment, arguing that it applies to "PRE-confinement situations only." Montgomery does not define "pre-confinement," and it is not entirely clear from the context what he intends it to mean. In any event, the illustrations in the Restatement support the *Montgomery I* division's interpretation of the comment. For example, the first illustration in comment a provides as follows: "A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B." *Id.* If Montgomery's interpretation of the Restatement were correct, the false imprisonment described in this illustration would be complete, at the latest, when A locks B in the room. But the comment makes clear that, because B has a "means of escape of which he is himself aware" that can be utilized with only "a slight inconvenience," he has not been confined. *Id.*

¶ 15 As the *Montgomery I* division held, the circumstances giving rise to Montgomery's false imprisonment cause of action are directly analogous to the illustrations in the Restatement. In particular, just as the "athletic young man" could escape a locked room with a minimum of inconvenience by exiting through the window, Montgomery could have left the store with his purchased goods in hand simply by showing the receipt that he had concealed on his person. Indeed, as the district court observed, the undisputed facts show that Montgomery was aware that, in each case, he could have resolved the situation merely by showing his receipts. Specifically, the court concluded that the undisputed facts showed that "Montgomery knew that he could escape without causing an unreasonable risk of harm to him[self] . . . or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited."

¶ 16 Like the *Montgomery I* division, we recognize that reasonableness is a matter usually left to the jury. *See, e.g.*, *Deines v. Atlas Energy Servs., LLC*, 2021 COA 24, ¶ 10 (noting that issues of negligence and proximate cause — both of which involve determinations of reasonableness — "are matters generally to be

resolved by the jury"). However, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Gibbons v. Ludlow*, 2013 CO 49, ¶ 13 (quoting *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008)).

¶ 17 We agree with the district court in this case — and with the *Montgomery I* division's analysis based on substantially similar facts — that no reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment. As a matter of law, then, for those interactions in which Montgomery was merely asked for his receipt at the exit, he had a reasonable means by which he could exit each of the stores. He simply chose not to avail himself of it.

¶ 18 Second, even if Montgomery was confined without a reasonable means of escape, we agree with the district court the

undisputed facts implicate the "shopkeepers' privilege" established by section 18-4-407.[4]

¶ 19 Section 18-4-407, which is titled "Questioning of person suspected of theft without liability," exempts store employees from civil or criminal penalties if they detain and question suspected shoplifters in a reasonable manner. As relevant here, the statute provides as follows:

> If any person . . . conceals upon his person or otherwise carries away any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question

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[4] In *Montgomery I*, the division observed that "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested." *Montgomery v. Walmart Stores, Inc.*, slip op. at 7 (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)). In at least two of the situations here (Claims 4 and 5), Montgomery was escorted to the loss prevention office by a Walmart employee and subsequently handcuffed by responding officers. He later showed his receipts and was released. We are not convinced that escorting Montgomery to the loss prevention office makes any substantive difference to the question whether he had a "means of escape of which he is himself aware," Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965) — namely, showing his receipt. But to the extent that these circumstances do undermine the applicability of the Restatement, the shopkeepers' privilege applies.

> such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee, or peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

¶ 20 In *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 247-48, 455 P.2d 201, 203 (1969), our supreme court noted that the "intent of the statute" is "to afford under certain circumstances a degree of protection to the person who stops and questions another for the purpose of ascertaining whether such other person is guilty of shoplifting but who it later develops is actually not guilty of any shoplifting." Accordingly, the statute

> affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting.

Id. at 248, 455 P.2d at 203.

¶ 21 In *Carrington*, the supreme court observed that "the evidence on this particular issue [i.e., whether the store employees were

justified in questioning the plaintiff about his purchases] was not in dispute," and thus it was able to "conclude that as a matter of law the defendant's agents acted in good faith and upon probable cause based upon reasonable grounds."[5] *Id.* at 248, 455 P.2d at 204.

¶ 22 The undisputed facts here lead us to the same conclusion. As the district court noted, "Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence." That conclusion is confirmed not only by Montgomery's description of his actions, but also by own statements made to store employees and responding officers — which included his admissions that he

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[5] To be sure, the court in *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 244, 455 P.2d 201, 202 (1969), did conclude that there were disputed facts concerning the plaintiff's other tort claims, which arose from his allegations that he was "forcibly and violently seized and assaulted" and "subjected to great indignities, humiliation and disgrace," both of which led to him to suffer complications from a previous surgery. As best we can tell from the record before us, Montgomery did not pursue any causes of action other than false imprisonment, malicious prosecution, and defamation. In contrast to the claims that were remanded for further consideration in *Carrington*, the facts underlying those claims that might implicate the shopkeepers' privilege are undisputed, and thus amenable to resolution as a matter of law.

000026 EXHIBIT 1

was conducting a "sting," and that "he came to the store and planned on suing."

¶ 23 Accordingly, even if Montgomery was "confined" by the store employees, those employees are immune from liability for false imprisonment under section 18-4-407. The district court therefore properly granted summary judgment on these causes of action in Walmart's favor.

IV. Malicious Prosecution

¶ 24 Montgomery's Claims 2, 4, and 5 sought relief for malicious prosecution.[6] We agree with the district court's conclusion that Walmart was entitled to summary judgment on these claims.

¶ 25 At the threshold, without the complaint or any relevant citations to the record, we are unable to discern the basis for malicious prosecution as asserted in Claim 5. We therefore do not

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[6] The court's summary judgment order states that Claims 2, 4, and 6 include malicious prosecution claims, but the order consolidating Montgomery's cases reflects that cause of action only in Claims 2, 4, and 5. The complaint underlying Claim 6 is not in the record, but Walmart's summary judgment motion states that it asserted claims of false imprisonment and defamation. Consistent with this description, Montgomery's description of "facts unique to Claims #1 and #6" in his opening brief does not describe any acts that could give rise to a malicious prosecution cause of action.

consider it further. *See Cikraji v. Snowberger*, 2015 COA 66, ¶ 10 ("[W]e will not comb the record for facts supporting plaintiff's arguments that were not cited in his brief.").[7]

¶ 26 A claim of malicious prosecution requires the plaintiff to establish the following factors:

(1) A criminal case was brought against the plaintiff.

(2) The criminal case was brought as a result of oral or written statements made by the defendant.

(3) The criminal case ended in favor of the plaintiff.

(4) The defendant's statements against the plaintiff were made without probable cause, or, if the complaint was filed with probable cause, the defendant continued to prosecute the criminal action after he no longer had probable cause to believe the plaintiff guilty.

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[7] To the extent that the malicious prosecution cause of action in Claim 5 might have arisen from a theft charge that was later dropped, Walmart would be immune from civil liability under the shopkeepers' privilege. *See* § 18-4-407, C.R.S. 2022. However, we do not apply the shopkeepers' privilege analysis to the malicious prosecution cause of action arising from the harassment charges underlying Claims 2 and 4. Rather, those claims fail because Montgomery failed to establish at least two of the elements of a malicious prosecution claim.

(5) The defendant's statements against the plaintiff were motivated by malice toward the plaintiff.

(6) As a result of the criminal case, the plaintiff suffered damages.

CJI-Civ. 17:1 (2022).

¶ 27 Claims 2 and 4 were based on a harassment charge for using threats and obscenities against a Walmart employee. The charge was dismissed by the prosecution without any decision having been rendered on the merits, but the district court concluded that it nonetheless was based on probable cause irrespective of whether Montgomery did in fact threaten the Walmart employee. The court also concluded that summary judgment was warranted because "there was no evidence that [the harassment] charge was pursued by [the Walmart employee] nor that the statements against Montgomery were supported by malice."

¶ 28 We agree with all of the district court's rationales:

- Montgomery did not establish that the store employee's statements against Montgomery were made without probable cause, nor did he provide any evidence that any of the defendants' statements against him were motivated

by malice. *See Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 858 (Colo. App. 2007) ("[W]hen a response to a motion for summary judgment . . . states conclusions on ultimate issues without including facts that tend to prove or disprove the allegations made in the motion for summary judgment, it is insufficient to give rise to genuine issues of fact.").

- Montgomery presented no evidence that would support a conclusion that the harassment case was dismissed on the merits or that it was terminated under circumstances that fairly imply his innocence.

¶ 29 Accordingly, Montgomery failed to establish at least two of the elements of malicious prosecution in Claims 2 and 4. Summary judgment was therefore proper.

V. Defamation

¶ 30 Finally, Montgomery contends that the court erroneously entered summary judgment for Walmart on his defamation claims, which appeared in Claims 5 and 6. We discern no error.

¶ 31 At the outset, as we have already noted, the shopkeepers' privilege covers defamation. Thus, to the extent that the allegations

of defamation are based on statements made by Walmart employees when they confronted him and asked to see his receipts, Walmart is arguably immune from civil liability because, as we have already concluded, they had probable cause for doing so under section 18-4-407 and, as a matter of law, none of the statements that they made — all of which were focused on whether Montgomery had in fact shoplifted — exceeded the scope of that privilege.

¶ 32 Even if the statements were not covered by shopkeepers' privilege, however, Montgomery's claims of defamation would still fail. Because the statements pertained to potential criminal activity, the statements were matters of public concern. *See Lawson v. Stow*, 2014 COA 26, ¶ 21. And "[w]here a statement relates to a matter of public concern, the speaker's communication is subject to a qualified privilege." *Id.* at ¶ 18. Under this standard, (1) the defamed party must prove the falsity of the statement by clear and convincing evidence, rather than by a mere preponderance; (2) the defamed party must prove that the speaker published the statement with actual malice — that is, with actual knowledge that the statement was false or with reckless disregard for whether the statement was true; and (3) the defamed party must

establish actual damages to maintain the action, even if the statement is defamatory per se. *Id.*

¶ 33 As discussed above, there is no evidence in the record that the Walmart employees were speaking with actual malice when they referred to Montgomery as a shoplifter, told him they needed their products back, or expressed concerns that Montgomery was on drugs. To the contrary, Montgomery deliberately led store employees to believe that he was shoplifting with the express purpose of filing suit for, among other things, defamation and false imprisonment. Based on the undisputed facts in the record, Montgomery is therefore unable to overcome the presumption that the employees' statements were not made with actual knowledge that they were false or with reckless disregard for whether the statements were true. The district court thus properly entered summary judgment on this cause of action.

VI. Conclusion

¶ 34 The judgment is affirmed.

JUDGE DAILEY and JUDGE GOMEZ concur.

☐ County Court ■ District Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500 Plaintiff/Petitioner(s): **WILLIAM MONTGOMERY** v. Defendant/Respondent(s): **BEST BUY STORES, L.P.**	FEB 20 DATE FILED February 20, 2024 1:15 PM ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #: (pro se)	Case Number: **23CV226** Division: **6** Courtroom:

AFFIDAVIT OF SERVICE

I declare under oath that I am 18 years or older and not a party to the action and that I served THE FOLLOWING DOCUMENTS District Court Cover Sheet, Civil Summons, and Complaint on the Defendant/Respondent in Jefferson County, CO (name of County/State) on 2024 / 01 / 22 (date) at 2:49pm (time) at the following location: 7700 E Arapahoe Rd Ste 220, Centennial, CO 80112.

☐ By handing the documents to a person identified to me as the Defendant/Respondent: _____ (print name of person served).

☐ By identifying the documents, offering to deliver them to a person identified to me as the Defendant/Respondent who refused service, and then leaving the documents in a conspicuous place.

☐ By leaving the documents at the Defendant/Respondent's usual place of abode with _____ (Name of Person) who is a member of the Defendant/Respondent's family and whose age is 18 years or older. (Identify family relationship)_____.)

☐ By leaving the documents at the Defendant/Respondent's usual workplace with _____ (Name of Person) who is the Defendant/Respondent's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)

■ By leaving the documents with Samantha Peck of CT Corporation System (Name of Person), who as Registered Agent (title) is authorized by appointment or by law to receive service of process for the Defendant/Respondent.

☐ By serving the documents as follows (other service permitted by C.R.C.P 4(g) or C.R.C.P. 304(c)(d) and (e):

_____.

☐ **For Eviction Cases Only.**
I have made diligent efforts such as _____ (list personal service attempts) but have been unable to make personal service on the Defendant/Respondent(s) and I have made service of the within summons and complaint by posting a copy of them in a conspicuous place upon the premises described therein.

I have charged the following fees for my services in this matter:

■ Private process server

☐ Sheriff, _____ County
Fee $ _____ Mileage $ _____

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VERIFICATION AND ACKNIOWLEDGMENT

I David Montgomery (name) swear/affirm under oath, and under penalty of perjury, that I have read the foregoing *AFFIDAVIT OF SERVICE* and that the statements set forth therein are true and correct to the best of my knowledge.

David Montgomery
Signature

Subscribed and affirmed, or sworn to before me in the County of Arapahoe, State of Colorado, this 20th day of Febuvary, 20 24. My Commission Expires: 01/26/2028

Giovanny Lopez
Notary Public

GIOVANNY ALBERTO LOPEZ JR.
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20244003717
MY COMMISSION EXPIRES 01/26/2028

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DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED February 26, 2024 9:25 AM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Delay Prevention Order

1. Plaintiff filed the Complaint on November 21, 2023.

2. This case was at issue on February 8, 2024.

3. Pursuant to the Civil Procedure Order, the Responsible Attorney must file and serve a Notice to Set the initial case management conference within 7 days after the at issue date.

4. **REQUIRED ACTION**

You are hereby **ORDERED** to take the following action(s) in this matter:

File a notice to set the case management conference.

Parties shall contact the Court's Division Clerk for scheduling matters at 720-772-2627. The Division's setting dates and hours are Wednesday and Thursday, 10:00 AM - 12:00 PM.

5. **FAILURE TO RESPOND TO ORDER**

In the event a party does not respond to this Order within thirty-five (35) days, the Court will dismiss the claim, cross-claim, or counterclaim of the party failing to respond without prejudice pursuant to Rule 41.

Issue Date: 2/26/2024

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED February 27, 2024 12:44 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio Chase Bell Jones, LLP 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE TO SET CASE MANAGEMENT CONFERENCE	

PLEASE TAKE NOTICE that on Thursday, February 29, 2024, at 10:00 am, or as soon thereafter as we may be heard, a representative from the office of undersigned counsel will contact the Clerk of Division 6 by telephone at (720) 772-2627 to obtain dates for the case management conference in the above captioned matter and will then telephone the Defendant to clear dates and times.

Filed on February 27, 2024.

MONTGOMERY AMATUZIO
CHASE BELL JONES, LLP

By: *s/ Glenn D. Germany*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on February 27, 2024, a true and correct copy of the foregoing was **NOTICE TO SET CASE MANAGEMENT CONFERENCE** prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☒ U.S. Mail ☐ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED March 07, 2024 2:46 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio Chase Bell Jones, LLP 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE OF CASE MANAGEMENT CONFERENCE	

PLEASE TAKE NOTICE that the Case Management Conference has been scheduled for Wednesday, March 27th, 2024, at 11:00 a.m. in Division 6 of the Jefferson County District Court via Webex https://judicial.webex.com/meet/Christopher.Zenisek. All parties of record are to join virtual courtroom by video or by telephone by dialing 1-720-650-7664 and entering meeting number/access code 926 582 107.

Filed March 7, 2024,

MONTGOMERY AMATUZIO
CHASE BELL JONES, LLP

By: *s/ Lori K. Bell*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on March 7, 2024 a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☒ U.S. Mail ☐ Email ☒ CCES

s/ Ellen H. Zuckerman
Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 01, 2024 11:28 AM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY STORES L.P.,** Defendant.	▲COURT USE ONLY ▲
	Case No.: 2023CV00226 Division: 6

PROPOSED CASE MANAGEMENT ORDER

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position briefly. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, it shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court no later than 42 days after the case is at issue and at least 7 days before the date of the case management conference.

The case management conference is set for **March 27, 2024, at 11:00am via Webex.**

1. The "at issue date" is: **February 8, 2024**.

2. Responsible attorney's name, address, phone number and email address:

Lori K. Bell, Reg. No. 31714
Glenn D. Germany, Reg. No. 59722
Montgomery Amatuzio Chase Bell Jones, LLP
4100 East Mississippi Avenue, Suite 1600
Denver, CO 80246-3048
Telephone: 303-592-6600
lbell@mac-legal.com
ggermany@mac-legal.com

3. The lead counsel for each party, Lori K. Bell of Montgomery Amatuzio Chase Bell Jones, LLP (counsel for Best Buy L.P.), and William Montgomery, a party not represented by counsel, met and conferred by telephone concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on February 21, 2024.

4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side):

Plaintiff: Plaintiff asserts three civil claims against the Defendant for actions committed by its employees on November 25, 2022 outside a Best Buy store located in Westminster, CO. Claim number one is false imprisonment, committed by three Best Buy employees when they surrounded Plaintiff on all sides with his back against a wall and wouldn't let him leave or go anywhere for 12 minutes. Claim number two is defamation *per se*, committed by the same three employees when they falsely, loudly, rudely, and publicly accused Plaintiff of stealing in front of many others, which simultaneously occurred during their detention of him. Claim number three is assault, committed by the same three employees when they threatened to "jump" Plaintiff around the corner and off camera, which also occurred during their detention of him.

Now, while "shopkeeper's privilege" is one possible defense for a merchant in circumstances similar to this, such will be of no help to the Defendant, who's employees went far, far beyond the words and actions typically used by a merchant during an otherwise valid detention of a suspected shoplifter. "In other words, the qualified privilege under the statute does not give the merchant the right to embarrass or harass individuals suspected, in public view of every one, in a rude manner." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 12-13 (Miss. 1963).

Also, keep in mind that Plaintiff has NEVER, not once, shoplifted or "concealed property" of a store in any way, shape, or form so as to EVER "provoke" store employees into reasonably believing that he is stealing from their store. These allegations of "concealing" and "provoking" are COMPLETELY UNSUBSTANTIATED LIES that have been fraudulently perpetuated throughout multiple courthouses now for an umpteen number of times by wreckless and intellectually dishonest attorneys who have repeatedly failed to ascertain THE ACTUAL FACTS of each presented case. At most, all Plaintiff has ever done is refuse to show his receipt when asked, a common patron practice not personalized enough to ever lawfully detain over, and to which is not even applicable in this particular case, with this particular Defendant, who lacks "shopkeeper's privilege" for an entirely different set of reasons [see above].

Defendant: Although Plaintiff filed a complaint under the simplified procedures contained in C.R.C.P. 16.1, Defendant asserts that the complaint, and the resolution of the same, are not subject to C.R.C.P. 16.1. Defendant denies that it or its employees committed the allegations contained in Plaintiff's complaint including, but not limited to, False Imprisonment, Defamation *Per Se*, and Assault. Defendant asserts any actions taken by its employees are protected by the shopkeepers' privilege created by C.R.S. § 18-4-407 and Defendant cannot be found liable for the

allegations contained in Plaintiff's complaint. Plaintiff has a history of concealing property on his person while exiting places of business in order to provoke store employees to stop and interact with Plaintiff and create grounds for litigation. Plaintiff has been told repeatedly by Colorado State and Federal Courts that his actions trigger the shopkeepers' privilege. As such, Plaintiff's claims are substantially frivolous, grounds, and vexatious and, as such, his complaint lacks substantial justification. Defendant has requested the court award reasonable attorney fees against Plaintiff pursuant to C.R.S. § 13-17-102 et seq.

5. The following motions have been filed and are unresolved: **None.**

6. Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1):

Plaintiff: Plaintiff does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Defendant: Defendant does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

7. The lead counsel for each party, Lori K. Bell of Montgomery Amatuzio Chase Bell Jones, LLP (counsel for Best Buy L.P.), and William Montgomery, a party not represented by counsel, met and conferred concerning possible settlement. The prospects for settlement are unlikely as the parties disagree on the merits of the case.

8. Deadlines for:

a. Amending or supplementing pleadings: May 23, 2024

b. Joinder of additional parties: May 23, 2024

c. Identifying non-parties at fault: April 23, 2024

9. Dates of initial disclosures:

Plaintiff: Plaintiff has yet to serve his initial disclosures, but will be doing so shortly.

Defendant: Defendant served its initial disclosures on March 7, 2024.

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures _____, and completion of discovery on damages: **N/A**

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

Plaintiff: Plaintiff does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): **1 of adverse party + 2 others + experts**

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): **30 per party**

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): **20 per party**

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): **20 per party**

Any physical or mental examination per C.R.C.P. 35: **N/A**

Any limitations on awardable costs: **As provided for by Colorado law**

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: **N/A**

Defendant: Defendant does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): **1 of adverse party + 2 others + experts**

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): **30 per party**

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): **20 per party**

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): **20 per party**

Any physical or mental examination per C.R.C.P. 35: **N/A**

Any limitations on awardable costs: **As provided for by Colorado law**

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: **N/A**

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

Plaintiff: Plaintiff may endorse an expert necessary to rebut Plaintiff's experts, if any are endorsed.

Defendant: Defendant may endorse an expert necessary to rebut Plaintiff's experts, if any are endorsed.

If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side:

13. Proposed deadlines for expert witness disclosure if other than those in C.R.C.P. 26(a)(2):

a. production of expert reports:

i. Plaintiff/claimant: **Presumptive C.R.C.P. 26(a) deadline (126 days prior to scheduled trial date).**

ii. Defendant/opposing party: **Presumptive C.R.C.P. 26(a) deadline (98 days prior to scheduled trial date).**

b. production of rebuttal expert reports: **Presumptive C.R.C.P. 26(a) deadline (77 days prior to scheduled trial date).**

c. production of expert witness files: **Within 14 days of the disclosure, upon request**

State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C): **N/A**

14. Oral Discovery Motions. The court requires discovery motions to be presented orally, without written motions or briefs. **Discovery disputes are to be addressed pursuant to the court's Pretrial Order.**

15. Electronically Stored Information. The parties **do not** anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

16. Parties' best estimate as to when discovery can be completed: **September 30, 2024**

Parties' best estimate of the length of the trial: **5 days**

Trial will commence on (or will be set by the court later): **To be set by the court.**

Pro se Plaintiff: By: *s/ William Montgomery* William Montgomery 2443 S University Blvd #129 Denver, CO 80210		MONTGOMERY AMATUZIO CHASE BELL JONES, LLP By: *s/ Lori K. Bell* Lori K. Bell Glenn D. Germany Attorneys for Best Buy Stores, L.P.

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this _____.

BY THE COURT:

_____
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED April 16, 2024 9:34 AM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Case Management

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

The Court adopts this proposed order as its case management order, with the following amendments:

1. This case is governed by C.R.C.P. 16, not 16.1.

2. The Court sets a mediation completion deadline of August 30, 2024.

3. The Court does require discovery motions to be presented orally, without written motions or briefs.

4. The Court sets 49 days prior to trial as a discovery cut-off date.

5. The Court previously set a three-day jury trial to begin October 22, 2024 at 8:00 a.m.

6. Defendant shall also set a pre-trial conference on notice to Plaintiff. Setting hours are Wednesdays and Thursdays from 10 a.m. to noon.

Issue Date: 4/16/2024



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY STORES L.P.,** Defendant.	**▲COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

PROPOSED CASE MANAGEMENT ORDER

Attachment to Order - 2023CV226

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position briefly. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, it shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court no later than 42 days after the case is at issue and at least 7 days before the date of the case management conference.

The case management conference is set for **March 27, 2024, at 11:00am via Webex.**

1. The "at issue date" is: **February 8, 2024**.

2. Responsible attorney's name, address, phone number and email address:

Lori K. Bell, Reg. No. 31714
Glenn D. Germany, Reg. No. 59722
Montgomery Amatuzio Chase Bell Jones, LLP
4100 East Mississippi Avenue, Suite 1600
Denver, CO 80246-3048
Telephone: 303-592-6600
lbell@mac-legal.com
ggermany@mac-legal.com

3. The lead counsel for each party, Lori K. Bell of Montgomery Amatuzio Chase Bell Jones, LLP (counsel for Best Buy L.P.), and William Montgomery, a party not represented by counsel, met and conferred by telephone concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on February 21, 2024.

4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side):

Plaintiff: Plaintiff asserts three civil claims against the Defendant for actions committed by its employees on November 25, 2022 outside a Best Buy store located in Westminster, CO. Claim number one is false imprisonment, committed by three Best Buy employees when they surrounded Plaintiff on all sides with his back against a wall and wouldn't let him leave or go anywhere for 12 minutes. Claim number two is defamation *per se*, committed by the same three employees when they falsely, loudly, rudely, and publicly accused Plaintiff of stealing in front of many others, which simultaneously occurred during their detention of him. Claim number three is assault, committed by the same three employees when they threatened to "jump" Plaintiff around the corner and off camera, which also occurred during their detention of him.

Attachment to Order - 2023CV226

Now, while "shopkeeper's privilege" is one possible defense for a merchant in circumstances similar to this, such will be of no help to the Defendant, who's employees went far, far beyond the words and actions typically used by a merchant during an otherwise valid detention of a suspected shoplifter. "In other words, the qualified privilege under the statute does not give the merchant the right to embarrass or harass individuals suspected, in public view of every one, in a rude manner." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 12-13 (Miss. 1963).

Also, keep in mind that Plaintiff has NEVER, not once, shoplifted or "concealed property" of a store in any way, shape, or form so as to EVER "provoke" store employees into reasonably believing that he is stealing from their store. These allegations of "concealing" and "provoking" are COMPLETELY UNSUBSTANTIATED LIES that have been fraudulently perpetuated throughout multiple courthouses now for an umpteen number of times by wreckless and intellectually dishonest attorneys who have repeatedly failed to ascertain THE ACTUAL FACTS of each presented case. At most, all Plaintiff has ever done is refuse to show his receipt when asked, a common patron practice not personalized enough to ever lawfully detain over, and to which is not even applicable in this particular case, with this particular Defendant, who lacks "shopkeeper's privilege" for an entirely different set of reasons [see above].

Defendant: Although Plaintiff filed a complaint under the simplified procedures contained in C.R.C.P. 16.1, Defendant asserts that the complaint, and the resolution of the same, are not subject to C.R.C.P. 16.1. Defendant denies that it or its employees committed the allegations contained in Plaintiff's complaint including, but not limited to, False Imprisonment, Defamation *Per Se*, and Assault. Defendant asserts any actions taken by its employees are protected by the shopkeepers' privilege created by C.R.S. § 18-4-407 and Defendant cannot be found liable for the

Attachment to Order - 2023CV226

allegations contained in Plaintiff's complaint. Plaintiff has a history of concealing property on his person while exiting places of business in order to provoke store employees to stop and interact with Plaintiff and create grounds for litigation. Plaintiff has been told repeatedly by Colorado State and Federal Courts that his actions trigger the shopkeepers' privilege. As such, Plaintiff's claims are substantially frivolous, grounds, and vexatious and, as such, his complaint lacks substantial justification. Defendant has requested the court award reasonable attorney fees against Plaintiff pursuant to C.R.S. § 13-17-102 et seq.

5. The following motions have been filed and are unresolved: **None.**

6. Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1):

Plaintiff: Plaintiff does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Defendant: Defendant does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

7. The lead counsel for each party, Lori K. Bell of Montgomery Amatuzio Chase Bell Jones, LLP (counsel for Best Buy L.P.), and William Montgomery, a party not represented by counsel, met and conferred concerning possible settlement. The prospects for settlement are unlikely as the parties disagree on the merits of the case.

8. Deadlines for:

a. Amending or supplementing pleadings: May 23, 2024

b. Joinder of additional parties: May 23, 2024

c. Identifying non-parties at fault: April 23, 2024

Attachment to Order - 2023CV226

9. Dates of initial disclosures:

Plaintiff: Plaintiff has yet to serve his initial disclosures, but will be doing so shortly.

Defendant: Defendant served its initial disclosures on March 7, 2024.

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures _____, and completion of discovery on damages: **N/A**

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

Plaintiff: Plaintiff does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1):

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): **1 of adverse party + 2 others + experts**

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): **30 per party**

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): **20 per party**

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): **20 per party**

Any physical or mental examination per C.R.C.P. 35: **N/A**

Any limitations on awardable costs: **As provided for by Colorado law**

Attachment to Order - 2023CV226

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: **N/A**

Defendant: Defendant does not anticipate a need to deviate from the presumptive discovery limits under C.R.C.P. 26.

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): **1 of adverse party + 2 others + experts**

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): **30 per party**

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): **20 per party**

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): **20 per party**

Any physical or mental examination per C.R.C.P. 35: **N/A**

Any limitations on awardable costs: **As provided for by Colorado law**

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: **N/A**

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

Plaintiff: Plaintiff may endorse an expert necessary to rebut Plaintiff's experts, if any are endorsed.

Defendant: Defendant may endorse an expert necessary to rebut Plaintiff's experts, if any are endorsed.

Attachment to Order - 2023CV226

If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side:

13. Proposed deadlines for expert witness disclosure if other than those in C.R.C.P. 26(a)(2):

a. production of expert reports:

i. Plaintiff/claimant: **Presumptive C.R.C.P. 26(a) deadline (126 days prior to scheduled trial date).**

ii. Defendant/opposing party: **Presumptive C.R.C.P. 26(a) deadline (98 days prior to scheduled trial date).**

b. production of rebuttal expert reports: **Presumptive C.R.C.P. 26(a) deadline (77 days prior to scheduled trial date).**

c. production of expert witness files: **Within 14 days of the disclosure, upon request**

State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C): **N/A**

14. Oral Discovery Motions. The court requires discovery motions to be presented orally, without written motions or briefs. **Discovery disputes are to be addressed pursuant to the court's Pretrial Order.**

15. Electronically Stored Information. The parties **do not** anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

Attachment to Order - 2023CV226

16. Parties' best estimate as to when discovery can be completed: **September 30, 2024**

Parties' best estimate of the length of the trial: **5 days**

Trial will commence on (or will be set by the court later): **To be set by the court.**

Pro se Plaintiff: By: *s/ William Montgomery* William Montgomery 2443 S University Blvd #129 Denver, CO 80210		MONTGOMERY AMATUZIO CHASE BELL JONES, LLP By: *s/ Lori K. Bell* Lori K. Bell Glenn D. Germany Attorneys for Best Buy Stores, L.P.

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this _____.

BY THE COURT:

_____
District Court Judge

Attachment to Order - 2024CV226

DISTRICT COURT, JEFFERSON COUNTY COMBINED COURT, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 22, 2024 3:59 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6

NOTICE OF FIRM NAME CHANGE

PLEASE TAKE NOTICE that effective April 9, 2024, the law firm of counsel for Defendant Best Buy, L.P., has changed its name and is now doing business as Montgomery | Amatuzio. Undersigned counsel's mailing address, email address, phone number and fax number remain the same.

Filed April 22, 2024,

MONTGOMERY AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on April 22, 2024, a true and correct copy of the foregoing **NOTICE OF FIRM NAME CHANGE** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☒ U.S. Mail ☐ Email ☐ CCES

s/ Ellen H. Zuckerman

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 15, 2024 3:38 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S UNOPPOSED MOTION TO CONTINUE JURY TRIAL	

Defendant, Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby move the Court for an Order to Continue the Trial and re-set deadlines accordingly, as grounds therefore Best Buy states as follows:

Pursuant to C.R.C.P. § 121-1-15(8) Defendants counsel conferred with Pro-Se Plaintiff and this motion is **unopposed.**

This case stems from an incident that occurred on November 25, 2022 at a Best Buy Store. Plaintiff filed his complaint on November 21, 2023.

1. The Court set a Trial date for October 22, 2024 by written order on March 27, 2024.

2. The Court held a Case Management Conference on April 16, 2024.
3. At the WebEx hearing, Defendant's counsel was having issues with their audio during the hearing and was unable to inform the Court of their unavailability for the scheduled Trial date.
4. Defendant's counsel is unavailable on the currently scheduled Trial date of October 22, 2024.

WHEREFORE, Defendant Best Buy respectfully requests this Court to continue the Trial currently scheduled for October 22, 2024 to a date after January 1, 2025.

Respectfully Submitted May 15, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Glenn D. Germany*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on May 14, 2024, a true and correct copy of the **DEFENDANT BEST BUY, L.P.'S UNOPPOSED MOTION TO CONTINUE JURY TRIAL** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/Jaime L. Gress
Jaime L. Gress, Paralegal

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 15, 2024 3:38 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDERING GRANTING DEFENDANT BEST BUY, L.P.'S UNOPPOSED MOTION TO CONTINUE JURY TRIAL

THIS MATTER, having come before the Court on the Defendant, Best Buy, L.P.'s Unopposed Motion to Continue the Jury Trial currently scheduled to commence on October 22, 2024, and the Court being fully advised in the premises, hereby GRANTS said Motion.

Defendant, Best Buy will contact the Court on _____, 2024 to obtain additional Jury Trial dates.

DATED this _____ day of _____ 2024.

BY THE COURT:

_____
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED June 14, 2024 4:18 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Defendant Best Buy LPs Unopposed Motion to Continue Jury Trial

The motion/proposed order attached hereto: DENIED IN PART.

Contrary to certain representations in the motion, the trial date was set on March 27 at the original case management conference. (See Minute Order). The minute order reflects no difficulty in the communications on that date.

Thus, at the time of the April 16 conference the trial date was already set.

If counsel is seeking to change the trial date, the parties may set an in-person status conference with calendars. The trial could be held before or after the presently-scheduled trial date.

Issue Date: 6/14/2024



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S UNOPPOSED MOTION TO CONTINUE JURY TRIAL	

Attachment to Order - 2023CV226

Defendant, Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby move the Court for an Order to Continue the Trial and re-set deadlines accordingly, as grounds therefore Best Buy states as follows:

Pursuant to C.R.C.P. § 121-1-15(8) Defendants counsel conferred with Pro-Se Plaintiff and this motion is **unopposed.**

This case stems from an incident that occurred on November 25, 2022 at a Best Buy Store. Plaintiff filed his complaint on November 21, 2023.

1. The Court set a Trial date for October 22, 2024 by written order on March 27, 2024.

2. The Court held a Case Management Conference on April 16, 2024.
3. At the WebEx hearing, Defendant's counsel was having issues with their audio during the hearing and was unable to inform the Court of their unavailability for the scheduled Trial date.
4. Defendant's counsel is unavailable on the currently scheduled Trial date of October 22, 2024.

WHEREFORE, Defendant Best Buy respectfully requests this Court to continue the Trial currently scheduled for October 22, 2024 to a date after January 1, 2025.

Respectfully Submitted May 15, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Glenn D. Germany*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

Attachment to Order - 2023CV226

CERTIFICATE OF SERVICE

I hereby certify that, on May 14, 2024, a true and correct copy of the **DEFENDANT BEST BUY, L.P.'S UNOPPOSED MOTION TO CONTINUE JURY TRIAL** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/Jaime L. Gress
Jaime L. Gress, Paralegal

Attachment to Order - 2023CV226

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED June 20, 2024 11:40 AM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE OF STATUS CONFERENCE	

PLEASE TAKE NOTICE that a Status Conference has been scheduled for Thursday, August 1, 2024 at 1:00pm. The parties are to appear in person, in Division 6 of the Jefferson County District Court located at 100 Jefferson County Pkwy, Golden Colorado 80401.

Respectfully Submitted June 20, 2024.

MONTGOMERY AMATUZIO

By: *s/ Glenn D. Germany*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on June 20, 2024 a true and correct copy of the **NOTICE OF STATUS CONFERENCE** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☐ U.S. Mail ☒ Email ☒ CCES

s/ Jaime L. Gress
Jaime L. Gress, Paralegal

District Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
Plaintiff(s): WILLIAM MONTGOMERY v. Defendant(s): WAL-MART STORES, INC., JOHN DOE. 7455 W Colfax Ave Lakewood, CO 80214	2020 MAR 31 PM 12:58 DATE FILED: March 31, 2020 3:59 PM CASE NUMBER: 2020CV76 DATE FILED: July 23, 2024 5:06 PM ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 305 W Magnolia St PMB 221 Fort Collins, CO 80521 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20CV76 Division 2 Courtroom 4B

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WAL-MART STORES, INC., JOHN DOE, defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 7455 W Colfax Ave, City of Lakewood, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

On March 31, 2019, JOHN DOE (a presently unidentified employee employed by WAL-MART STORES, INC., stole three bags of ice (total purchase price of $5.17 which includes tax) from me while I attempted to leave his store after purchasing them. Immediately prior to stealing my items, he cornered me, blocked my path, and wouldn't let me leave on my way out.

The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

305 W Magnolia St PMB 221, Fort Collins, CO 80521
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED: January 19, 2021 2:55 PM CASE NUMBER: 2020CV76
William Montgomery, Plaintiff, **v.** **Wal-Mart Stores, Inc., and John Doe,** Defendants.	▲COURT USE ONLY▲ **Case Number:** 20CV76 **Division:** 2 **Courtroom:** 4B

ORDER: MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Defendant Wall Mart Stores, Inc.'s September 29, 2020 Motion for Summary Judgment. On October 19, 2020, Plaintiff William Montgomery filed *pro se* his Response. On October 22, 2019, Walmart filed its Reply. The Court dispenses with a hearing. Having considered the relevant pleadings, case file, and applicable law, the Court **ORDERS** the following.

I. BACKGROUND

This case arises from an argument over $5.17 worth of melting ice purchased at a Wal-Mart Store. On March 31, 2020, Plaintiff filed *pro se* a Complaint w/ Jury Demand. The Complaint alleges that a Wal-Mart associate "stole three bags of ice" purchased for $5.17 from Plaintiff while Plaintiff "attempted to leave [Defendant's] store." Compl. ¶ 4. The Complaint further alleges that "prior to stealing my items, [the associate] cornered me, blocked my path, and wouldn't let me leave on my way out." *Id.*

On the day of the incident Plaintiff audio recorded himself shopping in the Wal-Mart store in Lakewood, Colorado. Ex. A. According to the audio, Plaintiff took two bags of ice to a register, where he purchased the ice. Ex. A at 55:30-56:00.[1] At the register, Plaintiff also paid for a third bag of ice, which he could pick up as he exited the store. *Id.* Plaintiff left the register with his two bags of ice and two receipts. *Id.* at 56:00-57:00

While leaving the store, Plaintiff picked up his third bag of ice and headed towards the exit. *Id.* at 59:30-1:03:00. Before getting there, an associate approached him. *Id.* The associate asked to see receipts for the $5.17 worth of ice, but Plaintiff refused. *Id.* A second associate joined, and Plaintiff put down the ice as the three argued about Plaintiff's refusals to show his receipts. *Id.*[2] Soon after, the second associate took away the ice. *Id.*

[1] Citations to the audio exhibits are approximated to within 30 seconds.

[2] Plaintiff extensively disputes when and how the second associate observed Plaintiff with the bags of ice. Resp. pp.2-5, ¶¶ 8, 10.

Next, Plaintiff was asked to leave, and Plaintiff stepped outside the doors of the store while continuing the argument with a store manager. *Id.* at 1:06:00-1:07:30; Ex. B at 6:00-8:00. The manager repeatedly asked to see the receipts, and Plaintiff continually refused. *Id.* Ultimately, Plaintiff left. *Id.* Later that day, he called the Lakewood police to report the incident. Ex. B.

Now, Defendant argues that Plaintiff's Complaint makes a sole claim for civil theft. Mot. 2, 5. For this claim, Defendant asserts that there was no requisite intent to show theft of Plaintiff's ice. Mot. 6. Allegedly, the second associate did not believe Plaintiff owned the ice when it was taken. Mot. 6-8. Defendant also alleges that Plaintiff admits the associate lacked the necessary intent for theft. Reply 4-5.

Plaintiff responds that there is a second claim of false imprisonment for the associates allegedly blocking Plaintiff's exit from the store. Resp. 6.[3] As such, Plaintiff argues that Defendant lacked the "shopkeeper's privilege" to lawfully detain Plaintiff. Resp. 7-10. And Plaintiff asserts that Defendant is attempting to shift the burden and obscure the facts for what is allegedly a "classic example of theft." Resp. 10-11.

II. LEGAL STANDARD

Summary judgment is appropriate when, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." C.R.C.P. 56(c); *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). A material fact is one that will affect the outcome of the case. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party. *Martini*, 42 P.3d at 632.

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. *Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). If the moving party meets its burden, the nonmoving party must demonstrate by relevant and specific facts that a real controversy exists. *Knittle v. Miller*, 709 P.2d 32, 35 (Colo. App. 1985). The nonmoving party "must by affidavit or otherwise set forth specific facts showing there is a genuine issue for trial." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084-85 (Colo. App. 1991). Mere conclusory statements based upon unsubstantiated beliefs are insufficient to raise a genuine factual issue. *See Ellerman v. Kite*, 625 P.2d 1006, 1008 (Colo. 1981); *see also Ginter v. Palmer & Co.*, 585 P.2d 583, 585 (Colo. 1978). If the nonmoving party fails to establish a genuine issue for trial, then summary judgment may be entered in favor of the moving party if the moving party has met its ultimate burden of persuasion. *Sanderson v. Am. Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010).

[3] The Response has no page numbers. Cited pages numbers are based on Court's printed pdf. copy.

III. ANALYSIS

A. Claims for Relief

As an initial matter, the Court addresses Defendant's assertion that Plaintiff improperly raised the claim of false imprisonment for the first time in his Response. Reply 2-3.

A complaint must plead sufficient facts to state a plausible claim for relief. C.R.C.P. 8; *see Warne v. Hall*, 373 P.3d 588, 589-90 and 595 (Colo. 2016) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A properly pled complaint provides "a short and plain statement of the claim showing that the pleader is entitled to relief." C.R.C.P. 8(a)(2). Rule 8 demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Complaint must provide the defendant reasonable notice of the matter presented. *Lorenzen v. Pinnacol Assurance*, 457 P.3d 100, 111 (Colo. App. 2019). But the notice-pleading requirement is a liberal policy. *Camp Bird Colorado, Inc. v. Bd. of Cty. Comm'rs of Cty. of Ouray*, 215 P.3d 1277, 1282 (Colo. App. 2009). "[W]hile the complaint need not list all examples of defendant's misconduct, it must at least give the defendant sufficient notice of the basis of the claim so that the defendant can use the discovery rules to prevent any surprise at trial." *Lorenzen*, 457 P.3d at 111.

Here, the Complaint states that Defendant "stole three bags of ice" from Plaintiff when Plaintiff "attempted to leave [Defendant's] store." Compl. ¶ 4. From that, Defendant reasonably construed that Plaintiff's Complaint presented a claim of theft. Mot. 2; Reply 2-3. The Complaint also states that Defendant "cornered me, blocked my path, and wouldn't let me leave." Compl. ¶ 4. By comparison, it is reasonable to construe that Plaintiff's Complaint also presented a claim of false imprisonment. Plaintiff is not required to recite a formulaic title of "false imprisonment" when the statements "cornered me, blocked my path, and wouldn't let me leave" provide notice of the basis for a claim which could guide discovery. *Iqbal*, 556 U.S. at 678; *Lorenzen*, 457 P.3d at 111.

Defendant argues that Plaintiff's interrogatories[4] do not indicate a claim for false imprisonment because the *pro se* Plaintiff merely listed "Loss of Liberty" under "Categories of Damages" to suggest false imprisonment. Reply 3. However, Defendant did construe the theft claim from the similar listing of "Theft of goods" under the same "Categories of Damages." Reply 3. Defendant does not explain why notice existed for one claim but not the other when they were both presented in identical manners. Furthermore, there seems little risk of surprise at trial because Plaintiff mentions false imprisonment numerous times in his audio recordings, which were exhibits submitted and cited to by Defendant. Ex. A; Ex. B; *Lorenzen*, 457 P.3d at 111.

Therefore, the Court finds that the Complaint contains two claims of which Defendant had reasonable notice. The false imprisonment claim was thus sufficiently pled and not raised for the first time in Plaintiff's Response.

[4] The Court could not review the interrogatories because Defendant did not file them with its Motion.

Although Defendant's briefs sometimes refer to a "sole" claim, Defendant's Motion ultimately requests for the Court enter judgement in Defendant's favor, which the Court interprets as requesting the Court grant judgment on all claims. The Court will review both the claim of false imprisonment and the claim of theft for genuine issues. The Court does so in consideration that the facts for both claims substantially overlap and because Plaintiff had the opportunity to argue for the false imprisonment claim in his Response.

B. False Imprisonment

Although Plaintiff asserts that there are disputed facts, the Court finds there is no genuine issue of material fact over the claim of false imprisonment.

"[T]o confine one intentionally without lawful privilege and against one's consent within a limited area for any appreciable time, however short, constitutes the tort of false imprisonment." *Blackman for Blackman v. Rifkin*, 759 P.2d 54, 58 (Colo. App. 1988); *see Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983) (citing *Restatement (Second) of Torts* § 35 (1965)). The *Second Restatement of Torts* states that confinement includes the following:

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

Restatement (Second) of Torts § 36 (1965) (Oct. 2020 Update); *see also* Restatement (Third) of Torts: Inten. Torts to Persons § 8 TD (2018) ("An actor confines another within the meaning of § 7(b) if: (a) the actor employs physical barriers that preclude, or appear to preclude, the other from exiting the area of confinement, and the other is unaware of a readily available and safe means of exit….").

Here, Plaintiff must prove he was confined in order to prove false imprisonment. To show he was confined, he must show the confinement did not contain a reasonable means of escape known by Plaintiff. *Id.* Stipulating *arguendo* that Plaintiff was prevented from leaving, Plaintiff could have left the store if he showed the receipts according to the following undisputed facts:

- The first associate asked Plaintiff to see a receipt (Ex. A at 59:30 to 1:00:00);
- The second associate told Plaintiff he could not let Plaintiff leave *without* showing a receipt (Ex. A at 1:01:00-1:04:00);
- The second associate stated that Plaintiff is not imprisoned (Ex. A at; 1:02:30 to 1:03:00);

- Plaintiff stated that he was being prevented from leaving *unless* he showed a receipt (Ex. B at 35:00-35:30); and

- Plaintiff stated in his brief that Defendants "afforded Plaintiff every chance to go home with his merchandise" (Resp. 10).

Even if the Court makes all inferences in Plaintiff's favor—that the associates acted intentionally, that Defendant lacked shopkeepers' privilege, that the associates blocked Plaintiff's way, etc.—there is no dispute that Plaintiff could have left the store if he showed his receipts.

As such, the Court examines whether there is a dispute as to whether Plaintiff could knowingly and reasonably produce the receipts. Plaintiff argues he could not leave the store without "substantial personal difficulty" under the circumstances. Resp. 9. Whether Plaintiff *subjectively* wanted to show his receipts is not relevant to the issue of whether showing a receipt is an *objectively* reasonable action to escape imprisonment. The facts show that:

- Plaintiff received the receipts at the cash register (Ex. A at 55:00-57:00);

- Plaintiff admitted to having had the receipts (Ex. B 17:30 to 18:30);

- After the incident, Plaintiff quickly retrieved the receipts once he decided to share them with Lakewood Police (Ex. B 19:00-20:00);

- Plaintiff told the associates he purchased the ice at the nearby register, implying he had the receipts Ex. A 59:00 to 1:00:00); and

- Plaintiff told the Lakewood Police he simply does not like showing receipts (Ex. B at 2:00 to 2:30).

Plaintiff chose not to show the receipts, although he received the receipts, had the receipts during the incident, and could have easily produce them. Therefore, there is no dispute that Plaintiff knew of a reasonable means to leave the store by showing the receipts, and so, he was not completely confined.

Plaintiff has provided no evidence to demonstrate there is a dispute, as Plaintiff merely provides allegations to refute the Motion. Thus, there is no dispute of material fact that Plaintiff was not confined. As a matter of law, Plaintiff cannot prove a necessary element to show he was falsely imprisoned. C.R.C.P. 56(c)

The Court also notes *arguendo*, under the *Restatement*, Plaintiff's confinement could not result from Defendant merely preventing Plaintiff from going towards the exit. *Restatement (Second) of Torts* § 36 (1965). The Court finds there is no dispute that Plaintiff was blocked as he was leaving the store. *See* Compl. ¶ 4; Mot. 3. Plaintiff provides mere allegations that he was cornered or that Defendant did more than block his path. Compl. ¶ 4. Thus, Plaintiff fails to prove confinement as a matter of law pursuant to the third element of the *Restatement (Second) of Torts* § 36 (1965).

C. Civil Theft

The Court finds that there is no genuine issue that the second associate lacked the necessary intent to deprive Plaintiff of the ice.

Civil theft requires "that the defendant knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception and acts intentionally or knowingly in ways that deprive the other person of the property permanently." *Scott v. Scott*, 428 P.3d 626, 633 (Colo. App. 2018) (citations omitted). Civil theft requires the same specific intent to permanently deprive as criminal theft. *Id.* "It is the intent at the time of taking to permanently deprive that is the essential element of theft." *People v. Burke*, 549 P.2d 419, 421 (Colo. App. 1976).

Here, while making all inferences of disputed facts in Plaintiff's favor, there is no dispute that the associate did not intended to permanently deprive Plaintiff. At the time of the taking, the associate undisputedly thought Plaintiff did not own the ice because Plaintiff would not show his proof of purchase. This is demonstrated by the associate, in accompaniment with his college, repeatedly requesting to see Plaintiff's receipt before taking the ice. *See supra* p. 4. Furthermore, Plaintiff admits as much in his pleadings, as he states:

- "Defendants simply asked Plaintiff to see his receipt, *concluded that he stole items from them,* reclaimed what they believed was theirs, and went about their business after escorting Plaintiff out of their store" (Resp. 10) (emphasis added); and
- "Defendant's had every intention of permanently keeping what *they thought was 'their' merchandise*, so long as Plaintiff continued to not give into their demands" (Resp. 10) (emphasis added).

Therefore, it is undisputed that the second associate did not intend to permanently deprive Plaintiff of the ice.

Even when making all inferences over the disputed facts in Plaintiff's favor, the exhibits show the associate took the ice after Plaintiff refused to show the receipts and upon the belief that Plaintiff had not purchased them. Plaintiff fails to raise a genuine issue because he responds with mere allegations and conclusory statements, and these statements support, rather than deny, that the associate assumed Plaintiff stole the ice. *Ellerman v. Kite*, 625 P.2d 1006, 1008 (Colo. 1981).

Therefore, there is no dispute of material fact that the second associate lacked the specific intent to permanently deprive Plaintiff at the time of taking. As a matter of law, Plaintiff cannot prove a necessary element to support his claim for theft. C.R.C.P. 56(c)

IV. CONCLUSION

For these reasons, the Court rules there are no genuine issues of material fact to Plaintiff's claim of false imprisonment and claim of theft. Therefore, the Court **GRANTS** Defendant's Motion for Summary Judgment. Judgement is entered for the Defendant Wal-Mart Stores, Inc.

The Court awards Defendant its costs in defending this action.

SO ORDERED in Golden, Colorado on January 19, 2021.

BY THE COURT:



Jason D. Carrithers
District Court Judge

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., XAVION CAWINS, FELIX DOE, SHANE DOE, JOSEPH DOE, NEIL DOE.** 200 W 136TH AVE WESTMINSTER, CO 80234	FILED IN ADAMS COUNTY CONFIRMED 5:06 PM SEP 03 2020 ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20CV067 Division Courtroom

DATE FILED: July 23, 2024 5:06 PM
DATE FILED: September 3, 2020
CASE NUMBER: 2020CV067

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., XAVION CAWINS, FELIX DOE, SHANE DOE, JOSEPH DOE, NEIL DOE., defendant(s), is (are) resident(s) of Adams County, with a post office address of 200 W 136th Ave, City of Westminster, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 6, 2019**, while attempting to leave a Walmart after shopping, **XAVION**, **FELIX**, **SHANE**, **JOSEPH**, and **NEIL** – all employees of **WALMART INC.** – detained me, assaulted me, took my items from me, slandered me in front of others, and reported to the police that I had stolen from them. Once the police arrived, I was further detained, searched, and arrested by them for shoplifting. However I was 100% innocent.

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/09/03
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit B

District Court, Adams County, Colorado 1100 Judicial Center Drive Brighton, Colorado 80601	DATE FILED: August 19, 2022 4:38 PM CASE NUMBER: 2020CV67
Plaintiff: William Montgomery v Defendant: Walmart Inc.	**COURT USE ONLY** Case Number: 2020CV67 Division: W

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on competing motions for summary judgment. Defendant filed its Motion for Summary Judgment on May 2, 2022. Plaintiff filed his Response on May 23. Defendant filed its Reply and Notice of Supplemental Authority on May 31. Also on May 23, Plaintiff filed his own Cross Motion for Summary Judgment. Defendant filed its Response on June 13 and Plaintiff filed his Reply on July 5.

Having reviewed the briefs, relevant portions of the case file, and the applicable legal authority, the Court finds and orders as follows.

I. BACKGROUND

This dispute arises from an incident at a Walmart store located at 200 W 136th Ave. in Westminster, Colorado. On the evening of September 6, 2019, Plaintiff entered the store and purchased some items.[1] He declined to have the items bagged, so they were loose in the shopping cart he was using. Upon exiting, he was stopped by one or more Walmart employees/associates who requested to see his receipt. Plaintiff refused multiple requests. Several associates stated they were concerned he was shoplifting. Plaintiff was advised that he could leave if he gave the products back or showed his receipt. When Plaintiff refused to produce a receipt or leave the items, a Walmart Asset Protection associate called the

[1] Plaintiff had entered the store wearing a recording device in anticipation of a dispute regarding the request for a receipt. The record reflects his actions on September 6, 2019 are consistent with a pattern of similar conduct at Walmart stores throughout the metro area, which result in Plaintiff filing similar lawsuits.

Westminster Police Department. Once the officers arrived, they detained the Plaintiff. Upon completion of their investigation, Plaintiff was released without charges.

Plaintiff filed the Complaint on September 3, 2020, alleging that the Walmart employees wrongfully detained or falsely imprisoned him, assaulted him, and slandered him. Defendant's Motion seeks dismissal of Plaintiff's claims on grounds there are no material facts to support a finding that Plaintiff's freedom of movement was ever restricted, that there was an act of assault, that he suffered any harm to his reputation, or that he suffered actual or special damages. Defendant further contends its actions are protected under the shopkeeper's privilege. Plaintiff asserts that he paid for the items and should be allowed to leave the store without showing a receipt, and contends that the fact he had a receipt is irrelevant. He contends evidence that Defendant's associates blocked his path creates a dispute of fact preventing entry of summary judgment on false imprisonment. He also contends disputes of fact preclude summary judgment on assault and defamation claims. Plaintiff further states Defendant had no reasonable grounds upon which to rely on the shopkeeper's privilege.

Plaintiff's Cross-Motion includes an extensive list of purported undisputed facts, and requests judgment in his favor on all claims. Defendant denies many of the facts as set forth by Plaintiff, and continues to assert that the undisputed material facts support their own Motion (including that Plaintiff was asked to show a receipt upon exiting the store and refused to do so set into motion his temporary detention, questioning, and release).

II. LEGAL AUTHORITY

A. Summary Judgment

The purpose of summary judgment is "to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). "Summary judgment is appropriate when the pleadings and supporting documents clearly demonstrate that no issues of material fact exist…." *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). "A material fact is one that will affect the outcome of the case." *Western*

Innovations, Inc. v. Sonitrol, Corp., 187 P.3d 1155, 1158 (Colo. Ct. App. 2008). "[A] genuine issue of material fact cannot be raised simply by allegations of pleadings or argument of counsel." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084 (Colo. Ct. App. 1991). "In addition to concerning a material fact, the issue in dispute must be 'genuine.' To avoid summary judgment, the evidence presented in opposition to such a motion must therefore be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party." *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007).

"The moving party bears the initial responsibility of informing the court of the basis for the motion and identifying those portions of the record and of the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." *Quist v. Specialties Supply Co., Inc.*, 12 P.3d 863, 868 (Colo. Ct. App. 2000). "[O]nce this initial burden of production is met, the burden shifts to the opposing party to demonstrate that there exists a triable issue of fact." *City of Aurora v. ACJ Partnership*, 209 P.3d 1076, 1082 (Colo. 2009). "The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party." *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

Summary judgment has been described as a "drastic remedy" to be granted only "when it is clear that the applicable legal standards have been met." *People ex rel. Reign v. Meagher*, 465 P.3d 554, 559 (Colo. 2020).

Affidavits in support of a summary judgment motion "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." C.R.C.P. 56(e). The supporting affidavit must contain evidentiary material that would be admissible as part of the affiant's testimony if the affiant was in court and testifying on the witness stand. *USA Leasing, Inc., L.L.C. v. Montelongo*, 25 P.3d 1277, 1278 (Colo. App. 2001).

B. False Imprisonment/False Arrest

To prove false imprisonment or false arrest, a plaintiff must prove by a preponderance of the evidence the following elements:

1. The defendant intended to restrict the plaintiff's freedom of movement;

2. The defendant, directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short; and

3. The plaintiff was aware their freedom of movement was restricted

See CJI-Civ. 21:1; *See also* Restatement (Second) of Torts § 35 (1965).

"Restriction of freedom of movement" is when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." *See* CJI-Civ. 21:2; *See also* Restatement (Second) of Torts § 36 (1965).

"[I]mprisonment is … a total restraint of the liberty of the person, for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him." Restatement (Third) of Torts: Inten. Torts to Persons § 7 TD (2018); A classic statement of the principles underlying false imprisonment is contained in *Bird v. Jones*, 7 Q.B. 742; 115 Eng. Rep. 668 (1845) (Patteson, J).

In a prima facie case for false imprisonment, a plaintiff need not prove unlawful detention, improper motivation, or unjustified actions on the part of defendant, as the issues of legal justification are substantive matters of concern only once an affirmative defense is raised by defendant. *Martensen v. Koch*, 301 F.R.D. 562, 571 (D. Colo. 2014).

C. Defamation/Slander

The elements of defamation are: (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* CJI-Civ. 21:2.

A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." CJI-Civ. 22:8; *See Burns v. McGraw Hill Broadcasting*, 659 P.2d 1351, 1357 (Colo. 1983.)

The plaintiff must prove that the statement in not only false but also material. To be material, "the alleged misstatement must be likely to cause reasonable people to think 'significantly less favorably' about the plaintiff than they would if they knew the truth; a

misstatement is not actionable if the comparative harm to the plaintiff's reputation is real but only modest." *Bustos v. A & E Television Networks*, 646 F.3d 762, 765 (10th Cir. 2011); *See also* CJI-Civ. 22:13.

A defamation *per se* claim requires a plaintiff to prove: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication. *See Lawson v. Stow*, 327 P.3d 340, 345 (Colo. App. 2014); *Yeiser v. DG Retail, LLC*, 18-CV-0320-WJM-STV, 2021 WL 1439853, at *7 (D. Colo. Apr. 16, 2021). A private individual's statements to law enforcement regarding "possible criminal conduct" are subject to a qualified privilege because such statements are matters of public concern. *See id.*; *see also Lawson*, 327 P.3d at 346.

D. Assault

To recover on a claim for assault, a plaintiff must prove: (1) the defendant intended to cause an offensive or harmful physical contact with the plaintiff or intended to place the plaintiff in apprehension of such contact; (2) the defendant placed the plaintiff in apprehension of immediate physical contact; and (3) that contact was or appeared to be harmful or offensive. *See* CJI-Civ. 20:1.

E. Shopkeeper's Privilege

The shopkeeper's privilege under C.R.S. § 18-4-407 permits merchants or their employees to detain and question suspected shoplifters under certain circumstances, and protects them from civil liability for false imprisonment, slander, false arrest, and related civil claims. However, the privilege only applies when the merchant acts in good faith and upon probable cause based upon reasonable grounds to believe the person was shoplifting, and detains them in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. *See J.S. Dillon & Sons Store Co. v. Carrington* 455 P.2d 201, 246 (Colo. 1969) (referencing former statute C.R.S. § 40-5-28). *See also* CJI-Civ. 21:7. A person has reasonable grounds to believe a person is shoplifting, or has probable cause to believe a person is shoplifting, if a reasonable person under the same or similar circumstances would

believe this fact exists. "Probable cause" and "reasonable grounds" are equivalent terms. *See People v. Villard*, 670 P.2d 593, 598 (Colo. 1984); *See also* CJI-Civ. 21:13.

III. ANALYSIS

A. Shopkeeper's Privilege

The undisputed facts demonstrate that Defendant had reasonable grounds to believe Plaintiff had wrongfully taken or failed to purchase the items in his shopping cart as he began to exit the store. Indeed, Defendant intentionally designed his conduct to inspire such a belief on the part of Defendant's employees.[2]

There is no evidence Defendant's employees acted in bad faith. Nor is there any evidence that, after stopping Plaintiff, Defendant's employees were not engaged in ascertaining whether he had committed an act of theft.

Under the circumstances presented by Plaintiff, a reasonable person would believe he was or may have been shoplifting. Defendant had probable cause and reasonable grounds to stop him and inquire, within the meaning of C.R.S. § 18-4-407. Defendant is entitled to the immunity or other protections afforded by the shopkeeper's privilege. The statute precludes Defendant's civil liability for all of Plaintiff's claims except for the assault claim.

B. Individual Claims

Even if the shopkeeper's privilege did not apply to create immunity for Defendant's conduct, defeating Plaintiff's false imprisonment and defamation claims, the undisputed facts demonstrate that Plaintiff cannot meet the mandatory elements for any of his claims.

[2] His strategy was to induce Defendant's employees to request a receipt. Including the absence of bags for the items, the placement of the items in the cart, and the decision to purchase the items at a cash register at the rear of the store then bypass cash registers at the front of the store with his unbagged items. None of his behaviors are improper, but together they were plainly designed to create the impression that he had not purchased the items, and to give Defendant's employees a reason to confront him about them or to ask for a receipt. Even if Defendant could credibly claim his actions were not deliberately designed to create such an impression, the circumstances were such that the employees' request for a receipt was not unreasonable. Additionally, Plaintiff's brother had called law enforcement during the investigation and reported that Plaintiff had not "finished" paying for the items when he tried to leave the store, and wanted to go pay for his items.

1. False Imprisonment

Plaintiff argues this lawsuit as a matter of principle; he believes he should be able to shop without being stopped on the way out to show a receipt. Colorado law does not include an absolute right to shop free from any inconveniences. Private parties, including merchants, have the right to protect their property in a reasonable manner. Theft of merchandise is a significant problem today, the cost of which gets passed on to the consumers. To curtail theft, most consumers are not bothered by the inconvenience of being asked to stop and provide their receipt.

Defendant relies on the definition of "restriction of movement" as set forth in CJI 21:2 to solidify its argument that there was no false imprisonment to begin with. Defendant argues all Plaintiff had to do was to show his receipt to go on his way. He held the means to escape, and chose not to use it. (Defendant also contends that, in any event, its actions are protected by the shopkeeper's privilege.)

Plaintiff stands by his assertion that "**it is his absolute, unequivocal, 100% OBJECTIVE right to not show [the receipt], to anybody, PERIOD**." Plaintiff's Response, at p. 15 (emphasis original). Plaintiff relies, in part, on the comment section in Restatement (Second) of Torts § 36, from which CJI 21:2 is formulated. However, the Restatement comment provides the following example:

> On the other hand, it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience….
>
> **Illustrations**:
>
> 1. A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B.

Restatement (Second) of Torts § 36, cmt. a.

Plaintiff gets caught up on the clause 'intends to imprison' and argues this only applies if there is an exit provided before any blockage. However, the example above

demonstrates his theory is not supported. If there is an exit within the party's control, even if inconvenient and even if some exit options are blocked, the party is not confined.

Plaintiff also refers to a 1923 case from Massachusetts (*Jacques v. Childs Dining Hall Co.*, 138 N.E. 843 (Mass. 1923)),[3] in which the court addressed whether the "situation was in the control of the defendant." *Jacques*, 138 N.E. at 844-45. While the case is aged and the statutes and case law between the states differ, the basic principles regarding false imprisonment are related. The restaurant in *Jacques* held the key to "escape." The customer was held for 25-30 minutes while the restaurant investigated whether she paid the proper bill. *Id*. at 844. The customer had no way of proving she had. *See id*. She did not hold a receipt that would have allowed her to leave, nor did she have the option of returning her items, as Plaintiff did in this case. Another Massachusetts case decided shortly after *Jacques*, *Sweeney v. F.W. Woolworth Co.*, 142 N.E. 50 (Mass. 1924), found no false imprisonment of a juvenile, suspected of shoplifting, who had to empty his pockets before being permitted to leave the store. *Sweeney*, 142 N.E. at 51.

Plaintiff references another Massachusetts case, this time a federal case, in *Ball v. Wall-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000), in which the court denied summary judgment. There, an exiting shopper was stopped to have her bags searched and to compare her receipt to the items she had. *Ball*, 102 F. Supp. 2d at 57. The employee stood in front of her and blocked her cart, with customers behind her, and began to inspect her bags. *Id*. The court found there was a genuine issue of material fact as to whether the shopper was under a reasonable apprehension that she could not leave without interference if and when she decided to. *Id*. Again, here, the undisputed facts demonstrate Plaintiff was given options to depart without interference. Moreover, *Jacques*, *Sweeney*, and *Hall* were decided under Massachusetts law as it existed at the time of each case; none applied the same definition of "restriction of movement" that Colorado courts have adopted.

In addition, Plaintiff makes arguments regarding constitutional rights against search and seizure, and to be secure in papers and effects. Defendant is a private company with a

[3] *See* Plaintiff's Response at p. 13, or Cross Motion at p. 12. Much of the Cross Motion and Plaintiff' Response to Defendant's Motion is redundant.

right to protect its property in a reasonable manner, while the Fourth Amendment applies to government actors.

Cases as far back as 1845, including the *Bird* case refenced above, refer to situations where there is "partial obstruction of a person's will" imposing an "inconvenience." The central concern is who is in control of the situation. As demonstrated in the case law, false imprisonment arises from more than mere loss of power or total freedom; it requires restraint and detention. False imprisonment is not met by the loss of freedom to go on in whatever way a person wishes. In *Bird*, for example, a man was prevented from going in a certain direction when he tried to get closer to see a boat race. He could stay put or turn around, but could not go on as he pleased in the direction he wanted. This was a mere inconvenience but not false imprisonment.

Colorado law favors the interpretation that false imprisonment is closer to total restraint than a partial obstruction of a person's unilateral will. It recognizes that the world has many inconveniences, and that none of us enjoys the complete freedom to move about without interruption or interference.

It is undisputed that Plaintiff held a receipt throughout the interaction with Defendant's employees. He anticipated it would be requested, and the undisputed facts demonstrate he took steps to ensure it would be requested.[4] He knew all he had to do was show it and he could leave. Showing the receipt would slightly delay and inconvenience him, but less so than refusing to show it. He was not forcefully detained, or completely restrained against his will. He had control over the means to his release. He controlled the situation and set into motion the employees stopping him, calling the manager over, calling the police, and the police investigating the situation. Therefore, the Court finds there are no disputed material facts that could support a finding of false imprisonment.

Plaintiff sought to add allegations in support of his claim of false arrest in his Cross Motion. The Court notes that Plaintiff was handcuffed and questioned by police outside of the store and outside of the control of Defendant. The police indicated they handcuffed him

[4] *See* note 2, above.

for safety to make sure no weapons were present. They questioned him, located the receipt, and released him. For many of the same reasons stated above, the Court does not find material facts to support a claim of false arrest against Defendant, particularly based on the conduct of law enforcement outside of Defendant's store and not controlled by Defendant.

2. Defamation

Plaintiff has provided no credible evidence of any harm to his reputation in the estimation of a substantial and respectable minority of the community. Defendant asserts Plaintiff must prove not only damage to his reputation, but also actual and special damages, and that he has failed to present any material facts to support these elements. In tacit admission of the absence of any evidence of damages for the defamation claim, Plaintiff asserts he need not prove special damages because he alleges a claim of defamation per se, based on accusations he was shoplifting.

Plaintiff was stopped on the way out of the store and was asked to produce a receipt. Plaintiff's actions led Defendant's employees to suspect he was shoplifting.[5] There is evidence that at least one customer assumed he was shoplifting, and offered to pay for the items. But this was due to Plaintiff's own actions and statements claiming the items were his, while at the same time refusing to produce a receipt, rather than by any statement by Defendant's employees. Further, the evidence reflects that Defendant's employees' statements were made under a reasonable belief that Plaintiff was shoplifting, and for the purpose of determining and reporting suspected criminal activity under the qualified immunity afforded by the Shopkeeper's Privilege.

There is no genuine dispute of material facts that would support the mandatory element of damages for Plaintiff's defamation claim. Plaintiff also has not demonstrated that there was an accusation of theft by Defendants' employees that was untrue, overheard, and understood by a third person such as to support a claim of defamation *per se*. And under either a defamation or defamation *per se* claim, Plaintiff lacks evidence sufficient to

[5] *See* note 2, above.

support the required element of harm to his reputation in the estimation of the community, as required for either claim.

3. Assault

It is undisputed that there was incidental physical contact between the Walmart employees and Plaintiff during this incident. At most, Plaintiff describes it as "abrupt and unwanted physical contact" as the employees "rushed him" to regain control over the store items. Plaintiff has neither submitted nor even alleged evidence supporting that the employees intended any harmful or offensive contact or put him in fear of it. There is no genuine dispute of material fact that would support the mandatory element of intent on the part of Defendant to support Plaintiff's assault claim.

IV. ORDER

For the foregoing reasons, Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Cross-Motion for Summary Judgment is DENIED.

Plaintiff's claims in this action are DISMISSED.

Judgment is entered in favor of Defendant and against Plaintiff. subject to additional determinations regarding costs, if any, pursuant to C.R.C.P. 54(d). Within 14 days of this Order, counsel for Defendant shall submit: (1) a bill of costs and supporting material; or (2) a proposed form of order for Final Judgment. If Defendant seeks to recover costs, an order for final judgment will be issued after costs are determined. Submission of any proposed order shall be consistent with the practice standards of C.R.C.P. 121, § 1-16.

SO ORDERED August 19, 2022.

BY THE COURT:



Kyle Seedorf
District Court Judge

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed SEP 03 2020 DATE FILED CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO DATE FILED: September 3, 2020 12:51 PM CASE NUMBER: 2020CV148
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., DJ DOE, CHRISTIAN DOE, JOHN DOE.** 601 ENGLEWOOD PKWY ENGLEWOOD, CO 80110	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20 CV 148 Division 21 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., DJ DOE, CHRISTIAN DOE, JOHN DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 601 Englewood Pkwy, City of Englewood, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On September 3, 2019, DJ DOE, CHRISTIAN DOE, AND JOHN DOE (two employees -- DJ and CHRISTIAN -- whose last names are unknown, and a third employee -- JOHN DOE -- whose entire name is unknown), all employees of WALMART INC., didn't let me leave, on my way out of their store, after I refused to show them my receipt. Claim: **FALSE IMPRISONMENT.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/09/03
Signature of Plaintiff(s)

_____
Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit C

DISTRICT COURT, ARAPAHOE COUNTY,COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	DATE FILED: February 25, 2022 2:10 PM CASE NUMBER: 2020CV148
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
	Case Number: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

THE COURT, being duly advised in these premises after consideration of Defendant's Motion for Summary Judgment (the Motion), the response (containing a cross motion for summary judgment) and replies thereto hereby finds and orders as follows:

1. Statement of Case:

a. William Montgomery ("Montgomery") pro se - filed a series of complaints against Walmart Inc. and its employees (Walmart) alleging as follows:

(1) First Claim for Relief 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

(2) Second Claim for Relief 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

(3) Fourth Claim for Relief 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was arrested for threatening Cordero Duarte, making claims of malicious prosecution.

(4) Fifth Claim for Relief 2021CV217: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

(5) Sixth Claim for Relief 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

b. The Court notes that:

(1) An order denying Walmart's Motion to Dismiss concerning the Fourth Claim for Relief has already been issued. See, Order Re: Defendant's Motion to Dismiss with Prejudice (Fourth Claim for Relief (2020CV217).

(2) An order granting Walmart's Motion to Dismiss Montgomery's Third Claim for relief 2020CV209 has already been issued. See, Order Granting Motion to Dismiss Third Claim for Relief (2020CV209).

c. The Motion, pursuant to C.R.C.P. Rule 56, states:

(1) Montgomery's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim. The Court notes that this request is based on the standards set forth by C.R.C.P. Rule 12(b)(5).

(2) Montgomery's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

(3) Montgomery's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Montgomery has not disclosed any evidence that his freedom of movement was restricted.

(4) Montgomery's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his reputation was not harmed in the estimation of at least a substantial and respectable minority of the community.

d. In response, Montgomery attaches four affidavits, in turn referring to audio recordings he preserved of his interactions at the Walmart stores he visited, and body camera video taken by the Aurora Police during their interactions at those Walmart stores, in support of his remaining claims. He also makes a cross motion for summary judgment for his false imprisonment, defamation, and slander claims (the "Cross Motion").

e. In response to the Cross Motion, Walmart argues that Montgomery failed to comply with C.R.C.P. 16.1(k)(3) and pursuant to C.R.C.P. 16.1(k)(7) and C.R.C.P. 37(c) Montgomery's affidavits and other evidence submitted in support of his position is inadmissible. Further, Walmart attaches Cordero Duarte's affidavit concerning the October 22, 2018 incident in support of their argument that he had probable cause to believe that Montgomery was threatening him.

2. The Court finds that pro se litigants are bound by the same rules of civil procedure as attorneys licensed to practice law in this state (*Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); see also *Loomis v. Seely*, 677 P.2d 400 (Colo.App.1983); *People v. Romero*, 694 P.2d 1256 (Colo.1985)) and while judge may not become a surrogate attorney for a pro se litigant (*Loomis v. Seely*, supra) the Court has an ethical obligation "to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard." (Code of Judicial Conduct, Rule 2.2, Comment [4]). As a reasonable accommodation to the pro se plaintiff the Court:

a. Accepts Montgomery's cross motion for summary judgment despite it being contained within a response in violation of C.R.C.P. Rule 121, 1-15 (1)(d); and,

b. Accepts Montgomery's exhibits and affidavits, as fulfilling the disclosures required by C.R.C.P. Rule 16.1(k) but pursuant to C.R.C.P. 16.1(k)(7) and C.R.C.P. 37(c) these disclosures constitute the entirety of evidence Montgomery could present at trial.

3. The Court further finds, based on admissions, or failure to support denial with reference to factual allegations, that the following alleged facts are undisputed, material, and admissible, reflecting by reference below the paragraph numbers relied on by the parties:

¶3. A year after the incident, Montgomery filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. See (First Compl. at ⁋ 4).

¶6. Montgomery filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution (Defendant's Motion, Undisputed Facts, ¶ 6).

¶8. On October 22, 2018, Walmart employees called the Aurora Police Department on Montgomery for an apparent shoplifting incident at the store. (Defendant's Motion, Undisputed Facts, ¶ 8); (Defendant's Motion, Ex. A, p. 6).

¶10. Officer Baker documented Montgomery's admission that he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. (Plaintiff's Motion, Exhibit 4.1, at 8:30). Montgomery went on and stated that the business and the person (loss prevention) did not have "shopkeepers privilege" to stop him. (Defendant's Motion, Undisputed Facts, ¶ 10); (Defendant's Motion, Ex. A, p. 6).

¶11. Montgomery told Officer Baker that "he came to the store and planned on suing." (Plaintiff's Motion, Exhibit 4.1, at 9:36); (Defendant's Motion, Undisputed Facts, ¶ 10); (Defendant's Motion, Ex. A, p. 6).

¶12. Officer Baker also documented Montgomery's statement that he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts. (Defendant's Motion, Undisputed Facts, ¶ 12); (Defendant's Motion, Ex. A, p. 9).

¶13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now." (Plaintiff's Motion, Exhibit 4.1, at 9:36); (Defendant's Motion, Undisputed Facts, ¶ 13); (Defendant's Motion, Ex. A, pp. 6-7).

¶17. Montgomery filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. See (Fourth Compl. at ⁋ 4).

¶19. A year later, Montgomery filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. See (Fifth Compl. at ¶ 4).

¶22. A year later, Montgomery filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. See (Sixth Compl. at ¶ 4).

¶23. In all of Montgomery's claims, Montgomery entered a Walmart Superstore. On or about September 3, 2019, at approximately 6:38pm, Montgomery entered a Walmart Superstore located at 601 Englewood Pkwy, Englewood, CO, 80110. See (Plaintiff's Affidavit #1, ¶ 1). In Plaintiff's Claims #2 and #4, on or about October 22, 2018, at approximately 8:12pm, Montgomery entered a Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231. See (Plaintiff's Affidavit #2 & #4, ¶ 2). In Plaintiff's Claim #5, on or about January 4, 2020, at approximately 1:44pm, Montgomery entered a Walmart Superstore located at 10900 E Briarwood Ave, Centennial, CO, 80012. See (Plaintiff's Affidavit #5, ¶ 2). In Plaintiff's Claim #6, on or about September 20, 2020, at approximately 4:02pm, Montgomery entered a Walmart Superstore located at 14000 E Exposition Ave, Aurora, CO, 80012. See (Plaintiff's Affidavit #6, ¶ 2).

¶24. Just before entering all Walmart Superstores in all of Montgomery's claims, Montgomery started audio recordings on his cellular phone, later saving and labeling each based on the date, time, and location that each was recorded on/at. See (Plaintiff's Motion, Exhibits 1, 3, 8, and 13). Montgomery entered each WALMART SUPERSTORE with the intent to "secret shop" the Walmart employees and prove that Walmart employees "profile people as guilty until proven innocent." See (Plaintiff's Motion, Exhibits 1, at 13:32).

¶26. Once inside all Walmart Superstores in all of Montgomery's claims, Montgomery traveled throughout each store's various departments, where he selected items for purchase directly off their shelves. See (Plaintiff's Affidavit #1, ¶¶ 5, 7, and 10); (Plaintiff's Affidavit #2 & #4, ¶¶ 5, 7, 10, 13, 16, and 19); (Plaintiff's Affidavit #5, ¶¶ 6, 8, and 11); (Plaintiff's Affidavit #6, ¶¶ 5, 7, and 10); (Plaintiff's Motion, Exhibits 1, 3, 8, and 13).

¶29. Inside all Walmart Superstores in all of Montgomery's claims, Montgomery either had a store employee ring up his items for him, or he rang them up himself at a self-checkout register. He then paid for all the items he shopped for at all the stores he visited. See (Plaintiff's Affidavit #1,¶ 10); (Plaintiff's Affidavit #2 & #4, ¶¶ 13, 19); (Plaintiff's Affidavit #5, ¶ 11); (Plaintiff's Affidavit #6, ¶ 10); (Plaintiff's Motion, Exhibit 1 at 2:38, Exhibit 3 at 33:16, 41:34, Exhibit 8 at 10:53, and Exhibit 13 at 13:21).

¶31. While on his way out of all Walmart Superstores in all of Montgomery's claims, Montgomery was asked to show his receipt by store employees who had either been "posted up" at their exits, or who had otherwise appeared shortly thereafter from right around the corner, and whom Montgomery had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. See (Plaintiff's Affidavit #1, ¶¶ 14, 15); (Plaintiff's Affidavit #2 & #4, ¶¶ 24-26); (Plaintiff's Affidavit #5, ¶¶ 15, 16); (Plaintiff's Affidavit #6, ¶ 14); (Plaintiff's Motion, Exhibit 1 at 4:43, Exhibit 3 at 45:39, Exhibit 8 at 19:44, and Exhibit 13 at 17:33).

¶33. When asked by all store employees or security guards at all Walmart Superstores in all of Montgomery's claims, Montgomery declined to show his receipt, but in response had his path blocked by store employees. See (Plaintiff's Affidavit #1, ¶¶ 16-20); (Plaintiff's Affidavit #2 & #4, ¶¶ 26-28); (Plaintiff's Affidavit #5, ¶¶ 17-20); (Plaintiff's Affidavit #6, ¶¶ 15-19); (Plaintiff's Motion, Exhibits 1, 3, 8, and 13).

¶34. In Plaintiffs Claims #6, store employees at both stores slandered Montgomery, by making statements like "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have." See (Plaintiff's Affidavit #6, ¶ 21); (Plaintiff's Motion, Exhibits #13).

¶35. Eventually, Montgomery then left each respective store, without further issue. See (Plaintiff's Affidavit #1, ¶¶ 22-27); (Plaintiff's Affidavit #6, ¶¶ 20-24); (Plaintiff's Motion, Exhibits 1 and 13).

¶36. In Plaintiffs Claim #2, at the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, Montgomery was physically moved into the store's loss prevention office by Alberto Carlos Cordero-Duarte. Montgomery argued with Cordero-Duarte until he was told to leave. See (Plaintiff's Affidavit #2 & #4, ¶¶ 29-35); (Plaintiff's Motion, Exhibit 3).

¶37. A fellow store employee who had witnessed the event called the Aurora Police Department to report a physical disturbance. See (Plaintiff's Motion, Exhibit 6, p. 6).

¶39. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, Officer Kaycie Sawyer and Officer Scott Baker. Officer Baker directed Montgomery to provide his ID, which he did without issue, while Officer Sawyer went inside the store to speak with CORDERO-DUARTE. See (Plaintiff's Affidavit #2 & #4, ¶¶ 42, 43); (Plaintiff's Motion, Exhibits 4, 5, and 6).

¶40. Once inside the store's loss prevention office, Cordero-Duarte told Officer Sawyer that he "was on the floor walking, [and] saw [Montgomery] pick the merchandise out of the shelf, and, he walked out." See (Plaintiff's Motion, Exhibit 4.1 at 2:07).

¶41. Officer Sawyer eventually asked Cordero-Duarte if he would like to charge Montgomery with shoplifting, which he said he did. See (Plaintiff's Motion, Exhibit 4.1 at 2:38). Officer Sawyer then radioed Officer Baker of Cordero-Duarte's intention to charge Montgomery with shoplifting. See (Plaintiff's Motion, Exhibit 4.1 at 3:27).

¶42. OFFICER SAWYER went back outside to where Officer Baker and Montgomery had been standing, directed Montgomery to take off his backpack, and arrested Montgomery, using handcuffs, for what she told him was "theft." See (Plaintiff's Affidavit #2 & #4, ¶ 44); (Plaintiff's Motion, Exhibit 4.1 at 6:59-8:25).

¶43. Once Officer Sawyer finished handcuffing Montgomery, Montgomery informed the officer that he had receipts for all of his recently purchased merchandise, that they were located in his jacket pocket and cell phone case, and that the store employees she spoke with had lied to her in addition to her not appropriately viewing the store's video footage for herself. Officer Sawyer then obtained both of Montgomery's receipts, went back into the store to speak with Cordero-Duarte again, and left Montgomery in handcuffs outside next to Officer Baker. See (Plaintiff's Affidavit #2 & #4, ¶ 45); (Plaintiff's Motion, Exhibit 4.1).

¶44. Once back inside the store's loss prevention office, Cordero-Duarte confessed to Officer Sawyer that he had only been posted up at the store's exit, "in the corner, [where] somebody was talking to [him]," when he first saw Montgomery leaving and had initially decided to confront him. See (Plaintiff's Motion, Exhibit 4.1 at 11:17).

¶45. Eventually, Officer Sawyer came back outside, and was immediately asked by Officer Baker if the store wanted Montgomery "trespassed." She then went back into the store to speak with Cordero-Duarte again, who said he did want Montgomery "trespassed." See (Plaintiff's Affidavit #2 & #4, ¶ 46); (Plaintiff's Motion, Exhibit 4.1).

¶46. After a minute or two, Officer Sawyer came back outside, and removed her handcuffs from Montgomery. Montgomery was then told by both officers that he was "free to go," and that if he wanted to stay until his "trespass notice" was issued, that he could freely do so, which he did. Officer Sawyer then went back inside to obtain from CORDERO-DUARTE Montgomery's "trespass notice." See (Plaintiff's Affidavit #2 & #4, ¶ 47); (Plaintiff's Motion, Exhibit #4.1).

¶47. Once back inside the store's loss prevention office, Cordero-Duarte told Officer Sawyer that he "was on the floor, [he] was walking the floor when [he] saw [Plaintiff] taking the merchandise." See (Plaintiff's Motion, Exhibit 4.2 at 4:44).

¶48. Later that evening, after arresting Montgomery on another charge, Officer Sawyer wrote in her police report that, upon being dispatched to the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, she spoke with Cordero-Duarte, who told her that he "observed what appeared to be Montgomery, William 07071985 (CODL) conceal various merchandise including; oil stabilizer, antifreeze, a gallon of water, and juice." She further wrote that Cordero-Duarte "watched Montgomery select these numerous items and place them in his backpack and walk past all points of sale." See (Plaintiff's Motion, Exhibit 6, p. 6).

¶49. In Plaintiffs Claim #4, at the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, after Cordero-Duarte physically moved Montgomery into the store's loss prevention office, he physically let go of him, told him to have a seat, and continued to stand in his way while Montgomery continued to try to leave. See (Plaintiff's Affidavit #2 & #4, ¶ 33); (Plaintiff's Motion, Exhibit 3 at 48:04).

¶50. For the next few minutes, Montgomery told Cordero-Duarte to let him go, that he was committing crimes, and that he would be fired from his job for doing so. Cordero-Duarte responded by continuing to tell Montgomery to drop his merchandise or show his receipt. See (Plaintiff's Affidavit #2 & #4, ¶ 34); (Plaintiff's Motion, Exhibit 3 at 48:04-50:44).

¶51. Eventually, Cordero-Duarte stopped arguing with Montgomery, and told him that he could leave the store. The exact words Cordero-Duarte said to Montgomery were, "Do you want to walk out with the merchandise? Okay, go ahead, go ahead." See (Plaintiff's Affidavit #2 & #4, ¶ 35); (Plaintiff's Motion, Exhibit 3 at 50:45).

¶52. After Cordero-Duarte told Montgomery that he could leave the store, Montgomery told him that he had a medical problem, and that he needed to spit into a nearby trashcan. The exact words Montgomery said to CORDERO-DUARTE were, "I have a medical problem." Montgomery then turned to his left and spat into a nearby trashcan. See (Plaintiff's Affidavit #2 & #4, ¶ 36); (Plaintiff's Motion, Exhibit 3 at 50:49).

¶56. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, Officer Kaycie Sawyer and Officer Scott Baker. Officer Baker directed Montgomery to provide his ID, which he did without issue, while Officer Sawyer went inside the store to speak with Cordero-Duarte. See (Plaintiff's Affidavit #2 & #4, ¶¶ 42, 43); (Plaintiff's Motion, Exhibits 4, 5, and 6).

¶58. After speaking with Cordero-Duarte regarding Montgomery spitting, Officer Sawyer spoke with him regarding Montgomery shoplifting. She then came back outside and arrested Montgomery for "theft." In response, Montgomery provided her with his receipts, which she then used to go back inside the store and exonerate him with. After that, she eventually went outside to remove her handcuffs from Montgomery. She then went back inside to obtain from Cordero-Duarte a "trespass notice" he requested that Montgomery be given. See (Plaintiff's Affidavit #2 & #4, ¶¶ 44-47); (Plaintiff's Motion, Exhibit 4.1).

¶59. Once back inside the store's loss prevention office, Officer Sawyer inquired and Cordero-Duarte stated that during his encounter with Montgomery, he said to him, “Don't spit on my face,” and that Montgomery replied to him with, “I will, get off me!” He then told the officer that Montgomery further said to him, “I will, I have a medical condition, blah blah blah blah blah blah blah blah,” and that he further replied to Montgomery with, “Okay, whatever dude, just leave the store.” Then, after being asked one last time if Montgomery had indeed threatened to spit on him, Cordero-Duarte confirmed for the officer that he indeed said to Montgomery, “Don't spit on me,” and that Montgomery indeed said to him, “I will, if you don't let me go. I have to go, I have to go, let me go. I'm, I'm good, I'm good to go, let me go right now.” See (Plaintiff’s Motion, Exhibit 4.2 at 2:14-2:43).

¶61. Eventually, Officer Sawyer came back outside to where Montgomery and Officer Baker had been standing, and placed Montgomery into handcuffs again. This time she told Montgomery that he was being arrested for “disorderly conduct,” which OFFICER BAKER clarified was based on the purported use of “threats.” See (Plaintiff’s Affidavit #2 & #4, ¶ 48); (Plaintiff’s Motion, Exhibit 4.2 at 1:28).

¶64. Montgomery was held for next two (2) legal days at The Aurora Police Station, from the evening of October 22, 2018, to the afternoon of October 23, 2018, where he had been booked under Aurora Municipal Code Section 94-42(4). He was then released from custody by way of signing a PR bond with the station worth $500. On his way out, Montgomery was given a copy of the Summons & Complaint (#J243907) Officer Sawyer had issued to him the night before. See (Plaintiff’s Affidavit #2 & #4, ¶ 51); (Plaintiff’s Motion, Exhibit 6, p. 14).

¶65. Montgomery spent the next two months attending all the necessary court appearances required of him until December 10, 2018, the date on which an AURORA MUNICIPAL JUDGE granted a Motion To Dismiss filed by the Aurora City Attorney, citing "lack of evidence" as his reasoning, and to which dismissed Montgomery's harassment case in its entirety thus relieving him of all legal obligations to defend himself in it further. See (Plaintiff's Affidavit #2 & #4, ¶ 52); (Plaintiff's Motion, Exhibit 7).

¶66. In Plaintiffs Claim #5, at the Walmart Superstore located at 10900 E Briarwood Ave, Centennial, CO, 80012, before entering the store, and while still in his vehicle parked in the store parking lot, Montgomery inserted into one of his jacket pockets two previously purchased RV lights that he had been contemplating on returning that day (depending on if he needed the money or not). See (Plaintiff's Affidavit #5, ¶ 4).

¶67. After being prevented from leaving both store exits by two store employees, Montgomery was verbally escorted by a third store employee into a loss prevention office located just around the corner. The employee did not ask Montgomery to come with her, she told him that he was required to come with her, so he did. See (Plaintiff's Affidavit #5,¶ 1); (Plaintiff's Motion, Exhibit 8 at 22:51).

¶68. While inside the store's loss prevention office, the third store employee told Montgomery, in front of three other store employees, "I need my merchandise back." See (Plaintiff's Affidavit #5, ¶ 22); (Plaintiff's Motion, Exhibit 8 at 23:24).

¶69. On January 4, 2020, at 2:09pm, Kadyn Moyer, the second store employee who stopped Montgomery from leaving the store's southern exit, called the ARAPAHOE COUNTY SHERIFF'S OFFICE, and reported to them that he had a “shoplifter” in his security office, whom he further reported he “[thought was] on drugs.” See (Plaintiff’s Motion, Exhibit 11, p. 6).

¶70. For the next nine or so minutes Montgomery stayed in the store's loss prevention office with its employees until several members of the Arapahoe County Sheriff's Office arrived on scene, Sergeant Brett Cohn, Deputy Trevor Cuaz, and an unknown deputy. Sergeant Cohn and the unknown deputy entered the store's loss prevention office to speak with Montgomery and the store employees, while Deputy Cuaz stationed himself around the comer, just outside the office. See (Plaintiff’s Affidavit #5, ¶ 23); (Plaintiff’s Motion, Exhibit 8 at 23:25-32:23).

¶71. Once inside the store's loss prevention office, Sergeant Cohn directed Montgomery to provide his ID, which he did without issue. He then asked the third store employee if Montgomery had a receipt for his items. The third store employee told him, in front of Montgomery, the other employees, and an unknown Deputy, “No,” followed by, “That's my stuff.” See (Plaintiff’s Affidavit #5, ¶ 24); (Plaintiff’s Motion, Exhibit 8 at 32:27-32:50).

¶75. DEPUTY CUAZ then entered the store's loss prevention office, and placed Montgomery into handcuffs. See (Plaintiff’s Affidavit #5, ¶ 28); (Plaintiff’s Motion, Exhibit 8 at 35:41).

¶77. After being searched and having all his items seized, the police cross referenced the receipt they took from him against the merchandise they took from him. See (Plaintiff's Affidavit #5, ¶ 30); (Plaintiff's Motion, Exhibit 8 at 37:30).

¶78. The police concluded that Montgomery had paid for some items, but not others. The officers charged Montgomery for purportedly shoplifting the two RV lights. Montgomery never provided an explanation or offered a receipt for the RV lights to the officers during the entirety of their time with him. See (Plaintiff's Affidavit #5, ¶ 31); (Plaintiff's Motion, Exhibit 8 at 45:17).

¶82. Montgomery spent the next two months attending all the necessary court appearances required of him until March 12, 2020, the date on which he appeared at the Arapahoe County Courthouse, spoke with his Public Defender, Elizabeth Frawley, and asked her for his discovery, and whereby she then entered the Arapahoe County District Attorney's office while Montgomery waited outside, and eventually came back and informed him that the DA had dropped his charges. Montgomery then obtained an ORDER from the Court, which reported his case as "Dismissed by Court," and to which established dismissal of his shoplifting case in its entirety thus relieving him of all legal obligations to defend himself in it further. See (Plaintiff's Affidavit #5, ¶ 133); (Plaintiff's Motion, Exhibit 12).

4. The Court finds:

a. Montgomery voluntarily abandoned his "false arrest" claim in his Fifth Claim For Relief. (Cross Motion, pg. 41). His remaining theory in his Fifth Claim for Relief (2021CV217) is defamation similar to his slander claim in his Sixth Claim for Relief (2021CV235slander) which he claims are based on statements which are per se actionable:

(1) Montgomery states: "Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation actionable per se. RESTATEMENT (SECOND) OF TORTS 750; *Denver Publ'g v. Bueno*, 54 P.3d 893, 899 n. 9 (Colo. 2002)…" and that he is not "otherwise required to allege and prove 'special damages'" because defamation per se does not require proof of special damages." (Cross Motion, p. 39).

(2) Montgomery states in conclusion that there is "no genuine dispute of material fact that Defendants defamed" him as a "shoplifter." (Cross Motion, p. 40).

b. Rule 56(e) requires supporting and opposing affidavits setting forth "facts as would be admissible in evidence" and "the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." *Terrell v. Walter E. Heller & Co*., 439 P.2d 989 (Colo. 1968).

c. However, to avoid summary judgment, the evidence presented in opposition to such a motion must be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party. *Andersen v. Lindenbaum*, 160 P.3d 237 (Colo. 2007).

5. Concerning Montgomery's claims for false imprisonment the Court further finds as follows:

a. CJI 21:1 states in relevant part:

(1) The defendant intended to restrict the plaintiff's freedom of movement;

(2) The defendant, directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short; and

(3) The plaintiff was aware that his freedom of movement was restricted.

b. CJI 21:2 states in relevant part:

(1) A person's freedom of movement is actually limited, or he believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property. (Restatement (Second) Of Torts § 36 cmt. d (1965)).

(2) The person is restrained by physical force, however slight, to which the person submitted. (*McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437 (1969); *Crews-Beggs Dry Goods Co. v. Bayle*, 97 Colo. 568, 51 P.2d 1026 (1935))

c. CJI 21:7 AND 21:8 (citing to C.R.S. 18-4-407 and the common law (the "Shopkeeper's Privilege")) in relevant part state that it is an affirmative defense to the claim of false imprisonment if in relevant part:

(1) The defendant was an owner or employee of a store selling merchandise;

(2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods, wares, or merchandise held or owned by the store, or otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store (*Gonzales v. Harris*, 528 P.2d 259 (1974) (concealment within the store is prima facie evidence of the intent to commit the crime of theft));

(3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft.

d. CJI 21:13 states that a person has probable cause to believe a fact exists if a reasonable person under the same or similar circumstances would believe the fact exists. Probable cause exists when there is a fair probability that defendant committed a crime, based on the facts known at the time of arrest (*People v. Brown*, 217 P.3d 1252 (Colo. 2009)). Circumstantial evidence provides probable cause, even if evidence might also support other inferences; *Scott v. People*, 166 Colo. 432, 444 P.2d 388 (1968); *Lavato v. People*, 159 Colo. 223, 411 P.2d 328 (1966); *Gonzales v. People*, 156 Colo. 252, 398 P.2d 236 (1965); *Baldwin v. Huber*, 223 P.3d 150 (Colo. App. 2009). See also, Restatement (Second) Of Torts § 119 cmt. j (1965); 1 F. Harper Et Al., Harper, James, And Gray On Torts § 3.18 (3d ed. 2006).

e. CJI 21:9, Restatement (Second) Of Torts sections 67, 76, 80, and 87 (1965) states that it is an affirmative defense to the claim of false imprisonment:

(1) When the defendant restricted the plaintiff's freedom of movement, he believed and had reasonable grounds to believe that the plaintiff intended to interfere or continue to interfere with the defendant's right to possess his personal property; and

(2) This restriction of the plaintiff's freedom of movement was reasonably imposed, under the circumstances, to prevent the plaintiff's actions, considering the length of the time of the restriction, the seriousness of the threatened harm to, or interference with, the defendant's property, and the seriousness of any harm that might result to the plaintiff from the restriction.

(3) CJI 21:10, C.R.S. 16-3-201 states that it is an affirmative defense to the claim of false imprisonment, in relevant part, the plaintiff, at the time of the arrest, was committing a crime in the presence of the defendant, and the defendant arrested the plaintiff for that crime, or, the plaintiff knew that his or her conduct would cause the defendant to believe that the plaintiff was committing a crime in the defendant's presence, and the defendant arrested the plaintiff for that crime. The "in presence" requirement is met if the citizen observes acts which are in themselves sufficiently indicative of the commission of a crime; *People v. Olguin*, 528 P.2d 234, 236 (Colo. 1974).

f. CJI 21:12, *Hart v. Herzig*, 283 P.2d 177, 180-81 (1955); Restatement (Second) Of Torts § 112 (1965); see also *People v. Tottenhoff*, 691 P.2d 340 (Colo. 1984)) state that an arrest is taking another into custody by physical force or by asserting legal authority over him for the apparent purpose of having that person dealt with as provided by law (An "arrest" is complete when a person is told to "just wait here." (*People v. Benner*, 530 P.2d 964, 965, (Colo. 1975)) or when such person is physically prohibited from leaving (Olguin, supra)).

g. CJI 21:16 states that a person does not have to indicate an intent to arrest, in relevant part, if he or she reasonably believes that a reasonable person should know that he is being arrested and for what offense. *Olguin, supra*; see also, Restatement (Second) Of Torts § 128(2) (1965); And 1 F. Harper et al., Harper, James, and Gray On Torts § 3.17, at 361, and § 3.18, at 408 (3d ed. 2006).

6. Concerning Montgomery's claims for malicious prosecution the Court further finds as follows:

a. CJI 17:1 states in relevant that to prevail on a claim for malicious prosecution:

(1) A criminal case was brought against the plaintiff;

(2) The criminal case was brought as a result of oral or written statements made by the defendant;

(3) The criminal case ended in favor of the plaintiff;

(4) The defendant's statements against the plaintiff were made without probable cause, or, if the complaint was filed with probable cause, the defendant continued to prosecute the criminal action after he no longer had probable cause to believe the plaintiff guilty;

(5) The defendant's statements against the plaintiff were motivated by malice towards the plaintiff.

b. To be terminated in favor of the malicious prosecution plaintiff, the prior proceedings must be dismissed on the merits. *Hewitt v. Rice*, 119 P.3d 541, 544 (Colo. App. 2004), aff'd, 154 P.3d 408 (Colo. 2007) ("Favorable termination is a question of law requiring an action to be resolved on the merits in favor of the party claiming malicious prosecution").

c. Malice is any motive other than a desire to bring an offender to justice. *Suchey v. Stiles*, 394 P.2d 739, 741 (Colo. 1964).

7. Concerning Montgomery's claims for defamation per se the Court further finds as follows:

a. Imputing crime or criminal offense upon another may be slanderous per se (See, *O'Cana v. Espinosa*, 347 P.2d 1118, 1119 (Colo. 1960)(holding that the word's "'You are thieves and if it had not been for Malouffs you would be in the penitentiary today" are slanderous per se), but the statement must be unmistakably recognized as injurious (*Keohane v. Wilkerson*, 859 P.2d 291, 301 (Colo. App. 1993), aff'd sub nom. *Keohane v. Stewart*, 882 P.2d 1293 (Colo. 1994)) leading Colorado courts to construe defamation per se narrowly (*Keohane v. Wilkerson, supra*).

b. The use of derogatory terms that do not themselves impute the commission of a crime are not slanderous per se and cannot be isolated from their context and the total attendant circumstances but rather "such words must impute conduct constituting a criminal offense chargeable … and of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace." *Cinquanta v. Burdett*, 388 P.2d 779, 780 (Colo. 1963)(use of the word "crook" was not slanderous per se).

c. In determining whether a statement is slanderous per se the court cannot isolate the offending words from their context and must examine the words in the light of the total attendant circumstances. Id. It is the general rule that such words must impute conduct constituting a criminal offense chargeable by indictment or by information either at common law or by statute and of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace. *Cinquanta v. Burdett*, *supra*)

d. Colorado law recognizes a qualified privilege for communications by a party with a legitimate interest to persons having a corresponding interest and communications promoting legitimate individual, group, or public interests (*Patane v. Broadmoor Hotel, Inc*., 708 P.2d 473 (Colo. App. 1985), citing *Denver Public Warehouse Co. v. Holloway*, 283 P. 131(Colo. 1905). This qualified privilege, based on a presumption of the absence of malice which must be overcome by the plaintiff is determined by the Court even "where evidence of ill will is forthcoming; but, if, taken in connection with admitted facts, the words complained of are such as must have been used honestly and in good faith by the defendant," *Ling v. Whittemore*, 343 P.2d 1048 (Colo. 1959), relying on *Denver Public Warehouse Co., supra*.

e. Further, statements made to law enforcement officers are entitled to a qualified privilege as well; *Burke v. Greene*, 963 P.2d 1119, 1122 (Colo. App. 1998) because a qualified privilege "is sufficiently protective of [those] wishing to report events concerning crime and balances society's interest in detecting and prosecuting crime with a defendant's interest not to be falsely accused." *Id*. Unless the statement is made with "malice (i.e., with knowledge that they were false or with reckless disregard for whether they were true or false)" (*Id*.) the qualified immunity protects the statement.

f. Thus, statements made to peace officers are recoverable only if the alleged statements were made with malice i.e. "knowledge that they were false or with reckless disregard for whether they were true or false." *Burke v. Greene*, *supra*; see also *Seible v. Denver Post Corp*., 782 P.2d 805 (Colo.App.1989).

g. Montgomery states that the basis for his Fifth Claim for Relief is that the "Defendants impermissibly imputed the crime of larceny onto Plaintiff…" when they referred to him as a "shoplifter." (Cross Motion, p. 39). Montgomery also claims the statements "I need my merchandise back," while inside the store's loss prevention office, in front of three other store employees is actionable. ((Cross Motion, Exhibit 8 at 23:24; Plaintiff's Affidavit #5, ¶ 22) as well as the statement to the Arapahoe County Sheriff's Office that a Walmart employee had a "shoplifter" in his security office whom he thought was "on drugs." See (Cross Motion, Exhibit 11, p. 6).

h. Montgomery states that the basis for his Sixth Claim For Relief is that the "Defendants impermissibly imputed the crime of larceny onto Plaintiff…" when they stated "we're losing money with what you have…give us our products…we need our products back…" (Cross Motion, p. 40) as well as the statement "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have." (Cross Motion, Exhibit #13; Plaintiff's Affidavit #6, ¶ 21).

8. The Court concludes:

a. Montgomery's First Claim for Relief, Fifth Claim for Relief and Sixth Claim for Relief allege false imprisonment. The Court concludes that Montgomery knew that he could escape without causing an unreasonable risk of harm to him or herself or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited. Further, the undisputed facts show that Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store, which he knew would lead to being detained and asked for his receipts. In doing so Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence. Not only was Montgomery's conduct sufficient to cause the Walmart employees to believe that his intent was to commit a crime, but he specifically intended that result happen. Reasonable people acting in good faith under the same or similar circumstances would have reasonable grounds - as did the Walmart employees - to find probable cause existed to detain and question Montgomery in order to ascertain whether he had committed a theft by, in a reasonable manner, asking to see his receipts, and therefore,

the Walmart employees including Duarte were protected by the Shopkeepers Privilege. No reasonable jury could return a verdict for Montgomery by finding otherwise.

b. Montgomery's Second Claim for Relief and Fourth Claim for Relief concern the October 22, 2018 incident, and his Sixth Claim for Relief concerning the September 20, 2020 incident allege malicious prosecution.

(1) The summons Municipal Court of Aurora he received for harassment against Cordero-Duarte (threats and obscenities) related to the October 22, 2018 incident was dismissed due to a lack of evidence rather than on the merits but was issued with probable cause regardless of the disputed facts concerning whether Montgomery threatened to spit on Cordero-Duarte. Further, there is no evidence that this charge was pursued by Cordero-Duarte nor that the statements against Montgomery were motivated by malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(2) The events of January 4, 2020 when Montgomery claims he was summoned to the Arapahoe County Court for theft, was based on a cross reference of his receipts and the merchandise in his possession by investigating officers and not by Walmart employees. In fact, Montgomery's refusal to disclose the fact that not all the merchandise in his possession, specifically RV lights were from a previous purchase contributed to the probable cause determination by law enforcement. Further, there are no facts to support any claim that these statements were motivated by malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

c. Montgomery's Fifth Claim for Relief and Sixth Claims for Relief are also based on defamation per se:

(1) The statements "I need my merchandise back," while inside the store's loss prevention office, in front of three other store employees is protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(2) The statement to the Arapahoe County Sheriff's Office that a Walmart employee had a "shoplifter" in his security office whom he thought was "on drugs" is protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(3) The statement "we're losing money with what you have…give us our products…we need our products back" as well as the statement "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have" are ambiguous at best, do not impute conduct constituting a criminal offense nor of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace, are protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

9. Accordingly, the Court orders as follows:

a. The request pursuant to C.R.C.P Rule 12 to dismiss Montgomery's Second, Fourth, and Fifth Claims for Relief for failing to properly allege the elements required for maintaining a malicious prosecution claim is untimely (see C.R.C.P. 12(a)(1)) and DENIED.

b. However, the requests in the Motion pursuant to C.R.C.P. Rule 56 are GRANTED as to all of Montgomery's claims for the reasons stated above.

c. Montgomery's cross-motion is DENIED.

d. Any further pending request for relief by either party is DENIED.

e. Further proceedings, including trial and the trial management conference are vacated.

f. Defendants may submit a bill of costs within twenty-one days.

SO ORDERED, February 24, 2022:

BY:



District Court Judge Peter F. Michaelson

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed NOV 25 2020 DATE FILED July 23, 2024 5:06 PM DATE FILED: November 25, 2020 CASE NUMBER: 2020CV209 ▲ COURT USE ONLY ▲
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JANE DOE 1, JANE DOE 2, JOHN DOE.** 9400 E HAMPDEN AVE AURORA, CO 80231	
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20cv209 Division 15 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JANE DOE 1, JANE DOE 2, JOHN DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 9400 E Hampden Ave, City of Aurora, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On NOVEMBER 26, 2018, JANE DOE 1, JANE DOE 2, AND JOHN DOE, all employees of WALMART INC., detained me on my way out of their store, after I refused to show them my receipt. They also grabbed my items out of my hands, as well as tell other people that I stole from them. **Claims: FALSE IMPRISONMENT, ASSAULT, and DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/11/27
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit D

DATE FILED: December 27, 2021 10:30 PM
FILING ID: EDBDC9ED38A27
CASE NUMBER: 2020CV148

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	

Defendants Walmart, Inc. et al ("Walmart"), by and through counsel, Treece Alfrey Musat P.C., hereby submit their Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter consolidates six (6) separate Arapahoe County Complaints filed by *pro se* Plaintiff, William Montgomery, against Walmart.[1] Plaintiff has also filed (3) filed pro se Complaints against Walmart in Adams County,[2] and he initiated his pro se Court of Appeals case for a Complaint against Walmart he filed in Jefferson County.[3] Plaintiff's method of operation at all Walmart stores is to begin audio recording before he enters the store. Invariably, Plaintiff will refuse to show his receipt for the items in his possession, with a goal of filing suit against Walmart under theories of false imprisonment, false arrest, malicious prosecution, and defamation. Plaintiff has failed to disclose evidence sufficient to meet his burden of proof on each of these claims. Accordingly, summary judgement is warranted.

STATEMENT OF UNDISPUTED FACTS

1. All six (6) of Plaintiff's Complaints filed under this Consolidated Case were filed *pro se*. *See* First Compl 2020CV148; Second Compl 2020CV184; Third Compl 2020CV209 (Dismissed. MTD Granted); Fourth Compl 2020CV217; Fifth Compl 2021CV1 (also referred to as 2021CV231); and Sixth Compl 2021CV235.

2. In his First Claim for Relief (2020CV148), Plaintiff claims that on September 3, 2019, Walmart employees "didn't let me leave, on my way out of their store, after I refused to show them my receipt." *See* First Compl. at ¶ 4.

3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id*.

4. In his Second Claim for Relief (2020CV184), Plaintiff claims that on October 22, 2018, a Walmart employee "lied to an Aurora Police Officer that Plaintiff had shoplifted at his store." *See* Second Compl. at ¶ 4.

5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id*.

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[1] 2020CV148; 2020CV184; 2020CV209 (Dismissed. MTD Granted); 2020CV217; 2021CV1 (also referred to as 2021CV231); and 2021CV235.
[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation*. **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B**.

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

Second Claim for Relief: 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

Fourth Claim for Relief: 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte (Duarte) occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was accused of threatening Duarte and was arrested, making claims of malicious prosecution.

Fifth Claim for Relief: 2021CV1: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

Sixth Claim for Relief: 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *See West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering*, 72 P.3d at 453 (*citing Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970)). “[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts.” *Lewis v. McGraw Hill Broadcasting Co*., 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim.

Plaintiff has the burden to prove the following elements to succeed on a claim for malicious prosecution: (1) A criminal case was brought against the plaintiff; (2) The criminal case was brought as a result of (an) oral or written statement(s) made by the defendant; (3) The criminal case ended in favor of the plaintiff; (4) The defendant's statement(s) against the plaintiff (was) (were) made without probable cause; (5)The defendant's statement(s) against the plaintiff (was) (were) motivated by malice towards the plaintiff; and (6)As a result of the criminal case, the plaintiff had damages. Colo. Jury Instr., Civil 17:1.

In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

II. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Defendants are not legally responsible for Plaintiff's false imprisonment and false arrest claims because Defendants had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff does not dispute that he failed to show a receipt in any of these cases. Plaintiff has not disclosed any evidence that Plaintiff was detained for any purpose other

than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

III. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Plaintiff has not disclosed any evidence that his freedom of movement was restricted.

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." ***See*** **Colo. Jury. Instr., Civ. 21:2.**

Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C**. Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to*. **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id*. Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed JAN 04 2021 DATE FILED July 23, 2024 5:06 PM DATE FILED: January 4, 2021 5:47 PM CASE NUMBER: 2021CV1
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., KADYN MOYER, JOHN DOE, JANE DOE.** 10900 E BRIARWOOD AVE CENTENNIAL, CO 80112	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV1 Division Courtroom 15

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., KADYN MOYER, JOHN DOE, JANE DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 10900 E Briarwood Ave, City of Centennial, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

On **JANUARY 4, 2020,** while attempting to leave a Walmart after shopping, **KAYDYN MOYER, JOHN DOE, and JANE DOE** – all employees of **WALMART, INC.** – detained me, slandered me in front of others, and reported to the police that I had stolen from them. Once the police arrived, they further detained, searched, arrested, and prosecuted me. All charges were dropped. **Claims: FALSE IMPRISONMENT, DEFAMATION, FALSE ARREST, and MALICIOUS PROSECUTION.**

The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2021/01/04
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit E

DATE FILED: December 27, 2021 10:30 PM
FILING ID: EDBDC9ED38A27
CASE NUMBER: 2020CV148

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Walmart, Inc. et al ("Walmart"), by and through counsel, Treece Alfrey Musat P.C., hereby submit their Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter consolidates six (6) separate Arapahoe County Complaints filed by *pro se* Plaintiff, William Montgomery, against Walmart.[1] Plaintiff has also filed (3) filed pro se Complaints against Walmart in Adams County,[2] and he initiated his pro se Court of Appeals case for a Complaint against Walmart he filed in Jefferson County.[3] Plaintiff's method of operation at all Walmart stores is to begin audio recording before he enters the store. Invariably, Plaintiff will refuse to show his receipt for the items in his possession, with a goal of filing suit against Walmart under theories of false imprisonment, false arrest, malicious prosecution, and defamation. Plaintiff has failed to disclose evidence sufficient to meet his burden of proof on each of these claims. Accordingly, summary judgement is warranted.

STATEMENT OF UNDISPUTED FACTS

1. All six (6) of Plaintiff's Complaints filed under this Consolidated Case were filed *pro se*. *See* First Compl 2020CV148; Second Compl 2020CV184; Third Compl 2020CV209 (Dismissed. MTD Granted); Fourth Compl 2020CV217; Fifth Compl 2021CV1 (also referred to as 2021CV231); and Sixth Compl 2021CV235.

2. In his First Claim for Relief (2020CV148), Plaintiff claims that on September 3, 2019, Walmart employees "didn't let me leave, on my way out of their store, after I refused to show them my receipt." *See* First Compl. at ¶ 4.

3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id*.

4. In his Second Claim for Relief (2020CV184), Plaintiff claims that on October 22, 2018, a Walmart employee "lied to an Aurora Police Officer that Plaintiff had shoplifted at his store." *See* Second Compl. at ¶ 4.

5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id*.

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[1] 2020CV148; 2020CV184; 2020CV209 (Dismissed. MTD Granted); 2020CV217; 2021CV1 (also referred to as 2021CV231); and 2021CV235.
[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation*. **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B**.

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

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In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

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Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

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than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

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Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C**. Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to*. **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id*. Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., AUSTIN DOE.** 200 W 136TH AVE WESTMINSTER, CO 80234	DATE FILED July 23, 2024 5:06 PM CASE NUMBER: 2021CV68 RECEIVED AUG 06 2021 ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV68 Division C Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., AUSTIN DOE., defendant(s), is (are) resident(s) of Adams County, with a post office address of 200 W 136th Ave, City of Westminster, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

On **AUGUST 6, 2020**, while attempting to leave a Walmart after shopping, **AUSTIN DOE** (whose last name is unknown), an employee of **WALMART INC.**, detained me and wouldn't let me leave his store, after I refused to show him my receipt. He was only called over by another employee "posted up" at the store's exit, so neither one of them had witnessed anything remotely resembling a theft. Claim: **FALSE IMPRISONMENT.**

The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

District Court, Adams County, Colorado 1100 Judicial Center Drive Brighton, Colorado 80601 **Plaintiff:** WILLIAM MONTGOMERY v. **Defendant:** WALMART, INC	DATE FILED: December 9, 2022 4:20 PM CASE NUMBER: 2021CV68 Case Number: 2021CV68 Consolidated with 2021CV88 Division: C

ORDER RE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant's Motion For Summary Judgment filed on October 31, 2022. Plaintiff filed a Response on November 21, 2022. A Reply was not filed. The Court, being fully informed in the premises, hereby makes the following findings and orders:

BACKGROUND

This matter arises out of two Adams County Complaints that were filed by pro se Plaintiff, William Montgomery, against Walmart. Plaintiff filed a third complaint in Adams County in 2020 (2020CV67). To date, Plaintiff has also filed six (6) pro se Complaints against Walmart in Arapahoe County, and a pro se Court of Appeals case for a claim against Walmart he filed in Jefferson County[1].

All aforementioned cases arise from instances, in which, Plaintiff enters a Walmart store under what appears to be a plan to be sought and detained by Walmart managers. In each of the incidents, including in this case, Plaintiff begins audio recording before he enters the store. Before exiting, he engages in acts designed to elicit a Walmart Asset Protection employee to ask him if he has a receipt for the items in his possession. Plaintiff then refuses to show his receipt or refuses to respond to the questions as to whether he has a receipt. Plaintiff elevates the situation

[1] The Court takes Judicial Notice of the findings of fact and orders in the following cases: Walmart/Montgomery Arapahoe (Claim 1 – 20CV148 – DOI: 09/03/19) MSJ granted 02/25/22; Walmart/Montgomery Arapahoe (Claim 2 – 20CV184 – DOI: 10/22/18) MSJ granted 02/25/22; Walmart/Montgomery Arapahoe (Claim 3 - 20CV209 – DOI: 11/26/18) – MTD granted 03/23/21; Walmart/Montgomery Arapahoe (Claim 4 – 20CV217 – DOI: 10/22/18) MSJ granted on 02/25/22; Walmart/Montgomery Arapahoe (Claim 5 – 21CV231, aka 21CV1 – DOI: 01/04/20) MSJ granted on 02/25/22; Walmart/Montgomery Arapahoe (Claim 6 - 21CV235 - DOI: 09/20/20) MSJ granted 02/25/22; Appeal from 20CV76 MSJ granted on 01/19/21.

where police are usually called. He threatens suit against Walmart and eventually brings suit against Walmart under various theories including false imprisonment and defamation.

Here, the sole claim set forth in the complaint filed in 2020CV68 is false imprisonment. In the case which was consolidated with this action, 2020CV88, the claims pled are false imprisonment and defamation.

LEGAL STANDARD – SUMMARY JUDGMENT

The purpose of summary judgment is "to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992).

"Summary judgment is appropriate when the pleadings and supporting documents clearly demonstrate that no issues of material fact exist, and the moving party is entitled to judgment as a matter of law." *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). "A material fact is one that will affect the outcome of the case." *Western Innovations, Inc. v. Sonitrol, Corp.*, 187 P.3d 1155 (Colo. App. 2008). "[A] genuine issue of material fact cannot be raised simply by allegations of pleadings or argument of counsel." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084-85 (Colo. App. 1991). "In addition to concerning a material fact, the issue in dispute must be 'genuine.'"

"The moving party bears the initial responsibility of informing the court of the basis for the motion and identifying those portions of the record and of the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." *Quist v. Specialties Supply Co., Inc.*, 12 P.3d 863, 868 (Colo. App. 2000).

"[O]nce this initial burden has been met, the burden shifts to the non-moving party to establish that there is a triable issue of fact." *City of Aurora v. ACJ Partnership*, 209 P.3d 1076 (Colo. 2009). To avoid summary judgment, the evidence presented in opposition to such a motion must therefore be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to existence of a triable issue of fact must be resolved against the moving party." *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

Summary judgment is a drastic remedy, but it is one that should be granted when there is a clear showing that the controlling standards are met. *HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 887 -888 (Colo. 2002).

LEGAL STANDARD – FALSE ARREST

Plaintiff has to prove the following elements by a preponderance of the evidence to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of

movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. [C.J.I., Civ. 21:1].

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." [C.J.I., Civ. 21:2].

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. [C.J.I., Civ. 21:7].

LEGAL STANDARD – DEFAMATION

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. [C.J.I., Civ. 21:2]. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." [C.J.I., Civ. 22:7]; *See Burns v. McGraw Hill* Broadcasting, 659 P.2d 1351,1357 (Colo. 1983.)

A defamation per se claim requires a plaintiff to prove: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication. *See Lawson v. Stow*, 327 P.3d 340, 345 (Colo. App. 2014)

SHOPKEEPER'S PRIVILEGE

If any person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. C.R.S. § § 18-4-407. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *Id*.

UNDISPUTED FACTS

The August 6, 2020 Incident (Complaint originally filed in 2021CV68):

1. On August 6, 2020, Plaintiff activated a concealed audio recording device before entering a Walmart store. [Ex. A[2]].

2. At the beginning of this recording Plaintiff can be heard telling an unknown third party: "(unintelligible) . . . basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." [*Id*. at 1:42].

3. Plaintiff forgets his wallet when checking out and returns to his vehicle to obtain it. On the way back into the store he comments to himself on the receipt line and implies that he won't be showing his receipt. [*Id*. at 12:20].

4. Approximately sixteen (16) minutes into the recording, Plaintiff is heard attempting to exit the store when he is asked by a Walmart associate to show his receipt for the merchandise. [*Id*. at 16:48].

5. The associate offers to get the AP (short for asset protection) for Plaintiff. Plaintiff responds, "I mean if you want to hold me, that's all you buddy." "Unless you're a cop I'm not going to answer questions." [*Id*.]

6. The AP arrives and asks Plaintiff at least five (5) times for his receipt. He says, "If not, you can go back and pay for it and I'll let you go." Plaintiff became defensive at the request to see his receipt for the items; and proceeds to ignore and/or refuse repeated requests to see his receipt. [*Id*. at 17:30].

7. When asked if he had a receipt, Plaintiff responded "Last time I checked I do not have to show it to you." [*Id*. at 16:20].

8. The AP told Plaintiff that if he showed his receipt he could go. [*Id*. at 18:55].

9. Plaintiff is eventually told to leave the store. Plaintiff responded by screaming that he would be seeing the AP in Court. [*Id*. at 20:25].

The September 3, 2020 Incident (Complaint originally filed in 2021CV68)

10. On September 3, 2020, Plaintiff again activated a concealed audio recording device before entering a Walmart store. [Ex. B[3]].

11. While checking out, Plaintiff instructs the cashier to put an item on a separate receipt from the other items. [*Id*. at 10:55]. According to Plaintiff he originally asked for a separate receipt for a non-food-based item, but when he discovered he could not afford the non-food item he cancelled that transaction and received only one receipt. [*Id.*; Plaintiff's Affidavit – Claim 2, ¶10].

[2] Plaintiff titled this audio recording "Westminster Walmart Detains Me Again."
[3] Plaintiff titled this audio recording "Tower Road Walmart Detains Me."

12. Plaintiff received a receipt for his purchase and did want any bags for his items because the bags are not environmentally friendly. [*Id.*; Plaintiff's Affidavit – Claim 2, ¶10].

13. Upon exiting the store, Plaintiff was asked for his receipt. He responded with "Receipt Nazi?" [*Id*. at 14:17].

14. The Walmart associates ask multiple times for his receipt and state "All you got to do is show the receipt and you can go." [*Id*. at 16:00].

15. Plaintiff responds "you can ask but I do not have to show you. I don't have to show you anything." [*Id.* at 20:20-29].

16. After the police are called, Plaintiff is told he can leave. After being told he can leave, Plaintiff requests to stay so that he can talk to the police. When told he could not stay, Plaintiff tells the associates that he will see them in Court. [*Id*. at 21:39].

ANALYSIS

False Arrest:

An essential claim to Plaintiff's false arrest claim includes a showing that Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time. A person's freedom of movement is not restricted if the person knows of a way to escape without causing an unreasonable risk of harm to him. [*See*, C.J.I., Civ. 21:2].

Here, on both occasions Plaintiff knew that all he had to do to prevent detention was to show his receipt. In fact, the facts here, and in prior cases, clearly demonstrate that Plaintiff's purpose on his recorded trips to Walmart is to get detained and record himself being detained. [*See* Exhibits A - F]. He knows it is Walmart's policy to ask for receipts from customers exiting the stores. [Ex. A at 1:42]. He is told that all he has to do is present a receipt and he can leave. [Ex. A at 18:55; Ex. B at 16:00].

Even construing the above facts in the light most favorable to Plaintiff leads to the conclusion that no reasonable jury could return a verdict in favor of Plaintiff on his claim for false arrest[4].

While not necessary, it is important to note that Plaintiff's claim for false arrest also fails on the grounds of the shopkeeper's privilege and privilege to detain. Again, Plaintiff admits that he was repeatedly asked to show his receipt for merchandise in his possession and repeatedly either refused or refused to even answer whether he had a receipt for his purchases. No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for

[4] Plaintiff submits in his affidavit regarding the second claim in this case that he threw his receipt away. From this Plaintiff argues that his lack of a receipt dispels the notion that he had a means of escape without causing unreasonable risk of harm. However, given Plaintiff's prior activity and knowledge in these various detention cases, if Plaintiff threw away the receipt it would be his actions that prevented his means of escape, not the Defendant's. Plaintiff cannot manufacture a way out of his reasonable means of escape then argue he had no reasonable means of escape.

preventing a person from leaving their store with goods for which the person refuses to show a receipt.

Defamation and Defamation per se[5]:

"Where the moving party does not bear the burden of persuasion at trial, [the] initial burden of production may be satisfied by showing that there is an absence of evidence in the record to support the nonmoving party's case." *Quist v. Specialties Supply Co., Inc.*,12 P.3d 863, 868 (Colo. App. 2000). *Accord Lombard v. Colorado Outdoor Educ. Center,* 179 P.3d 16 (Colo. App. 2007), *rev'd on other grounds.*

Here, essential to a defamation and defamation *per se* claim is the element of a defamatory statement. A defamatory statement is one that "tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." [C.J.I., Civ. 22:7]. Therefore, essential to a defamation and defamation *per se* claim is a showing of harm to Plaintiff's reputation "in the estimation of a substantial and respectable minority" of the community.

Walmart argues that there is an absence of any evidence of reputational harm. With respect to the defamation claim Walmart also argues that there is an absence of evidence of any special damages incurred by Plaintiff as a result of any defamatory statements. The Court finds that Walmart met its initial burden for purposes of summary judgment. The burden then shifted to Plaintiff to demonstrate by affidavit, depositions or other evidence, a triable issue of fact.

Plaintiff has not produced any evidence that he suffered economic loss. That fact alone supports summary judgment in favor of Walmart on a defamation claim.

Plaintiff has not produced any credible evidence of harm to his reputation. He submits affidavits stating that he "felt [his] reputation was damaged, that others perceived [him] as a thief." [Aff. Claim 1, ¶ 23 and Affidavit Claim 2, ¶ 24]. But these conclusory statements are not corroborated by other evidence. "A litigant "cannot avoid a summary disposition of his case by merely asserting a fact, without any evidence to support it." *Coffman v. Williamson*, 348 P.3d 929 (Colo. 2015); *Norton v. Dartmouth Skis, Inc.*, 147 Colo. 436, 364 P.2d 866, 868 (Colo. 1961); *see also Bernard v. Grp. Publ'g, Inc.,* 970 F.Supp.2d 1206, 1213 (D. Colo. 2103) (explaining that unsubstantiated, self-serving testimony in an affidavit does not create a genuine issue of material fact for summary judgment purposes where the record does not contain corroborating evidence). Plaintiff's failure to produce credible evidence of harm to his reputation is fatal to both a claim for defamation and defamation *per se*.

[5] Plaintiff did not clearly assert a defamation *per se* claim in his Complaint in 2021CV88 and only listed a defamation claim. However, Plaintiff raises the issue of a defamation *per se* claim in his response to the summary judgment motion. The Court notes that Plaintiff is proceeding *pro se*. The Court also notes that *pro se* litigants are bound by the same rules of civil procedure as attorneys. (*Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *see also Loomis v. Seely*, 677 P.2d 400 (Colo. App. 1983*); People v. Romero*, 694 P.2d 1256 (Colo. 1985). Finally, the Court notes that it must "make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard." (Code of Judicial Conduct, Rule 2.2, Comment [4]). Therefore, the Court will address a defamation *per se* claim as a reasonable accommodation to Plaintiff.

Finally, the Court notes for reasons stated above, the shopkeepers privilege would act as a bar to Plaintiff's defamation claims as well.

CONCLUSION

Based on the foregoing, Defendant's Motion for Summary Judgment is **GRANTED**.

Judgment is hereby entered in favor of Defendant and against Plaintiff on Plaintiff's claim for false arrest in 2020CV68.

Judgment is also entered in favor of Defendant and against Plaintiff on Plaintiff's claims for false arrest, defamation, and defamation *per se* in 2020CV88.

SO ORDERED THIS 9th day of December, 2022

BY THE COURT:



_____

District Court Judge

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	FILED IN ADAMS COUNTY COMBINED COURT SEP 03 2021 DATE FILED July 23, 2024 5:06 PM DATE FILED: September 3, 2021 CASE NUMBER: 2021CV88
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JANE DOE.** 3301 TOWER RD AURORA, CO 80011	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21 CV 88 Division Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JANE DOE., defendant(s), is (are) resident(s) of Adams County, with a post office address of 3301 Tower Rd, City of Aurora, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 3, 2020,** while attempting to leave a Walmart after shopping, **JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, and JANE DOE** (whose names are yet to be known), all employees of **WALMART INC.**, detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered me (as a thief) publicly in front of others. Claims: **FALSE IMPRISONMENT & DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit G

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO 1100 Judicial Center Dr. Brighton, CO 80601 (303) 659-1161	DATE FILED: October 31, 2022 4:23 PM FILING ID: 9F14A41EEEEC5 CASE NUMBER: 2021CV68
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC.	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700; Fax: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant, Walmart, Inc.*	Case No.: 2021cv68 (Consolidated Case: 2021cv88) Division: C
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	

Defendant Walmart, Inc. ("Walmart" or "Defendant"), by and through counsel, Treece Alfrey Musat P.C., hereby submits its Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that she has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter is the first of three (3) Adams County Complaints that were filed within a year by *pro se* Plaintiff, William Montgomery, against Walmart.[1] To date, Plaintiff has also filed six (6) *pro se* Complaints against Walmart in Arapahoe County,[2] and a *pro se* Court of Appeals case for a claim against Walmart he filed in Jefferson County.[3] All aforementioned cases arise from instances, in which, Plaintiff planned and sought to be detained by Walmart managers. Plaintiff's method of operation before each incident at the Walmart stores is to begin audio recording before he enters. Before exiting, he will display conspicuous behavior to suggest that he is shoplifting, so that Walmart's Asset Protection employees will be prompted to ask him if he has a receipt for the items in his possession. Invariably, Plaintiff will refuse to show his receipt for the items in his possession and cause a raucous, so that he may manufacture a basis for suit against Walmart under various theories including false imprisonment and defamation.

Here, the sole claim set forth in the complaint filed in 2020cv68 is false imprisonment. In the case which was consolidated with this action, 2020cv88, the claims pleaded are false imprisonment and defamation.

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[1]20CV067 (filed September 3, 2020); 21CV68 (filed August 6, 2021); 21CV88 (filed September 3, 2021).
[2]Walmart/Montgomery Arapahoe (Claim 1 – 20CV148 – DOI: 09/03/19) MSJ granted 02/25/22
Walmart/Montgomery Arapahoe (Claim 2 – 20CV184 – DOI: 10/22/18) MSJ granted 02/25/22
Walmart/Montgomery Arapahoe (Claim 3 - 20CV209 – DOI: 11/26/18) – MTD granted 03/23/21
Walmart/Montgomery Arapahoe (Claim 4 – 20CV217 – DOI: 10/22/18) MSJ granted on 02/25/22
Walmart/Montgomery Arapahoe (Claim 5 – 21CV231, aka 21CV1 – DOI: 01/04/20) MSJ granted on 02/25/22
Walmart/Montgomery Arapahoe (Claim 6 - 21cv235 - DOI: 09/20/20) MSJ granted 02/25/22.
A notice of appeal has been filed in this matter.
[3] 2021CA359. (Appeal from 20CV76 MSJ granted on 01/19/21).

STATEMENT OF UNDISPUTED FACTS

The August 6, 2020 Incident (Complaint originally filed in 2021cv68)

1. On August 6, 2020, Plaintiff activated a concealed audio recording device before entering a Walmart store. **Ex. A. (*Exhibits A and B are audio files and can be downloaded here:*** https://we.tl/t-x8d1Xae0fn).

2. At the beginning of this recording Plaintiff can be heard telling an unknown third party: "(intelligible) . . . basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." **Id. at 1:42.**

3. Plaintiff forgets his wallet when checking out and returns to his vehicle to obtain in. On the way back into the store he comments to himself on the receipt line and implies that he won't be showing his receipt. **Id. at 12:20.**

4. .Approximately sixteen (16) minutes into the recording, Plaintiff is heard attempting to exit the store when he is asked by a Walmart associate to show his receipt for the merchandise. ***Id.* at 16:48.**

5. The associate offers to get the AP (short for asset protection) for Plaintiff. Plaintiff responds "I mean if you want to hold me (unintelligible) buddy." "Unless you're a cop I'm not going to answer questions." **Id.**

6. The AP arrives and asks Plaintiff at least five (5) times for his receipt. He says "If not, you can go back and pay for it and I'll let you go." Plaintiff became defensive at the request to see his receipt for the items; and proceeded to ignore and/or refuse repeated requests to see his receipt. ***Id.* at 17:30.**

7. When asked if he had a receipt, Plaintiff responded "Yes, I have it that doesn't mean . . . (unintelligible)." **Id. at 17:55.**

8. The AP told Plaintiff that if he showed his receipt he could go. **Id. at 18:55.**

9. Plaintiff is eventually told to leave the store. Plaintiff responded by screaming that he would be seeing the AP in Court**. Id. at 20:25.**

The September 3, 2020 Incident (Complaint originally filed in 2021cv68)

10. On September 3, 2020, Plaintiff again activated a concealed audio recording device before entering a Walmart store. **Ex. B.**

11. While checking out, Plaintiff instructs the cashier to put an item on a separate receipt from the other items. **Id. at 10:55.** Plaintiff received receipts for his purchase and did want any bags for his items. **Id.**

12. Upon exiting the store, Plaintiff was asked for his receipt. He responded with "Receipt Nazi?" **Id. at 14:17.**

13. The Walmart associates ask multiple times for his receipt and state "All you got to do is show the receipt and you can go." **Id. at 16:00.**

14. After the police are called, Plaintiff is told he can leave. After being told he can leave, Plaintiff requests to stay so that he can talk to the police. When told he could not stay, Plaintiff tells the associates that he will see them in Court. **Id. at 21:39.**

INCORPORATION OF PRIOR ORDERS

Defendant incorporates, as if set forth fully herein, the law and holdings set forth in prior orders addressing Plaintiff's claims. *See* Order: Motion for Summary Judgment, dated 01/19/21 (Jefferson County) attached hereto as **Ex. C**, Order re: Motions for Summary Judgment, dated

02/25/22 (Arapahoe County), attached hereto as **Ex. D,** Court of Appeals Opinion Affirming Grant of Summary Judgment, attached hereto as **Ex. E,** and Order Granting Summary Judgment, dated 08/19/2022 (Adams County) attached hereto as **Ex. F.**

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." See *West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering,* 72 P.3d at 453 (citing *Sullivan v. Davis*, 172 Colo. 490, 474 P.2d 218 (1970)). "[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts." *Lewis v. McGraw Hill Broadcasting Co*., 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary

judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's claims for false imprisonment should be dismissed because Walmart maintained Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407 and because his freedom of movement was not restricted.

Plaintiff has to prove the following elements by a preponderance of the evidence to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury

Instr., Civil 21:1. "Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." *See* Colo. Jury. Instr., Civ. 21:2.

If any person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. *See* Colo. Rev. Stat. Ann. § 18-4-407. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *Id*.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Here, Plaintiff's freedom of movement was never restricted, as required by Colo. Jury. Instr., Civ. 21:2. Plaintiff indisputably knew that showing his receipt would allow him to easily

leave the store. *See* Exs. C-D. Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, Plaintiff chose not to show his receipt for the purpose of provoking a confrontation with Walmart's Asset Protection department. Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." As the Court of Appeals held, "[n]o reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment." **Ex. E,** p. 8.

Additionally, Defendant is not responsible for Plaintiff's false imprisonment claim as a matter of law because Defendant had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff cannot dispute that he repeatedly refused to show his receipt for the merchandise in his possession. Indeed, Plaintiff has not disclosed any evidence that he was detained for any purpose other than to investigate whether or not he paid for the merchandise.

Plaintiff's freedom of movement was not restricted, as required by Colo. Jury. Instr., Civ. 21:2 to maintain a claim for false imprisonment. Furthermore, Plaintiff's false imprisonment and defamation claim is barred by both the statutory and common law Shopkeeper's privilege and should be dismissed.

II. Plaintiff's claim for defamation/slander must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community

The elements of defamation are (1) a defamatory statement concerning another; (2)

published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting*, 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Adams County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id*.

"Plaintiff also has not demonstrated that there was an accusation of theft by Defendant's employees that was untrue, overheard, and understood by a third person such as to support a claim of defamation *per se*. And under either a defamation or defamation *per se* claim, Plaintiff lacks evidence sufficient to support the required element of harm to his reputation in the estimation of the community, as required for either claim." **Ex. F. pp 10-11.**

Moreover, as set forth above, Defendant's shopekeeper's privilege bars Plaintiff's claim for defamation. Accordingly, Plaintiff has failed to meet his burden of proof for his allegations of defamation.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of the asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. Based on the undisputed facts and the applicable points of law discussed herein, Defendant respectfully requests that the Court enter judgment in their favor on all of Plaintiff's claims against Defendant, for its costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 31st day of October, 2022.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendant Walmart, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2022, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed SEP 20 2021 DATE FILED July 23, 2024 5:06 PM DATE FILED: September 20, 2021 2:43 PM CASE NUMBER: 2021CV235 ARAPAHOE COUNTY, COLORADO
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JAROD DOE, MARCUS DOE, JASON DOE.** 14000 E EXPOSITION AVE AURORA, CO 80012	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV235 Division 21 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JAROD DOE, MARCUS DOE, JASON DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 14000 E Exposition Ave, City of Aurora, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 20, 2020,** while attempting to leave a Walmart after shopping, **JAROD DOE, MARCUS DOE, and JASON DOE,** (whose last names are yet to be known), all employees of **WALMART INC.**, detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered me (as a thief) publicly in front of others. Claims: **FALSE IMPRISONMENT & DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

Exhibit H

DATE FILED: December 27, 2021 10:30 PM
FILING ID: EDBDC9ED38A27
CASE NUMBER: 2020CV148

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	

Defendants Walmart, Inc. et al ("Walmart"), by and through counsel, Treece Alfrey Musat P.C., hereby submit their Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter consolidates six (6) separate Arapahoe County Complaints filed by *pro se* Plaintiff, William Montgomery, against Walmart.[1] Plaintiff has also filed (3) filed pro se Complaints against Walmart in Adams County,[2] and he initiated his pro se Court of Appeals case for a Complaint against Walmart he filed in Jefferson County.[3] Plaintiff's method of operation at all Walmart stores is to begin audio recording before he enters the store. Invariably, Plaintiff will refuse to show his receipt for the items in his possession, with a goal of filing suit against Walmart under theories of false imprisonment, false arrest, malicious prosecution, and defamation. Plaintiff has failed to disclose evidence sufficient to meet his burden of proof on each of these claims. Accordingly, summary judgement is warranted.

STATEMENT OF UNDISPUTED FACTS

1. All six (6) of Plaintiff's Complaints filed under this Consolidated Case were filed *pro se*. *See* First Compl 2020CV148; Second Compl 2020CV184; Third Compl 2020CV209 (Dismissed. MTD Granted); Fourth Compl 2020CV217; Fifth Compl 2021CV1 (also referred to as 2021CV231); and Sixth Compl 2021CV235.

2. In his First Claim for Relief (2020CV148), Plaintiff claims that on September 3, 2019, Walmart employees "didn't let me leave, on my way out of their store, after I refused to show them my receipt." *See* First Compl. at ⁋ 4.

3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id*.

4. In his Second Claim for Relief (2020CV184), Plaintiff claims that on October 22, 2018, a Walmart employee "lied to an Aurora Police Officer that Plaintiff had shoplifted at his store." *See* Second Compl. at ⁋ 4.

5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id*.

---

[1] 2020CV148; 2020CV184; 2020CV209 (Dismissed. MTD Granted); 2020CV217; 2021CV1 (also referred to as 2021CV231); and 2021CV235.
[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation*. **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B**.

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

Second Claim for Relief: 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

Fourth Claim for Relief: 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte (Duarte) occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was accused of threatening Duarte and was arrested, making claims of malicious prosecution.

Fifth Claim for Relief: 2021CV1: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

Sixth Claim for Relief: 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *See West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering*, 72 P.3d at 453 (*citing Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970)). “[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts.” *Lewis v. McGraw Hill Broadcasting Co*., 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim.

Plaintiff has the burden to prove the following elements to succeed on a claim for malicious prosecution: (1) A criminal case was brought against the plaintiff; (2) The criminal case was brought as a result of (an) oral or written statement(s) made by the defendant; (3) The criminal case ended in favor of the plaintiff; (4) The defendant's statement(s) against the plaintiff (was) (were) made without probable cause; (5)The defendant's statement(s) against the plaintiff (was) (were) motivated by malice towards the plaintiff; and (6)As a result of the criminal case, the plaintiff had damages. Colo. Jury Instr., Civil 17:1.

In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

II. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Defendants are not legally responsible for Plaintiff's false imprisonment and false arrest claims because Defendants had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff does not dispute that he failed to show a receipt in any of these cases. Plaintiff has not disclosed any evidence that Plaintiff was detained for any purpose other

than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

III. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Plaintiff has not disclosed any evidence that his freedom of movement was restricted.

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." ***See*** **Colo. Jury. Instr., Civ. 21:2.**

Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C**. Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to*. **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id*. Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

COLORADO COURT OF APPEALS

DATE FILED: May 12, 2022
CASE NUMBER: 2021CA0359
DATE FILED: May 12, 2022 5:06 PM
CASE NUMBER: 2021CA0359

Court of Appeals No. 21CA0359
Jefferson County District Court No. 20CV76
Honorable Jason Carrithers, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart Stores, Inc.,

Defendant-Appellee.

ORDER AFFIRMED

Division I
Opinion by JUDGE TOW
Dailey and Berger, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced May 12, 2022

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Rachelle J. Veikune, Denver, Colorado, for Defendant-Appellee

¶ 1 Plaintiff, William Montgomery, appeals the district court's judgment in favor of defendant, Walmart Stores, Inc. (Walmart). We affirm.

I. Background

¶ 2 The following undisputed facts are gleaned from the pleadings and the parties' summary judgment briefing.

¶ 3 Montgomery entered a Walmart store and took two bags of ice out of a large cooler. He took the two bags to the cashier and bought them. Montgomery then asked the cashier if he could pay for a third bag of ice and then go get it from the cooler. The cashier agreed and Montgomery paid for the third bag of ice. The cashier gave Montgomery a receipt for that purchase and told Montgomery that "they'll ask for it."

¶ 4 A Walmart associate who was stationed at the exit watched Montgomery go to the cooler, get the third bag of ice, and proceed toward the exit. At the exit, the associate told Montgomery that he watched him do that and asked to see his receipt. Montgomery laughed and did not show his receipt. A second associate then asked to see the receipt. Montgomery refused to show his receipt. The second associate clarified that he was not accusing

Montgomery of anything but was just asking to see the receipt and explained that he did not know if Montgomery had a receipt.

¶ 5 Montgomery placed the bags of ice on the floor and started to search for Walmart's policies and "case law" on his cell phone. The second associate picked up the ice and began talking to the Walmart manager about the situation. The manager then asked Montgomery — six times — if he had a receipt. In response, Montgomery asked, "do I have to show the receipt." He was told he could take the ice out of the store if he showed a receipt. Ultimately, the manager asked Montgomery to leave, and he left without taking the ice.

¶ 6 Montgomery reported the incident to the police, insisting that Walmart be charged with a crime.[1] He then sued Walmart for false imprisonment and civil theft of $5.17 (the price of the three bags of ice). The district court granted Walmart's motion for summary judgment on both claims.

[1] It does not appear that any charges were filed.

II. Standard of Review

¶ 7 We review de novo a district court's order granting summary judgment. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 8 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact and there is a clear showing that the moving party is entitled to summary judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001). The moving party bears the burden of showing the absence of a genuine issue of fact. *Id.* The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27; C.R.C.P. 56(e).

A. False Imprisonment

¶ 9 Montgomery contends that the district court erred by concluding that he was not confined because all he had to do before being permitted to leave with the ice was show his receipt. We discern no error.

¶ 10 "[T]o confine one intentionally without lawful privilege and against one's consent within a limited area for any appreciable time, however short, constitutes the tort of false imprisonment." *Blackman for Blackman v. Rifkin*, 759 P.2d 54, 58 (Colo. App. 1988) (quoting 1 F. Harper & F. James, The Law of Torts § 3.7 (O. Gray 2d ed. 1986); *see also Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983) (citing Restatement (Second) of Torts section 35 (Am. L. Inst. 1965) in discussing what constitutes false imprisonment).[2]

¶ 11 To determine whether the Walmart employees "confined" Montgomery, the district court looked to section 36 of the

[2] Walmart did not assert in its motion for summary judgment, and does not assert here, that its employees had lawful authority to detain Montgomery under what is known as the "shopkeepers' privilege." *See* § 18-4-407, C.R.S. 2021. Thus, we do not address that issue.

Restatement (Second) of Torts, Westlaw (database updated Oct. 2020), which provides

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

¶ 12 Relying on this language, the district court concluded that showing the receipt was a reasonable means of leaving the store, and Montgomery was aware of that fact. Therefore, the district court concluded, Montgomery was not confined. As a threshold matter, we agree with the district court that section 36(2) of the Restatement (Second) of Torts accurately states the law. In particular, a comment to the provision notes that "it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a.

¶ 13 Montgomery does not claim he did not know that all he needed to do was show his receipt in order to leave the store but contends that showing his receipt was not a reasonable means of escape.[3] He argues — without citation to any statute or case law — that "showing a receipt is not an objectively reasonable action, under any circumstance." Indeed, he likens the request to being surrounded by a gang demanding money to let him leave. Notwithstanding how sincere Montgomery's subjective belief may be, his analogy objectively fails. Being mugged is not a "slight inconvenience"; being asked by a retailer to show a receipt as proof that an item was actually purchased — which is precisely what a receipt is designed for — is *at most* a "slight inconvenience."[4]

¶ 14 Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury. *See, e.g.*, *Deines v. Atlas Energy Servs., Inc.*, 2021 COA

[3] In this context, we view the term "escape" to simply refer to ending any confinement that may have occurred.

[4] Nor do we agree with Montgomery's claim that leaving would subject him to "social disgrace" and being labeled a thief. The only suggestion there may have been to the viewing public that he may not have paid for the ice was created by his own conduct in refusing to produce the receipt as proof of purchase.

24, ¶ 10 (noting that issues of negligence and proximate case — both of which involve determinations of reasonableness — "are matters generally left to be resolved by the jury"). However, in the "clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Id.* (quoting *Starks v. Smith*, 475 P.2d 707, 707 (Colo. App. 1970) (not published pursuant to C.A.R. 35(f)).

¶ 15 This is one such clear case. No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment. As a matter of law, then, Montgomery had a reasonable means by which he could exit the store. He simply chose not to avail himself of it.

¶ 16 We also note that Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested. We are aware of no case — and Montgomery presents none — in which a store patron was found to have been falsely imprisoned in the absence of one or more of those facts. Nor are we aware of — and, again, Montgomery does not cite to — any case or statute that prohibits a merchant from requiring customers to

display a receipt before leaving a store with goods in hand.[5] Accordingly, the district court properly decided that Walmart was entitled to judgment as a matter of law on the false imprisonment claim.[6]

B. Civil Theft

¶ 17 Montgomery also contends that the district court erred by concluding that the second Walmart associate lacked the requisite intent to deprive him of his property. Again, we discern no error.

¶ 18 Civil theft requires that the defendant "'knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception,' and acts intentionally or knowingly in ways that deprive the other person of the property permanently." *Scott v. Scott*, 2018 COA 25, ¶ 26 (quoting *Van Rees v. Unleaded Software, Inc.*, 2016 CO 51, ¶ 21); *see also* § 18-4-401(1), C.R.S. 2021. "Thus, civil theft, like criminal theft, requires the specific intent of the defendant to permanently

[5] Montgomery is not left without recourse. He remains free to opt not to frequent merchants who engage in this practice and to take his business elsewhere.

[6] In light of our conclusion, we need not address the district court's alternate reliance on section 36(3) of the Restatement (Second) of Torts, Westlaw (database updated Oct. 2020).

deprive the *owner* of the benefit of the property." *Scott*, ¶ 26 (emphasis added).

¶ 19 To succeed in his civil theft claim, as relevant here, Montgomery had to show that the second associate had the specific intent to deprive him of his ice. In Montgomery's response to Walmart's motion for summary judgment, he admitted the following:

- "The Defendants simply asked Plaintiff to see his receipt, *concluded that he stole items from them, reclaimed what they believed was theirs*, and went about their business after escorting Plaintiff out of their store."
- "The Defendants had every intention of permanently keeping *what they thought was 'their' merchandise*, so long as Plaintiff continued to not give into their demands."

(Emphasis added.) It was, therefore, undisputed that the second associate thought that Montgomery did not own the ice. Thus, Montgomery failed to create a dispute of material fact regarding the associate's (or Walmart's) unlawful intent. Accordingly, the district

court properly determined that Walmart was entitled to judgment as a matter of law on the civil theft claim.

¶ 20 Finally, we will not consider Montgomery's conversion claim on appeal because he failed to bring it in the district court. *See O'Connell v. Biomet, Inc.*, 250 P.3d 1278, 1282 (Colo. App. 2010) (specific arguments that were never "presented to, considered by, or ruled upon by a trial court may not be raised for the first time on appeal").

III. Conclusion

¶ 21 We affirm the judgment.

JUDGE DAILEY and JUDGE BERGER concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

23CA0159 Montgomery v Walmart 10-26-2023

COLORADO COURT OF APPEALS

DATE FILED: October 26, 2023
July 23, 2024 5:06 PM
CASE NUMBER: 2023CA159

Court of Appeals No. 23CA0159
Adams County District Court Nos. 21CV68 & 21CV88
Honorable Teri Lynn Vasquez, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart Inc.,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division B
Opinion by JUDGE SCHUTZ
Tow and Grove, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced October 26, 2023

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Denver, Colorado, for Defendant-Appellee

¶ 1 Plaintiff, William Montgomery, appeals the trial court's order granting summary judgment in favor of defendant, Walmart Inc. We affirm.[1]

I. Factual and Procedural Background

¶ 2 This appeal addresses two consolidated cases filed by Montgomery against Walmart in Adams County District Court. Both cases arise out of a repeated fact pattern in which Montgomery enters a Walmart store, purchases merchandise, refuses to produce receipts for that merchandise when asked to do so before exiting, is briefly detained by Walmart employees, and thereafter sues Walmart (and on some occasions Walmart employees and responding law enforcement officers) for false imprisonment, defamation, and related claims. Many of these claims have resulted in the entry of summary judgment against

---

[1] We note that Montgomery's reply brief contains numerous obscenities and ad hominem attacks on appellee, its counsel, and judicial officers. Such rhetoric has no place in the legal system. *See, e.g.*, *Martin v. Essrig*, 277 P.3d 857, 860-61 (Colo. App. 2011). We also note that the reply brief was previously struck because it was not timely filed. Mr. Montgomery is hereby notified that if he files papers or pleadings containing such rhetoric in the future, his appeal may be summarily dismissed, and other appropriate sanctions will be imposed.

Montgomery, with Montgomery thereafter appealing to this court, where the panels affirmed the summary judgment orders. *See Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)); *Montgomery v. Walmart, Inc.*, (Colo. App. No. 22CA0625, June 1, 2023) (not published pursuant to C.A.R. 35(e)). Nevertheless, Montgomery has persisted in repeating the same scenario, with minor factual variations, followed by the filing of similar claims.

¶ 3 In case no. 21CV68, the underlying interaction started when Montgomery decided to shop at Walmart once again. Aware of Walmart's policy of requesting receipts from some exiting customers, Montgomery decided to tape-record his interaction so that he would have a record if such an encounter ensued. At the beginning of the recording, Montgomery tells an unidentified third party that "basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." Montgomery thereafter entered Walmart, selected the item he wished to purchase, and proceeded to the self-checkout machines at the front of the store. He had forgotten his wallet, so he exited the store without any items before returning to the checkout with

his wallet. He then paid for the items. He declined to use a plastic shopping bag, believing them to be environmentally unfriendly. By affidavit, Montgomery stated as follows: "Regarding my receipt, I don't recall if I kept it on me, or threw it away. Because I had no intention of returning what I had just purchased, I think I might have thrown it away."

¶ 4 The exit closest to the self-checkout machine was closed, so Montgomery walked to the next exit, carrying the purchased items. As he approached the exit doors, a Walmart employee asked to see Montgomery's receipt. Montgomery declined the request, and when he attempted to leave, the employee stepped in front of him. A second employee was called and again asked Montgomery for his receipt, and he again declined to produce it. The two employees were blocking Montgomery's path to the door. The employees told Montgomery that if he showed them his receipt, he could leave. Eventually a third Walmart employee appeared. This employee recognized Montgomery from a past encounter and told him to leave the store. Montgomery did so. Based on these facts, Mongomery alleged a single claim of false imprisonment.

¶ 5 Case no. 21CV88 involved a similar scenario. Montgonery turned on his phone recorder, entered Walmart, and began shopping for items. This time he purchased various food and non-food items. He then went to the automotive register, which is located in the back of the store away from primary checkout registers, where he asked that the food and non-food items be rung up separately. He then determined he did not have enough money to purchase the non-food items, so he asked that they be removed from the purchase and then paid for the food items. Again, Montgomery eschewed using a bag and could not recall whether he kept or discarded his receipt but thought he "might have thrown it away."

¶ 6 Montgomery then travelled to the front exit doors, where he was asked for his receipt. He declined to produce it and was eventually confronted by three Walmart employees who blocked his exit but told Montgomery that he would be allowed to leave if he showed them his receipt. Montgomery declined to produce a receipt and did not state that he had discarded it. Montgomery alleged that several store employees "accus[ed] him of 'stealing' from the store" and that another patron offered to pay for his items. After a

few minutes, the employees permitted Montgomery to leave the store. On the basis of these facts, Montgomery asserted claims for false imprisonment and defamation.

¶ 7 Walmart moved for summary judgment on all three claims. The trial court granted the motion, and Montgomery appeals that order.

II. Analysis

¶ 8 Montgomery contends that the trial court erred by concluding that the undisputed material facts established that he could not prevail on his false imprisonment and defamation claims.

A. Standard of Review and Applicable Law

¶ 9 Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c). "The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party." *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988). "The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts . . . ." *Martini v. Smith*, 42 P.3d 629, 632 (Colo.

2002). We review a district court's grant of summary judgment de novo. *Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 657 (Colo. 2011). On review, our task is to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law in granting the defendant's motion. *City of Fort Collins v. Colo. Oil & Gas Ass'n*, 2016 CO 28, ¶ 9.

B. False Imprisonment

¶ 10 To prevail on a claim of false imprisonment, a plaintiff must establish the following: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." *Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983).

¶ 11 With respect to the second element, a person's "freedom of movement" is restricted if he has been limited to a certain area "and does not know of any way to escape without causing an unreasonable risk of harm" to himself. *See* CJI-Civ. 21:2(1) (2023). Additional guidance is provided by section 36 of the Restatement (Second) of Torts (Am. L. Inst. 1965), which provides:

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) *The confinement is complete although there is a reasonable means of escape, unless the other knows of it.*
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

(Emphasis added.) The italicized language and a related comment make clear that false imprisonment does not occur if the claiming party has a reasonable means of escaping the confinement. Restatement (Second) of Torts § 36 & cmt. a ("[I]t is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience . . . .").

¶ 12 The question, then, is whether Montgomery had a reasonable means of escaping his alleged confinement by the Walmart employees. Past divisions of this court, addressing Montgomery's prior lawsuits against Walmart, have concluded that Montgomery was not confined for purposes of his false imprisonment claims because he had a receipt that would allow him to avoid

confinement, and production of the receipt was not an unreasonable means of avoiding or terminating his confinement. *See Montgomery*, No. 21CA0359, slip op. at ¶ 15; *Montgomery*, No. 22CA0625, slip op. at ¶ 12.

¶ 13 In an effort to avoid the reasoning of these prior appellate decisions, Montgomery notes that he has averred that he does not remember whether he kept his receipt and thinks he "might" have discarded it. Thus, he argues, the evidence does not establish that he had a receipt and associated means of escape available to him at the time he was confronted and detained. We are not persuaded this fact, even if true, would change the outcome.

¶ 14 The evidence is undisputed that, at the time he entered the Walmart store in both underlying cases, Montgomery was aware of Walmart's policy of stopping some exiting customers to ask for receipts. Montgomery was also aware that if he chose not to produce a receipt, he might be briefly detained as employees investigated the matter. At the same time, Montgomery also knew that if he retained and produced his receipt, he would not be detained. Despite this knowledge, Montgomery either chose to

discard his receipt or to disregard the fact that the receipt would have allowed him to avoid the confinement of which he complains.

¶ 15 Given Montgomery's repetitive interactions with Walmart, coupled with his recorded contemplation of his anticipated detention, the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision. Similarly, no reasonable juror could conclude that it was an unreasonable burden to expect Montgomery, under these circumstances, to retain his receipt and show it to the Walmart employee as he exited. Simply put, Montgomery had a reasonable means of both avoiding confinement and "escaping" confinement by using a receipt.

¶ 16 Nor are we persuaded otherwise by Montgomery's reliance on case law from other jurisdictions. Montgomery leans heavily on *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000). In the first instance, *Ball* was decided based on Massachusetts law, which is not controlling here. Moreover, the facts of *Ball* are materially different than those presented here. Most significantly, there is no indication that the customer detained in *Ball* was aware of Walmart's receipt checking policy. Here, in contrast, Montgomery

- was fully aware of the Walmart receipt policy;
- had been subjected to the receipt policy on numerous prior occasions;
- continued to shop at Walmart while expressly contemplating that he would likely be asked for a receipt and briefly confined if he chose not to produce it; and
- nevertheless chose to either discard or disregard his receipt at the checkout and then refused to produce it as requested.

These facts were not present in *Ball*; therefore, we find it unpersuasive.

¶ 17 The trial court did not err by concluding, as a matter of law, that no reasonable juror could find in Montgomery's favor on his claims for false imprisonment.[2] We therefore will not disturb its entry of summary judgment.

---

[2] For the reasons explained more fully below, the trial court also properly concluded that Montgomery's false imprisonment claims are barred by the shopkeeper's privilege. *See* § 18-4-407, C.R.S. 2023.

C. Defamation

¶ 18 The term defamation encompasses claims for both libel and slander. *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). Generally, a libel claim must be based on a written defamatory statement. *Id.* Slander is based on oral statements. Montgomery bases his defamation claim on statements allegedly made by Walmart employees that "accus[ed] him of 'stealing' from the store." Thus, he characterizes the claim as one for slander per se.[3]

¶ 19 Even if we assume, without deciding, that the alleged accusation of theft was slanderous per se, that does not end the inquiry. A claim for libel per se is defeated if the declarant was acting pursuant to a recognized privilege. Section 18-4-407, C.R.S. 2023, which is titled "Questioning of persons suspected of theft without liability," establishes what is commonly referred to as the

---

[3] In his complaint, Montgomery stated a claim for "defamation." Nonetheless, in his response to Walmart's motion for summary judgment, and again on appeal, Montgomery relies on principles of slander per se as the basis for his defamation claim. Construing his filings liberally, we conclude that Montgomery adequately asserted a claim for slander per se. *See, e.g.*, *Gandy v. Williams*, 2019 COA 118, ¶ 8 ("[W]e liberally construe [pro se] filings while applying the same law and procedural rules applicable to a party represented by counsel.").

shopkeeper's privilege, allows a store employee, "acting in good faith and upon probable cause based upon reasonable grounds" to "detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft." Given the combination of unique circumstances surrounding Montgomery's purchases and subsequent rescission of some of the purchases, his use of the automotive register to purchase food items, his eschewing the use of a bag, and his persistent failure to produce a receipt when requested, we conclude the employees, acting in good faith, had reasonable grounds for concluding there was probable cause that Montgomery was committing a theft.[4] Similarly, we conclude the brief detention and questioning — including an accusation of theft — were made in a reasonable manner to ascertain whether a theft occurred. Thus, the shopkeeper's privilege applied, and it defeats Montgomery's claim for slander per se.

---

[4] Our holding should not be interpreted to mean that any one of these factors, standing alone, would be sufficient to provide probable cause under the shopkeeper's privilege.

III. Conclusion

¶ 20 The judgment is affirmed.

JUDGE TOW and JUDGE GROVE concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

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BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

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COLORADO COURT OF APPEALS

DATE FILED: June 1, 2023
CASE NUMBER: 2022CA0625

Court of Appeals No. 22CA0625
Arapahoe County District Court Nos. 20CV148, 20CV184, 20CV209, 20CV217, 21CV1 & 21CV235
Honorable Peter F. Michaelson, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart, Inc. and Alberto Carlos Cordero Duarte,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE GROVE
Dailey and Gomez, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 1, 2023

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Rachelle J. Veikune, Denver, Colorado, for Defendants-Appellants

¶ 1 Plaintiff, William Montgomery, appeals the district court's judgment in favor of defendants, Walmart Stores, Inc., and Albert Carlos Cordero Duarte (collectively, Walmart). We affirm.

I. Background

¶ 2 This consolidated case is one of several in which Montgomery has gone to Denver-area Walmart stores to, as the district court put it, "sting[]" them "so he can sue them for false arrest." The cases generally follow the same pattern: Montgomery buys items from the store (or enters the store with items that he has previously purchased), declines a bag "for environmental reasons," and then walks out of the store carrying the items in his hand and without a visible receipt. If he is stopped and asked for his receipt, he refuses to provide it until after he is detained, and in some cases arrested.

¶ 3 After some of these encounters (including the incidents underlying this appeal), Montgomery has sued Walmart and/or its employees for, among other things, false imprisonment, malicious prosecution, and defamation. *See Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)) (*Montgomery I*).

¶ 4 Montgomery has also filed many federal civil rights lawsuits against law enforcement officers who have taken action against him on suspicion of shoplifting. *See, e.g.*, *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB-MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

¶ 5 Based on our review of the record and the district court's summary judgment order, the consolidated cases before us in this appeal are generally similar to those cited above. In each incident, all of which Montgomery audio recorded, store employees stopped Montgomery when exiting a Walmart while carrying merchandise in his hands or on his person (but not in a bag) and asked for his receipt. Even though he had receipts for his purchases,

Montgomery refused to provide them. Walmart's loss-prevention officers then called the police, who responded, and in some cases, detained and/or arrested Montgomery on suspicion of shoplifting. Only then did Montgomery produce receipts demonstrating that he had purchased, rather than stolen, the items he was carrying.

¶ 6 Montgomery sued Walmart in six different cases. Only one complaint is in the record before us (and even that one has virtually no detail), but in a case management order consolidating five of the cases, the district court categorized each case as a separate "claim for relief." The case management order listed the "claims for relief" as follows:

- Claim 1: 2020CV148: False imprisonment;
- Claim 2: 2020CV184: Malicious prosecution;
- Claim 3: 2020CV209: False imprisonment, assault, and defamation;
- Claim 4: 2020CV217: Malicious prosecution; and
- Claim 5: 2021CV1: False imprisonment, defamation, false arrest, and malicious prosecution.

¶ 7 A sixth case (Claim 6: 2021CV235) alleging false imprisonment and slander was added at some point after the cases were

consolidated. The complaint for Claim 6 does not appear in the record, but the parties addressed it in their summary judgment briefing.

¶ 8 After the cases were consolidated, and as relevant here, Walmart moved to dismiss Claim 3.[1] The court granted the motion in a written order, concluding that it was barred by the statute of limitations. Montgomery does not challenge that order on appeal, so we do not consider it further.

¶ 9 Both parties later moved for summary judgment on the remaining Claims. In a detailed written order, the court granted Walmart's motion and denied Montgomery's. As relevant here, the court ruled as follows:

- Montgomery abandoned the cause of action for false arrest in Claim 5.
- Walmart was entitled to summary judgment on the false imprisonment causes of action in Claims 1, 5, and 6

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[1] Walmart's motion to dismiss Claim 3 is not in the record before us. Nor is Montgomery's response, if any was filed. But the court's order granting Walmart's motion to dismiss Claim 3 with prejudice is part of the appellate record.

because the undisputed facts showed that its employees "would have reasonable grounds . . . to find probable cause existed to detain and question Montgomery in order to ascertain whether he had committed a theft by, in a reasonable manner, asking to see his receipts."

- Walmart was entitled to summary judgment on the malicious prosecution causes of action in Claims 2, 4, and 6 because he failed to allege the elements that were necessary for him to prevail.[2]
- Walmart was entitled to summary judgment on Montgomery's defamation causes of action in Claims 5 and 6 because the employees' statements were protected by qualified privilege,[3] and "Montgomery has

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[2] We note that the court's consolidation order indicated that Montgomery's Claim 5 also included a malicious prosecution cause of action. Because the complaint for Claim 5 is not in the record before us, we cannot confirm that this is accurate. However, assuming that Claim 5 included a malicious prosecution cause of action, the court's summary judgment order did not specifically rule on it. On appeal, however, Montgomery does not address this omission or otherwise suggest that he was entitled to relief on that specific cause of action. We therefore consider it abandoned.

[3] The district court erroneously referred to the qualified *privilege* associated with statements involving matters of public concern as

shown no evidence to overcome the presumption that there was an absence of malice."

II. Standard of Review

¶ 10 We review de novo a district court's order granting summary judgment. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 11 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact, and there is a clear showing that the moving party is entitled to summary judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001). The moving party bears the burden of showing the absence of a genuine issue of fact. *Id.* The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere

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qualified *immunity*. Walmart repeats this mistake in its answer brief.

allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27.

III. False Imprisonment

¶ 12 The district court rejected Montgomery's false imprisonment causes of action (which appeared in Claims 1, 5, and 6) on two distinct grounds: (1) Montgomery was not confined because he "knew that he could escape without causing an unreasonable risk of harm to him[self] . . . by merely presenting his receipt to Walmart employees"; and (2) in each case, "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store," thus triggering the "shopkeepers' privilege" created by section 18-4-407, C.R.S. 2022. We agree with both facets of the court's reasoning.

¶ 13 First, when faced with this precise question in *Montgomery I*, the division affirmed the district court's conclusion that "showing the receipt was a reasonable means of leaving the store, and Montgomery was aware of that fact." *Montgomery I*, slip op. at 5. As support for this proposition, the *Montgomery I* division relied on

a comment to section 36(2) of the Restatement (Second) of Torts, which says that "it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

¶ 14 Montgomery disagrees with the division's reliance on this comment, arguing that it applies to "PRE-confinement situations only." Montgomery does not define "pre-confinement," and it is not entirely clear from the context what he intends it to mean. In any event, the illustrations in the Restatement support the *Montgomery I* division's interpretation of the comment. For example, the first illustration in comment a provides as follows: "A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B." *Id.* If Montgomery's interpretation of the Restatement were correct, the false imprisonment described in this illustration would be complete, at the latest, when A locks B in the room. But the comment makes clear that, because B has a "means of escape of which he is himself aware" that can be utilized with only "a slight inconvenience," he has not been confined. *Id.*

¶ 15 As the *Montgomery I* division held, the circumstances giving rise to Montgomery's false imprisonment cause of action are directly analogous to the illustrations in the Restatement. In particular, just as the "athletic young man" could escape a locked room with a minimum of inconvenience by exiting through the window, Montgomery could have left the store with his purchased goods in hand simply by showing the receipt that he had concealed on his person. Indeed, as the district court observed, the undisputed facts show that Montgomery was aware that, in each case, he could have resolved the situation merely by showing his receipts. Specifically, the court concluded that the undisputed facts showed that "Montgomery knew that he could escape without causing an unreasonable risk of harm to him[self] . . . or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited."

¶ 16 Like the *Montgomery I* division, we recognize that reasonableness is a matter usually left to the jury. *See, e.g.*, *Deines v. Atlas Energy Servs., LLC*, 2021 COA 24, ¶ 10 (noting that issues of negligence and proximate cause — both of which involve determinations of reasonableness — "are matters generally to be

resolved by the jury"). However, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Gibbons v. Ludlow*, 2013 CO 49, ¶ 13 (quoting *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008)).

¶ 17 We agree with the district court in this case — and with the *Montgomery I* division's analysis based on substantially similar facts — that no reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment. As a matter of law, then, for those interactions in which Montgomery was merely asked for his receipt at the exit, he had a reasonable means by which he could exit each of the stores. He simply chose not to avail himself of it.

¶ 18 Second, even if Montgomery was confined without a reasonable means of escape, we agree with the district court the

undisputed facts implicate the "shopkeepers' privilege" established by section 18-4-407.[4]

¶ 19 Section 18-4-407, which is titled "Questioning of person suspected of theft without liability," exempts store employees from civil or criminal penalties if they detain and question suspected shoplifters in a reasonable manner. As relevant here, the statute provides as follows:

> If any person . . . conceals upon his person or otherwise carries away any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question

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[4] In *Montgomery I*, the division observed that "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested." *Montgomery v. Walmart Stores, Inc.*, slip op. at 7 (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)). In at least two of the situations here (Claims 4 and 5), Montgomery was escorted to the loss prevention office by a Walmart employee and subsequently handcuffed by responding officers. He later showed his receipts and was released. We are not convinced that escorting Montgomery to the loss prevention office makes any substantive difference to the question whether he had a "means of escape of which he is himself aware," Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965) — namely, showing his receipt. But to the extent that these circumstances do undermine the applicability of the Restatement, the shopkeepers' privilege applies.

> such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee, or peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

¶ 20 In *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 247-48, 455 P.2d 201, 203 (1969), our supreme court noted that the "intent of the statute" is "to afford under certain circumstances a degree of protection to the person who stops and questions another for the purpose of ascertaining whether such other person is guilty of shoplifting but who it later develops is actually not guilty of any shoplifting." Accordingly, the statute

> affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting.

Id. at 248, 455 P.2d at 203.

¶ 21 In *Carrington*, the supreme court observed that "the evidence on this particular issue [i.e., whether the store employees were

justified in questioning the plaintiff about his purchases] was not in dispute," and thus it was able to "conclude that as a matter of law the defendant's agents acted in good faith and upon probable cause based upon reasonable grounds."[5] *Id.* at 248, 455 P.2d at 204.

¶ 22 The undisputed facts here lead us to the same conclusion. As the district court noted, "Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence." That conclusion is confirmed not only by Montgomery's description of his actions, but also by own statements made to store employees and responding officers — which included his admissions that he

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[5] To be sure, the court in *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 244, 455 P.2d 201, 202 (1969), did conclude that there were disputed facts concerning the plaintiff's other tort claims, which arose from his allegations that he was "forcibly and violently seized and assaulted" and "subjected to great indignities, humiliation and disgrace," both of which led to him to suffer complications from a previous surgery. As best we can tell from the record before us, Montgomery did not pursue any causes of action other than false imprisonment, malicious prosecution, and defamation. In contrast to the claims that were remanded for further consideration in *Carrington*, the facts underlying those claims that might implicate the shopkeepers' privilege are undisputed, and thus amenable to resolution as a matter of law.

was conducting a "sting," and that "he came to the store and planned on suing."

¶ 23 Accordingly, even if Montgomery was "confined" by the store employees, those employees are immune from liability for false imprisonment under section 18-4-407. The district court therefore properly granted summary judgment on these causes of action in Walmart's favor.

IV. Malicious Prosecution

¶ 24 Montgomery's Claims 2, 4, and 5 sought relief for malicious prosecution.[6] We agree with the district court's conclusion that Walmart was entitled to summary judgment on these claims.

¶ 25 At the threshold, without the complaint or any relevant citations to the record, we are unable to discern the basis for malicious prosecution as asserted in Claim 5. We therefore do not

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[6] The court's summary judgment order states that Claims 2, 4, and 6 include malicious prosecution claims, but the order consolidating Montgomery's cases reflects that cause of action only in Claims 2, 4, and 5. The complaint underlying Claim 6 is not in the record, but Walmart's summary judgment motion states that it asserted claims of false imprisonment and defamation. Consistent with this description, Montgomery's description of "facts unique to Claims #1 and #6" in his opening brief does not describe any acts that could give rise to a malicious prosecution cause of action.

consider it further. *See Cikraji v. Snowberger*, 2015 COA 66, ¶ 10 ("[W]e will not comb the record for facts supporting plaintiff's arguments that were not cited in his brief.").[7]

¶ 26 A claim of malicious prosecution requires the plaintiff to establish the following factors:

> (1) A criminal case was brought against the plaintiff.
>
> (2) The criminal case was brought as a result of oral or written statements made by the defendant.
>
> (3) The criminal case ended in favor of the plaintiff.
>
> (4) The defendant's statements against the plaintiff were made without probable cause, or, if the complaint was filed with probable cause, the defendant continued to prosecute the criminal action after he no longer had probable cause to believe the plaintiff guilty.

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[7] To the extent that the malicious prosecution cause of action in Claim 5 might have arisen from a theft charge that was later dropped, Walmart would be immune from civil liability under the shopkeepers' privilege. *See* § 18-4-407, C.R.S. 2022. However, we do not apply the shopkeepers' privilege analysis to the malicious prosecution cause of action arising from the harassment charges underlying Claims 2 and 4. Rather, those claims fail because Montgomery failed to establish at least two of the elements of a malicious prosecution claim.

(5) The defendant's statements against the plaintiff were motivated by malice toward the plaintiff.

(6) As a result of the criminal case, the plaintiff suffered damages.

CJI-Civ. 17:1 (2022).

¶ 27 Claims 2 and 4 were based on a harassment charge for using threats and obscenities against a Walmart employee. The charge was dismissed by the prosecution without any decision having been rendered on the merits, but the district court concluded that it nonetheless was based on probable cause irrespective of whether Montgomery did in fact threaten the Walmart employee. The court also concluded that summary judgment was warranted because "there was no evidence that [the harassment] charge was pursued by [the Walmart employee] nor that the statements against Montgomery were supported by malice."

¶ 28 We agree with all of the district court's rationales:

- Montgomery did not establish that the store employee's statements against Montgomery were made without probable cause, nor did he provide any evidence that any of the defendants' statements against him were motivated

by malice. *See Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 858 (Colo. App. 2007) ("[W]hen a response to a motion for summary judgment . . . states conclusions on ultimate issues without including facts that tend to prove or disprove the allegations made in the motion for summary judgment, it is insufficient to give rise to genuine issues of fact.").

- Montgomery presented no evidence that would support a conclusion that the harassment case was dismissed on the merits or that it was terminated under circumstances that fairly imply his innocence.

¶ 29 Accordingly, Montgomery failed to establish at least two of the elements of malicious prosecution in Claims 2 and 4. Summary judgment was therefore proper.

V. Defamation

¶ 30 Finally, Montgomery contends that the court erroneously entered summary judgment for Walmart on his defamation claims, which appeared in Claims 5 and 6. We discern no error.

¶ 31 At the outset, as we have already noted, the shopkeepers' privilege covers defamation. Thus, to the extent that the allegations

of defamation are based on statements made by Walmart employees when they confronted him and asked to see his receipts, Walmart is arguably immune from civil liability because, as we have already concluded, they had probable cause for doing so under section 18-4-407 and, as a matter of law, none of the statements that they made — all of which were focused on whether Montgomery had in fact shoplifted — exceeded the scope of that privilege.

¶ 32 Even if the statements were not covered by shopkeepers' privilege, however, Montgomery's claims of defamation would still fail. Because the statements pertained to potential criminal activity, the statements were matters of public concern. *See Lawson v. Stow*, 2014 COA 26, ¶ 21. And "[w]here a statement relates to a matter of public concern, the speaker's communication is subject to a qualified privilege." *Id.* at ¶ 18. Under this standard, (1) the defamed party must prove the falsity of the statement by clear and convincing evidence, rather than by a mere preponderance; (2) the defamed party must prove that the speaker published the statement with actual malice — that is, with actual knowledge that the statement was false or with reckless disregard for whether the statement was true; and (3) the defamed party must

establish actual damages to maintain the action, even if the statement is defamatory per se. *Id.*

¶ 33 As discussed above, there is no evidence in the record that the Walmart employees were speaking with actual malice when they referred to Montgomery as a shoplifter, told him they needed their products back, or expressed concerns that Montgomery was on drugs. To the contrary, Montgomery deliberately led store employees to believe that he was shoplifting with the express purpose of filing suit for, among other things, defamation and false imprisonment. Based on the undisputed facts in the record, Montgomery is therefore unable to overcome the presumption that the employees' statements were not made with actual knowledge that they were false or with reckless disregard for whether the statements were true. The district court thus properly entered summary judgment on this cause of action.

VI. Conclusion

¶ 34 The judgment is affirmed.

JUDGE DAILEY and JUDGE GOMEZ concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED July 25, 2024 3:17 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S MOTION FOR SUMMARY JUDGMENT	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Summary Judgment seeking dismissal of Plaintiff's claims against Best Buy pursuant to C.R.C.P. 56:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with pro se Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

I. INTRODUCTION

It is important for this Court to understand that Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado State Courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff seeks to change well established case law and statutes because he simply disagrees with the statute. Because Plaintiff has been told multiple times by numerous courts that his complaints against retailers are not permissible pursuant to the Shopkeeper's Privilege, and Plaintiff yet chose to file this lawsuit against Best Buy, this Court should dismiss the matter summarily and award Best Buy attorney's fees for having to defend this frivolous lawsuit.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On March 31, 2020, Plaintiff filed a Complaint against Walmart alleging false imprisonment claims, similar to the allegations in the matter before this Court (Jefferson County case 2020CV76). See *Exhibit A, Plaintiff's Complaint in 2020CV76 and Order granting Defendant's Motion for Summary Judgment.*

2. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Adams County cases 2020CV067). See *Exhibit B, Plaintiff's Complaint in 2020CV067 and Order granting Defendants motion for summary judgment.*

3. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV148). See *Exhibit C, Plaintiff's Complaint in 2020CV148 and Order granting motion for summary judgment.*

4. On November 27, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment, assault, and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV209). See *Exhibit D, Plaintiff's Complaint in 2020CV209 and Order granting Defendant's Motion for Summary Judgment.*

5. On January 4, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV1/21CV231). See *Exhibit E, Plaintiff's Complaint in 2021CV1 and Order granting Defendant's Motion for Summary Judgment.*

6. On August 6, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Adams County case 2021CV68). See *Exhibit F, Plaintiff's Complaint in 2021CV68 and Order granting Defendant's Motion for Summary Judgment.*

7. On September 3, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Adams County case 2021CV88). See *Exhibit G, Plaintiff's Complaint in 2021CV88 and Order granting Defendant's Motion for Summary Judgment.*

8. On September 20, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV235). See *Exhibit H, Plaintiff's Complaint in 2021CV235 and Order granting Defendant's Motion for Summary Judgment.*

9. On May 12, 2022, the Colorado Court of Appeals issued and Order Affirming the trial court's Order granting Defendants motion for summary judgement set forth in Exhibit A. See *Exhibit I, Order Affirmed, Court of Appeals No. 21CA0359*.

10. On October 26, 2023, the Colorado Court of Appeals issued an Order affirming the Adams County District Court Orders set forth in Exhibits B, F & G. See, *Exhibit J, Judgement Affirmed, Court of Appeals No. 23CA0159.*

11. On June 1, 2023, the Colorado Court of Appeals issued an Order affirming the Arapahoe County District Court Orders set forth in Exhibits C, D, E & H. See *Exhibit K, Judgment Affirmed, Court of Appeals No. 22CA0625.*

Best Buy incorporates, as if fully set forth herein, the above Orders granting defendants' motions for summary judgment, contained in Exhibits A through G and the Colorado Court of Appeals Orders affirming the District Court Orders, contained in Exhibits

12. YOUTUBE VIDEO "I have it all planned" *See Exhibit L, link to Youtube video.* https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY

13. On or about November 25, 2022, Plaintiff targeted the Best Buy store located in Westminster, CO when he exited the store with merchandise in his possession ("the Incident"). The only evidence Plaintiff produced of the encounter was the body cam video captured by Plaintiff. See *Exhibit M, link to Body Cam footage.* https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY

14. As seen on the video, Plaintiff did not show a receipt to Best Buy staff when requested to do so.

15. As seen on the video, Best Buy employees suspected Plaintiff of stealing items from Best Buy and confronted Plaintiff outside the store.

16. In the recording, a Best Buy employee stated that he had "never had someone stand here and wait for us to come get them" in reference to Plaintiff.

17. Best Buy employees repeatedly ask Plaintiff to return the store merchandise.

18. Eventually Best Buy employees leave Plaintiff, tell him to "have a good one."

19. At no time during the interaction did Best Buy employees touch Plaintiff or threaten to harm him.

20. At all times, Plaintiff could have simply shown a receipt and ended the confrontation.

21. On November 21, 2023, Plaintiff filed a complaint against Best Buy, alleging False Imprisonment, Defamation *per se*, and Assault against the Best Buy. See *Exhibit N, Complaint against Best Buy.*

III. LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *American Water Dev., Inc. v. City of Alamosa, 874 P.2d 352, 360* (Colo. 1994). In deciding whether to grant a motion for summary judgment, a court must consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any." *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 466 (Colo. 2003) (quoting C.R.C.P. 56(c)); *AviComm, Inc. v. Colo. Pub. Util. Comm'n*, 955 P.2d 1023, 1029 (Colo. 1998). The burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *Id*.

In determining when summary judgment is proper, the nonmoving party is entitled to all favorable inferences that may reasonably be drawn from the undisputed facts. *Bayou Land Co. v. Talley*, 924 P.2d 136, 151 (Colo. 1996). However, once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes necessary for the nonmoving party to set forth facts by affidavit, or otherwise, showing that there is a genuine issue for trial. *Civil Service Com'n. v. Pinder*, 812 P.2d 645, 649 (Colo.1991).

Shopkeeper's Privilege

C.R.S. § 18-4-407

> affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether

> or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

IV. ARGUMENT

A. Plaintiff has failed to show that the Actions of the Best Buy Employees amounted to False Imprisonment and the actions of the Best Buy employees were further protected by the Shopkeeper's Privilege, pursuant to C.R.S. 18-4-407.

In order to prove a claim for False Imprisonment, Plaintiff must show that 1) the defendant intended to restrict the plaintiff's freedom of movement; 2) the defendant directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short' 3) the plaintiff was aware their freedom of movement was restricted. Freedom of movement is restricted when a "person's freedom of movement is actually limited, or he believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him." See CJI-21:2.

"It is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

Plaintiff had the tools of escape and Best Buy cannot be held liable for False Imprisonment. If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not have proof of purchase, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff's claims. Showing such proof was a minor inconvenience, and Plaintiff cannot claim that

inconvenience is insurmountable and thus claim false imprisonment. It is unreasonable for Plaintiff to refuse to show his proof of purchase which would have freed him from the false imprisonment he alleges. Thus, the Court should dismiss Plaintiff's claim of false imprisonment.

Further, Plaintiff's claim necessarily fails as Best Buy's actions were protected by C.R.S. § 18-4-407, the Shopkeeper's Privilege, which provides that:

> under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

Here, Plaintiff intentionally concealed merchandise, exited the Best Buy store, waited to be confronted by employees and then refused to show a receipt for the merchandise. Best Buy acted in good faith and had probable cause to believe Plaintiff may have shoplifted merchandise from Best Buy and acted reasonably in questioning Plaintiff while waiting for police to respond.

Plaintiff's freedom of movement was not restricted, as required for a claim of false imprisonment and his claim is further barred by the Shopkeeper's Privilege and should be dismissed.

B. Plaintiff's claim for Defamation Per Se must be dismissed because Plaintiff has not shown that his reputation was harmed, and the only statements made were by the Plaintiff.

The elements of Defamation are 1) a defamatory statement concerning another; 2) published to a third party; 3) falsity of the statement; 4) special damages caused by publication. Plaintiff must show that at the time of publication, the defendant knew that the statements were

false or the defendant made the statements with reckless disregard as to whether they were false. CJI-22:1. A statement is "published" when it is communicated to and is understood by some person other than the plaintiff. CJI-22:7. A statement is defamatory if it tends to harm the person's reputation by lowering the person in the estimation of at least a substantia and respectable minority in the community. CJI-8.

"Plaintiff alleges in his Complaint that Best Buy employees "falsely, loudly, rudely, and publicly accused me of stealing in front of many others." Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic. At the time Plaintiff was questioned by Best Buy employees they were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy. Further, Plaintiff's claim of defamation is frivolous given that Plaintiff actually publishes via social media and YouTube, his intent and plan to bait store employees into suspecting him of shoplifting and investigating his actions. See *Exhibit L.*

Further, the Shopkeeper's Privilege bars Plaintiff's claim for defamation against Best Buy.

C. Plaintiff has failed to establish that the actions of Best Buy employees constituted assault and the Best Buy employees actions in confronting Plaintiff were protected by the Shopkeeper's Privilege.

For the plaintiff to recover from the defendant, on his claim of assault, he must prove that 1) The defendant intended to cause an offensive or harmful physical contact with the plaintiff or intended to place the plaintiff in apprehension of such contact; and 2) The defendant placed the plaintiff in apprehension of immediate physical contact.

"Mere words alone, unless accompanied by an actual act of hostility [does] not justify an assault." *Goldblatt v. Chase*, 121 Colo. 355, 363, 216 P.2d 435, 440 (1950). "Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault…" Restatement (Second) of Torts § 31 (1965). Indeed, "[t]his is true even though the mental discomfort caused by a threat of serious future harm on the part of one who has the apparent intention and ability to carry out his threat may be far more emotionally disturbing than many of the attempts to inflict minor bodily contacts which are actionable as assaults." *Id*.

Best Buy employees told Plaintiff to "walk away; we'll take this off camera." This is the only statement that could be vaguely construed as a threat. However, this employee makes no other action nor takes any other step to show hostility towards Plaintiff. Even if the statement made caused Plaintiff mental discomfort, the words alone cannot constitute an assault. Once again, it is notable that Plaintiff orchestrated the interaction with Best Buy employees in Order to bait them into confronting him about suspected shoplifting.

D. In addition to Plaintiff's failure to prove the individual claims against Best Buy, the entirety of the encounter between Best Buy employees and Plaintiff is protected by the Shopkeepers' Privilege.

Aside from Plaintiff's failure to prove his claims of false imprisonment, defamation and assault, Best Buy's actions are protected by the Shopkeeper's Privilege.

Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items. Plaintiff left the store with merchandise that was not in a bag and did not have a receipt to show Best Buy employees. To prevent possible

theft, these employees stopped Plaintiff, questioned him and investigated further. These employees had probable cause to stop Plaintiff and their actions were taken in good faith. The employees, therefore, are protected from any allegation of slander/defamation, false imprisonment/arrest, and assault.

The Court should also note that Plaintiff left the store with the merchandise and then waited outside the store for Best Buy employees to approach him. On November 16, 2023, Plaintiff posted a video on YouTube wherein he stated, in relation to challenging the Shopkeepers' Privilege, he "had it all set up perfectly, a true sting" and that all he had to show was that he was surrounded. Plaintiff waited to get surrounded by Best Buy employees, just like he stated he would in his video. Even though this video was made a year after the initial incident, Plaintiff filed this complaint five days after making this video. Plaintiff was waiting for an opportunity to make these allegations against Best Buy, and this Court should not reward Plaintiff for his entrapment.

V. CONCLUSION

Plaintiff's sting operation was an attempt to bring unsupported allegations against a major corporation to either win a large settlement or to overturn well established case law and statutes. All of Best Buy employees' actions were protected and permissible because Plaintiff took Best Buy inventory and refused to show proof of purchase. He had the keys of escape and refused to use it. The words used by Best Buy employees were both protected and do not rise to the level of assault.

WHEREFORE, for the foregoing reasons, Best Buy respectfully requests that this Court grant its Motion for Summary Judgment and dismiss the claims for relief asserted against Best Buy in Plaintiff's Complaint, as such claims fail to state a state a claim upon which relief can be

granted under the facts presented and existing Colorado law. Best Buy further requests an award of attorney's fees and costs incurred in defending against this matter as the claims were frivolous and such other relief as the Court deems appropriate.

Filed on July 23, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2024, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☒ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED July 25, 2024 3:17 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6
ORDER GRANTING DEFENDANT BEST BUY, L.P.'S MOTION FOR SUMMARY JUDGMENT	

THIS MATTER comes before the Court on Defendant Best Buy, L.P's Motion for Summary Judgment, and the Court being fully advised in the premises, hereby GRANTS said Motion, and ORDERS that Plaintiff's claims of false imprisonment, defamation per se and assault, be dismissed and an award of attorney's fees and costs incurred in defending against this matter.

DATED this _____ day of _____ 2024.

BY THE COURT:

_____
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED August 02, 2024 12:15 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE OF STATUS CONFERENCE	

PLEASE TAKE NOTICE that a Status Conference has been scheduled for Friday, August 9, 2024 at 1:00pm. The parties are to appear in person, in Division 6 of the Jefferson County District Court located at 100 Jefferson County Pkwy, Golden Colorado 80401.

Respectfully Submitted August 2, 2024.

MONTGOMERY AMATUZIO

By: *s/ Glenn D. Germany*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on August 2, 2024, a true and correct copy of the **NOTICE OF STATUS CONFERENCE** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED August 12, 2024 Filed in Combined Court AUG 1 2 2024 Jefferson County
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **23CV226** Division: **6** Courtroom: **520**
EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE PTF'S RESPONSE TO DEF'S MSJ & PTF'S OWN CROSS-MSJ	

Plaintiff, proceeding *pro se*, respectfully requests that this Court grant him an extension of time to file his RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, as well as his own CROSS-MOTION FOR SUMMARY JUDGMENT, so as to allow him ~~forty-two~~ thirty-eight (~~42~~ 38) additional days to file them within (thus creating a new filing deadline for each of September 20, 2024). In support thereof, Plaintiff states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with counsel for the Defendant concerning this MOTION. Ultimately, Defendant indicates that it "does not take a position" with regard to the relief sought herein. *However, please see Plaintiff's recent email chain (Exhibit A) with the Defendant, conducted earlier today, to get a better understanding of their position.*

FACTUAL BACKGROUND

1. On July 23, 2024, Defendant filed a MOTION FOR SUMMARY JUDGMENT in this matter.

2. For some reason, Plaintiff was not served with a copy of said MOTION when it was filed. Specifically, it was not until August 9, 2024, during a status conference, that Plaintiff was first made aware of the existence of said MOTION.

3. Currently, Plaintiff's deadline to file a RESPONSE to said MOTION, as well as to file his own CROSS-MOTION FOR SUMMARY JUDGMENT, is set for tomorrow, August 13, 2024. Obviously, a couple of days is not enough time for Plaintiff to reasonably prepare such documents, hence this here motion.

4. Plaintiff suffers from an extremely rare and debilitating medical condition called Abdomino-Phrenic Dyssynergia. This challenging gastrointestinal disorder renders Plaintiff chronically malnourished, dehydrated, and sleep deprived – to the point where he is only able function at about a 33% operating capacity when compared to normal, healthy people. *Specifically, he is forced to spend literally four to six hours per day eating just one meal (all his body can handle), then several more hours thereafter laying down in various positions so as to facilitate the escape of air from his body that no longer expels naturally.* At least he is still alive! And his mind is intact. But life moves rather slowly for him otherwise. Thus, between his legal, financial, personal, and familial obligations, Plaintiff requires a great deal more time to juggle and keep up with each accordingly.

5. In Defendant's MOTION FOR SUMMARY JUDGMENT, it mentions / analyzes several of Plaintiff's prior cases that he has filed in other jurisdictions (even though each are inapposite as will soon be discussed by Plaintiff in his future briefings). Nevertheless, such

extensive referencing by the Defendant will undoubtedly require Plaintiff to take additional time (on top of the time it will already take to accommodate his medical condition) to fairly, reasonably, and thoroughly address / refute.

6. Moreover, the various legal concepts (i.e. shopkeeper's privilege, entrapment, etc.) discussed by Defendant in its MSJ, while appearing simple on their face, are actually quite complex in nature, having a rich history and case law that has traditionally required Plaintiff to use many more words and time than usual to adequately address. The same holds true in today's instant case.

7. Plaintiff has not made any prior requests for extensions of time to file his RESPONSE and CROSS-MSJ (and trial in this case was just reset to take place on January 28, 2025), so he does not believe the Defendant or Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** his MOTION FOR EXTENSION OF TIME TO FILE, thereby permitting him ~~forty-two~~ thirty-eight (~~42~~ 38) additional days (statutory three weeks from August 9th, the date he was first made aware due to him not being served on July 23rd, *then* an additional three weeks *after that* to specifically accommodate for his unique medical and briefing needs) to file his RESPONSE and CROSS-MSJ.

Respectfully submitted on this, the 12th day of August, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 12th day of August, 2024, the foregoing **EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE PTF'S RESPONSE TO DEF'S MSJ & PTF'S OWN CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Glenn D. Germany
Lori K. Bell
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
ggermany@mac-legal.com
lbell@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Montgomery v. Best Buy ~ Emergency MFEOTTF Response & Cross-MSJ

7 messages

DATE FILED
August 12, 2024

zoinbergs@gmail.com <zoinbergs@gmail.com> Sun, Aug 11, 2024 at 9:18 PM
To: "Glenn D. Germany" <ggermany@mac-legal.com>, "Lori K. Bell" <lbell@mac-legal.com>

Greetings,

I would like to file a motion for extension of time to file my response to your MSJ, as well as my own Cross-MSJ in this matter. I seek to obtain a 42-day extension (three weeks I missed due to not being served, and three weeks to accommodate my medical and briefing needs).

Please refer to the attached draft I have prepared that outlines my position.

The question now, of course, is, do you oppose or not oppose the filing of said motion?

Thanks,

William

2024.08.12 ~ MFEOTTF Response & Cross-MSJ.pdf
110K

Lori K. Bell <lbell@mac-legal.com> Mon, Aug 12, 2024 at 11:25 AM
To: "zoinbergs@gmail.com" <zoinbergs@gmail.com>
Cc: "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

Good morning, William,

You mention that you were not aware of the MSJ until Friday, August 9, 2024. We will agree to three weeks from August 9, which is August 30. The rules of civil procedure allow for 14 days to respond to an MSJ; thus, August 30 is exceeding what the rules allow.

Please let us know if you have questions.

Lori

Lori K. Bell
Partner
Direct: 303.592.6652
Email: lbell@mac-legal.com

Montgomery | Amatuzio
4100 E. Mississippi Ave, 16th Floor
Denver, Colorado 80246
Main: 303.592.6600

Fax: 303.592.6666
http://www.mac-legal.com

EXHIBIT A-2

[Quoted text hidden]

zoinbergs@gmail.com <zoinbergs@gmail.com> Mon, Aug 12, 2024 at 2:01 PM
To: "Lori K. Bell" <lbell@mac-legal.com>, "Glenn D. Germany" <ggermany@mac-legal.com>
Cc: "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

Greetings,

Please correct me if I'm wrong, but Local Rule 121, Section 1-15(1)(b) provides for a standard 21 days to respond to a MSJ, not 14 as you say.

If such is true, three weeks from August 9th is indeed August 30th, and to which under normal circumstances would be what I would be asking for. (Your offer of three weeks from the 9th is simply a little more precise of a date to toll from, vs. the 13th that I started to count from from, and to which I conceptually agree to).

With that being said, did you not also read about my abdomino-phrenic dyssynergia? I've had it for years now, and my life has gone to absolute shit as a result. I operate at a literal snail's pace. Some days I can't even get out of bed. Ultimately, I can't even support myself I'm so disabled (my brother who lives in our RV with me has to support me). So that's why I was seeking to obtain a three week extension IN ADDITION TO the standard three week extension you speak of starting from the 9th.

So to summarize, do you oppose a deadline of precisely September 20th? That's 21 days from the 9th ~ to be Aug 30th (as you just calculated), plus 21 days from THAT date ~ to be Sep 20th (to accommodate my medical issues).

Hope that makes sense.

Thanks,

William

PS– If I could work any faster, I absolutely would. But I only have a few hours a day to juggle what everybody else gets 12-18 hours to use! I wish I could get better, but treatment is slow, and the only doctor that treats this super rare condition my insurance doesn't cover, so that doesn't help! Thus, it's been an absolutely shitshow for awhile now, putting me in this awkward position where I constantly need extra time to process everything ~ eating, sleeping, working, etc.).

[Quoted text hidden]

Lori K. Bell <lbell@mac-legal.com> Mon, Aug 12, 2024 at 2:13 PM
To: "zoinbergs@gmail.com" <zoinbergs@gmail.com>, "Glenn D. Germany" <ggermany@mac-legal.com>
Cc: "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

We do not agree to double the time because of the impact on all deadlines in the case. These are not new issues to you.

[Quoted text hidden]

zoinbergs@gmail.com <zoinbergs@gmail.com> Mon, Aug 12, 2024 at 2:34 PM
To: "Lori K. Bell" <lbell@mac-legal.com>
Cc: "Glenn D. Germany" <ggermany@mac-legal.com>, "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

Greetings,

Your use of the phrase "double the time" is not an accurate or fair assessment of the situation. I am seeking to RESTORE the standard three weeks that I LOST, that I (and anybody else) deserve to get back in order to respond to your motion. THEN, due to my medical issues, I am seeking an additional, very reasonable three weeks *to specifically accommodate for THEM.*

Put another way, if I was indeed properly served on the 23rd of July, I would **still** be asking for (and likewise deserve to receive) three weeks to accommodate my medical issues. Historically, in other courts, *not once* has a defense attorney or judge opposed such requests to accommodate such my medical issues.

Therefore, just because I was served late (on the 9th), doesn't mean that my medical issues are no longer relevant and somehow count as "double the time." Like I just said, under normal circumstances, I would likely receive a pretty standard three weeks (***on top of*** the statutorily-provided three weeks) to accommodate for my medical issues, thus bringing the total time I would have to respond, FROM JULY 23RD, to 6 weeks. Here, today, that **same** total of six weeks (three weeks according to the local rules, plus three weeks for my medical issues) is what I am requesting. I don't see how a person in my unique medical position would be considered "unreasonable" to make such a request.

Next, regarding your claim of "impact on all deadlines in the case," trial was just moved out to January, so I fail to see the negative impact of obtaining such an extention. Moreover, your claim that "these are not new issues" is refuted by the fact that you injected practically every previous case I have ever filed on the subject, into your current motion, which now requires me to address and put back every little goalpost that you (and others before you) have moved. THAT'S A LOT OF WORK. That's like a dozen cases I have to summarize. NOBODY can reasonably be expected to squeeze such a response into three weeks, let alone six with a medical disability. Honestly, I should be asking for more. But I'm not. Because I would like this case to get adjudicated sooner rather than later, too. It certainly won't be easy, and I will likely get into even more debt now just to cover the finances that I know my brother won't be able to, just so I have the time to file this stuff. But there is no way on earth that I can pull this off in less than six weeks, let alone three!

Thank you for your understanding in this matter, and for your swift responses (so that I can still file this MFEOTTF today).

William

[Quoted text hidden]

Lori K. Bell <lbell@mac-legal.com> Mon, Aug 12, 2024 at 2:55 PM
To: "zoinbergs@gmail.com" <zoinbergs@gmail.com>
Cc: "Glenn D. Germany" <ggermany@mac-legal.com>, "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

I have confirmed that we sent the motion to you via CCES, email and US mail. I do not know why it was not received.

Feel free to file your motion and note that we do not take a position.

[Quoted text hidden]

---

zoinbergs@gmail.com <zoinbergs@gmail.com> Mon, Aug 12, 2024 at 2:58 PM
To: "Lori K. Bell" <lbell@mac-legal.com>
Cc: "Glenn D. Germany" <ggermany@mac-legal.com>, "Stephanie E. Boutsicaris" <sboutsicaris@mac-legal.com>, Abigail Spohn <Aspohn@mac-legal.com>, "Jaime L. Gress" <jgress@mac-legal.com>

Greetings,

I do not know why it was not received either. I began expecting it after your conferral on it. But it never came. So it is what it is.

I will reflect your position, and file my MFEOTTF.

Thanks,

William

[Quoted text hidden]

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED August 21, 2024 4:47 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ and Ptf's Own Cross MSJ

The motion/proposed order attached hereto: GRANTED.

The Court grants a contnuance to September 20. Further extensions should not be anticipated.

Issue Date: 8/21/2024

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	Filed in Combined Court AUG 1 2 2024 Jefferson County
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **23CV226** Division: **6** Courtroom: **520**
EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE PTF'S RESPONSE TO DEF'S MSJ & PTF'S OWN CROSS-MSJ	

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, respectfully requests that this Court grant him an extension of time to file his RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, as well as his own CROSS-MOTION FOR SUMMARY JUDGMENT, so as to allow him ~~forty-two~~ thirty-eight (~~42~~ 38) additional days to file them within (thus creating a new filing deadline for each of September 20, 2024). In support thereof, Plaintiff states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with counsel for the Defendant concerning this MOTION. Ultimately, Defendant indicates that it "does not take a position" with regard to the relief sought herein. *However, please see Plaintiff's recent email chain (Exhibit A) with the Defendant, conducted earlier today, to get a better understanding of their position.*

FACTUAL BACKGROUND

1. On July 23, 2024, Defendant filed a MOTION FOR SUMMARY JUDGMENT in this matter.

2. For some reason, Plaintiff was not served with a copy of said MOTION when it was filed. Specifically, it was not until August 9, 2024, during a status conference, that Plaintiff was first made aware of the existence of said MOTION.

3. Currently, Plaintiff's deadline to file a RESPONSE to said MOTION, as well as to file his own CROSS-MOTION FOR SUMMARY JUDGMENT, is set for tomorrow, August 13, 2024. Obviously, a couple of days is not enough time for Plaintiff to reasonably prepare such documents, hence this here motion.

4. Plaintiff suffers from an extremely rare and debilitating medical condition called Abdomino-Phrenic Dyssynergia. This challenging gastrointestinal disorder renders Plaintiff chronically malnourished, dehydrated, and sleep deprived – to the point where he is only able function at about a 33% operating capacity when compared to normal, healthy people. *Specifically, he is forced to spend literally four to six hours per day eating just one meal (all his body can handle), then several more hours thereafter laying down in various positions so as to facilitate the escape of air from his body that no longer expels naturally.* At least he is still alive! And his mind is intact. But life moves rather slowly for him otherwise. Thus, between his legal, financial, personal, and familial obligations, Plaintiff requires a great deal more time to juggle and keep up with each accordingly.

5. In Defendant's MOTION FOR SUMMARY JUDGMENT, it mentions / analyzes several of Plaintiff's prior cases that he has filed in other jurisdictions (even though each are inapposite as will soon be discussed by Plaintiff in his future briefings). Nevertheless, such

Attachment to Order - 2023CV226

extensive referencing by the Defendant will undoubtedly require Plaintiff to take additional time (on top of the time it will already take to accommodate his medical condition) to fairly, reasonably, and thoroughly address / refute.

6. Moreover, the various legal concepts (i.e. shopkeeper's privilege, entrapment, etc.) discussed by Defendant in its MSJ, while appearing simple on their face, are actually quite complex in nature, having a rich history and case law that has traditionally required Plaintiff to use many more words and time than usual to adequately address. The same holds true in today's instant case.

7. Plaintiff has not made any prior requests for extensions of time to file his RESPONSE and CROSS-MSJ (and trial in this case was just reset to take place on January 28, 2025), so he does not believe the Defendant or Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** his MOTION FOR EXTENSION OF TIME TO FILE, thereby permitting him ~~forty-two~~ thirty-eight 38 (~~42~~) additional days (statutory three weeks from August 9th, the date he was first made aware due to him not being served on July 23rd, *then* an additional three weeks *after that* to specifically accommodate for his unique medical and briefing needs) to file his RESPONSE and CROSS-MSJ.

Respectfully submitted on this, the 12th day of August, 2024.

William Montgomery

William Montgomery

Attachment to Order - 2025CV226

CERTIFICATE OF SERVICE

I hereby certify that on this, the 12th day of August, 2024, the foregoing **EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE PTF'S RESPONSE TO DEF'S MSJ & PTF'S OWN CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Glenn D. Germany
Lori K. Bell
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
ggermany@mac-legal.com
lbell@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Attachment to Order - 2023CV226

FILED
COMBINED COURT
JEFFERSON COUNTY

DATE FILED
September 19, 2024 3:16

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT	

Plaintiff, proceeding *pro se*, hereby submits to the Court his CROSS-MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this CROSS-MSJ. Defendant indicates that it is opposed to the relief sought herein.

INTRODUCTION

One day Plaintiff was standing on the side of a Best Buy building, waiting for his brother, when Defendant decided to accost him. Having never met Defendant before in his entire life, Plaintiff was taken by surprise, and so he decided to start a video recording of the encounter with his body-worn pen camera. Throughout the encounter, Defendant – in front of many others – loudly and rudely accused Plaintiff of stealing, said to him that it had contacted the police, called him foul names, and even taunted him, all while repeatedly and incessantly begging for him to "return its

merchandise" to it. Of course, Plaintiff knew that Defendant was bluffing (and was resorting to petty bullying tactics to compensate for its lack of investigation) as he knew full-well that it had not collected even a single iota of actual information to reasonably suspect him of shoplifting in the matter (let alone that he was a customer, or even browser, of its establishment). In fact, Defendant was so clueless, that it didn't even tell the difference between what Plaintiff had been holding in his hands, and what had existed in one of his pant pockets (but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period). As Plaintiff continued to try to peacefully leave the area, Defendant continued to stop him – both physically by way of stepping in front of him, and conceptually by way of threatening to "jump" him "around the corner" should he leave in that direction. Eventually, after hastily performing its failed investigation completely literally backwards, Defendant finally left the area so that Plaintiff could leave too, and to which he finally did 14 minutes later after feeling safe enough to do so. This here false imprisonment / defamation *per se* / assault lawsuit naturally followed.

LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *American Water Dev., Inc. v. City of Alamosa,* 874 P.2d 352, 360 (Colo. 1994). In deciding whether to grant a motion for summary judgment, a court must consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any." *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 466 (Colo. 2003) (quoting C.R.C.P. 56(c)); *see also AviComm, Inc. v. Colo. Pub. Util. Comm'n,* 955 P.2d 1023, 1029 (Colo. 1998). The burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *Id.* In determining when summary judgment is proper, the nonmoving party is entitled to all favorable inferences that may reasonably be drawn from the undisputed facts. *Bayou Land Co. v. Talley,* 924 P.2d 136, 151 (Colo. 1996). However, once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes

necessary for the nonmoving party to set forth facts by affidavit, or otherwise, showing that there is a genuine issue for trial. *Civil Service Com'n. v. Pinder,* 812 P.2d 645, 649 (Colo.1991).

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PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On or about November 25, 2022, at approximately 2:19pm, Plaintiff was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for his brother. *See Plaintiff's Affidavit (herein "PA") at ¶ 2. See Plaintiff's Cross-Motion For Summary Judgment (herein "PCMSJ") Exhibit #1, which is available for download here: https://www.mediafire.com/folder/hwh3yxn2hu7uj [which is the same as Def's MSJ Exhibit M].*

2. Plaintiff had been standing on the east side of said building for about five minutes before he was approached by several Best Buy employees. *See PA at ¶ 3.*

3. Two of the employees, identified by company name tag as "Mahmoud" and "Shane," were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this C-MSJ as "John Doe"]. *See PA at ¶ 4. See PCMSJ Exhibit #1.*

4. Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near

Plaintiff on that day of November 25, 2022. Said employees had never been "posted up" at the store's exit, nor had they ever "followed" Plaintiff "out" of said store, either. Again, Plaintiff had been standing on the side of the Best Buy building for a full five minutes, "waiting for [them] to come out" (Defendant's words, not Plaintiff's, as Plaintiff was actually waiting for his brother at the time, see *Fact #1* above). *See PA at ¶ 5. See PCMSJ Exhibit #1 at timestamp 8:08.*

5. Upon approach, Mahmoud told Plaintiff something to the effect of, "I need my stuff back." Plaintiff was never asked to "show a receipt" by Mahmoud, Shane, or John Doe. *See PA at ¶ 6.*

6. Upon hearing Mahmoud's statement, Plaintiff discreetly activated his body-worn pen camera, located in his front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by Plaintiff based on the date/time he started recording it on/at. *See PA at ¶ 7. See PCMSJ Exhibit #1.* Later, a transcript of what Plaintiff personally heard that day was also prepared by him. *See Transcript Of Plaintiff's Bodycam Footage Of The Event.*

7. The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him. *See PA at ¶ 8.*

8. Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for *whatever* existed in one of his pant pockets, too. Said employees did not know if what Plaintiff had on him was a) store merchandise, b) stolen store merchandise, c) non-store merchandise, d) previously paid for store merchandise chosen by Plaintiff not to be returned, e) non-store merchandise Plaintiff had erroneously attempted to return to the wrong store, f) personal items, g) medication, h) etc. Specifically, by their very own admissions, said Best Buy employees ***did not even tell the difference between*** what Plaintiff held in his hands, and what existed in one of his pant pockets, **but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period.** *See PA at*

¶ 25. *See PCMSJ Exhibit #1 at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 8:06 ("Oh we'll find out soon enough."), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Moreover, ***EVEN IF*** what Plaintiff had on him was, in fact, stolen merchandise, such would ***STILL*** not have changed the **COMPLETELY-UNKNOWN-TO-THEM-AND-COMPLETELY-UNIDENTIFIED-TO-THEM-AT-ALL-TIMES-AND-PLACES** nature of the item(s), as said employees would not have known literally anything about anything, ABOUT ANYTHING, *regardless of the situation,* and regardless of the pocket, because of how they had only seen Plaintiff **for the very first time standing outside their building** (and thereby would have never seen him take whatever-the-heck-he-may-have-had-on-him-that-day "from any walls, past any points of sale, and out any doors, *whatsoever*, **period**). *See PA at ¶ 5.*

9. At about a minute into the interaction, Plaintiff tried to walk away from where he had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told Plaintiff, "And you're not bigger than any of us." *See PA at ¶ 11. See PCMSJ Exhibit #1 at timestamps 1:08 and 2:04.*

10. For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so. All three Best Buy employees had physically "corralled" Plaintiff against the building's wall, leaving him with no place to go [without otherwise having to physically touch the employees in order to move past them, but to which he was unable to do for fear that he would be assaulted in return]. *See PA at ¶ 12. See PCMSJ Exhibit #1 from timestamp 2:05 onward.*

11. At one point, John Doe called Plaintiff a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." These insults and accusations were made in a loud and brash tone, in front of several people walking by who would have also heard them be said to Plaintiff. *See*

PA at ¶ 13. See PCMSJ Exhibit #1 at timestamps 2:18 and 2:30. Later, John Doe continued to insult Plaintiff by repeatedly calling him a "miserable human being." *See PCMSJ Exhibit #1 at timestamp 10:54.* Toward the end of the interaction, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See PCMSJ Exhibit #1 at timestamp 12:08.*

12. At another point, all three employees began taunting Plaintiff, telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." *See PA at ¶ 14. See PCMSJ Exhibit #1 from timestamp 2:51 to 3:20, and 6:06.*

13. Throughout the encounter, as Plaintiff continued to try to step around the Best Buy employees in order to leave the area, Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go). *See PA at ¶ 15. See PCMSJ Exhibit #1 at timestamps 2:10 ("Give me my shit, or you're gonna be right fucking here."), 2:40 ("You're not going anywhere, you're giving us our shit back. You're not leaving."), 3:34 ("You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."), 3:51 ("Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit."), 4:03 ("You're not going anywhere, bro."), 5:11 ("You're not moving, dude. You're where you're gonna be until the cops get here. I don't know how else to explain it to you."), 6:00 ("Well then give me my stuff, dude. You're not moving, man. Give me my stuff."), 7:25 ("You're not going anywhere, dude."), and 8:51 ("Okay, then you're gonna stand there until the cops show up.").*

14. Finally, after being harassed and bullied by the three Best Buy employees for nearly ten minutes, John Doe finally told Plaintiff that he could leave. But then he immediately said to his fellow employees, "Or he can run off camera." John Doe then confirmed what he meant by that by telling Plaintiff, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera." *See PA at ¶ 18. See PCMSJ Exhibit #1 from timestamp 9:23 to 9:33.*

15. Plaintiff then said to the three Best Buy employees, "I don't feel safe leaving now," after which Mahmoud told him, "You shouldn't," followed by some laughter. John Doe then chimed in and said to Plaintiff, "I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also." *See PA at ¶ 19. See PCMSJ Exhibit #1 from timestamp 9:48 to 9:52.*

16. After being told once again by John Doe to "Walk away," Plaintiff once again responded to the three Best Buy employees by saying, "Yeah I don't feel like getting jumped off camera." Mahmoud replied by saying, "Then give me my stuff, dude." A few second later, after Plaintiff reaffirmed that he "doesn't feel safe leaving now," Mahmoud once again followed up by saying, "You'll have zero problems if you hand me what's in your pocket, and what's in your coat." *See PA at ¶ 20. See PCMSJ Exhibit #1 from timestamp 10:07 to 10:48.*

17. Once again, after being told by Mahmoud of his "chance" to leave, Plaintiff told him, "Like I'm just gonna trust him that he's not gonna jump me." Mahmoud then responded by saying, "You shouldn't trust him that he's not. You should give me my stuff. That's what you should do." *See PA at ¶ 21. See PCMSJ Exhibit #1 from timestamp 11:27 to 11:36.*

18. Eventually, after nearly ten minutes of being detained by the three Best Buy employees, Mahmoud told Plaintiff to "Have a good one dude. See ya later." All three employees then quickly stepped away from Plaintiff and proceeded back into the Best Buy building. *See PA at ¶ 22. See PCMSJ Exhibit #1 at timestamp 12:15.*

19. Plaintiff then spent the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would. [Throughout that 14 minutes, no cops ever came, either]. *See PA at ¶ 23. See PCMSJ Exhibit #1 from timestamp 12:16 to 26:16.*

20. During Plaintiff's detention by the three Best Buy employees, he counted at least 192 people that had walked past him [and who would have thus been within earshot of the conversation

that took place between he and the three employees]. *See PCMSJ Exhibit #1 generally.* Many times, people that were passing by looked directly at Plaintiff and the employees. One person even stopped literally *right* next to Plaintiff and the three employees to explicitly listen to the conversation that had been taking place between them. *See PCMSJ Exhibit #1 from timestamp 4:36 to 4:53.*

21. At no point in time, on that day of November 25, 2022, had Plaintiff ever once "concealed" anything in front of [let alone not in front of] anybody, ever, period. *See PA at ¶ 24.*

22. At no point in time, on that day of November 25, 2022, had Plaintiff ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in his pant pockets remained there before, throughout, and after his interaction with the Best Buy employees. *See PA at ¶ 25.*

23. At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere has Plaintiff ever seen such a policy posted in any Best Buy store, nor spoken to him by any Best Buy employee, nor available for him [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, Plaintiff still has literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place]. *See PA at ¶ 26.*

24. On November 25, 2022, Defendant made no "calls for service" to Westminster Police, *whatsoever*, in reference to Plaintiff purportedly shoplifting from its store. *See PCMSJ Exhibit #2.*

25. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant. Such manifestations include (but are not limited to): helplessness, anger, frustration, shock, disappointment, inconvenience, embarrassment, humiliation, severe indignity, devastation, reputational damage, apprehensiveness, anxiety, mistrust in authority, marked diminishment in quality of life, bitterness, insomnia, and overwhelming grief. *See PA at ¶ 27.*

ARGUMENT

I. DEFENDANT FALSELY IMPRISONED PLAINTIFF, AND LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

a. Defendant is liable for falsely imprisoning Plaintiff

In order to succeed on a claim for False Imprisonment, a Plaintiff must prove the following elements:

1) The Defendant intended to restrict the Plaintiff's freedom of movement;

2) The Defendant, directly or indirectly, restricted the Plaintiff's freedom of movement for a period of time, no matter how short; and

3) The Plaintiff was aware that their freedom of movement was restricted.

See Colorado Civil Jury Instruction 21:1. Additionally, regarding the second and third elements,

> A person's freedom of movement has been restricted when . . . the person complies with actual or apparent threats that he or she or a member of his or her family will be immediately harmed if he or she moves beyond or refuses to go to a certain area.

See Colorado Civil Jury Instruction 21:2(3).

Regarding the first element, it is emphatically indisputable that the three Best Buy employees at issue here today ***intended to*** – specifically *and* explicitly [by way of their very own words *and* actions] – "restrict Plaintiff's freedom of movement." *See Plaintiff's Undisputed Material Facts #9, #10, and especially #13, above.*

Regarding the second element, it is equally indisputable that said employees ***did,*** in fact, "restrict Plaintiff's freedom of movement" – for over ten minutes – by way of their continuing to step in front of him every time he tried to leave the area. *See Plaintiff's Undisputed Material Facts #9, #10, and #13, above. See PCMSJ Exhibit #1 from timestamp 1:08 to 12:15.* Moreover, Colorado Courts have long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment."

Ibid. See also McDonald v. Lakewood Country Club, 170 Colo. 355, 461 P.2d 437 (1969).

Regarding the third element, it is also indisputable that a reasonable person in Plaintiff's position would be "aware that their freedom of movement was restricted" – every time they were denied permission to leave [as Plaintiff was] upon every attempt made to do so [as Plaintiff did].[1]

b. Defendant lacked "shopkeeper's privilege" for its actions

Under certain circumstances, a Defendant is not legally responsible to a Plaintiff on a claim of False Imprisonment if the affirmative defense of a "privilege to detain for investigation" is proved. This defense is **only** proved if **all** of the following elements are met:

1) The Defendant was an owner or employee of a business establishment selling merchandise;

2) The Defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the Plaintiff:

   a) Triggered an alarm or a theft detection device, or

   b) Concealed upon their person any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise, or

   c) Otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise; and

3) The Defendant detained and questioned the Plaintiff in a reasonable manner for the purpose of determining whether the Plaintiff committed theft.

See Colorado Civil Jury Instruction 21:7 (see also Colorado Civil Jury Instruction 21:8).

Regarding the first element, Plaintiff is not disputing that the three people who detained him on November 25, 2022 were employees of the business establishment known as Best Buy.

Regarding the second element, however, it is **categorically indisputable** that said three

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1 It it wholly irrelevant that Plaintiff was initially "waiting" for his brother [or even for the Best Buy employees, for that matter] on the side of the building that day. This is because once he actively *tried* to leave the area [and was actively *denied* permission to do so] his false imprisonment was complete. "The fact that a plaintiff merely believes she is not free to leave is not enough to support a claim of false imprisonment. A plaintiff must make some 'attempt to determine whether his belief that his freedom of movement has been curtailed has basis.' This can be done, for instance, **by making a failed request to leave**." *Caswell v. BJ's Wholesale Co.,* 5 F. Supp. 2D 312, 319 (E.D. Pa. 1998) (citing *Chicarelli v. Plymouth Garden Apartments,* 551 F.Supp. 532, 540-41 (E.D. Pa. 1982)).

Best Buy employees **DID NOT** act in "good faith," **DID NOT** have "probable cause," and **DID NOT** act based upon "reasonable grounds" to fairly believe that Plaintiff stole merchandise from their business establishment [as will be discussed next]. Moreover, ***EVEN IF*** the three Best Buy employees at issue here today did, in fact, have "probable cause" (i.e. "shopkeeper's privilege" as we'll henceforth call it) to *initially* detain Plaintiff, they indisputably **LOST** that privilege once they began to question him **in an unreasonable manner** [as will also be discussed next], thereby rendering them unable to satisfy the third and final element of their affirmative defense, as well.

First, before delving into the various sub-elements of the second element, it cannot be stressed here enough that, when discussing civil False Imprisonment claims, **once a Plaintiff shows that a detention has occurred, THE BURDEN OF PROOF SHIFTS TO THE DEFENDANT who must then prove the existence of probable cause**. *See Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935); *see also Goodboe v. Gabriella,* 663 P.2d 1051 (Colo. App. 1983). This is because "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940).

Now, regarding the sub-elements of the "shopkeeper's privilege" affirmative defense, let's begin with sub-element (2)(a). Here, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "triggered an alarm or a theft detection device."

Next, regarding sub-element (2)(b), Defendant has likewise failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "concealed upon his person any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise." Indeed, not only has Defendant failed to provide this Court with any evidence whatsoever of "concealment" (such as a witness affidavit attesting to such),[2] Plaintiff *has* provided

2 In fact, Defendant **can't even get its own facts straight** on this particular subject. *Compare its statement made*

definitive evidence to the exact contrary (via his own witness affidavit attesting to such) that he "had **[NOT]** ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," that day. Additionally, regarding the contents of Plaintiff's pant pockets, Plaintiff likewise "had **[NOT]** ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period," that day. *See Plaintiff's Undisputed Material Facts #21 and #22, above. See also Chelette v. Wal-Mart Stores, Inc., 535 So. 2d 558, 561 (La. Ct. App. 1989)* (held that because Plaintiff made no "effort to conceal" the merchandise that he had recently purchased, Defendant lacked "facts justifying a belief (a reasonable belief) on [their] part [] that Plaintiff intended to commit a theft.").

Next, regarding sub-element (2)(c), Defendant has likewise failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise." This is because Defendant has failed to provide this Court with any evidence, whatsoever, ***that Plaintiff was even located inside its store in the first place, EVER – customer, browser, *or* thief – that day of November 25, 2022.*** Remember, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that it had "ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022" prior to approaching him for the very first time, ***outside***, on the side of its particular building. *See Plaintiff's Undisputed Material Fact #4, above.* Nor has Defendant shown this Court that it had ever been "posted up" at its store's exit, or that it had "followed" Plaintiff "out" of its store, either, as evidenced by its very own self-admitting statement made of, "we haven't had people stand here and wait for us to come out and get 'em though." *See PCMSJ Exhibit #1 at timestamp 8:08.* Thus, ***even if*** it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that

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on page 8 of its MSJ ("Here, Plaintiff intentionally concealed merchandise...") *with its statement made on page 10 of its MSJ* ("Plaintiff left the store with merchandise that was not in a bag...").

Plaintiff **was even a customer, let alone a thief, of it.** Indeed, Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Undisputed Material Fact #8, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have been EITHER "a shopper" OR "a thief" that day [for which Defendant might have some argument for in one direction or the other]. In other words, **it can never legally be assumed, IN EITHER DIRECTION** (i.e. that Plaintiff was either a customer, or he was a thief) just because he was merely located "near" [and thus potentially at one point in time "inside"] the store, **because of how such an argument is simply a false dichotomy.** Moreover, ***EVEN IF*** it could be assumed that Plaintiff had, *in fact*, entered [then exited] the store, **AND** that Defendant had, *in fact*, been "posted up" at its exit, such would ***STILL*** do absolutely nothing to even begin to substantiate that Plaintiff "otherwise carried away any **unpurchased** goods" from the store. This is because when merely carrying out of a store unbagged merchandise located on one's person, "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). *See also Coblyn v. Kennedy's Inc.*, 359 Mass. 319, 320 (Mass. 1971); *see also Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) (held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [Plaintiff] had stolen anything" where Defendant "never saw [Plaintiff] anywhere in the store until they were walking out of the store.").

Finally, regarding element (3) of the "shopkeeper's privilege" affirmative defense, Defendant has failed to satisfy this element, as well, due to the **patently unreasonable manner** in which they executed their 10+ minute detention of Plaintiff. "In other words, the qualified privilege under the statute does not give the merchant the right to **embarrass** or **harass** individuals suspected, in public

view of every one, **in a rude manner**." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 12-13 (Miss. 1963). Specifically, Plaintiff's detention involved John Doe calling him a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." His detention also involved John Doe repeatedly calling him a "miserable human being." At one point, all three employees publicly taunted Plaintiff by telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." Then, toward the end of his detention, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See Plaintiff's Undisputed Material Facts #11 and #12, above.* Additionally, ***and perhaps more importantly***, were the implicit threats made by Defendant to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While the three Best Buy employees didn't personally use the word "jump" in their correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **they actively chose to not correct him.** This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See Plaintiff's Undisputed Material Facts #14 through #17, above. See more specifically PCMSJ Exhibit #1 from timestamps 10:17 to 10:19, 10:44 to 10:47, and 11:28 to 11:31.* In the end, under the totality of the circumstances, such flagrantly vulgar and inappropriate insults and threats – made in full view and earshot of over 192 people that passed by that day – rendered Defendant's detention of Plaintiff, *even if justified at the outset*, ultimately unlawful due to the **"unreasonable manner"** in which it was executed. No human being deserves to be treated like Plaintiff was that day, *regardless* of whether or not he may have stolen something [which, again, Defendant has failed to provide this Court with any tangible, admissible evidence for, *whatsoever*, that that would have even been – *or not* – the case].

Now, when analyzing "shopkeeper's privilege," Courts have long held that "The test of liability is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the circumstances." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "And whether reasonable belief is established, is

usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Id.* However, when the facts are not in dispute (as appears to be the situation in Plaintiff's instant case), "reasonable belief," or "probable cause" as Colorado Revised Statutes § 18-4-407 codifies it, "is not a question of fact for the jury, but one of law for the court, to be decided in accordance with the circumstances at the time of the detention." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963).

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something."** *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable.").

Here, today, in Plaintiff's instant case, Defendant has failed to provide this Court with **LITERALLY ANY EVIDENCE**, *whatsoever*, to support it's affirmative defense of "shopkeeper's privilege." Defendant has not shown that it saw Plaintiff *enter its store*. It has not shown that it saw him *anywhere in its store*. It has not shown that it saw him *shop [or not shop]*. It has not shown that it saw him *take anything off a shelf*. It has not shown that it saw him *pay [or not pay]*. It has not shown that it saw him *conceal [or not conceal] anything on his person*. It has not shown that it saw

him *use [or not use] a plastic bag*. It has not shown that it saw him *leave its store*. It has not shown that it *called the police*. It has not shown that it even *asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place*, let alone that *whatever he had been holding in his hands that day was even store merchandise for which one might have been associated*]. In the end, it is painfully apparent that Defendant has failed to show this Court, *with literally ANY evidence at all*, that it **ever once** saw – be it by way of personal affidavit or by video surveillance otherwise – Plaintiff **do literally anything** "until the confrontation occurred" outside its particular building. **Absolutely ZERO evidence has been provided by the Defendant to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store.** Therefore, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than **unfounded naked suspicion**. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). As such, because Defendant completely and wholeheartedly lacked "shopkeeper's privilege" to detain Plaintiff – **by way of failing to satisfy EVEN A SINGLE IOTA of EVEN ONE of its critical elements of its affirmative defense on the subject** – it is indisputably liable for falsely imprisoning him.

II. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

In order to succeed on a claim for Defamation *Per Se*, a Plaintiff must prove that the Defendant "published a defamatory statement concerning him." *See Colorado Civil Jury Instruction 22:4*. A statement is "published" when it is communicated – either orally or in writing – to [and is understood by] some person other than the Plaintiff. *See Colorado Civil Jury Instruction 22:7*. A statement is "defamatory" if it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community. *See Colorado Civil Jury Instruction 22:8*. ***HOWEVER*, accusing someone of being A THIEF, when such accusation is untrue and is overheard and understood by a third person, is defamation**

"actionable *per se.*" Restatement (Second) Of Torts § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). "Actionable *per se*" means that without adducing any evidence that he has in fact been harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. P.H. Winfield, A Text-Book Of The Law Of Tort § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. **The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation <u>that such damage may be presumed</u>.** 2 Harper et al, supra note 2, § 5.11, at 118. Moreover, while "[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting . . . the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964). In other words, <u>the affirmative defense of privilege is lost if the Plaintiff proves the Defendant "abused the privilege.</u>" This can be proven by showing that the statement in question was made "**with knowledge that the statement was false" [or that Defendant acted with reckless disregard for whether the statement was true or false].** *See Colorado Civil Jury Instruction 22:18.*

As laid out in Plaintiff's instant case, Defendant **<u>impermissibly</u>**, **<u>specifically</u>** and **<u>repeatedly</u>** imputed the crime of larceny onto him. Not only did Defendant loudly and rudely call Plaintiff "fucking a thief," *(PCMSJ Exhibit #1 at timestamp 2:30),* it said to him, "I got you concealing, I have you walking out without paying," *(timestamp 4:46),* "You can steal the rest of the day, just not here," *(timestamp 5:36)*, "Go steal the rest of your life away," *(timestamp 10:54)*, and "You know how much we have to do, to deal with people like you, who just come in and steal from us?" *(timestamp 11:05)*. This isn't even counting the **<u>THIRTY EIGHT</u>** times Defendant told Plaintiff, in

one form or another, to "give us our shit back." *See PCMSJ Exhibit #1 at timestamps 0:22, 0:52, 0:58, 1:01, 1:13, 1:27, 1:36, 1:51, 2:01, 2:10, 2:11, 2:16, 2:20, 2:30, 2:33, 2:43, 2:51, 3:31, 3:40, 3:43, 3:55, 4:38, 5:32, 6:00, 6:05, 8:55, 10:14, 10:19, 10:20, 10:22, 10:29, 10:47, 10:48, 11:42, 11:43, 11:45, 11:47, and 11:49.* Additionally, all these implicit *and* explicit accusations of theft **were made in the presence of OVER 192 PEOPLE that Plaintiff counted had walked past he and Defendant that day.** *See Plaintiff's Undisputed Material Fact #20, above.*

Most importantly on this subject, is that Defendant made these baseless accusations **"with knowledge that they were false, or with reckless disregard for whether they were true or false."** This is because Defendant **utterly lacked** "shopkeeper's privilege" to **fairly** and **reasonably** believe that Plaintiff had stolen anything from it that day. *See Section I (b), above.* As such, Defendant is indisputably liable for defaming Plaintiff, ***PER SE***, *in front of numerous others*, as a "thief."

III. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

In order to succeed on a claim for Assault, a Plaintiff must prove the following elements:

1) The defendant intended to cause an offensive or harmful physical contact with the Plaintiff or intended to place the Plaintiff in apprehension of such contact; and

2) The Defendant placed the Plaintiff in apprehension of immediate physical contact; and

3) That contact [would be, or would appear to be] harmful or offensive.

See Colorado Civil Jury Instruction 20:1.

The term "apprehension" is defined as "a state of mind experienced when a person anticipates immediate harmful or offensive physical contact." *See Colorado Civil Jury Instruction 20:2.*

The phrase "intends to place another in apprehension of physical contact" is defined as when a person either "acts with the purpose of causing apprehension of physical contact," or they "know that such conduct will probably place the other person in apprehension of physical contact." *See Colorado Civil Jury Instruction 20:3.*

Contact [that would be, or would appear to be] "harmful" is defined as contact that

"[would] cause physical pain, injury, illness or emotional distress," and contact [that would be, or would appear to be] "offensive" is defined as contact that "would offend another's reasonable sense of personal dignity." *See Colorado Civil Jury Instruction 20:6.*

Importantly, while "Mere words alone, unless accompanied by an actual act of hostility [does] not justify an assault," *Goldblatt v. Chase,* 121 Colo. 355, 363, 216 P.2d 435, 440 (1950). "words, []accompanied by some act apparently intended to carry the threat into execution, can[] make the actor liable for an assault." *Restatement (Second) of Torts* § 31 (1965).

Regarding the first element, it is indisputable that Defendant specifically ***intended to*** "cause an offensive or harmful physical contact with Plaintiff [or otherwise] place him in apprehension of such contact." This is evidenced by its ***numerous*** THREATS made to "jump" Plaintiff "off camera" should he attempt to leave the area, *see Plaintiff's Undisputed Material Facts #14 through #17, above,* **ACCOMPANIED BY** its ***numerous*** PHYSICAL ACTS made to *actively* and *repeatedly* step in front of him in order to *actually* prevent him from leaving said area, *see Plaintiff's Undisputed Material Facts #10 and #13, above.* Moreover, while Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him.** This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PCMSJ Exhibit #1 from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

Regarding the second element, it is likewise indisputable that Defendant ***actually did*** "place Plaintiff in apprehension of immediate physical contact." This is evidenced by Plaintiff's ***multiple*** statements made [in direct response to Defendant's ***numerous*** threats and physical acts made], of "I don't feel safe leaving now," *(PCMSJ Exhibit #1 at timestamp 9:48),* "Yeah I don't feel like getting jumped off camera," *(timestamp 10:17),* "Like I said I don't feel safe leaving now, *(timestamp 10:44),* and "Like I'm just gonna trust him that he's not gonna jump me," *(timestamp 11:28). See Plaintiff's Undisputed Material Facts #15 through #17, above.*

Regarding the third element, it is equally indisputable that Defendant's THREATS and PHYSICAL ACTS were [or appeared to be] "harmful" or "offensive." This is evidenced by Plaintiff's reluctant decision made to – *even after* Defendant finally left the area – "spend the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would." *See Plaintiff's Undisputed Material Fact #19, above.*

As such, Defendant is indisputably liable for assaulting Plaintiff.

CONCLUSION

Plaintiff has satisfied each and every element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has failed to provide this Court with **any** tangible, admissible facts, *whatsoever*, to even begin to support its **naked and unfounded** affirmative defense of "shopkeeper's privilege" to otherwise lawfully detain him.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
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Attorneys for Defendant

William Montgomery
William Montgomery

Public Records Menu

- Home
- FAQs
- Submit a Request
- My Records Center
- Public Records Archive
- Search by Reference Number

For more information on submitting a Public Records Request call the City Clerk's Office at 303-658-2161.

For general service questions **other than public records**, please visit

Access Westminster.

FAQs

See All FAQs

Purchase a Traffic Accident Report

Is there a fee?

What is a public record?

Need more

Select Language

View File(s) | View Message(s)

Request Type:	Police Records Request
Contact E-Mail:	zoinbergs@gmail.com
Reference No:	Z000422-090424
Status:	Full Release
Balance Due:	$0.00
Payments:	$0.00

	UPLOAD DATE	DOWNLOAD ALL
Files:	09/10/2024 WPD2022-103788.pdf	
	09/10/2024 WPD2022-103786.pdf	

Police Records Request

24-72-301 Colorado Criminal Justice Records Act
All records requests are processed in accordance with the Colorado Criminal Justice Records Act (CCJRA). Some reports may not be released or may have redactions as required by law.

24-72-305.5 Access to Records - denial by custodian - use of records to obtain information for solicitation.
Records of Official Actions and Criminal Justice Records and the names, addresses, telephone numbers and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The Official custodian shall deny any person access to records of Official Actions and Criminal Justice Records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

24-72-309 Violation - penalty.
Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a

Powered by GovQA

submitting a Public Records Request?

imprisonment.

Can I get the fees waived?

Are You Representing An Agency?:
No

Type of Report Requested:
Address Search / Calls for Service
Incident/Offense Report

PLEASE NOTE
The following information is necessary to process your request. Please fill out all sections. Colorado law and department procedures require you identify the record requested by supplying information that is specific enough to identify the exact record/person/report sought.

Case Report Number or Event Number:

Date of Incident:
11/25/2022

Location of Incident:
Best Buy @ 9369 Sheridan Blvd, Westminster, CO, 80031

Subject Involved:
Last Name, First Name, Middle Initial

Date of Birth:

Describe the Record(s) Requested:
Greetings! I am looking to obtain a record of all calls for service originating from this location on November 25, 2022. Specifically, I am looking for any calls for service that any Best Buy employees may have made, that might show up as a "shoplifting" incident, that might have been called in by said employees (if they even made such a call in the first place) and to which would have likely been made by them around 2:19pm that day. Ultimately, if no such calls for service were made on the date, around that time, an "empty" record report showing that no such calls were made on that date, around that time, is what I am alternatively seeking. Thanks!

Please be specific with your request to narrow our search and respond to you quickly and efficiently.

Preferred Method to Receive Records:
Electronic via Records Center

Acknowledgment
I have read the statute above and do hereby affirm and attest that the records requested by me shall not be used for the direct solicitation of business for pecuniary gain and that the information obtained in the reports requested and/or copies of said reports shall not be further disseminated by me except for as allowed by law.

Type Your Name To Sign:
William Montgomery

New Message ✕ Return to List

Messages 3 Print Messages (PDF)

On 9/10/2024 8:42:09 AM, Westminster CORA Request wrote:

Subject: [Records Center] Police Records Request :: Z000422-090424
Body:
Attached is the completed calls for service that you requested last week.
Please note, we usually charge $30.00 per hour for redaction on requests, but since there was only 2 calls for service and no redactions necessary I am not adding the charge to this request.

Thank you
Dawn Neelands

> On 9/4/2024 5:22:26 PM, Westminster CORA Request wrote:

> On 9/4/2024 5:22:26 PM, William Montgomery wrote:

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PCMSJ Exhibit #2.04

CAD Incident Number: **WPD2022103786**
Case Number:

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Location	Commonplace Name	Beat
9369 N SHERIDAN BLVD Westminster, CO 80031	**BEST BUY**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:14**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **471** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched: **11/25/2022 08:14** Unit Arrived: **11/25/2022 08:14** Unit Cleared: **11/25/2022 08:15**

Call Comments

Location: BEST BUY

11/25/2022 8:15:11 AM, Performed By: TS

Comment: [1] 131 - C4

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PCMSJ Exhibit #2.05

CAD Incident Number: **WPD2022103788**
Case Number:

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:15**	**11/25/2022 08:33**

Call Location	Commonplace Name	Beat
9369 N Sheridan Blvd Westminster, CO 80031	**Best Buy**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:15**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **131** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched: **11/25/2022 08:15** Unit Arrived: **11/25/2022 08:15** Unit Cleared: **11/25/2022 08:33**

Person(s) Involved

Last Name	First Name	Phone Number
Herring	**Justin**	

Vehicle(s) Involved

License Plate	Plate State	Year	Make	Model	Color
AXDZ04	**CO**	**2005**	**Chevrolet**	**Silverado**	**White**
BGC010	**CO**				

Call Comments

Location: Best Buy

11/25/2022 8:19:00 AM, Performed By: TS

Comment: [1] [Query] 131, QP Combo Query: USRID/2061.LIC/AXDZ04.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:22:57 AM, Performed By: TS

Comment: [2] [Query] 131, QP Combo Query: USRID/2061.LIC/BGC010.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:33:27 AM, Performed By: TS

Comment: [3] 131 - C4

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED September 19, 2024 3:53 PM
WILLIAM MONTGOMERY Plaintiff vs. **WAL-MART STORES, INC., JOHN DOE.** Defendant(s)	▲ Court Use Only ▲
Attorney Or Party Without Attorney: William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463	Case Number: **20CV76** Division: **2** Courtroom: **4B**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendants' Motion For Summary Judgment ("Defs' MSJ"), and in support thereof, states as follows:

INTRODUCTION

Plaintiff seeks justice for the unlawful detention of him by the Defendants, followed by the unlawful taking of his items by the same, upon his peaceful attempt to leave a Walmart store located in Lakewood, Colorado. Contrary to what the Defendants would have this Court believe, Plaintiff listed facts in his Simplified Complaint that plainly give rive to **two** causes of action: 1) **common law theft** (*"On March 31, 2019, JOHN DOE. . .stole three bags of ice (total purchase price of $5.17 which includes tax) from me while I attempted to leave his store."*), and 2) **common law false imprisonment** (*"Immediately prior to stealing my items, he cornered me,*

blocked my path, and wouldn't let me leave on my way out."). Indeed, Defendants freely admit in their MSJ that in Plaintiff's Initial Disclosures are compensatory damages plainly listed for a) "theft of goods" and b) "loss of liberty." These are two distinct categories of damages arising from two distinct causes of action. Thus, Defendants' attempt to characterize Plaintiff's lawsuit as solely one of "theft" is mere sophistry intended to deceive the Court and skirt liability.

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff ADMITS that this asserted material fact is true.

2. Plaintiff ADMITS that this asserted material fact is true.

3. Plaintiff ADMITS that this asserted material fact is true.

4. Plaintiff ADMITS that this asserted material fact is true.

5. Plaintiff ADMITS that this asserted material fact is true. Important to note here is that the Walmart associate specifically referenced in this asserted material fact is not the Walmart associate Plaintiff is claiming to have been falsely imprisoned by. THAT Walmart employee ("John Doe") is rightfully the subject of Defendants' Undisputed Material Fact #8.

6. Plaintiff ADMITS that this asserted fact is true, however ultimately this fact is immaterial to the outcome of this case.

7. Plaintiff ADMITS that this asserted material fact is true.

8. Plaintiff DENIES that this asserted material fact is true. This "second" Walmart associate (who is the principal subject of Plaintiff's civil claim – "John Doe" until further notice) **did not** "observe Plaintiff take merchandise out of the store's cooler and then proceed to exit." While Plaintiff freely admits that the "first" Walmart associate (referenced in Defendants' Undisputed

Material Fact #5) did indeed observe Plaintiff "approach the large ice cooler, retrieve merchandise from inside, and immediately proceed to exit," this "second" Walmart associate referenced in this particular asserted material fact **saw literally nothing of the sort**. As Plaintiff reported to the Lakewood Police officer in his phone call with her that had taken place immediately after the event, *"this other employee came around the corner . . .this third employee [ ] asked me for my receipt. Now he absolutely 100% did not see me go from the wall, uninterrupted, past the door. He was basically called over from this other employee."* (Defs' MSJ Exh. B at 4:10). Plaintiff then further explained to the officer, *"I am reporting to you that he was about 10 or 15 feet around the corner, hanging out, and that basically as soon as I declined to show my receipt to the normal receipt checker, that's when he had flagged him down. He was hanging out in the double doors, and I was at the ice machine right before the double doors."* Plaintiff continued to report that, *"He certainly didn't see me obviously go pay for the first two bags and then the third bag of ice at the register,"* and then further reported that, *"The reason why I know he didn't witness or view anything. . .is because he took all three bags of ice from me. . .He did not differentiate between the two bags that I walked to the register, and the third bag that I grabbed from the ice chest initially, or after the fact. He basically jumped the gun, we'll call it, [ ] and appears to believe that I took all three bags right there, then and there, at the exit, and I was just trying to turn around and leave with all three."* NOW, evidence that is currently available in the record that creates a genuine dispute of fact (if not alternatively render such a dispute "indisputable" in Plaintiff's favor) is the conversation that Plaintiff captured in store's vestibule, during the event. First Defendant John Doe can be heard telling Plaintiff *"If you've already left, then you've already left."* (Defs' MSJ Exh. A at 1:00:09). Then, he repeats the same by saying again, *"You've already left. You left and came back."* (Defs' MSJ Exh. A

at 1:01:27). Then, he is finally heard reporting the same to his supervisor, *"So listen, this guy has left the store. He has come back into the store. He has grabbed three bags of ice from the ice cooler . . . He said he left without them and forgot them."* (Defs' MSJ Exh. A at 1:03:11).[1] THUS, is can fairly be inferred, by his very own admissions, that the Defendant thought he had witnessed Plaintiff William a) enter the store *once* (an hour prior), b) go shopping *once* (during that hour), c) purchase all his items *once* (Defs' MSJ Exh. A at 39:06 – 44:00), d) leave the store *once*, and then e) come back into the store after leaving it **to go straight toward the ice chest to pick up some ice as if he had "purchased" the ice during his first shopping round (before coming out and talking to his brother) and had simply "forgotten" to grab it on his way out that first time around**. But, it is clear that the Defendant had been posted up in the vestibule the entire time and thus **DID NOT** observe Plaintiff go back into the store the second time and a) grab two bags of ice from the ice chest, b) take them directly to a register, c) pay for them, and then a third, and then finally, d) grab the third bag of ice from the ice chest on his way back out of the store. Rather, the Defendant didn't see literally anything at all, and instead had recklessly and lazily assumed that Plaintiff went straight from outside the store, to the ice chest, and then straight back out of the store again [but now with three purportedly unpaid for bags of ice with him]. THIS blatant assumption, of course, goes to the very heart of Plaintiff's complaint. By merely being posted up in the store's vestibule [and literally nothing more] the Defendant did not reasonably witness *anything whatsoever* that may have occurred around the corner that could fairly form the requisite basis of a "shoplifting" occurrence, in order to legally justify with "shopkeeper's privilege" his subsequent action performed of stopping Plaintiff from leaving on his way out of the store.

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1 Absolutely critical to note here is that Plaintiff never once said to John Doe (or anybody else for that matter) that he "left without them and forgot them." This may be what John Doe *claims* to have heard, however it is clearly disputable – based on Plaintiff's captured audio of the event – that no such communication was made.

9. Plaintiff ADMITS that this asserted material fact is true.

10. Plaintiff ADMITS that the first half of this asserted material fact is true (where "the second Walmart associate clarified that he is not accusing Plaintiff of anything and that he is just asking to see his receipt."). However, Plaintiff DENIES that the second half of this asserted material fact is true. This is because, according to the audio, while the second Walmart associate clarified that he is not accusing Plaintiff of anything (Defs' MSJ Exh. A at 1:00:40) the first Walmart associate (not the second one) is actually the one that "explained that he does not know if Plaintiff has a receipt because he just watched him 'grabbing merchandise.'" (Defs' MSJ Exh. A at 1:01:24). **The second Walmart associate ("John Doe") never once said that "he just watched [Plaintiff] 'grabbing merchandise.'"**

11. Plaintiff ADMITS that this asserted fact is true, however ultimately this fact is immaterial to the outcome of this case.

12. Plaintiff ADMITS that this asserted material fact is true.

13. Plaintiff ADMITS that this asserted material fact is true.

14. Plaintiff ADMITS that this asserted fact is true, however ultimately this fact is immaterial to the outcome of this case.

15. Plaintiff ADMITS that this asserted fact is true, however ultimately this fact is immaterial to the outcome of this case.

16. Plaintiff ADMITS that this asserted material fact is true.

17. Plaintiff ADMITS that this asserted fact is true, however ultimately this fact is immaterial to the outcome of this case.

18. Plaintiff ADMITS that this asserted material fact is true.

19. Plaintiff ADMITS that this asserted material fact is true.

STATEMENT OF ADDITIONAL DISPUTED MATERIAL FACTS

20. Absent entirely from the Defendants' Statement of Undisputed Material Facts is that John Doe physically stepped in front of Plaintiff and cornered him up against the wall in the vestibule, thus stopping him from leaving as he attempted to leave through the only available exit of the store [a detainment]. Because this fact was omitted from the Defendants' list of undisputed material facts, it is unclear whether or not this fact would ultimately be disputed by them. Nevertheless, if the Defendants attempt to dispute such a fact, the record is full of evidence that substantiates that Plaintiff was detained by the Defendant. First, the Defendant can be heard at one point telling Plaintiff, *"Well I can't let you leave with the ice unless you're going to show me a receipt."* (Defs' MSJ Exh. A at 1:00:07). Then, Plaintiff can be heard asking the Defendant, *"Are you not letting me leave?"* (Defs' MSJ Exh. A at 1:00:43). [At this point, Plaintiff attempts to leave, as evidenced by his footsteps that can be heard in the background.] Then, Plaintiff informs the Defendant, *"Excuse me. I have to go, I have some place I need to be."* (Defs' MSJ Exh. A at 1:00:53). [This is the point at which Plaintiff is cornered by the Defendant, up against the wall, as the cornering of him is what prompted Plaintiff to say "Excuse me."] Eventually, Plaintiff can be heard telling the first Walmart associate, *"When he blocked my path, that could be considered a detainment. He literally stepped right in front of me, dude. And the point is, if I wanted to go through another exit, there is no other exit, so you're stopping me from going through the only exit of the store right now, and that is an effective detainment, based upon case law."* (Defs' MSJ Exh. A at 1:03:47).

ARGUMENT

I. THE DEFENDANTS LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WILLIAM WITH

"If any person. . .carries away any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft." C.R.S. § 18-4-407. This is the official, codified version of what is commonly known as "the shopkeeper's privilege." Such privilege is not without limits, however, as "[a]ny person who knowingly confines or detains another without the other's consent **and without proper legal authority** commits false imprisonment." C.R.S. § 18-3-303(1). Thus, a merchant who recklessly detains a suspected shoplifter – but without possessing the requisite "probable cause" to justify its actions – commits the crime of false imprisonment. Such a criminal act also gives rise to civil liability, as false imprisonment is also a civil tort.

Additionally, "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Id.* See also *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 55 (D. Mass. 2000) (Any restraint, even without physical contact, is sufficient to constitute false imprisonment. If a [person] is restrained by fear of a personal difficulty, that amounts to false imprisonment within the legal meaning of such term.") (internal quotations omitted).

Ultimately, "The test of liability [for shopkeeper's privilege] is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the

circumstances. And whether reasonable belief is established, is usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996).

In the instant case, while Plaintiff was attempting to leave a Walmart store located in Lakewood, Colorado, the Defendant ("John Doe") was flagged down by another associate, and informed by him that Plaintiff had refused to provide a receipt for his merchandise. The Defendant, who had been standing in the store vestibule and about 10 to 15 feet away compared to where Plaintiff and the other associate had been standing, did not see or witness **literally anything** that would have *even begun* to fairly form a "reasonable [] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "In fact, [Defendant] never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* Thus, **"When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion."** *Id.* Moreover, because the Defendant never once differentiated between the two bags of ice that he would have otherwise saw Plaintiff walk to a nearby register upon store re-entry (had he been posted up closer to inside the store) and the third bag of ice that Plaintiff had grabbed on his way back out, he himself – through his very own admissions – exposed that he didn't even remotely witness what could have possibly happened. It should be painfully obvious at this point that the Defendant simply, lazily, and recklessly **assumed** that he had witnessed Plaintiff steal something.

Of course, the sole piece of "information" in this case that the Defendant will think he can work with, is that Plaintiff refused to show his receipt to him. But even that will be insufficient to establish his probable cause with. This is because asking to provide a receipt "is

essentially a request for consent to search, [and] a customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). Meaning, "receipt-checking is not related to any fact of theft other than presence in the store, [and whereby] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. Basically, "Any other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998).

Now even though the Defendant never physically touched Plaintiff during this time, because he intentionally cornered him up against the wall, halfway through the vestibule, his actions nevertheless constituted a "confinement" or "imprisonment." Meaning, as Plaintiff had no way of exiting the store at this point without incurring "substantial personal difficulty" otherwise, all the elements of a classical false imprisonment had now been met.

Undoubtedly, "It is well known to the public that shoplifting is an everyday occurrence

which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984). **Yet this is exactly what has happened to Plaintiff. The Defendant unlawfully arrested him for not producing his receipt [and should now be held accountable for his actions].**

II. THE DEFENDANTS STOLE PLAINTIFF'S ICE FROM HIM

Contrary to what the Defendants would have this Court believe, they most certainly intended to permanently deprive Plaintiff of his paid-for merchandise.

First, their continued attempts to "shift the burden" onto Plaintiff is nothing more than mere sophistry intended to skirt liability. At first blush it may appear that the Defendants "afforded Plaintiff every chance to go home with the merchandise." (Defs' MSJ at pg. 7). But repeatedly demanding to see a receipt – like a broken record – can hardly be construed as a genuine "effort to make sure Plaintiff exited the store with the bags of ice." *Id.* This is because the onus was not, is not, and will never be on Plaintiff to show a merchant "proof of his innocence" – or if not, somehow forfeit ownership of property that is rightfully his to keep. This "guilty until proven innocent" / "show me your papers" mentality is precisely why Plaintiff repeatedly referenced Nazi-ism throughout his encounter. Rather, the onus was on the Defendants to investigate into Plaintiff's purported theft before deciding to kick him out of their store without merchandise in-hand. Conducting some sort of investigation – *literally any*

investigation – such as asking Plaintiff which register he paid at, checking video feeds or register manifests, or speaking with nearby cashiers, would have all gone far to show "good faith" on Defendants' part that they did indeed want to "reunite Plaintiff with his merchandise." **But none of that happened.** The Defendants simply asked Plaintiff to see his receipt, concluded that he stole items from them, reclaimed what they believed was theirs, and went about their business after escorting Plaintiff out of their store. Even if Plaintiff were to show his receipt to them later, this would not change the fact that a theft had already occurred, as "the return of the property is not a defense." *Kelley v. People*, 166 Colo. 322, 443 P.2d 734. Moreover, the Defendants took Plaintiffs items from his *because* he didn't show them a receipt. Meaning, they used the act of receipt asking as their sole vehicle of investigation, and whereby once they became apprised of Plaintiff's decision to not show them his receipt, concluded that investigation in its entirety. This is a classic example of theft. The Defendants had every intention of permanently keeping what they thought was "their" merchandise, so long as Plaintiff continued to not give into their demands.

Moreover, even if the Defendants were operating under the premise of having shopkeeper's privilege for their actions – such privilege would only grant them lawful justification to "detain and question **person[s]**." C.R.S. § 18-4-407. **No such privilege exists to independently snatch property out of a person's hands [or from where they place it immediately in front of them].** Of course, shopkeeper's privilege doesn't exist for the Defendants in this case anyways (see above) so this argument is rather moot.

Ultimately, the Defendants' characterization of the entire encounter as one in which Plaintiff somehow "caused a scene" by otherwise failing to "resolve the problem he created for himself," is nothing more than an intellectually dishonest and feeble attempt to scapegoat

and victim-shame him for wrongs that *they* actually did to *him*. This Court should not condone such downright immoral behavior.

III. PLAINTIFF EVENTUALLY PROVIDED HIS RECEIPT

Last, but certainly not least, is the flat out lie that the Defendants put forth regarding Plaintiff's "continued [ ] refusal to receive the items if it meant he must show that he paid for them." (Defs' MSJ at pg. 8). As can clearly be heard in Defs' MSJ Exh. B at 19:00, Plaintiff eventually conceded to providing proof of purchase for his items – because at that point, a theft had occurred, the police had now gotten involved, and he became more interested in "making it easy" for them to investigate into said crime rather than continuing to exercise his right to not show anybody anything. Of course, the police officer ultimately didn't need to see his receipt anyways, because of how she had the independent ability to look up video footage and register manifests herself, should she be compelled to continue her investigation traditionally otherwise. Plaintiff was just tired of being wronged and wanted to expedite the recovery process in any way he could.

Unfortunately, while following up on the incident with Lakewood Police, Plaintiff was told by them that they would not be pursuing any criminal charges against Defendant John Doe. This included both the reported theft and the reported false imprisonment. In fact, he was told by them that his only recourse moving forward would be via civil court, which is why Plaintiff is here today. **Plaintiff simply wants his merchandise (at this point, the value of it) returned to him, and those who took it from him / false imprisoned him over it held accountable for their actions.**

CONCLUSION

"Wal-Mart. . .ha[s] a receipt/bag checking policy in place to discourage shoplifting. This

policy provide[s] that Wal-Mart employees stationed near the exits [are to] check the shopping bags against the patrons' receipt as they [leave] the store. The bag check [is] to take place inside the store and within view of the checkout counters. If the store [is] busy employees [are] instructed to check as many bags as they [can]. If a customer refuse[s] to have his or her bag checked, the policy allow[s] the person to pass. *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 46-47 (D. Mass. 2000). This isn't just good policy, however, it is soundly based in law. By allowing customers to pass who refuse to have their receipts/bags checked, Wal-Mart limits their exposure to liability by not otherwise committing countless false imprisonments. This is because without observing literally anything that can *even begin* to resemble acts of theft, receipt checkers lack "shopkeeper's privilege" to detain patrons who are simply on their way out of their stores. The occasional over-zealous employee does exist, however, as can clearly be seen in *Ball v. Wal-Mart, Inc.*, in *Wal-Mart Stores, Inc. v. Odem*, and now, here today, in *Montgomery v. Wal-Mart Stores, Inc.* But as can also be seen, the Court is willing to uphold the law, and provide justice to those who seek it.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court DENY Defendants' Motion For Summary Judgment.

Respectfully submitted on this, the 15th day of October, 2020.

William Montgomery

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 15th day of October, 2020, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following persons:

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DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	DATE FILED September 19, 2024 3:53 PM
WILLIAM MONTGOMERY Plaintiff vs. **WALMART INC.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case No: **2020CV67** Division: **W**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendant's MOTION FOR SUMMARY JUDGMENT ("Def's MSJ"), and in support thereof, states as follows:

INTRODUCTION

Once again, WALMART has decided to retaliate against somebody for simply refusing to show their receipt on their way out of a store. How many times does this have to keep happening? Sorry, but Plaintiff isn't "going out his way" to be detained by the Defendant. Nor is he "seeking to be detained" by them, or "provoking" them, or "concealing" or otherwise "displaying conspicuous behavior to suggest that he shoplifting." It's no secret (nor has it been for literally decades now) that WALMART routinely asks to see the receipts of all those who leave its stores who don't use plastic bags. But as the retired criminal judge Matthew M. Steven aptly puts it, "No store has the right to force you to display your receipt after you've made your purchase, nor do they have the right to detain you for not doing so. Companies like Sam's Club, BJ's and Costco are able to do this because it is a part of your agreement

for membership. A store may detain you if they believe you're guilty of shoplifting, and they must tread exceptionally carefully when doing so, because the liability for falsely accusing and illegally detaining somebody is staggering. However, when an employee stationed at the exits asks to see customer receipts upon exiting, you do not have to show it to them, nor will they argue unless they believe you have committed the crime of larceny. I ruled against WalMart on several occasions with regard to this, and even went so far as to charge members of their loss prevention department with unlawful imprisonment after an incident. I realize that retail theft is rampant in stores like WalMart, but that does not excuse accusing and causing damage to a law abiding citizen." *See https://tinyurl.com/yckn79et.*

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff ADMITS that this asserted material fact is true.

2. Plaintiff ADMITS that this asserted material fact is true. Indeed, once Plaintiff was finished shopping, a store employee rang up his items, and he paid for them. After paying for his items, Plaintiff placed them back into his cart so as to eschew the use of the typical, non-environmentally friendly, one-time-use plastic bags, then proceeded toward the store's western exit with items in cart. *See Plaintiff's Affidavit (herein "PA") at ¶ 10. See Defendant's Motion For Summary Judgment (herein "Def's MSJ") Exhibit A at 17:43. See also Plaintiff's Cross-Motion For Summary Judgment (herein "PCMSJ") Exhibit #3 for an example of similarly situated people who also eschew the use of the typical, non-environmentally friendly, one-time-use plastic bags.*

3. Plaintiff DENIES that this asserted material fact is true. Plaintiff never "became defensive at the associate's request to see his receipt for the items," he became defensive that the store employees began blocking his path and grabbing a hold of his cart, which prevented him from leaving. IT CANNOT BE STRESSED HERE ENOUGH: PLAINTIFF ***COULDN'T CARE LESS*** IF HE IS EVER ***ASKED*** TO SHOW HIS RECEIPT. HE ONLY CARES IF HE IS WRONGFULLY ACCUSED, FALSELY IMPRISONED, MALICIOUSLY PROSECUTED,

ETC. SHOULD HE EVER CHOOSE TO REFUSE TO SHOW HIS RECEIPT.

4. Plaintiff ADMITS that this asserted material fact is true.

5. Plaintiff ADMITS that this asserted material fact is true.

6. Plaintiff ADMITS that this asserted material fact is true.

7. Plaintiff ADMITS that this asserted material fact is true. Plaintiff was indeed prevented from "working his way back into the store" [so as to leave through its other exits]. Therefore, because the employees a) wouldn't let him leave through the store's western exit, and b) wouldn't let him leave through any of its other exits, Plaintiff thus became "corralled" and officially fully detained by them.

8. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of this case.

9. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of this case.

10. Plaintiff ADMITS that this asserted material fact is true.

11. Plaintiff DENIES that this asserted material fact is true, insofar as it characterizes plaintiff's interaction with the police as that of merely a "detention." According to Plaintiff's audio of the event, when asked if he was "under arrest for theft," Officer MORGAN ARRICK clearly and unambiguously informed him that he was. *See Def's MSJ Exhibit A at 42:20.* This is also in addition to the police a) placing Plaintiff into handcuffs, b) custodially inventorying him, and c) placing him into the back of their patrol vehicle – all actions which traditionally exceed the scope of *Terry* style detentions [thereby graduating them into full-scale arrests]. *See Def's MSJ Exhibit A from 40:35 to 55:10.*

12. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome if this case. Here, Defendants are guilty of committing the classical logical fallacy known as *the ad hominem attack.* Let's stick to the material facts at hand, shall we?

13. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to

the outcome of this case. Whether Plaintiff had his receipt on him is **100% IRRELEVANT** to the issue of whether the Defendants had "shopkeeper's privilege" to lawfully detain him with.

14. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of this case.

15. Plaintiff DENIES that this asserted material fact is true. Plaintiff was a) placed into handcuffs immediately upon approach, b) unambiguously informed that he was under arrest for theft, c) custodially inventoried, and d) placed into the back of a patrol vehicle. Such actions, absent independent justification for their instigation [and to which the officers had none], plainly exceeded the traditional scope of a *Terry* style detention, thus characterizing Plaintiff's encounter as nothing short of an arrest. Moreover, whether Plaintiff was ever *charged* (or *booked*) with shoplifting is 100% IRRELEVANT to the issue of whether he was *arrested* for shoplifting. Suspects are often arrested for crimes that they are never formally charged or booked with. *See PA at ¶¶ 23-26. See Def's MSJ Exhibit A from 40:35 to 55:10.*

16. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of this case. *Nevertheless, feel free to see Montgomery v. Arrick et al, Civil Case No. 1:21-cv-02410-PAB-MEH, and to which is still very much alive and in the discovery phase of the case.*

PLAINTIFF'S ADDITIONAL MATERIAL FACTS

17. Upon entering the WALMART SUPERSTORE in Plaintiff's case, Plaintiff did not observe there to be, anywhere at all, any store receipt checking policies posted on any of its walls, nor verbally mentioned to him by any of its store employees. *See PA at ¶ 4.*

18. Once inside the store, Plaintiff traveled throughout the its various departments, where he selected items for purchase directly off the shelves. *See PA at ¶ 5. See Def's MSJ Exhibit A.*

19. While traveling between its various departments, Plaintiff never once observed any store employees, police officers, or any people at all, follow him throughout the store. *See PA at ¶¶ 6, 8, 11, 15, and 17. See Def's MSJ Exhibit A.*

20. While traveling between its various departments, at no time whatsoever did Plaintiff ever once exit/re-enter the store, until proceeding to exit it for the very first time since initially entering it, once he had concluded his entire shopping experience inside of it. *See PA at ¶¶ 9 and 12. See Def's MSJ Exhibit A.*

21. While on his way out of the store, Plaintiff was asked to show his receipt by store employees who had strictly been "posted up" at its exit, and whom Plaintiff had never once observed to have been located anywhere else in the store (let alone follow him throughout it as he shopped) until he finally saw them for the very first time as he proceeded to leave it. *See PA at ¶¶ 14–17. See Def's MSJ Exhibit A at 23:21.*

22. When asked by the store employees to show his receipt, Plaintiff politely declined. In response, he had his path blocked and cart grabbed by the store employees. Plaintiff then told the store employees to let go of his cart, but they would not. He then tried to step around them, but in response, they just stepped in front of him again. Eventually, after being unable to leave the store through its western exit, Plaintiff began to attempt to leave through its eastern exit. Two of the four store employees that were initially blocking his path outward then stepped around him to further block his path back inward / toward the eastern exit. At this point, Plaintiff felt he had no safe or realistic way of leaving the WALMART SUPERSTORE, through any of its exits, without otherwise bumping into or having to push several of its employees out of the way. The store had successfully "corralled" Plaintiff, in place, leaving him with literally nowhere else that he could go. *See PA from ¶¶ 16–21. See Def's MSJ Exhibit A from 23:21 to 34:17.*

23. During the encounter, the four store employees that were preventing Plaintiff from leaving began to take his recently paid for items out of his cart and out of his hands, of which he began to protest vehemently. At one point, several employees "rushed" in toward Plaintiff in an attempt to stop him from maintaining control over what remaining items he had in his cart, and to which resulted in them making abrupt and unwanted physical contact with

him. The only item left that Plaintiff had managed to maintain control over was a Clif Bar, to which he placed in his right jacket pocket so as to further prevent any store employees from taking from him otherwise. *See PA at ¶ 20. See Def's MSJ Exhibit A at 28:10.*

24. During the encounter, store employee XAVION CAWINS lied to Plaintiff [i.e. was bluffing] that he had him "on camera, selecting items, walking out the store, past the final point of sale, and failing to render any payment for them." *See Def's MSJ Exhibit A at 37:33.* CAWINS further lied (bluffed) to Plaintiff, saying to him that he personally saw him "grab it, [and] walk out." *Id at 37:50.*

25. During the encounter, store employee FELIX [LAST NAME UNKNOWN] confessed to Plaintiff that he had been "sitting right here" [i.e. merely "posted up" at the store's exit, and literally nothing more] when he first saw Plaintiff leaving and decided to confront him. *See Def's MSJ Exhibit A at 40:08.*

26. Store employee XAVION CAWINS eventually contacted the police for assistance. During his phone call with Westminster Police Dispatch, CAWINS informed them that Plaintiff was confronted by employees at the store's exit, asked for his receipt by them, and was refusing to show it to them. Dispatch then asked in Plaintiff had concealed anything, of which CAWINS responded in the negative. Dispatch then asked if Plaintiff was saying anything to the employees, of which CAWINS responded by stating that Plaintiff had said to them, "These are my items." CAWINS then lied to the dispatcher that he had personally watched Plaintiff "just walk out with the items; none of it's bagged..." [i.e. that he had observed Plaintiff walk past all points of sale without paying for his items]. CAWINS then further lied to the dispatcher that he had obtained video footage, from the store's surveillance system, of Plaintiff stealing merchandise. Eventually, the dispatcher informed CAWINS that members of the Westminster Police Department would be shortly on their way. *See Def's MSJ Exhibit B.*

27. Shortly after being prevented from leaving both store exits, two members of the Westminster Police Department arrived on scene to begin their investigation, Officer

MORGAN ARRICK (AYRES at the time) and Officer JAMES HOLLEY. At the time of their arrival, Plaintiff, and the store employees who had been detaining him, were still located inside the store, halfway in-between its two exits and behind its checkout registers. *See PA at ¶ 22. See Def's MSJ Exhibit A at 40:28.*

28. Officer MORGAN ARRICK was the first to approach Plaintiff. Upon approach, she asked him, "Hey, what's going on? What's going on tonight?" But before providing Plaintiff with even a single second to answer her question, she immediately demanded that he turn around and place his hands behind his back. Without issue, Plaintiff complied. She then placed him into handcuffs. *See PA at ¶ 23. See Def's Exhibit A from 40:28 to 40:55.*

29. The police then escorted Plaintiff out of the building. Shortly after exiting, they told him that he was under arrest for theft, and that a full-blown custodial inventory of him was necessary for them to complete next. As purported justification for the search, they told Plaintiff that it was because the store employees had told them that they had observed him, on camera, conceal merchandise in his pockets and walk past all points of sale without paying for them. *See PA at ¶ 24. See Def's MSJ Exhibit A from 40:55 to 44:25.*

30. During the custodial inventory of him, the officers removed from Plaintiff's pockets his keys, wallet, cell phone, a store receipt, and the sole remaining paid for item he still had on him – the Clif Bar. *See PA at ¶ 25. See Def's MSJ Exhibit A at 44:25.*

31. After removing said items, the officers then placed Plaintiff in the back of their patrol vehicle for the next several minutes while they waited for the store employees to investigate into whether he had paid for his merchandise or not. Shockingly, for the entirety of their visit to the SUPERSTORE, neither officer actually left the side of their patrol vehicle, to actually go into the store, to actually conduct their own investigation into the matter. They did not interview potential witnesses themselves, view potential video footage themselves, or compare potential register records against receipts themselves, to otherwise confirm or refute Plaintiff's innocence in

the matter. Rather, they simply waited for the store employees to complete their investigation *for* them, come outside and speak *to* them, and exonerate Plaintiff *on behalf of* them. *See PA at ¶ 26. See Def's MSJ Exhibit A from 44:25 to 55:10.*

32. Once Plaintiff was exonerated, the officers let him out of their patrol vehicle, removed their handcuffs from him, returned his merchandise to him, and sent him on his way while simultaneously telling him to leave the store's property at the request of its employees, and to which he promptly did, without issue, with all items finally back in his possession. *See PA at ¶ 27. See Def's MSJ Exhibit A at 55:10.*

33. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with the store employees and police. *See PA at ¶ 28.*

ARGUMENT

I. PLAINTIFF WAS IMPRISONED BY THE DEFENDANTS, AND WHETHER OR NOT HE HAD A RECEIPT ON HIM IS IRRELEVANT TO THAT FACT

In Defendant's MOTION FOR SUMMARY JUDGMENT, they claim that "Plaintiff's freedom of movement was never restricted. . .because [he] indisputably knew that showing his receipt would allow him to easily leave the store." *See Defs' MSJ at page 7.* **FOR THE LOVE OF GOD**, why won't this fallacious, misleading, and downright intellectually dishonest argument just die already!? Once again, Plaintiff presents the following legal arguments that directly refute this profoundly irrational and illogical position taken by the Defendant (and now two sister District Courts).

a. Defendants' interpretation of the jury instruction defeats the legislature's intent when drafting it, as well as renders said jury instruction absurd

We must begin by reviewing the Colorado Civil Jury Instruction at issue, **21:2(1)**. In reviewing the interpretation of a statute [or in this case, a jury instruction], a reviewing court should look first to the language of the statute [jury instruction], and the words and phrases

therein should be given effect according to their plain and ordinary meaning. *Ball Corp. v. Fisher, supra,* 51 P.3d at 1056. When a court construes a statute [jury instruction], it should read and consider the statute [jury instruction] as a whole and interpret it in a manner giving consistent, harmonious, and sensible effect to all its parts. *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003); *People v. Andrews,* 871 P.2d 1199, 1201 (Colo. 1994). In doing so, a court should not interpret a statute [jury instruction] in ways that defeat the legislature's obvious intent or render part of the statute [jury instruction] either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,* ___ P.3d ____, 2005 WL 3312826 (Colo.App. No. 04CA1223, Dec. 8, 2005).

Colorado Civil Jury Instruction 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property."

First, the definition of "escape" is being abused and misinterpreted by the Defendants (and sister District Courts) in such a way that "defeats the legislature's obvious intent" of the use of such a word. This is because there is a BIG difference between having one's path **PARTIALLY blocked**, but then still **seeing** and **being able to use** "other avenues open to [them]" so as to **avoid altogether** an **attempted** confinement of them **from occurring in the first place** *(see Colo. Jury Instr. Civ. 21:2, Notes On Use #3)* and having **one's ONLY path FULLY blocked IN ALL DIRECTIONS** but then merely being given the **option** to subsequently be **SET FREE** by the imprisoner **AFTERWARDS if** (and only if) one gives in to the imprisoner's demands. In other words, the latter is not an intellectually honest use of the term "escape," it is a **COMPLETED** and **CONTINUING** imprisonment (now subject to requiring lawful justification for) coupled with a **CONDITIONAL** (and to be discussed later, technically not even guaranteed) **RELEASE** of the subject that has yet to occur **UNTIL** the imprisoner's demands are satisfactorily met (if ever). This

also means that, *even if* satisfactorily "showing a receipt" results in the release of a person, doing such **would not nullify** their confinement **from having occurred in the first place** – any more than satisfactorily blowing into a breathalyzer at a DUI checkpoint would nullify a motorist's confinement from having occurred in the first place, satisfactorily posting bail at the local jail would nullify a prisoner's confinement from having occurred in the first place, etc.

Most importantly, however, is that SECTION 36 of the RESTATEMENT (SECOND) OF TORTS – on which Colorado Civil Jury Instruction 21:2(1) relies – contains a comment to the provision that **SPECIFICALLY** and **EXPLICITLY** clarifies the legislature's plain and unambiguous intent to define "escape" as **applying strictly to pre-confinement situations** (and not to post-confinement ones, once they have occurred). *See RESTATEMENT (SECOND) OF TORTS § 36 Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** *imprison* to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). *Note the specific use of the phrase "intends to imprison." That's not "has imprisoned," that's "intends to imprison."* Of course, this is not to say that a person, **post-confinement**, who **subsequently** discovers a way to escape his imprisonment, should not utilize such a means. It would certainly be incumbent upon him to do so. However, like previously mentioned, such a **subsequently discovered** avenue of escape, even if taken, **does not nullify the prior, completed, initial confinement of him from having occurred in the first place.**

Next, the definition of "escape" is further being abused and misinterpreted by the Defendant (and sister District Courts) in such a way that it renders the entire instruction "absurd." This is because if "escaping" really encompassed within it the act of merely "showing a valid receipt," as Defendant claims it does, **customers who happen to throw away their receipt** and even **thieves** could claim false imprisonment, while customers who keep their receipt could not! Such a result is patently absurd, as a paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all three** categories of people actually have **equal** standing to lodge a claim of false imprisonment against an

employee merely "posted up" at a store exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with]. Moreover, such an interpretation clearly **disincentivizes** customers from keeping their receipt. Not only is this undoubtedly *the exact opposite* of what the Defendant wants, who undeniably enjoys "posting" employees up at its store exits to ask patrons for their receipts, such diminishes the ability of customers to prove to the police that their items were confiscated unlawfully, should the store manage to unjustifiably reclaim them during an adverse encounter. Also, Walmart and several other stores have now begun to offer the sending of email-only receipts to customers who pay with an associated credit or debit card. **So now people who pay with a card have more of a right against false imprisonment than people who pay with cash?** Such a result, is once again, clearly and undoubtedly ABSURD!

Last, the phrase "unreasonable risk of harm" is being abused and misinterpreted by the Defendant (and sister District Courts) -- in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a phrase (and to which further renders it "absurd"). The Merriam-Webster Dictionary defines "harm" as "physical or mental damage." Thus, it strains credulity that within the definition of "harm" the legislature would have intended to include anything other than physical or mental acts of violence. This is especially true considering that it further defined types of harm (and their attendant threats) in its following three instructions. *See Colo. Jury Instr. Civ. 21:2(2–4).* Indeed, Plaintiff wholeheartedly agrees with the Defendant that "showing a valid receipt [] does not subject [him] to an 'unreasonable risk of harm.'" *Defs' MSJ at page 8.* No shit it doesn't! A store employee simply holding a receipt in his hands while verifying store purchases is not a physically or mentally violent act at all. The legislature would have never intended as much. *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking your only way out of a store until they forcefully verify your receipt against your merchandise will practically always involve "an unreasonable risk of harm."*

b. Showing a receipt and refusing to show a receipt cannot both be a form of consent

Because the act of "showing a receipt" is itself already construable as voluntarily giving consent to a detention, *see Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966), when coupled with Defendant's argument, even more absurdity results. This is because if Defendant's argument were valid, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order "to vindicate themselves" as *Grayson* puts it), customers who decline to show their receipt would also be "choosing to stay" (i.e. "forgoing escape" as Defendants put it). However, this obviously creates a "damned if they do, damned if they don't," never-detainable-either-way scenario, which is patently absurd, and manifestly unfair to the customer. The law is not such that Defendants get to "have their cake and eat it too." When detaining suspected shoplifters, there invariably exists *some* risk of basing one's detention on unfounded suspicions (i.e. not having shopkeeper's privilege). Under Defendant's legal theory, however, shopkeepers would enjoy **literal absolute immunity** when detaining all customers who happen to have their receipt on them, regardless of how little shopkeeper's privilege they may have in the matter – as no detainment of said patrons would EVER be able to occur, either way, in the first place!

c. Showing a receipt does not provide an immediate, guaranteed release of a person

Despite what the Defendants would have this Court believe – that showing a valid receipt would allow Plaintiff to **"immediately"** exit the store *(Defs' MSJ at page 8)* – such a release of Plaintiff would by no means be "immediate." Not only does it take time for a customer to locate their receipt, remove it from their pocket/wallet/purse, and present it to a store employee (which alone is sufficient to satisfy the "any amount of time, **no matter how short**" element of false imprisonment *(see Colo. Jury Instr. Civ. 21:1(2))*), it invariably takes an even more appreciable amount of time for a store employee to stand there, analyze a receipt, and cross-check it against a patron's merchandise. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court held that, ***even after*** Ms. Ball had provided the store employee with her receipt, there was enough evidence in the record for a jury to decide that

"she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

Thus, it is not simply the act itself of a patron merely "showing" (i.e. waving) a receipt on their way out of a store that conditions their release, **it is the explicit and undoubtedly time-consuming act of a store employee satisfactorily verifying a patron's purchases after thoroughly cross-checking their receipt against their merchandise,** that actually conditions their full and final release, and not a moment sooner.

d. Escape is a "one party" action, not a "two party" action

In a similar case Plaintiff filed in Arapahoe County, the Defendant defined "escape" as "to get away (as by flight)" or "to issue from confinement." Such definitions still naturally and logically hinge on the notion that a person "escaping" **would be doing so single-handedly and of their own volition** (i.e. "to [self] issue from confinement," not "to [be issued] from confinement"). In other words, if a prisoner still requires *permission* from their captor in order to be set free by them, one can hardly call that a viable "avenue of escape." Rather, as mentioned before, that's nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (and importantly, *not even guaranteed*) release of the subject that doesn't actually occur **until after** the captor **grants** said permission. Insert any number of acts that obviously "do not constitute an unreasonable risk of harm" (in and of themselves) like showing a receipt, saying which register you paid at, etc. as reasons a captor might offer to consider providing permission by, **however it is still the EXCLUSIVE decision of the captor, AND THE CAPTOR ALONE, to release the prisoner, AND NOT THE PRISONER'S ACT, that truly conditions their release**. This is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [] no physical restraint of her person was attempted." *Id.* Therefore, because the

captor's confinement comes first, and THEN **their decision** to release comes second, **there exists a critical window of time in between the two** where the prisoner may very have done everything asked of them, but is still nevertheless now waiting for **an independent, conscious decision** to be made by the captor to release them, and whereby they are, simply put, **NOT IN ANY MEANINGFUL WAY** actually free to "get away (as by flight)" or otherwise "issue from confinement" (until **AFTER** that all-important **permission** is finally **given** to them). Think of a captor and a prisoner who are standing in the same room with no windows and a single locked door. The captor gives a key to the prisoner that they tell them, and even show them, is what unlocks the door. However, the captor is standing in between the prisoner and the locked door, also telling the prisoner that the only way to actually secure their release is to hand the key back over, so that the captor can turn around, unlock the door himself, and then step aside to finally let the prisoner on through. Can one truly, intellectually honestly say that such an act – of giving the key to the prisoner and telling them its what unlocks the door – is a viable means of "escape"? **NOT IN THE LEAST.** Likewise, as mentioned before, it takes time for a customer to locate their receipt, remove it from their pocket/wallet/purse, present it to a store employee, and have that store employee stand there, analyze it, and cross-check it against their recently paid for merchandise. It strains credulity that during this period of time the store employee would permit the customer to leave prior to completing the verification procedure. *See again Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000) **The store employee is not some infallible robotic gatekeeper that one can simply wave their receipt in front of and be 100% guaranteed their own way out.** Purchase verification invariably takes time to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee hold them until it's finally done.

Also, it is worth noting that the aforementioned window (in between when the receipt is handed over, and when the person is finally released) is a completely separate and independent window of false imprisonment from the window in between when a store employee first detains a

customer, and when they unambiguously tell them, if they ever do, that they can leave the store if they show their receipt. **This is still its own window of false imprisonment**, and to which the Defendant is also unable to avoid liability within.

e. If a person is forced to give up one right for another, they are imprisoned

Last, but absolutely the most important reason why the Defendant's argument fails, is because a Plaintiff who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution; Fourth Amendment to the Colorado Constitution.* Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, to anybody, PERIOD.** The sheer arrogance and sense of entitlement exhibited by the Defendant in its persistent belief that it has some sort of right to see Plaintiff's (and everyone else's) receipt is just palpable. It just doesn't. It's agents are not police officers, who would be the only members of society that could ever possibly have such a right (and only upon obtaining probable cause or a warrant for it, no less). It's agents are just a citizens. Regular, U.S. citizens. Employees of a store. Literal strangers. Why on earth would Plaintiff EVER have to give literal strangers access to his private property? **The answer is, he doesn't.** No person does. There exists no law, no store policy, nothing remotely of the sort that could even begin to create such a "right" for the Defendant. PERIOD. Do civilians have a right detain people near the border, whom they believe could be illegal aliens, until they show them an ID? No. Do security guards have a right to detain people found inside their gated communities, whom they believe could be trespassing, until they tell them where they live? No. Do employees posted up

at store exits have a right to detain patrons on their way out, whom they believe could be shoplifting, until they show them a receipt? **NOOOOOO!!!!!!!!**

Accordingly, because the Defendant required Plaintiff to show his receipt in order to leave their stores, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – his right to be secure in his papers**. Of course, Plaintiff never actually "gave up" his right of locomotion, as during all of his shopping experiences his path was continuously blocked by the Defendant who continuously wouldn't let him leave despite his continuous attempts to do so. The only reason Plaintiff raises this final argument is to set in stone, **once and for all**, that *even if* "showing a receipt" could be considered some "avenue of escape," such would *still* not invalidate his false imprisonment claim against the Defendant, as "showing a receipt" falls squarely into the category of "relinquishment of another right," which if pitted against "the right of locomotion" (as Defendant unquestionably did) manifestly results in the legal definition of it "imprisoning" him.

In the end, Defendant's undying position that Plaintiff surely "knew that he could easily show his receipt and be released from custody" is nothing more than a shoddy, unsuccessful attempt to rebrand their criminal extortion of him (and to avoid liability for doing so). However, as explained, Plaintiff was through-and-through "imprisoned" by the Defendant, and as will be discussed next, "shopkeeper's privilege" was sorely lacking for them to lawfully do so with.

II. THE DEFENDANT LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WITH

In Defendant's MOTION FOR SUMMARY JUDGMENT, it claims that it "is not legally responsible for Plaintiff's false imprisonment claim as a matter of law because [it] had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter." *See Defs' MSJ at page 8.* While it is certainly true that the viability of essentially

Plaintiff's entire case hinges squarely on whether or not the Defendant had "reasonable grounds" to believe he had shoplifted in its store, what the Defendant *claims* to have possessed, and what they *actually* possessed, **are two very different things**. As will be discussed next, it is unequivocally beyond dispute that the Defendant genuinely *lacked* "reasonable grounds" (i.e. "shopkeeper's privilege") to lawfully detain Plaintiff with.

a. Being "posted up" at a store's exit, and literally nothing more, is insufficient as a matter of law to establish shopkeeper's privilege with

Traditionally, when analyzing "shopkeeper's privilege," the Court has held that "[t]he test of liability is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the circumstances." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "And whether reasonable belief is established, is usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Id.* However, when the facts are not in dispute (as largely appears to be the case in Plaintiff's instant case), "reasonable belief," or "probable cause" as C.R.S. § 18-4-407 codifies it, "is not a question of fact for the jury, but one of law for the court, to be decided in accordance with the circumstances at the time of the detention." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963).

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something."** *Id.* **"The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting."** *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not

have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592, (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable.").

In Plaintiff's instant case, while on his way out of the WALMART SUPERSTORE, he was asked to show his receipt by store employees who had been "posted up" at the store's exit, and whom Plaintiff had never once observed to be located anywhere else in the store (let alone follow him throughout it as he shopped) until he finally saw them for the very first time as he proceeded to leave it. The Defendant, having been strictly, indisputably, and even admittedly "posted up" at the store's exit, **did not see or witness literally anything** that could *even begin* to fairly form a "reasonable [ ] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). This is because the Defendant "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* In such circumstances, the Court has manifestly held, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Id.*

b. Nor does refusing to show a receipt help establish shopkeeper's privilege

A request to see a receipt "is essentially a request for consent to search, [and] the customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without *particularized* facts to reasonably justify a stop, systematic detention of most or all customers

may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.").

Moreover, refusal to consent to a police request cannot be the "single additional event that ripens [the officers'] preexisting concerns to the 'founded suspicion' that a *Terry* stop requires." *U.S. v. Sterling,* 909 F.2d 1078, 1082 (7th Cir. 1990). This is especially important to consider because of how in Plaintiff's claim against the Defendant his refusal to show his receipt ***was*** the "single additional event" they used to finally detain him with.

c. Nor does refusing to answer questions help establish shopkeeper's privilege

In the same vein, a customer also retains the right to refuse to answer questions put to him by an employee (and likewise, such refusal "does not create an adequate basis for invoking the privilege").

"The Fifth Amendment, in relevant part, provides that no person 'shall be compelled in any criminal case to be a witness against himself.' It has long been held that this prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant,

but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota v. Murphy,* 465 U.S. 420 (1984). *See also Michigan v. Tucker,* 417 U.S. 433, 440 (1974) ("Although the constitutional language in which the privilege is cast might be construed to apply only to situations in which the prosecution seeks to call a defendant to testify against himself at his criminal trial, its application has not been so limited."). *See also Combs v. Coyle,* 205 F.3d 269, 283 (6th Cir. 2000) ("[W]e believe that 'application of the privilege is not limited to persons in custody or charged with a crime; it may also be asserted by a suspect who is questioned during the investigation of a crime.").

d. Nor does not using plastic bags help establish shopkeeper's privilege

In today's day and age, the use of non-environmentally friendly, one-time-use plastic bags is frowned upon. Some jurisdictions (Boulder County, Denver County, etc.) have even begun to "tax them out of existence" by way of charging customers 10¢ each time one is used. Thus, people are using them less and less (present company included). *See PCMSJ Exhibit #3 [https://youtu.be/1YgIx44zcPw].* Accordingly, when it comes to analyzing whether or not a shopkeeper has established "probable cause" to detain a suspected shoplifter with, categorizing people who forgo the use of such bags as "likely enough to be thieves" is untenable, as doing so "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980).

Moreover, just like with receipt checking as discussed above, because plastic bags are "not related to any fact of theft other than presence in the store, detention for failure [to use them] does not create an adequate basis for invoking the privilege." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "The absence of any indication that the merchandise [is] 'unpurchased'

justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). See also *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971).

Finally, many items for sale to the public are simply too large to fit into a plastic bag. Or, some customers may forgo their use simply because they're only purchasing a single item and it would be silly to use a plastic bag. Therefore, once again, patrons in such positions "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid at 441.*

e. Nor does not using front registers help establish shopkeeper's privilege

It is well known that WALMART SUPERSTORES have scattered throughout them multiple points of sale that the general public utilize to purchase their various goods at. Registers are regularly located at the stores' cosmetics, electronics, paint, and automotive departments, to name a few. Not only does WALMART do this for the convenience of its customers, as the waiting lines at these registers are typically shorter than the ones found at the front of their stores, they do it for security, as they intentionally restrict certain goods from leaving certain departments until after they are purchased at that department's register (the cosmetics department being a prominent example).

After a customer buys their items at any of these alternate registers, they will invariably have to leave the store through one of its main (front) exits. Reasonably suspecting these customers of shoplifting based on their route of departure, then, is untenable, as they ultimately have no choice in the matter. They are going to have to leave the store *somehow* – either by walking *past* the traditional registers located at the front, or *through* the traditional registers located at the front (and to which either path taken, when not paying at such front registers, invariably creates some suspicion). Indeed, another "damned if you, damned if you don't" scenario that would be manifestly unfair to the customer should it be usable to establish

"shopkeeper's privilege" with. As such, store employees who are merely "posted up" at a store's exit, who see patrons leave from the back of the store and not from the front, cannot use a customer's route of departure as a valid basis to establish their "shopkeeper's privilege" with. *See Holguin v. Sally Beauty Supply Inc.,* 264 P.3d 732, 736 (N.M. Ct. App. 2011).

f. Lack of intent to conceal also tends to negate shopkeeper's privilege

While leaving the WALMART SUPERSTORE in Plaintiff's case, he made no "effort to conceal" the merchandise that he had recently purchased. As such, the Defendant *even further* lacked "facts justifying a belief (a reasonable belief) on [their] part [ ] that Plaintiff intended to commit a theft." *See Chelette v. Wal-Mart Stores, Inc.,* 535 So. 2d 558, 561 (La. Ct. App. 1989).

g. Even when factored together, shopkeeper's privilege is still lacking

As just discussed, refusing to show a receipt, answer questions, use a plastic bag, or use a front register each fail, on their own, to establish "shopkeeper's privilege" with. The same holds true when factoring them together, as "it [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995) *See also United States v. Wood, 1*06 F.3d 942, 948 (10th Cir. 1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). [SIDE NOTE: the two cases just quoted discuss the "reasonable suspicion" standard, which is ***lower*** than the "probable cause" standard codified by C.R.S. § 18-4-407 (Colorado's "Shopkeeper's Privilege" Statute). As such, the bar is ***even higher*** when combining "wholly innocent factors. . .into a suspicious conglomeration" for the purposes of reasonably and fairly establishing "shopkeeper's privilege" with]. Indeed, to hold otherwise, in the present circumstance, would allow shopkeepers **free reign to detain literally all customers** leaving their stores who simply purchase merchandise at the back of them, don't use plastic bags, and refuse to show their receipt while on their way out. Again, such describes an **indisputably large** category of "presumably innocent [people], who would be subject to virtually

random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980). In fact, the Court has already explicitly held "shopkeeper's privilege" to be lacking in precisely this scenario, where a patron left a store using a non-register exit, without a plastic bag, and whom didn't respond when asked if she could show her receipt. See *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). Once again, as previously discussed, it was because the store employee had merely been "posted up" at the store's exit, and whom "never saw [the suspect] anywhere in the store until [she was] walking out of the store," that he lacked "shopkeeper's privilege" to lawfully detain her with.

Ultimately, the reason why none of the aforementioned factors can be used – either in isolation, or together – to reasonably and fairly establish "shopkeeper's privilege" with, is because they are all strictly **exculpatory** in nature, leaving absent entirely from the seizure analysis the use of any **inculpatory** based information whatsoever. As Plaintiff has explained in times past, however, *"lack of evidence of innocence is not evidence of guilt."* Therefore, the Court should deny Defendant's MSJ of Plaintiff's false imprisonment claim.

III. THE DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

Courts have recognized that an intentional snatching of an object from one's hand is as clearly an offensive invasion of one's person as would be an actual contact with the body. *See Fisher v. Carrousel Motor Hotel, Inc.,* 424 S.W.2d 627 (Tex. 1967). Moreover, *even if* shopkeeper's privilege is found to exist, "the benefits of the shopkeeper's privilege [do not extend] to conduct constituting an assault. . .as it clearly was not the intent of the Legislature to insulate a person from liability for committing an act proscribed by a criminal statute under the guise of an investigative detention." *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 522 (Tex. App. 1996).

In Plaintiff's instant case, the Defendant snatched multiple items out of his hands, and even "rushed" in toward him in an attempt to stop him from maintaining control over what remaining items he had in his cart. *See PA at ¶ 20. See PCMSJ Exhibit #1 at 28:10.*

Therefore, the Court should deny Defendant's MSJ of Plaintiff's assault claim.

IV. THE DEFENDANT IS LIABLE FOR PLAINTIFF'S FALSE ARREST

A private citizen may be liable as the instigator of an arrest if he intentionally provides false, misleading or biased information to a police officer for the purpose of inducing the officer to make the arrest. *See Young v. Klass,* 776 F. Supp. 2d 916, 926 (D. Minn. 2011) (holding that jury could find that arcade security guard personally caused plaintiffs false imprisonment by flagging down police outside the arcade, despite knowing that plaintiff had committed no crime, and falsely telling the police that the plaintiff, who was then lawfully on the sidewalk outside the arcade, had been trespassing and acting disorderly inside the arcade). *See also Vessels v. District of Columbia,* 531A.2d 1016, 1020 (D.C. 1987); *Newton v. Spence,* 316 A.2d 837, 843 (Md. Ct. Spec. App. 1974); *Gibbs v. Blockbuster, Inc.,* 318 S.W.3d 157, 170 (Mo. Ct. App. 2010); *Godines v. First Guar. Sav. & Loan Ass'n,* 525 So. 2d 1321, 1325 (Miss. 1988); *Jensen v. Barnett,* 134 N.W.2d 53, 55 (Neb. 1965); *Pearson v. Galvin,* 454 P.2d 638, 641 (Or. 1969).

In Plaintiff's instant case, the Defendant provided **knowingly false** and **materially misleading** information to the police, which directly resulted in his arrest by them. Upon calling the police, store employee XAVION CAWINS lied to the dispatcher that he had personally watched Plaintiff "just walk out with the items; none of it's bagged..." [i.e. that he had observed Plaintiff walk past all points of sale without paying for his items]. CAWINS then further lied to the dispatcher that he had obtained video footage, from the store's surveillance system, of Plaintiff stealing merchandise. *See PCMSJ Exhibit #2.* Once the police showed up, the Defendant further lied to them, as evidenced by the multitude of statements made by them while they arrested Plaintiff. *See PCMSJ Exhibit #1 from 40:55 to 44:25.*

Of course, everything Defendant told them was a lie, as they ***had not*** observed (nor did they ever have video surveillance footage of) Plaintiff selecting merchandise off any shelves, let alone leaving the store without paying for them. *See PA generally. See PCMSJ Exhibit #1 generally, and at 40:08 where Defendant even confesses just the opposite – that he had been*

"sitting right here" [i.e. merely "posted up" at the store's exit, and literally nothing more] when he first saw Plaintiff leaving and decided to confront him. Moreover, Plaintiff ***most certainly*** had paid for his merchandise, and the Defendant ***most certainly*** would have observed him do so, had it actually been paying attention to its registers located ***mere*** feet from where Plaintiff had checked out ***literally seconds prior***. *See PA at ¶ 10. See PCMSJ Exhibit #1 at 17:43.*

Therefore, the Court should deny Defendant's MSJ of Plaintiff's false arrest claim.

V. THE DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF AS A THIEF

Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation *actionable per se*. *RESTATEMENT (SECOND) OF TORTS* § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). *"Actionable per se"* means that without adducing any evidence that he has in fact been harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. *P.H. WINFIELD, A TEXT-BOOK OF THE LAW OFTORT* § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed. *2 HARPER et al, supra* note 2, § 5.11, at 118.

Additionally, it is important to note that while "[a] store manager may have [ ] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964).

As just discussed in the previous section, the Defendant impermissibly imputed the crime

of larceny onto Plaintiff. Additionally, because it made such accusations "with knowledge that they were false, or with reckless disregard for whether they were true or false," they are not entitled to the "qualified privilege" that would otherwise exist when providing *honest* reports of crimes to the police. Moreover, one customer who witnessed the encounter between Defendant and Plaintiff even went so far as to offer to pay for Plaintiff's items, which reveals that members of the public were even made to believe that Plaintiff must have stolen something.

Therefore, the Court should deny Defendant's MSJ of Plaintiff's defamation claim.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** the Defendant's MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 23rd day of May, 2022.

William Montgomery
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 23rd day of May, 2022, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S Potomac St # 100 Centennial, CO 80112 (303) 645-6600	DATE FILED September 19, 2024 3:53 PM
WILLIAM MONTGOMERY Plaintiff vs. **WALMART INC. et al** Defendant(s)	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case No: **2020CV148** (Consolidated Cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235) **Division: 21**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MSJ / PLAINTIFF'S OWN CROSS-MOTION FOR SUMMARY JUDGMENT	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendants' MOTION FOR SUMMARY JUDGMENT ("Defs' MSJ"), and in turn, respectfully submits to the Court his own CROSS-MOTION FOR SUMMARY JUDGMENT. In support thereof, Plaintiff states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with the Defendants concerning this RESPONSE / CROSS-MOTION. Defendants have not responded to his email correspondence (and he has given them sufficient time to respond) so it is unknown whether or not they oppose the relief sought herein.

INTRODUCTION

WALMART has a receipt-checking problem. If you ask them personally, they'll always tell you that you never have to show one on your way out of their stores. If you read their official policy on the subject, it'll even state the same. If one day you actually decide to not show one, however, you'll quickly

realize that what WALMART says, and what WALMART does, are two very different things. Before you know it, upon merely refusing to show your receipt, WALMART will detain you, grab your merchandise, throw you in their office, assault you, threaten you, slander you, call the police on you, frame you, charge you, arrest you, maliciously prosecute you, and then finally ban you. Then, once they get caught (by way of you suing them), rather than admit they screwed up, they'll victim shame you and scapegoat you that it was *you* who somehow torted *them.* Then, during legal proceedings, they'll finish by attempting to lower the bar of what "shopkeeper's privilege" is so that it looks like they were never liable to you in the first place. Unfortunately, however, such immaturity only serves to hurt WALMART in the long run, as they are bound to keep repeating their mistakes until they actually learn from them.

Fortunately, for Plaintiff, the case law in this area is very well established: merely being "posted up" at the front of a store (as receipt-checkers always are) is, and has always been, insufficient as a matter of law to establish "shopkeeper's privilege" with. So, at the very least, should WALMART continue to employ such "guilty until proven innocent," nazi-style, show-me-your-papers checkpoints, it is good to know that patrons who are subjected to them have a solid chance at fighting back otherwise.

RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff ADMITS that this asserted material fact is true.
2. Plaintiff ADMITS that this asserted material fact is true.
3. Plaintiff ADMITS that this asserted material fact is true.
4. Plaintiff ADMITS that this asserted material fact is true.
5. Plaintiff ADMITS that this asserted material fact is true.
6. Plaintiff ADMITS that this asserted material fact is true.
7. Plaintiff DENIES that this asserted material fact is true. Plaintiff contends that he ***was*** charged, arrested, and prosecuted [albeit briefly] for shoplifting, as evidenced by a) his Affidavit, and b) OFFICER SAWYER'S bodycam footage of the event. *See Plaintiff's Affidavit For Claims*

(herein "PAFC") #2 & #4 at ¶ 44. See Plaintiff's Cross-Motion For Summary Judgment (herein "PCMSJ") Exhibit #4.1, which clearly shows OFFICER SAWYER placing Plaintiff into handcuffs at timestamp 8:25, after deciding to charge him with shoplifting at timestamp 3:27, after admitting her intention to arrest him for "theft" at timestamp 6:59, after concluding her shoplifting investigation with CORDERO-DUARTE in the store's loss prevention office.

8. Plaintiff ADMITS that this asserted material fact is true.

9. Plaintiff ADMITS that this asserted material fact is true.

10. Plaintiff DENIES that this asserted fact is true, insofar as it misapprehends his mental state when he goes shopping at Walmart. Plaintiff does not explicitly or disingenuously "sting" stores "so he can sue them for false arrest," he naturally goes shopping at stores (like any customer would) and naturally "audits" them on his way out (like any customer would) to simply make sure they conform to the rules and regulations of the store, the law, and the United States Constitution.

11. Plaintiff DENIES that this asserted fact is true, insofar as it, once again, misapprehends his mental state when he goes shopping at Walmart. Plaintiff goes shopping all the time, at many different stores, where he knows that he naturally has (as any normal person would) the right to sue anyone who happens to violate his rights along the way.

12. Plaintiff DENIES that this asserted fact is true, insofar as it, once again, misapprehends his "plan" [purportedly to sue] that he "abandoned." Plaintiff only "abandoned" his "plan" *to refuse to show his receipt on his way out of the store*, should a store employee happen to ask for it. Once Plaintiff saw no "yellow jackets" (uniformed loss prevention employees) "posted up" at the store's exit, he simply became doubtful that he would be given the opportunity to refuse to show his receipt. Indeed, he was actually quite surprised to have still been confronted by a plain-clothed store employee upon leaving.

13. Plaintiff DENIES that this asserted fact is true, insofar as it, once again, misapprehends what he was purportedly "doing" that night. When Plaintiff goes shopping, he doesn't really "do" anything outside what any normal customer would. He simply shops for items,

pays for them, and exercises his right to remain silent / to not be searched on his way out, should he so happen to be asked by anyone to show them his receipt.

14. Plaintiff ADMITS that this asserted fact is true, but only insofar that it *describes* what OFFICER SAYWER *wrote* in her police report (versus what had *actually* happened). Meaning, Plaintiff DENIES that he, in fact, "was attempting to agitate" anybody that evening.

15. Plaintiff ADMITS that this asserted material fact is true.

16. Plaintiff ADMITS that this asserted material fact is true.

17. Plaintiff ADMITS that this asserted material fact is true.

18. Plaintiff ADMITS that this asserted material fact is true.

19. Plaintiff ADMITS that this asserted material fact is true.

20. Plaintiff DENIES that this asserted material fact is true. Plaintiff contends that he ***was*** charged, arrested, and prosecuted for shoplifting, as evidenced by a) his Affidavit, b) his audio recording of the event, c) the arresting officer's police report, d) his Summons & Complaint (#928194), and e) the County Court Order eventually dismissing his shoplifting case. *See PAFC #5 from ¶¶ 26-32. See PCMSJ Exhibit #8 from 35:20–54:40. See PCMSJ Exhibits #11 and #12.*

21. Plaintiff ADMITS that this asserted material fact is true.

22. Plaintiff ADMITS that this asserted material fact is true.

PLAINTIFF'S ADDITIONAL MATERIAL FACTS

Because of how the majority of the undisputed facts laid out by the Defendants in their MSJ merely describe how Plaintiff "claimed" this and "alleged" that (and were thus, pretty simple to admit or deny) the following actual material facts must be set forth so as to provide sufficient evidence to prove that such "claims" and "allegations" are more than merely that.

I. FACTS COMMON TO ALL OF PLAINTIFF'S CLAIMS

23. In all of Plaintiff's claims, Plaintiff entered a WALMART SUPERSTORE, to go shopping. *In Plaintiff's Claim #1*, on or about September 3, 2019, at approximately 6:38pm, Plaintiff

entered a WALMART SUPERSTORE located at 601 Englewood Pkwy, Englewood, CO, 80110. *See PAFC #1 at ¶ 2. In Plaintiff's Claims #2 and #4*, on or about October 22, 2018, at approximately 8:12pm, Plaintiff entered a WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231. *See PAFC #2 & #4 at ¶ 2. In Plaintiff's Claim #5*, on or about January 4, 2020, at approximately 1:44pm, Plaintiff entered a WALMART SUPERSTORE located at 10900 E Briarwood Ave, Centennial, CO, 80012. *See PAFC #5 at ¶ 2. In Plaintiff's Claim #6*, on or about September 20, 2020, at approximately 4:02pm, Plaintiff entered a WALMART SUPERSTORE located at 14000 E Exposition Ave, Aurora, CO, 80012. *See PAFC #6 at ¶ 2.*

24. Just before entering all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff started audio recordings on his cellular phone, later saving and labeling each based on the date, time, and location that each been recorded on/at. *See PCMSJ Exhibits #1, #3, #8, and #13.*

25. Upon entering all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff did not observe there to be, anywhere at all, any store receipt checking policies posted on any of their walls, nor verbally mentioned to him by any of their store employees. *See PAFC #1 at ¶ 4; PAFC #2 & #4 at ¶ 4; PAFC #5 at ¶ 5; and PAFC #6 at ¶ 4.*

26. Once inside all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff traveled throughout each store's various departments, where he selected items for purchase directly off their shelves. *See PAFC #1 at ¶¶ 5, 7, and 10; PAFC #2 & #4 at ¶¶ 5, 7, 10, 13, 16, and 19; PAFC #5 at ¶¶ 6, 8, and 11; and PAFC #6 at ¶¶ 5, 7, and 10. See PCMSJ Exhibits #1, #3, #8, and #13.*

27. While traveling between all departments of all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff never once observed any store employees, police officers, or any people at all, follow him throughout the store. *See PAFC #1 at ¶¶ 6, 8, 11, 15, and 19; PAFC #2 & #4 at ¶¶ 6, 8, 11, 14, 17, 21, and 25; PAFC #5 at ¶¶ 7, 9, 12, and 16; and PAFC #6 at ¶¶ 6, 8, 11, and 16.*

28. While traveling between all departments of all WALMART SUPERSTORES in all of Plaintiff's claims, at no time whatsoever did Plaintiff ever once exit/re-enter each store, until proceeding

to exit each for the very first time since initially entering it, once he had concluded his entire shopping experience inside of it. *See PAFC #1 at ¶¶ 9 and 12; PAFC #2 & #4 at ¶¶ 9, 12, 15, and 18; PAFC #5 at ¶¶ 10 and 13; and PAFC #6 at ¶¶ 9 and 12. See PCMSJ Exhibits #1, #3, #8, and #13.*

29. Inside all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff either had a store employee ring up his items for him, or he rang them up himself at a self-checkout register. He then paid for all the items he shopped for at all the stores he visited. *See PAFC #1 at ¶ 10; PAFC #2 & #4 at ¶¶ 13 and 19; PAFC #5 at ¶ 11; and PAFC #6 at ¶ 10. See PCMSJ Exhibit #1 at 2:38, Exhibit #3 at 33:16 and 41:34, Exhibit #8 at 10:53, and Exhibit #13 at 13:21.*

30. In all of Plaintiff's claims, after concluding all of his shopping experiences, Plaintiff began to leave each WALMART SUPERSTORE. *In Plaintiff's Claim #1*, on or about September 3, 2019, at approximately 6:42pm, Plaintiff began to leave the WALMART SUPERSTORE located at 601 Englewood Pkwy, Englewood, CO, 80110. *See PAFC #1 at ¶ 13. In Plaintiff's Claims #2 and #4*, on or about October 22, 2018, at approximately 8:57pm, Plaintiff began to leave the WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231. *See PAFC #2 and #4 at ¶ 22. In Plaintiff's Claim #5*, on or about January 4, 2020, at approximately 2:04pm, Plaintiff began to leave the WALMART SUPERSTORE located at 10900 E Briarwood Ave, Centennial, CO, 80012. *See PAFC #5 at ¶ 14. In Plaintiff's Claim #6*, on or about September 20, 2020, at approximately 4:19pm, Plaintiff began to leave the WALMART SUPERSTORE located at 14000 E Exposition Ave, Aurora, CO, 80012. *See PAFC #6 at ¶ 13. See PCMSJ Exhibits #1, #3, #8, and #13.*

31. While on his way out of all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff was asked to show his receipt by store employees who had either been "posted up" at their exits, or who had otherwise appeared shortly thereafter from right around the corner, and whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. *See PAFC #1 at ¶¶ 14 and 15; PAFC #2 & #4 from ¶¶ 24–26; PAFC #5 at ¶¶ 15 and 16; and PAFC #6 at ¶ 14.*

See PCMSJ Exhibit #1 at 4:43, Exhibit #3 at 45:39, Exhibit #8 at 19:44, and Exhibit #13 at 17:33.

32. At all WALMART SUPERSTORES in all of Plaintiff's claims, WALMART had in place at the time two corporate policies: their "Receipt Checking" policy, and their "Investigation and Detention of Shoplifters" policy ("AP-09"). *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000). *See Exhibit #14.*

33. When asked by all store employees or security guards at all WALMART SUPERSTORES in all of Plaintiff's claims, Plaintiff politely declined to show his receipt, but in response had his path blocked by each store employee or security guard, as well as further blocked by all other store employees who soon thereafter joined them. On all occasions in all claims, Plaintiff told all store employees to stop blocking his path, but none of them would. He then tried to step around them, but in response, they all just stepped in front of him again. At such points, Plaintiff felt he had no safe or realistic way of leaving each WALMART SUPERSTORE, through any of its exits, without otherwise bumping into or having to push each of its various employees out of the way. *See PAFC #1 from ¶¶ 16–20; PAFC #2 & #4 from ¶¶ 26–28; PAFC #5 from ¶¶ 17–20; and PAFC #6 from ¶¶ 15–19. See PCMSJ Exhibits #1, #3, #8, and #13.*

II. FACTS UNIQUE TO PLAINTIFF'S CLAIMS #1 AND #6

34. *In Plaintiff's Claims #1 and #6,* at the WALMART SUPERSTORES located at 601 Englewood Pkwy, Englewood, CO, 80110, and 14000 E Exposition Ave, Aurora, CO, 80012, respectively, Plaintiff argued for a few minutes with the store employees who had been blocking his path and preventing him from leaving. While arguing, store employees at both stores slandered Plaintiff as a thief in front of others, by making statements like, "But we need the merchandise, 'cause you didn't pay for it," and "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have." *See PAFC #1 at ¶ 23; and PAFC #6 at ¶ 21. See PCMSJ Exhibits #1 and #13.*

35. Eventually, after arguing, the respective store employees in *Plaintiff's Claims #1*

and #6 stepped out of Plaintiff's way and allowed him to leave without further issue. Plaintiff then left each respective store, spoke with each store's manager in the parking lot about what had just happened, and then finally left each WALMART SUPERSTORE without further issue. *See PAFC #1 from ¶¶ 22–27; and PAFC #6 from ¶¶ 20–24. See PCMSJ Exhibits #1 and #13.*

III. FACTS UNIQUE TO PLAINTIFF'S CLAIM #2

36. *In Plaintiff's Claim #2*, at the WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231, Plaintiff was physically moved into the store's loss prevention office by the store employee who had been blocking his path, ALBERTO CARLOS CORDERO-DUARTE. Once inside the loss prevention office, Plaintiff argued with CORDERO-DUARTE until he was eventually let go and told to leave by the store employee, which Plaintiff then did. *See PAFC #2 & #4 from ¶¶ 29–35.*

37. A fellow store employee who had witnessed the event called the Aurora Police Department to report a physical disturbance. *See Exhibit #6 at page 6.*

38. Out of concern that the police had been lied to the by the store employees about what had just happened, Plaintiff remained stationed outside the store so that he could eventually tell them his side of the story. *See PAFC #2 & #4 at ¶ 41.*

39. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, OFFICER KAYCIE SAWYER and OFFICER SCOTT BAKER. OFFICER BAKER directed Plaintiff to provide his ID, which he did without issue, while OFFICER SAWYER went inside the store to speak with CORDERO-DUARTE. *See PAFC #2 & #4 at ¶¶ 42 and 43. See PCMSJ Exhibits #4, #5, and #6.*

40. Once inside the store's loss prevention office, CORDERO-DUARTE told OFFICER SAWYER that he "was on the floor walking, [and] saw [Plaintiff] pick the merchandise out of the shelf, and, he walked out." *See PCMSJ Exhibit #4.1 at 2:07.*

41. OFFICER SAWYER eventually asked CORDERO-DUARTE if he would like to charge Plaintiff with shoplifting, which he said he did. *See PCMSJ Exhibit #4.1 at 2:38.*

OFFICER SAWYER then radioed OFFICER BAKER of CORDERO-DUARTE'S intention to charge Plaintiff with shoplifting. *See PCMSJ Exhibit #4.1 at 3:27.*

42. OFFICER SAWYER went back outside to where OFFICER BAKER and Plaintiff had been standing, directed Plaintiff to take off his backpack, and arrested Plaintiff, using handcuffs, for what she told him was "theft." *See PAFC #2 & #4 at ¶ 44. See PCMSJ Exhibit #4.1 from 6:59–8:25.*

43. Once OFFICER SAWYER finished handcuffing Plaintiff, Plaintiff informed the officer that he had receipts for all of his recently purchased merchandise, that they were located in his jacket pocket and cell phone case, and that the store employees she spoke with had lied to her in addition to her not appropriately viewing the store's video footage for herself. OFFICER SAWYER then obtained both of Plaintiff's receipts, went back into the store to speak with CORDERO-DUARTE again, and left Plaintiff in handcuffs outside next to OFFICER BAKER. *See PAFC #2 & #4 at ¶ 45. See PCMSJ Exhibit #4.1.*

44. Once back inside the store's loss prevention office, CORDERO-DUARTE confessed to OFFICER SAWYER that he had only been posted up at the store's exit, "in the corner, [where] somebody was talking to [him]," when he first saw Plaintiff leaving and had initially decided to confront him. *See PCMSJ Exhibit #4.1 at 11:17.*

45. Eventually, OFFICER SAWYER came back outside, and was immediately asked by OFFICER BAKER if the store wanted Plaintiff "trespassed." She then went back into the store to speak with CORDERO-DUARTE again, who said he did want Plaintiff "trespassed." *See PAFC #2 & #4 at ¶ 46. See PCMSJ Exhibit #4.1.*

46. After a minute or two, OFFICER SAWYER came back outside, and removed her handcuffs from Plaintiff. Plaintiff was then told by both officers that he was "free to go," and that if he wanted to stay until his "trespass notice" was issued, that he could freely do so, which he did. OFFICER SAWYER then went back inside to obtain from CORDERO-DUARTE Plaintiff's "trespass notice." *See PAFC #2 & #4 at ¶ 47. See PCMSJ Exhibit #4.1.*

47. Once back inside the store's loss prevention office, CORDERO-DUARTE told OFFICER SAWYER that he "was on the floor, [he] was walking the floor when [he] saw [Plaintiff] taking the merchandise." *See PCMSJ Exhibit #4.2 at 4:44.*

48. Later that evening, after arresting Plaintiff on another charge, OFFICER SAYWER wrote in her police report that, upon being dispatched to the WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231, she spoke with CORDERO-DUARTE, who told her that he "observed what appeared to be Montgomery, William 07071985 (CODL) conceal various merchandise including; oil stabilizer, antifreeze, a gallon of water, and juice." She further wrote that CORDERO-DUARTE "watched Montgomery select these numerous items and place them in his backpack and walk past all points of sale." *See PCMSJ Exhibit #6 at page 6.*

IV. FACTS UNIQUE TO PLAINTIFF'S CLAIM #4

49. *In Plaintiff's Claim #4*, at the WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231, after CORDERO-DUARTE physically moved Plaintiff into the store's loss prevention office, he physically let go of him, told him to have a seat, and continued to stand in his way while Plaintiff continued to try to leave. *See PAFC #2 & #4 at ¶ 33. See PCMSJ Exhibit #3 at 48:04.*

50. For the next few minutes, Plaintiff told CORDERO-DUARTE to let him go, that he was committing crimes, and that he would be fired from his job for doing so. CORDERO-DUARTE responded by continuing to tell Plaintiff to drop his merchandise, or show his receipt. *See PAFC #2 & #4 at ¶ 34. See PCMSJ Exhibit #3 from 48:04–50:44.*

51. Eventually, CORDERO-DUARTE stopped arguing with Plaintiff, and told him that he could leave the store. The exact words CORDERO-DUARTE said to Plaintiff were, "Do you want to walk out with the merchandise? Okay, go ahead, go ahead." *See PAFC #2 & #4 at ¶ 35. See PCMSJ Exhibit #3 at 50:45.*

52. After CORDERO-DUARTE told Plaintiff that he could leave the store, Plaintiff

told him that he had a medical problem, and that he needed to spit into a nearby trashcan. The exact words Plaintiff said to CORDERO-DUARTE were, "I have a medical problem. I have to, keep spitting." Plaintiff then turned to his left and spat into a nearby trashcan. *See PAFC #2 & #4 at ¶ 36. See PCMSJ Exhibit #3 at 50:49.*

53. Neither prior to, nor while, nor after spitting, nor at any other time in the evening, did Plaintiff ever get close to CORDERO-DUARTE'S face, nor did he make any motion whatsoever with his mouth or his body that would have led any reasonable person in CORDERO-DUARTE'S position to believe that he was going to try to spit saliva on them. CORDERO-DUARTE never said to Plaintiff anything to the effect of, "Don't spit on me," and Plaintiff never said to CORDERO-DUARTE anything to the effect of, "I will spit on you if you do not let me go." *See PAFC #2 & #4 at ¶ 37. See PCMSJ Exhibit #3.*

54. Usually, when Plaintiff needs to spit, he does so discreetly into a personalized medical device he calls a "spit jar," which is nothing more than a blue 1.5" x 2" x 0.5" Mylanta Gas Relief Tablet container that he removes the retail labels from. Plaintiff's spit jar had since filled up throughout the course of the evening on October 22, 2018, however, so he had no more room to spit in it, and thus, had to do so directly into the nearby trashcan. Now, while he doesn't usually do this indoors, at the same time that he spat directly into the trashcan, Plaintiff took out of his pocket his spit jar and also emptied it into the trashcan, as he wanted to make sure that he had an empty spit jar with him right away so that I could begin to discreetly spit into it again. *See PAFC #2 & #4 at ¶ 38.*

55. Once Plaintiff finished spitting into the nearby trashcan, he resumed his attempt to leave the store. This time CORDERO-DUARTE let Plaintiff walk past him, out of the loss prevention office, and eventually out of the store, albeit telling him along the way that he would be "putting out a warrant for [him]." *See PAFC #2 & #4 at ¶ 39. See PCMSJ Exhibit #3.*

56. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, OFFICER KAYCIE SAWYER and OFFICER SCOTT BAKER.

OFFICER BAKER directed Plaintiff to provide his ID, which he did without issue, while OFFICER SAWYER went inside the store to speak with CORDERO-DUARTE. *See PAFC #2 & #4 at ¶¶ 42 and 43. See PCMSJ Exhibits #4, #5, and #6.*

57. Once inside the store's loss prevention office, CORDERO-DUARTE told OFFICER SAWYER that Plaintiff "tried to spit in [his] face." He then made a spitting motion with his mouth and body. Next, he pointed into a nearby trashcan, reporting to the officer that that was where Plaintiff had spat into. Then, CORDERO-DUARTE finally told the officer, "When I saw the first time that he tried to spit, and then I saw his spit here, 'get out the office I don't want you here, get out.'" *See PCMSJ Exhibit #4.1 from 2:18–2:36.*

58. After speaking with CORDERO-DUARTE regarding Plaintiff spitting, OFFICER SAWYER spoke with him regarding Plaintiff shoplifting. She then came back outside and arrested Plaintiff for "theft." In response, Plaintiff provided her with his receipts, which she then used to go back inside the store and exonerate him with. After that, she eventually removed her handcuffs from Plaintiff, told him he was "free to go," and went back inside to obtain from CORDERO-DUARTE a "trespass notice" he requested that Plaintiff be given. *See PAFC #2 & #4 from ¶¶ 44–47. See PCMSJ Exhibit #4.1.*

59. Once back inside the store's loss prevention office, CORDERO-DUARTE told OFFICER SAWYER that during his encounter with Plaintiff, he said to him, "Don't spit on my face," and that Plaintiff replied to him with, "I will, get off me!" He then told the officer that Plaintiff further said to him, "I will, I have a medical condition, blah blah blah blah blah blah blah blah," and that he further replied to Plaintiff with, "Okay, whatever dude, just leave the store." Then, after being asked one last time if Plaintiff had indeed threatened to spit on him, CORDERO-DUARTE confirmed for the officer that he indeed said to Plaintiff, "Don't spit on me," and that Plaintiff indeed said to him, "I will, if you don't let me go. I have to go, I have to go, let me go. I'm, I'm good, I'm good to go, let me go right now." *See PCMSJ Exhibit #4.2 from 2:14–2:43.*

60. During their conversation, CORDERO-DUARTE also told OFFICER SAWYER

that while Plaintiff was spitting into the nearby trashcan, "he dropped something blue that he [had] in his pocket. He [had] something in the right pocket, it is blue." *See PCMSJ Exhibit #4.2 at 2:51.*

61. Eventually, OFFICER SAWYER came back outside to where Plaintiff and OFFICER BAKER had been standing, and placed Plaintiff into handcuffs again. This time she told Plaintiff that he was being arrested for "disorderly conduct," which OFFICER BAKER clarified was based on the purported use of "threats." *See PAFC #2 & #4 at ¶ 48. See PCMSJ Exhibit #4.2 at 1:28.*

62. After being handcuffed, OFFICER SAWYER removed all of Plaintiff's personal belongings from inside of his pockets (including his blue spit jar, *see PCMSJ Exhibit #4.3 at 2:29*). She then placed him into the back of her police vehicle and drove him to the AURORA POLICE STATION located at 15001 E Alameda Pkwy, Aurora, CO, 80012, where he was booked into their system for further processing. *See PAFC #2 & #4 at ¶ 49. See PCMSJ Exhibit #4.3 and #4.4.*

63. Later that evening, after booking Plaintiff into the local police station, OFFICER SAYWER wrote in her police report that, upon being dispatched to the WALMART SUPERSTORE located at 9400 E Hampden Ave, Aurora, CO, 80231, she spoke with CORDERO-DUARTE, who told her that Plaintiff "stood up, [] got close to his face, [and] made a motion with his mouth that would lead him to believe he was going to try to spit saliva on him." She further wrote that CORDERO-DUARTE told her he said something to Plaintiff to the effect of, "Don't spit on me," and that Plaintiff replied something to the effect of "I will spit on you if you do not let me go." Later, OFFICER SAYWER concluded her police report by writing, "Due to the above information and Cordero's account of Montgomery threatening to spit on him, Montgomery was arrested and charged with 94-42(4) Harassment." *See PCMSJ Exhibit #6 at pages 6–7.*

64. Plaintiff was held for next two (2) legal days at the AURORA POLICE STATION, from the evening of October 22, 2018, to the afternoon of October 23, 2018, where he had been booked under Aurora Municipal Code Section 94-42(4). He was then released from custody by way of signing a PR bond with the station worth $500. On his way out, Plaintiff was given a copy of the

Summons & Complaint (#J243907) OFFICER SAWYER had issued to him the night before. *See PAFC #2 & #4 at ¶ 51. See PCMSJ Exhibit #6 at page 14.*

65. Plaintiff spent the next two months attending all the necessary court appearances required of him until December 10, 2018, the date on which an AURORA MUNICIPAL JUDGE granted a MOTION TO DISMISS filed by the AURORA CITY ATTORNEY, citing "lack of evidence" as his reasoning, and to which dismissed Plaintiff's harassment case in its entirety thus relieving him of all legal obligations to defend himself in it further. *See PAFC #2 & #4 at ¶ 52. See PCMSJ Exhibit #7.*

V. FACTS UNIQUE TO PLAINTIFF'S CLAIM #5

66. *In Plaintiff's Claim #5,* at the WALMART SUPERSTORE located at 10900 E Briarwood Ave, Centennial, CO, 80012, before entering the store, and while still in his vehicle parked in the store parking lot, Plaintiff inserted into one of his jacket pockets two previously purchased RV lights that he had been contemplating on returning that day (depending on if he needed the money or not). *See PAFC #5 at ¶ 4.*

67. After being prevented from leaving both store exits by both store employees, Plaintiff was verbally escorted by a third store employee into a loss prevention office located just around the corner. The employee did not ask Plaintiff to come with her, she told him that he was required to come with her, so he did. *See PAFC #5 at ¶ 21. See PCMSJ Exhibit #8 at 22:51.*

68. While inside the store's loss prevention office, the third store employee told Plaintiff, in front of three other store employees, "I need my merchandise back." *See PAFC #5 at ¶ 22. See PCMSJ Exhibit #8 at 23:24.*

69. On January 4, 2020, at 2:09pm, KADYN MOYER, the second store employee who stopped Plaintiff from leaving the store's southern exit, called the ARAPAHOE COUNTY SHERIFF'S OFFICE, and reported to them that he had a "shoplifter" in his security office, whom he further reported he "[thought was] on drugs." *See PCMSJ Exhibit #11 at page 6.*

70. For the next nine or so minutes Plaintiff stayed in the store's loss prevention office with its

employees until several members of the ARAPAHOE COUNTY SHERIFF'S OFFICE arrived on scene, SERGEANT BRETT COHN, DEPUTY TREVOR CUAZ, and DEPUTY JAROD [LAST NAME UNKNOWN]. SERGEANT COHN and DEPUTY UNKNOWN entered the store's loss prevention office to speak with Plaintiff and the store employees, while DEPUTY CUAZ stationed himself around the corner, just outside the office. *See PAFC #5 at ¶ 23. See PCMSJ Exhibit #8 from 23:25–32:23.*

71. Once inside the store's loss prevention office, SERGEANT COHN directed Plaintiff to provide his ID, which he did without issue. He then asked the third store employee if Plaintiff had a receipt for his items. The third store employee told him, in front of Plaintiff, the other employees, and DEPUTY UNKNOWN, "No," followed by, "That's my stuff." *See PAFC #5 at ¶ 24. See PCMSJ Exhibit #8 from 32:27–32:50.*

72. Then, over the course of the next several minutes, SERGEANT COHN asked Plaintiff at least nine times for him to show him his receipt. In response, Plaintiff simply laid mute, exercising both his right to remain silent and his right to not be searched. *See PAFC #5 at ¶ 25. See PCMSJ Exhibit #8 from 32:53–35:18.*

73. Eventually SERGEANT COHN told Plaintiff that he would be "tak[ing] [his silence] as a no," [that he had not paid for the merchandise], and that he would now be cited for shoplifting. *See PAFC #5 at ¶ 26. See PCMSJ Exhibit #8 at 34:47.*

74. SERGEANT COHN then began to reach for Plaintiff's items, which he still had with him after taking out of his cart near the store's northern exit. Upon the officer's act of reaching, Plaintiff finally said to him, "That's my stuff, man." SERGEANT COHN then turned to DEPUTY CUAZ, who was still stationed around the corner, and said to him, "Hey Cuaz, come here, he doesn't want to let us take his stuff, so we need to put him in cuffs." *See PAFC #5 at ¶ 27. See PCMSJ Exhibit #8 from 35:06–35:27.*

75. DEPUTY CUAZ then entered the store's loss prevention office, and placed Plaintiff into handcuffs. *See PAFC #5 at ¶ 28. See PCMSJ Exhibit #8 at 35:41.*

76. Once Plaintiff was in handcuffs, DEPUTY CUAZ patted him down. After patting him

down, he emptied all of his pockets. Upon emptying his pockets, the officer took possession of Plaintiff's cell phone, keys, wallet, medical spit jar, two RV lights, a tub of sour cream, and a store receipt for some of his recently purchased merchandise. Other officers present, including SERGEANT COHN, then took possession of Plaintiff's remaining paid for merchandise that he had set down on a nearby table just before being handcuffed. *See PAFC #5 at ¶ 29. See PCMSJ Exhibit #8 at 36:10.*

77. After being searched and having all his items seized, Plaintiff was left in handcuffs by the police for the next several minutes while they cross referenced the receipt they took from him against the merchandise they took from him. *See PAFC #5 at ¶ 30. See PCMSJ Exhibit #8 at 37:30.*

78. Eventually, the police concluded that Plaintiff had paid for some items, but not others. Plaintiff actually had a separate receipt for his non-food items, that the officers had surprisingly not discovered during their search of him, but to which nonetheless led to him being charged by them for purportedly shoplifting two rolls of paper towels valued at 50¢ each. Additionally, the officers charged Plaintiff for purportedly shoplifting the two RV lights, even though he had purchased them on a far previous occasion, was only thinking about returning them that day but otherwise decided not to, and therefore never once took out of his pockets during his entire shopping experience at that particular store, on that particular occasion. *See PAFC #5 at ¶ 31. See PCMSJ Exhibit #8 at 45:17.*

79. Once the police concluded their investigation, DEPUTY CUAZ issued Plaintiff a written Summons & Complaint (#928194), on scene, for shoplifting. He then removed his handcuffs from Plaintiff and let him go with his property in hand, to include the remaining merchandise he decided that Plaintiff had not otherwise shoplifted that day. Plaintiff then left the WALMART SUPERSTORE without further issue. *See PAFC #5 at ¶ 32. See PCMSJ Exhibit #8 at 51:57. See PCMSJ Exhibit #11 at page 4.*

80. Later that day, DEPUTY CUAZ wrote in his police report that, upon being dispatched to the WALMART SUPERSTORE located at 10900 E Briarwood Ave, Centennial, CO, 80012, he spoke with KADYN MOYER, who told him that "he was alerted by another employee that William had come into the store and walked past the point of final sale and was exiting the store on the

grocery side, [that] he intervened and blocked him from leaving, [that] William was escorted to the security office where he had a blank stare on his face while they were speaking with him, [and that] he was in possession of multiple stolen items, 2 paper towel rolls (value .50 each), 2 LED flashlights (value $7.87 each)." DEPUTY CUAZ concluded his police report by writing, "After investigation it was determined that William had paid for some items, but not others. William was issued a summons (#928194) for theft. Walmart took possession of the stolen items. A request was made for video footage. William was given all his property back and the items he bought. He was verbally trespassed by Walmart and released on scene. Williams's probation officer was contacted. A body worn camera was worn during call. Nothing further." *See PCMSJ Exhibit #11 at pages 2–3.*

81. Also later that day, KADYN MOYER provided the ARAPAHOE COUNTY SHERIFF'S OFFICE with his own written statement detailing the events that had just occurred. In his statement, MOYER wrote, "I, Kadyn moyer (APA) at Walmart I apprehended William Montgomery at 14:07. I was informed by my APCH that he tried to walk out with merchandise. When I approached him at the grocery entrance he tried to walk past me and my apch. After about two minutes of pacing back and forth he turned around and tried to walk out the other side where the actual apprehension was made. I contacted law enforcement after he entered my office because he was not cooperating. Police came and gave him a ticket and he was given a trespass from my partner." *See PCMSJ Exhibit #11 at page 8.*

82. Plaintiff spent the next two months attending all the necessary court appearances required of him until March 12, 2020, the date on which he appeared at the ARAPAHOE COUNTY COURTHOUSE, spoke with his Public Defender, ELIZABETH FRAWLEY, and asked her for his discovery, and whereby she then entered the ARAPAHOE COUNTY DISTRICT ATTORNEY'S office while Plaintiff waited outside, and eventually came back and informed him that the DA had dropped his charges. Plaintiff then obtained an ORDER from the Court, which reported his case as "Dismissed by Court," and to which established dismissal of his shoplifting case in its entirety thus relieving him of all legal obligations to defend himself in it further. *See PAFC #5 at ¶ 33. See PCMSJ Exhibit #12.*

83. After his shoplifting charges were dropped, Plaintiff called the WALMART SUPERSTORE at issue, spoke with an employee named MIKE, and asked for the items back that his store had previously confiscated from him. Plaintiff also asked that he be unbanned from their stores. MIKE told Plaintiff to meet him at his store, which he did. MIKE then returned to Plaintiff his two rolls of paper towels and his two RV lights, and then told him that he was unbanned from their property. Plaintiff then left the WALMART SUPERSTORE one final time, all remaining property owned by him finally back in hand. *See PAFC #5 at ¶ 34.*

VI. FACTS COMMON TO ALL OF PLAINTIFF'S CLAIMS

84. In all of Plaintiff's claims against the Defendants, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his encounters with them. *See PAFC #1 at ¶ 28; PAFC #2 & #4 at ¶ 53; PAFC #5 at ¶ 35; and PAFC #6 at ¶ 25.*

ARGUMENT

I. PLAINTIFF WAS IMPRISONED BY THE DEFENDANTS, AND WHETHER OR NOT HE HAD A RECEIPT ON HIM IS IRRELEVANT TO THAT FACT

In Defendants' MOTION FOR SUMMARY JUDGMENT, they claim that "[s]howing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an 'unreasonable risk of harm.' Therefore, Plaintiff's claims for false imprisonment must be dismissed." *See Defs' MSJ at page 9.* This argument continues to be one of the most fallacious and misleading arguments Plaintiff has ever come across, and therefore, **it is time for it to die, here and now, once and for all.**

a. Defendants' interpretation of the jury instruction defeats the legislature's intent when drafting it, as well as renders said jury instruction absurd

We must begin by reviewing the Colorado Civil Jury Instruction at issue, **21:2(1)**. In reviewing the interpretation of a statute [or in this case, a jury instruction], a reviewing court should look first to the language of the [jury instruction], and the words and phrases therein should be given effect according to their plain and ordinary meaning. *Ball Corp. v. Fisher, supra,* 51 P.3d at 1056.

When a court construes a [jury instruction], it should read and consider the [jury instruction] as a whole and interpret it in a manner giving consistent, harmonious, and sensible effect to all its parts. *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003); *People v. Andrews,* 871 P.2d 1199, 1201 (Colo. 1994). In doing so, a court should not interpret a [jury instruction] in ways that defeat the legislature's obvious intent or render part of the [jury instruction] either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,* ___ P.3d ____, 2005 WL 3312826 (Colo.App. No. 04CA1223, Dec. 8, 2005).

Colo. Jury Instr. Civ. 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property."

First, the definition of "escape" is being abused and misinterpreted by the Defendants in such a way that it "defeats the legislature's obvious intent" of the use of such a word. You see, there is a BIG difference between having one's path blocked, but still seeing and being able to use "other avenues open to [them]" so as to avoid altogether an **attempted** confinement **from occurring in the first place** *(see Colo. Jury Instr. Civ. 21:2, Notes On Use #3)* and having one's **only path fully blocked in all directions** but then merely being given the option to **subsequently** be set free by the imprisoner **if** (and only if) one gives in to the imprisoner's demands. That's not an intellectually honest use of the term "escape," that's a **completed** and **continuing** imprisonment coupled with a **conditional** (and to be discussed later, technically not even guaranteed) release of the subject that has yet to occur **until** the imprisoner's demands are satisfactorily met (if ever). This also means that, *even if* satisfactorily "showing a receipt" resulted in the release of a person, doing such **would not nullify** the customer's detention **from having occurred in the first place,** any more than satisfactorily blowing into a breathalyzer at a DUI checkpoint would nullify a motorist's detention from having occurred in the first place, satisfactorily posting bail at the local jail would nullify a prisoner's booking from having occurred in the first place, etc.]

Next, the definition of "escape" is further being abused and misinterpreted by the Defendant in such a way that it renders the entire instruction "absurd." You see, if "escaping" really encompassed within it the act of "showing a valid receipt," as Defendants claim it does, **customers who happen to throw away their receipt** and even **thieves** could claim false imprisonment, while customers who keep their receipt could not! Such a result is patently absurd, as a paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all three** categories of people actually have **equal** standing to lodge a claim of false imprisonment against an employee merely "posted up" at a store exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with]. Moreover, such an interpretation clearly **disincentivizes** customers from keeping their receipt. Not only is this undoubtedly *the exact opposite* of what the Defendants want, who undeniably enjoy "posting" employees up at their store exits to ask patrons for their receipts, such diminishes the ability of customers to prove to the police that their items were confiscated unlawfully, should the store manage to unjustifiably reclaim them during an adverse encounter.

Last, the phrase "unreasonable risk of harm" is being abused and misinterpreted by the Defendant – in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a phrase (and to which further renders it "absurd"). The Merriam-Webster Dictionary defines "harm" as "physical or mental damage." Thus, it strains credulity that within the definition of "harm" the legislature would have intended to include anything other than physical or mental acts of violence. This is especially true considering that it further defined types of harm (and their attendant threats) in its following three instructions. *See Colo. Jury Instr. Civ. 21:2(2–4).* Indeed, Plaintiff wholeheartedly agrees with the Defendants that "showing a valid receipt [ ] does not subject [him] to an 'unreasonable risk of harm.'" *Defs' MSJ at page 9.* No shit it doesn't! A store employee simply holding a receipt in his hands while verifying store purchases is not a physically or mentally violent act at all. The legislature would have never intended as much. *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking your only way out of a store until they forcefully verify*

your receipt against your merchandise will practically always involve "an unreasonable risk of harm."

b. Showing a receipt and refusing to show a receipt cannot both be a form of consent

Because the act of "showing a receipt" is itself already construable as voluntarily giving consent to a detention, *see Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966), when coupled with Defendant's argument, even more absurdity results. This is because if Defendants' argument were valid, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order "to vindicate themselves" as *Grayson* puts it), customers who decline to show their receipt would also be "choosing to stay" (i.e. "forgoing escape" as Defendants put it). However, this obviously creates a "damned if they do, damned if they don't," never-detainable-either-way scenario, which is patently absurd, and manifestly unfair to the customer. The law is not such that Defendants get to "have their cake and eat it too." When detaining suspected shoplifters, there invariably exists *some* risk of basing one's detention on unfounded suspicions (i.e. not having shopkeeper's privilege). Under Defendants legal theory, however, shopkeepers would enjoy **literal absolute immunity** when detaining all customers who have their receipt on them, regardless of how little shopkeeper's privilege they may have each the matter – as no detainment of said patrons would EVER be able to occur, either way, in the first place!

c. Showing a receipt does not provide an immediate, guaranteed release of a person

Despite what the Defendants would have this Court believe – that showing a valid receipt would allow Plaintiff to **"immediately"** exit each store *(Defs' MSJ at page 9)* – such a release of Plaintiff would by no means be "immediate." Not only does it take time for a customer to locate their receipt, remove it from their pocket/wallet/purse, and present it to a store employee (which alone is sufficient to satisfy the "any amount of time, **no matter how short**" element of false imprisonment *(see Colo. Jury Instr. Civ. 21:1(2))*), it invariably takes an even more appreciable amount of time for a store employee to stand there, analyze a receipt, and cross-check it against a patron's merchandise. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court held

that, ***even after*** Ms. Ball had provided the store employee with her receipt, there was enough evidence in the record for a jury to decide that "she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

Thus, it is not simply the act itself of a patron merely "showing" (i.e. waving) a receipt on their way out of a store that conditions their release, **it is the explicit and undoubtedly time-consuming act of a store employee satisfactorily verifying a patron's purchases after thoroughly cross-checking their receipt against their merchandise,** that actually conditions their full and final release, and not a moment sooner.

d. If a person is forced to give up one right for another, they are imprisoned

Last, but absolutely the most important reason why the Defendants' argument fails, is because a Plaintiff who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other United States citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution.* Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," *Defs' MSJ at page 9,* **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, PERIOD.** The sheer arrogance and sense of entitlement exhibited by the Defendants in their persistent belief that they have some sort of right to see Plaintiff's (and everyone else's) receipt is just palpable. They just don't. They're not even police officers, who would be the only members of society that could ever possibly have such a right (and only upon obtaining probable cause or a warrant for it, no less). They're just citizens. Regular, U.S. citizens. Employees of a store. Literal strangers. Why on earth would Plaintiff EVER have to give literal strangers access to his private property? **The answer is, he doesn't.** No person does. There exists no

law, no store policy, nothing remotely of the sort that could even begin to create such a "right" for the Defendants. PERIOD. Do civilians have a right detain people near the border, whom they believe could be illegal aliens, until they show them an ID? No. Do security guards have a right to detain people found inside their gated communities, whom they believe could be trespassing, until they tell them where they live? No. Do employees posted up at store exits have a right to detain patrons on their way out, whom they believe could be shoplifting, until they show them a receipt? **NOOOOOO!!!!!!!!**

Accordingly, because the Defendants required Plaintiff to show his receipt in order to leave their stores, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – <u>his right to be secure in his papers</u>**. Of course, Plaintiff never actually "gave up" his right of locomotion, as during all of his shopping experiences his path was continuously blocked by the Defendants who continuously wouldn't let him leave despite his continuous attempts to do so. The only reason Plaintiff raises this final argument is to set in stone, **<u>once and for all</u>**, that *even if* "showing a receipt" could be considered some "avenue of escape," such would *still* not invalidate his false imprisonment claims against the Defendants, as "showing a receipt" falls squarely into the category of "relinquishment of another right," which if pitted against "the right of locomotion" (as Defendants unquestionably did) manifestly results in the legal definition of them "imprisoning" him.

II. THE DEFENDANTS LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WITH

In Defendants' MOTION FOR SUMMARY JUDGMENT, they claim that they "are not legally responsible for Plaintiff's false imprisonment and false arrest claims because [they] had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter." *See Defs' MSJ at page 8.* While it is certainly true that the viability of essentially Plaintiff's entire caseload hinges squarely on whether or not the Defendants had "reasonable grounds" to believe he had shoplifted in each of their stores, what the Defendants *claim* to have possessed, and what they *actually* possessed, **<u>are two</u>**

very different things. As will be discussed next, it is unequivocally beyond dispute that the Defendants genuinely *lacked* "reasonable grounds" (i.e. "shopkeeper's privilege") to lawfully detain Plaintiff with.

a. Being "posted up" at a store's exit, and literally nothing more, is insufficient as a matter of law to establish shopkeeper's privilege with

Traditionally, when analyzing "shopkeeper's privilege," the Court has held that "[t]he test of liability is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the circumstances." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "And whether reasonable belief is established, is usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Id.* However, when the facts are not in dispute (as largely appears to be the case in Plaintiff's instant caseload), "reasonable belief," or "probable cause" as C.R.S. § 18-4-407 codifies it, "is not a question of fact for the jury, but one of law for the court, to be decided in accordance with the circumstances at the time of the detention." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963).

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something."** *Id.* **"The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting."** *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything").

In Plaintiff's instant caseload, while on his way out of all WALMART SUPERSTORES in all of his claims, he was asked to show his receipt by store employees who had either been "posted up" at their

exits, or who had otherwise appeared shortly thereafter from around the corner, and whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. The Defendants, all having been strictly and indisputably "posted up" at or near each exit, **did not see or witness literally anything** that could *even begin* to fairly form a "reasonable [] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). This is because the Defendants "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* In such circumstances, the Court has emphatically held, **"When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything."** *Id.*

b. Nor does refusing to show a receipt help establish shopkeeper's privilege

A request to see a receipt "is essentially a request for consent to search, [and] the customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without *particularized* facts to reasonably justify a stop, systematic detention of most or all customers may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine.

These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.").

Moreover, refusal to consent to a police request cannot be the "single additional event that ripens [the officers'] preexisting concerns to the 'founded suspicion' that a *Terry* stop requires." *U.S. v. Sterling,* 909 F.2d 1078, 1082 (7th Cir. 1990). This is especially important to consider because of how in all of Plaintiff's claims against the Defendants his refusal to show his receipt ***was*** the "single additional event" they used to finally detain him with.

c. Nor does refusing to answer questions help establish shopkeeper's privilege

In quite the same vein, a customer also retains the right to refuse to answer questions put to him by a store employee (and likewise, such refusal "does not create an adequate basis for invoking the privilege").

"The Fifth Amendment, in relevant part, provides that no person 'shall be compelled in any criminal case to be a witness against himself.' It has long been held that this prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota v. Murphy,* 465 U.S. 420 (1984). *See also Michigan v. Tucker,* 417 U.S. 433, 440 (1974) ("Although the constitutional language in which the privilege is cast might be construed to apply only to situations in which the prosecution seeks to call a defendant to testify against himself at his criminal trial, its application has not been so limited."). *See also Combs v. Coyle,* 205 F.3d 269, 283 (6th Cir. 2000) ("[W]e believe that 'application of the privilege is not limited to persons in custody or charged with a

crime; it may also be asserted by a suspect who is questioned during the investigation of a crime.").

d. Nor does not using plastic bags help establish shopkeeper's privilege

In today's day and age, the use of non-environmentally friendly, "one-time-use" plastic bags is frowned upon. Some jurisdictions (Boulder County, Denver County, etc.) have even begun to "tax them out of existence" by way of charging customers 10¢ each time one is used. Thus, people are using them less and less (present company included). Accordingly, when it comes to analyzing whether or not a shopkeeper has established "probable cause" to detain a suspected shoplifter with, categorizing people who forgo the use of such bags as "likely enough to be thieves" is untenable, as doing such "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980).

Moreover, just like with receipt checking as discussed above, because plastic bags are "not related to any fact of theft other than presence in the store, detention for failure [to use them] does not create an adequate basis for invoking the privilege." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)).

Finally, many items for sale to the public are simply too large to fit into a plastic bag. Or, some customers may forgo their use simply because they're only purchasing a single item *(see Plaintiff's Claim #1)* and it would be silly to use a plastic bag. Therefore, once again, patrons in such positions "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures." *Reid at 441.*

e. Nor does not using front registers help establish shopkeeper's privilege

It is well known that WALMART SUPERSTORES have scattered throughout them multiple points of sale that the general public utilize to purchase their various goods at. Registers are regularly located at the stores' cosmetics, electronics, paint, and automotive departments, to name a few. Not only does WALMART do this for the convenience of its customers, as the waiting lines at these

registers are typically shorter than the ones found at the front of their stores, they do it for security, as they intentionally restrict certain goods from leaving certain departments until after they are purchased at that department's register (the cosmetics department being a prominent example).

After a customer buys their items at any of these alternate registers, they will invariably have to leave the store through one of its main (front) exits. Reasonably suspecting these customers of shoplifting based on their route of departure, then, is untenable, as they ultimately have no choice in the matter. They are going to have to leave the store *somehow* – either by walking *past* the traditional registers located at the front, or *through* the traditional registers located at the front (and to which either path taken, when not paying at such front registers, invariably creates some suspicion). Indeed, another "damned if you, damned if you don't" scenario that would be manifestly unfair to the customer should it be usable to establish "shopkeeper's privilege" with. As such, store employees who are merely "posted up" at a store's exit, who see patrons leave from the back of the store and not from the front, cannot use a customer's route of departure as a valid basis to establish their "shopkeeper's privilege" with. *See Holguin v. Sally Beauty Supply Inc.,* 264 P.3d 732, 736 (N.M. Ct. App. 2011).

f. Lack of intent to conceal also tends to negate shopkeeper's privilege

While leaving all WALMART SUPERSTORES in all of Plaintiffs claims, Plaintiff made no "effort to conceal" the merchandise that he had recently purchased. As such, the Defendants *even further* lacked "facts justifying a belief (a reasonable belief) on [their] part [ ] that Plaintiff intended to commit a theft." *See Chelette v. Wal-Mart Stores, Inc.,* 535 So. 2d 558, 561 (La. Ct. App. 1989).

g. Even when factored together, shopkeeper's privilege is still lacking

As just discussed, refusing to show a receipt, answer questions, use a plastic bag, or use a front register each fail, on their own, to establish "shopkeeper's privilege" with. The same holds true when factoring them together, as "it [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995) *See also United States v. Wood, 1*06 F.3d 942, 948 (10th Cir.

1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). [SIDE NOTE: the two cases just quoted discuss the "reasonable suspicion" standard, which is ***lower*** than the "probable cause" standard codified by C.R.S. § 18-4-407 (Colorado's "Shopkeeper's Privilege" Statute). As such, the bar is ***even higher*** when combining "wholly innocent factors. . .into a suspicious conglomeration" for the purposes of reasonably and fairly establishing "shopkeeper's privilege" with]. Indeed, to hold otherwise, in the present circumstance, would allow shopkeepers **free reign to detain literally all customers** leaving their stores who simply purchase merchandise at the back of them, don't use plastic bags, and refuse to show their receipt while on their way out. Again, such describes an **indisputably large** category of "presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980). In fact, the Court has already explicitly held "shopkeeper's privilege" to be lacking in precisely this scenario, where a patron left a store using a non-register exit, without a plastic bag, and whom didn't respond when asked if she could show her receipt. See *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). Once again, as previously discussed, it was because the store employee had merely been "posted up" at the store's exit, and whom "never saw [the suspect] anywhere in the store until [she was] walking out of the store," that he lacked "shopkeeper's privilege" to lawfully detain her with.

Ultimately, the reason why none of the aforementioned factors can be used – either in isolation, or together – to reasonably and fairly establish "shopkeeper's privilege" with, is because they are all strictly **exculpatory** in nature, leaving absent entirely from the seizure analysis the use of any **inculpatory** based information whatsoever. As Plaintiff has explained in times past, however, *"lack of evidence of innocence is not evidence of guilt."*

III. BECAUSE PLAINTIFF WAS PHYSICALLY STOPPED FROM LEAVING, AND SHOPKEEPER'S PRIVILEGE WAS LACKING, HE WAS FALSE IMPRISONED

"Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v.*

Bayle, 97 Colo. 568, 571 (Colo. 1935). "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Id. See also Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 55 (D. Mass. 2000). *See also Colo. Jury Instr. Civ. 21:2(1).*

In all of Plaintiff's false imprisonment claims, the Defendants blocked all store exits available to him, which prevented him from leaving. On all occasions, Plaintiff then told the Defendants to stop blocking his path, but they would not. Then, on all occasions, Plaintiff tried to step around them, but in response, they all just stepped in front of him again. *See PAFC #1 from ¶¶ 17–20; PAFC #5 from ¶¶ 18–20; and PAFC #6 from ¶¶ 17–19. See PCMSJ Exhibits #1, #8, and #13.*

Therefore, because no genuine dispute of material fact exists that the Defendants a) intended to, and did, prevent Plaintiff from leaving their stores, while they b) lacked shopkeeper's privilege for their actions, the Court should find, as a matter of law, that they are liable for false imprisonment in Plaintiff's *Claims #1, #5, and #6.* Now, because Plaintiff has elected to not specify an exact dollar amount for the damages that he has sustained by such false imprisonments, the Court should leave the question of how much Plaintiff deserves to be compensated for the jury to decide.

IV. THE DEFENDANTS ARE LIABLE FOR MALICIOUSLY PROSECUTING PLAINTIFF ON THREE OCCASIONS

a. Plaintiff was arrested by the police in order to be prosecuted by the Defendants

"One who maliciously institutes a criminal prosecution is deemed to intend to cause an arrest, which is a normal incident of a criminal prosecution, and the actor is liable for the confinement caused by the arrest only because it is a part of the damages caused by the malicious prosecution." *Erp v. Carroll,* 438 So. 2d 31, 40 (Fla. Dist. Ct. App. 1983). *See also RESTATEMENT (SECOND) OF TORTS* § 37 cmt. B (1965) ("If the criminal proceedings include the arrest of the accused, the amount recoverable by him in an action [for malicious prosecution] against his accuser includes all the elements of damage properly recoverable in an action for false imprisonment, which include not only actual harm, but emotional disturbance, which is assumed to be a normal consequence of false imprisonment.").

Just what constitutes the initiation of a criminal proceeding depends on the procedure of the particular jurisdiction involved. *See KEETON et al, supra* note 1, at 871-72. In Colorado, due to its unique simplified misdemeanor criminal procedure, an arresting officer can "initiate" a criminal prosecution, instead of leaving the decision to a prosecutor. *See* C.R.S. § 16-2-104. The *SECOND RESTATEMENT OF TORTS* has expressly taken this same position, that the warrantless arrest by the peace officer is the initiation of the criminal proceeding, its basis for which being that a Plaintiff might have no remedy at all for certain warrantless arrests should he not be given it in an action for malicious prosecution. That is, if an arresting officer acts in good faith and relies on information maliciously supplied by a Defendant, then the arrest itself is lawful, and cannot be the basis of a false imprisonment action. *See also Schwane v. Kroger Co.* 480 S.W.2d 113, 117—18 (Mo. Ct. App. 1972) (explaining that where customer was wrongfully arrested by store employees on suspicion of shoplifting and then turned over to police and prosecuted for shoplifting, Plaintiff could elect to treat the "second arrest" by the police as part of malicious prosecution); *Cooke v. J.J. Newberry & Co.,* 232 A.2d 425, 427 (N.J. Super. Ct. App. Div. 1967) (observing that damages suffered by customer after merchant turned her over to police would have to be recovered in an action for malicious prosecution); *Lynch v. Toys "R" Us-Delaware, Inc.,* 654 S.E.2d 541 (S.C. Ct. App. 2007) ("The malicious prosecution injury began when Lynch was arrested [without a warrant] at the insistence of Toys 'R' Us. . ."). *See also Terry v. Ohio,* 392 U.S. 1, 26 (1968) ("An arrest is the initial stage of a criminal prosecution.").

In *Plaintiff's Claims #2, #4, and #5,* the police handcuffed and arrested Plaintiff for the sole purpose of continuing Defendants' prosecutions that they had just initiated against him.

Therefore, because no genuine dispute of material fact exists in *Plaintiff's Claims #2, #4, and #5* that Plaintiff was arrested in order to be prosecuted, the Court should find, as a matter of law, that the first element of Plaintiff's three malicious prosecution claims has been met.

b. Plaintiff's prosecutions were brought as a result of Defendants' statements

Ordinarily, providing information to police or prosecutors who are free to act as they see fit does

not make the provider of the information the instigator of a criminal proceeding that results from the communication. *RESTATEMENT (SECOND) OF TORTS* § 653 cmt. g & illus 2; *1 HARPER et al, supra* note 1, § 4.3, at 466. But the absolute immunity of the witness does not protect the accuser who provides information which he knows to be false to a third party, such as a public prosecutor or a police officer, who in turn relies on the false information in commencing the prosecution. *See Young v. Klass,* 776 F. Supp. 2d 916, 923-24 (D. Minn. 2011) ("[M]ultiple state and federal court decisions have acknowledged, explicitly or implicitly, the principle that when someone tells lies to a prosecutor and those lies result in charges, the liar is responsible for initiating criminal proceedings." (collecting cases)); *Humbert v. Knutson,* 354 P.2d 826, 828 (Or. 1960) ("If pertinent information is withheld or there are misrepresentations made as to the facts, or undue influence brought to bear, there can be no intelligent exercise of the officer's discretion, and the person thus procuring the action of the officer is not insulated from responsibility."); *1 HARPER et al, supra* note 1, § 4.3, at 466–67 ("[I]f the informer knew that the facts stated were false, it is clear that the attempt was made to influence the officer's judgment and the informer is, therefore, responsible for such subsequent action as may have been taken."); *KEETON et al, supra* note 1, at 873. Thus, if the false information was a material factor in the third party's decision to initiate the prosecution, then the party who provided the false information may be considered the instigator of the prosecution.

In *Plaintiff's Claim #2,* the Defendants provided knowingly false information to the police. While inside a store's loss prevention office, the Defendants lied to a police officer, saying that they "[were] on the floor walking, [and] saw [Plaintiff] pick the merchandise out of the shelf, and, he walked out." *See PCMSJ Exhibits #4.1 at 2:07, and #4.2 at 4:44.*

Later that evening, the arresting officer wrote in her police report that she spoke with the Defendants, who told her that they had "observed what appeared to be Montgomery, William 07071985 (CODL) conceal various merchandise including; oil stabilizer, antifreeze, a gallon of water, and juice." She further wrote that the Defendants "watched Montgomery select these numerous items and place them in his backpack and walk past all points of sale." *See PCMSJ Exhibit #6 at page 6.*

Of course, these were all lies, as the Defendants ***had not*** walked the floor, and ***had not*** seen Plaintiff select merchandise directly off the shelf and then immediately leave the store. *See PAFC #2 & #4 from ¶¶ 24–25. See PCMSJ Exhibits #3 and, #4.1 at 11:17 where Defendant confesses just the opposite.* Moreover, Plaintiff ***most certainly*** paid for his merchandise, and the Defendants ***most certainly*** would have observed him do so, had they actually "walked the floor" as they repeatedly claimed to have done so. *See PAFC #2 & #4 at ¶¶ 13 and 19. See PCMSJ Exhibit #3 at 33:16 and 41:34.*

Nevertheless, such lies resulted in Plaintiff's prosecution. After speaking with the Defendants, the police approached Plaintiff, directed him to take off his backpack, and arrested him for what they told him was "theft." *See PAFC #2 & #4 at ¶ 44. See PCMSJ Exhibit #4.1 from 6:59–8:25.*

In *Plaintiff's Claim #4,* the Defendants provided knowingly false information to the police. While inside a store's loss prevention office, the Defendants lied to a police officer, saying that Plaintiff "tried to spit in [their] face." Then, they made a spitting motion with their mouth and body. Then, they finally told the officer, "When I saw the first time that he tried to spit, and then I saw his spit here, 'get out the office I don't want you here, get out.'" *See PCMSJ Exhibit #4.1 from 2:18–2:36.*

Later, the Defendants further lied to the officer, saying that during their encounter with Plaintiff, they said to him, "Don't spit on my face," and that Plaintiff replied to them with, "I will, get off me!" They then told the officer that Plaintiff further said to them, "I will, I have a medical condition, blah blah blah blah blah blah blah blah," and that they further replied to Plaintiff with, "Okay, whatever dude, just leave the store." Then, after being asked one last time if Plaintiff had indeed threatened to spit on them, the Defendants confirmed for the officer that they indeed said to Plaintiff, "Don't spit on me," and that Plaintiff indeed said to them, "I will, if you don't let me go. I have to go, I have to go, let me go. I'm, I'm good, I'm good to go, let me go right now." *See PCMSJ Exhibit #4.2 from 2:14–2:43.*

Later that evening, the arresting officer wrote in her police report that she spoke with the Defendants, who told her that Plaintiff "stood up, [] got close to [their] face, [and] made a motion with his mouth that would lead [them] to believe he was going to try to spit saliva on [them]." She

further wrote that the Defendants told her they said something to Plaintiff to the effect of, "Don't spit on me," and that Plaintiff replied something to the effect of "I will spit on you if you do not let me go." *See PCMSJ Exhibit #6 at page 6.*

Of course, these were all lies, as the Defendants ***had not*** said anything whatsoever to Plaintiff to the effect of "Don't spit on me," and Plaintiff ***had not*** said anything whatsoever to the Defendants to the effect of "I will spit on you if you do not let me go." This is **especially** true considering how **SUPREMELY ILLOGICAL** it would have been for Plaintiff to make such a heinous statement ***A-F-T-E-R*** the Defendants had **already** told him that he was free to go. *See PCMSJ Exhibit #3, where Plaintiff captured on audio the entire conversation that took place between he and the Defendants that evening. Critically, from 50:45–50:53, the Defendants can FIRST be heard say to Plaintiff, "Do you want to walk out with the merchandise? Okay, go ahead, go ahead," followed by Plaintiff THEN saying to the Defendants, "I have a medical problem. I have to, keep spitting."* Additionally, Plaintiff never made any motions with his mouth or his body that would have led the Defendants, or any reasonable people in their position, to believe that he was going to try to spit saliva on them. *See PAFC #2 & #4 at ¶ 37.*

Nevertheless, such lies resulted in Plaintiff's prosecution. After speaking with the Defendants, the police arrested, booked, and issued a summons and complaint to Plaintiff for purportedly violating Aurora Municipal Code 94-42(4) (Harassment–Threats). *See PAFC #2 & #4 at ¶ 48. See PCMSJ Exhibit #6 at page 14.* The arresting officer also wrote in her police report, "Due to the above information and Cordero's account of Montgomery threatening to spit on him, Montgomery was arrested and charged with 94-42(4) Harassment." *See PCMSJ Exhibit #6 at page 7.*

In *Plaintiff's Claim #5,* the Defendants provided knowingly false and materially misleading information to the police. Upon calling the police, the Defendants reported to dispatch that they had a "shoplifter" in their security office. Then, while inside a store's loss prevention office, the Defendants further lied to an officer, saying "That's my stuff" when asked if Plaintiff had a receipt for his items. *See PCMSJ Exhibit #11 at page 6. See PAFC #5 at ¶ 24. See PCMSJ Exhibit #8 from 32:27–32:50.*

Later that day, the arresting officer wrote in his police report that he spoke with the Defendants, who told him that "he was alerted by another employee that William had come into the store and walked past the point of final sale and was exiting the store on the grocery side. . .[and that] he was in possession of multiple stolen items, 2 paper towel rolls (value .50 each), 2 LED flashlights (value $7.87 each)." *See PCMSJ Exhibit #11 at pages 2–3.*

Also later that day, the Defendants further lied to the police, saying in a written statement provided to them, "I, Kadyn moyer (APA) at Walmart I apprehended William Montgomery at 14:07. I was informed by my APCH that he tried to walk out with merchandise." *See PCMSJ Exhibit #11 at page 8.*

Of course, these were all lies, as the Defendants ***had not*** observed Plaintiff "walk past the point of final sale" "with merchandise" [that he had failed to pay for]. Plaintiff ***most certainly*** paid for his merchandise, and the Defendants ***most certainly*** would have observed him do so, had they actually been paying attention to their front registers, *located not more than 30 feet in front of them*, where Plaintiff had just paid for his merchandise. *See PAFC #5 at ¶ 11. See PCMSJ Exhibit #13 at 13:21.* Moreover, Plaintiff purportedly being "in possession of multiple stolen. . .LED flashlights (value $7.87 each)" was yet another bald-faced lie, as Plaintiff had ***never once*** taken his previously purchased RV lights out of his pockets during his entire shopping at that particular store, on that particular occasion. *See PAFC #5 at ¶¶ 4 and 31.*

Nevertheless, such lies resulted in Plaintiff's prosecution. After speaking with the Defendants, the police arrested, released, and issued a summons and complaint to Plaintiff for purportedly "shoplifting." *See PAFC #5 from ¶¶ 28–32. See PCMSJ Exhibit #8 from 35:41 onward. See PCMSJ Exhibit #11 at page 4.* The arresting officer also wrote in his police report, "After investigation it was determined that William had paid for some items, but not others. William was issued a summons (#928194) for theft. Walmart took possession of the stolen items. A request was made for video footage. William was given all his property back and the items he bought. He was verbally trespassed by Walmart and released on scene." *See PCMSJ Exhibit #11 at page 3.*

Therefore, because no genuine dispute of material fact exists that all three of Plaintiff's criminal prosecutions were brought against him as a result of both oral and written statements made by the Defendants, the Court should find, as a matter of law, that the second element of Plaintiff's three malicious prosecution claims has been met.

c. The Defendants' criminal prosecutions were terminated in Plaintiff's favor

One may not recover for malicious prosecution if it appears that the charge against him was well founded, or if substantial doubts remain as to whether it was or not. However, it is not necessary for a Plaintiff to prove a complete determination of his innocence by the official action that has been brought against him. Any termination of the proceedings that fairly implies his innocence will suffice. *RESTATEMENT (SECOND) OF TORTS* § 660 cmt. a; *1 HARPER et al, supra* note 1, § 4.4, at 469. Formal abandonment of the proceedings by a public prosecutor, such as by voluntary dismissal or entry of a *nolle prosequi*, absent evidence suggesting unfavorable circumstances, is a favorable termination. *RESTATEMENT (SECOND) OF TORTS* § 659(c) & cmt. e; *1 HARPER et al, supra* note 1, § 4.4, at 470-71; *KEETON et al, supra* note 1, at 874.

In *Plaintiff's Claim #2,* the police abandoned Defendants' "shoplifting" prosecution lodged against Plaintiff as soon as they obtained sufficient evidence to determine that his charges were unfounded. The police then dropped their charges, removed their handcuffs, and released Plaintiff from their custody. *See PAFC #2 & #4 at ¶ 47. See PCMSJ Exhibit #4.1 at 15:37.*

In *Plaintiff's Claim #4,* the AURORA CITY ATTORNEY abandoned Defendants' "harassment" prosecution lodged against Plaintiff, via motion to dismiss, as soon as he determined he lacked sufficient evidence to keep pursuing it with. *See PAFC #2 & #4 at ¶ 52. See PCMSJ Exhibit #7.*

In *Plaintiff's Claim #5,* the ARAPAHOE COUNTY DISTRICT ATTORNEY abandoned Defendants' "shoplifting" prosecution lodged against Plaintiff, via motion to dismiss, under similar circumstances not inconsistent with his innocence. *See PAFC #5 at ¶ 33. See PCMSJ Exhibit #12.*

Therefore, because no genuine dispute of material fact exists that all of Defendants'

criminal prosecutions were terminated in Plaintiff's favor, the Court should find, as a matter of law, that the third element of Plaintiff's three malicious prosecution claims has been met.

d. The Defendants lacked probable cause to initiate Plaintiff's prosecutions

Probable cause is a reasonable belief that a criminal offense has been committed, and that the person charged is the one who committed it. *1 HARPER ET AL., supra* note 1, § 4.5, at 477; *KEETON ET AL., supra* note 1, at 876. "Good faith is not enough to constitute probable cause. That faith must be grounded on facts within knowledge of the [accuser] which in the judgment of the court would make his faith reasonable." *Director General v. Kastenbaum,* 263 U.S. 25, 28 (1923).

As previously discussed in SECTION II of this RESPONSE / CROSS-MOTION, the Defendants lacked "shopkeeper's privilege" to fairly believe that Plaintiff had committed the crime of "shoplifting." As such, they equally lacked "probable cause" to initiate criminal proceedings against him in *Claims #2 and #5* where they subsequently directed the police to arrest him for the same reason.

In *Plaintiff's Claim #4,* the Defendants had no objectively reasonable basis to fairly believe that Plaintiff had "threatened to spit on them if they did not let him go." As such, the Defendants equally lacked "probable cause" to initiate criminal proceedings against Plaintiff for "harassment."

Therefore, because no genuine dispute of material fact exists that the Defendants lacked "probable cause" to initiate prosecutions against Plaintiff for "shoplifting" and "harassment," the Court should find, as a matter of law, that the fourth element of Plaintiff's three malicious prosecution claims has been met.

e. The question of malice / improper motive is one of fact for the jury

"Malice," in the malicious prosecution context, means a motive inconsistent with the primary purpose of bringing an offender to justice. *Montgomery Ward v. Wilson,* 664 A.2d 916, 924-25 (Md. 1995). Actual malice, in the sense of ill will, spite or hatred toward the accused, is not required. *Id.* "Any feeling of hatred, animosity, or ill will toward the plaintiff, of course, amounts to malice. But it is not essential to prove such ill will." *1 HARPER et al, supra* note 1, § 4.6, at 499 (footnote omitted). Since an accuser's belief and motive must ordinarily be proved by circumstantial evidence, the vast

majority of courts have taken the view that malice may be inferred from a lack of probable cause for the prosecution. *E.g., S.S. Kresge Co. v. Ruby,* 348 So. 2d 484, 489 (Ala. 1977) ("Malice may be inferred from the lack of probable cause."); *Patin v. Duplessis Pontiac-Buick-GMC,* 632 So. 2D 790, 792 (La. Ct. App. 1994) ('Malice is presumed when there is no probable cause."); *Owens v. Kroger Co.,* 430 So. 2d 843, 848 (Miss. 1983) ("If the jury found there was no probable cause for the prosecution, [Plaintiff] likewise had the right for the jury to pass upon the question of malice."); *Schmidt v. Richman Gordman, Inc.,* 215 N.W.2d 105, 110 (Neb. 1974) ('Malice. . .may be deducible from the facts and circumstances surrounding the transaction and is inferable from the absence of probable cause."); Unlike the question of probable cause, the question of malice or improper motive is one of fact for the jury. *KEETON et al, supra* note 1, at 883; *accord RESTATEMENT (SECOND) OF TORTS* § 672(1) cmt. a, § 673(2)(b) (1977); *1 HARPER et al, supra* note 1, § 4.5, at 497, § 4.6, at 507.

Therefore, the Court should leave the question of malice / improper motive, the fifth element of Plaintiff's three malicious prosecution claims, entirely for the jury to decide.

f. Plaintiff was damaged by Defendants' malicious prosecutions; the question of how much he deserves to be compensated should be left for the jury to decide

Where a plaintiff proves a malicious prosecution claim, he will be entitled to actual damages proximately caused as a result of the proceeding. This includes emotional distress, humiliation, injury to reputation, loss of time and business, and attorneys' fees incurred in defending the prior proceeding. Further, punitive damages may be awarded since a malicious prosecution inherently requires that the prior proceeding was brought with malice or an improper motive. *See Colorado Causes of Action at 23-1.*

As the direct result of being maliciously prosecuted by the Defendants on three specific occasions, Plaintiff sustained multiple actual damages. These include a) being arrested, b) having to attend court appearances until his charges were dropped, and c) experiencing numerous manifestations of significant mental anguish and emotional distress. *See PAFC #1 at ¶ 28; PAFC #2 & #4 at ¶ 53; PAFC #5 at ¶ 35; and PAFC #6 at ¶ 25.*

Therefore, because no genuine dispute of material fact exists that Plaintiff was damaged by Defendants' malicious prosecutions, the Court should find, as a matter of law, that the sixth element of Plaintiff's three malicious prosecution claims has been met. Now, because Plaintiff has elected to not specify an exact dollar amount for the damages that he has sustained by such prosecutions, the Court should leave the question of how much Plaintiff deserves to be compensated for the jury to decide.

V. THE DEFENDANTS ARE LIABLE FOR DEFAMING PLAINTIFF AS A THIEF; PLAINTIFF'S DAMAGES SHOULD BE LEFT FOR THE JURY TO DECIDE

Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation *actionable per se*. *RESTATEMENT (SECOND) OF TORTS* § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). *"Actionable per se"* means that without adducing any evidence that he has in fact been harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. *P.H. WINFIELD, A TEXT-BOOK OF THE LAW OFTORT* § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed. *2 HARPER et al, supra* note 2, § 5.11, at 118.

Additionally, it is important to note that while "[a] store manager may have [ ] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964).

In *Plaintiff's Claim #5,* the Defendants impermissibly imputed the crime of larceny onto Plaintiff. First, they called the police to report a "shoplifter." *See PCMSJ Exhibit #11 at page 6.*

Then, they told the police that Plaintiff's merchandise "[was their] stuff." *See PCMSJ Exhibit #8 at 32:49.* Then, they told the police that "William had come into the store and walked past the point of final sale and was exiting the store on the grocery side. . .[and that] he was in possession of multiple stolen items, 2 paper towel rolls (value .50 each), 2 LED flashlights (value $7.87 each)." *See PCMSJ Exhibit #11 at pages 2–3.* Then, they wrote in a statement they provided to the police, "I, Kadyn moyer (APA) at Walmart I apprehended William Montgomery at 14:07. I was informed by my APCH that he tried to walk out with merchandise." *See PCMSJ Exhibit #11 at page 8.*

In *Plaintiff's Claim #6,* the Defendants impermissibly imputed the crime of larceny onto Plaintiff. While inside the store's vestibule and in front of multiple customers who had been passing by them, they repeatedly said to Plaintiff, "we're losing money with what you have," "give us our products," "we need our products back," etc. *See PCMSJ Exhibit #13 from 22:57–25:21.*

Moreover, because "there is no evidence that Wal-Mart's policy of checking shoppers' bags when they left to store was made known to the shoppers. . .neither [Plaintiff] nor any other shopper would have known that [the Defendants] [were] merely stopping [Plaintiff] as part of a routine practice of checking contents of shoppers' bags against receipts." Therefore, the Defendants' conduct, *in combination with their words*, only further imputed the crime of larceny onto Plaintiff. *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 50 (D. Mass. 2000).

Therefore, because no genuine dispute of material fact exists that the Defendants defamed Plaintiff as a "shoplifter" in front of and/or directly to others, the Court should find, as a matter of law, that they are liable for defamation in *Plaintiff's Claims #5 and #6.* Now, because Plaintiff has elected to not specify an exact dollar amount for the damages that he has sustained by such defamation, the Court should leave the question of how much Plaintiff deserves to be compensated for the jury to decide.

CONCLUSION

"It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to

establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendants' MOTION FOR SUMMARY JUDGMENT, and instead **GRANT** Plaintiff's CROSS-MOTION FOR SUMMARY JUDGMENT. Specifically, the Court should **A)** dismiss Plaintiff's "false arrest" claim in *Claim #5* as hereby abandoned, **B)** enter judgment in his favor on all issues of law and liability in all of his claims, and **C)** leave for the jury to decide the only two remaining triable issues of fact regarding: **1)** the question of malice / improper motive in his three malicious prosecution claims, and **2)** the amount of damages he should be awarded in his eight remaining claims.

Respectfully submitted on this, the 18th day of January, 2022.

William Montgomery

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 18th day of January, 2022, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MSJ / PLAINTIFF'S OWN CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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DISTRICT COURT, ADAMS COUNTY, COLORADO 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	DATE FILED September 19, 2024 3:53 PM
WILLIAM MONTGOMERY Plaintiff vs. **WALMART INC.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case No: **2021CV68** (Consolidated: 2021CV88) Division: **C**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendant's MOTION FOR SUMMARY JUDGMENT ("Def's MSJ"), and in support thereof, states as follows:

INTRODUCTION

Once again, WALMART has decided to retaliate against somebody for simply refusing to show a receipt on their way out of a store. How many times does this have to keep happening? Sorry, but Plaintiff isn't "going out his way" to be detained by the Defendant. Nor is he "seeking to be detained" by them, or "provoking" them, or "concealing," or otherwise "displaying conspicuous behavior to suggest that he shoplifting." It's no secret (nor has it been for literally decades now) that WALMART routinely and indiscriminately asks to see the receipts of literally anybody that it so wishes. But as the retired criminal judge Matthew M. Steven aptly puts it, "No store has the

right to force you to display your receipt after you've made your purchase, nor do they have the right to detain you for not doing so. Companies like Sam's Club, BJ's and Costco are able to do this because it is a part of your agreement for membership. A store may detain you if they believe you're guilty of shoplifting, and they must tread exceptionally carefully when doing so, because the liability for falsely accusing and illegally detaining somebody is staggering. However, when an employee stationed at the exits asks to see customer receipts upon exiting, you do not have to show it to them, nor will they argue unless they believe you have committed the crime of larceny. I ruled against WalMart on several occasions with regard to this, and even went so far as to charge members of their loss prevention department with unlawful imprisonment after an incident. I realize that retail theft is rampant in stores like WalMart, but that does not excuse accusing and causing damage to a law abiding citizen." *See https://tinyurl.com/yckn79et.*

RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

THE AUGUST 6, 2020 INCIDENT (ORIGINALLY 2021CV68)

1. Plaintiff ADMITS that this asserted material fact is true.

2. Plaintiff ADMITS that this asserted fact is true, but DENIES its materiality.

3. Plaintiff ADMITS that this asserted fact is true, but DENIES its materiality.

4. Plaintiff ADMITS that this asserted material fact is true.

5. Plaintiff partially ADMITS that this asserted material fact is true. Plaintiff's exact response to the employee was "I mean if you want to hold me, *that's all you* buddy."

6. Plaintiff ADMITS that this asserted fact is true, but DENIES its materiality.

7. Plaintiff DENIES that this asserted fact is true. While it is true that the manager

"asked [Plaintiff] if he had a receipt," **Plaintiff absolutely did not provide any response whatsoever to the question**, instead remaining entirely silent on the answer (eventually sighing only in response). Specifically, it was the manager who said "yes or no?," but only in response to Plaintiff's silence.

8. Plaintiff ADMITS that this asserted fact is true, but DENIES its materiality.

9. Plaintiff ADMITS that this asserted material fact is true.

THE SEPTEMBER 3, 2020 INCIDENT (ORIGINALLY 2021CV88)

10. Plaintiff ADMITS that this asserted material fact is true.

11. Plaintiff DENIES that this asserted fact is true. While it is true that Plaintiff originally instructed the cashier to "put [a non-food-based item] on a separate receipt from the other items," because Plaintiff discovered that he could not afford the non-food-based item upon it being rung up, he canceled that purchase, and instead only completed the purchase of his food-based items, thus only receiving one receipt in total during his entire transaction. Moving on, Plaintiff indeed ADMITS that after paying for his items, he placed them back into his hands so as to eschew the use of the typical, non-environmentally friendly, one-time-use plastic bags. *See Plaintiff's Affidavit For Claim (herein "PAFC") #2 at ¶ 10.*

12. Plaintiff ADMITS that this asserted material fact is true.

13. Plaintiff ADMITS that this asserted fact is true, but DENIES its materiality.

14. Plaintiff ADMITS that this asserted material fact is true.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

FACT COMMON TO BOTH INCIDENTS (2021CV68 & 2021CV88)

15. Upon entering each WALMART SUPERSTORE, Plaintiff did not observe there to

be, anywhere at all, any store receipt checking policies posted on any of its walls, nor verbally mentioned to him by any of its store employees. *See PAFC #1 and #2 at ¶ 4.*

16. Once inside each store, Plaintiff traveled throughout its various departments, where he selected items for purchase directly off their shelves. *See PAFC #1 and #2 at ¶ 5. See Def's MSJ Exhibits A and B.*

17. While traveling between each store's various departments, Plaintiff never once observed any store employees, police officers, or any people at all, follow him throughout the store. *See PAFC #1 at ¶¶ 6, 8, 13, 16, and 20; PAFC #2 at ¶¶ 6, 8, 13, 16, and 19.*

18. At each store, after paying for his items, Plaintiff doesn't recall if he kept his receipt on him, or threw it away. Because he had no intention of returning what he had just purchased on each occasion, he probably threw each away. *See PAFC #1 and #2 at ¶ 11.*

19. While on his way out of each store, Plaintiff was asked to show his receipt by store employees who had either been "posted up" at their exits, were walking past him, or who had otherwise appeared shortly thereafter from right around the corner, but whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout it as he shopped) until he finally saw them for the very first time as he proceeded to leave each. *See PAFC #1 at ¶¶ 15, 16, and 20; PAFC #2 at ¶¶ 15, 16, and 19.*

20. In each store, in response to Plaintiff politely declining to show his receipt, he had all available pathways of his, through all available exits, physically blocked by each store's employees, which prevented him from leaving. In each store, he tried to step around the employees, but in response, they just stepped in front of him again. At this point, Plaintiff felt he had no safe or realistic way of leaving either WALMART SUPERSTORE, through any of its

exits, without otherwise bumping into or having to push each of its various employees out of the way. *See PAFC #1 and #2 at ¶¶ 18–20. See Def's MSJ Exhibits A and B.*

21. Ultimately, on each occasion, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with the store employees. *See PAFC #1 at ¶ 23; PAFC #2 at ¶ 24.*

FACTS UNIQUE TO THE AUGUST 6, 2020 INCIDENT (2021CV68)

22. At no time whatsoever did Plaintiff ever once exit/re-enter the store while traveling from its various departments to its self-checkout registers (before paying for his items), nor from its self-checkout registers to its western exit (after paying for his items). *See PAFC #1 at ¶¶ 9 and 14. See Def's MSJ Exhibit A.*

FACTS UNIQUE TO THE SEPTEMBER 3, 2020 INCIDENT (2021CV88)

23. At no time whatsoever did Plaintiff ever once exit/re-enter the store while traveling from its various departments to its automotive register, nor from its automotive register to its eastern exit. Only upon leaving the store's automotive register, after concluding his entire shopping experience, did he finally begin to proceed to exit the store for the very first time since he had initially entered it. *See PAFC #2 at ¶¶ 9 and 14. See Def's MSJ Exhibit B.*

24. Upon Plaintiff exiting the WALMART SUPERSTORE, Defendant made numerous unsubstantiated comments impermissibly imputing the crime of larceny onto him. Specifically, Defendant said, "Give us our stolen stuff back," *Def's MSJ Exhibit B at 15:49,* "Give us our stolen stuff," *Id. at 15:51,* and "When you steal from the store, that can't happen." *Id. at 16:41.*

ARGUMENT

I. PLAINTIFF WAS PHYSICALLY DETAINED BY THE DEFENDANT

In all previous ORDERS of the Court to which the Defendant refers *(Def's MSJ Exhibits C through F)* the underlying rational for each holding (its utterly nonsensical, failed logic notwithstanding) was that because Plaintiff had a receipt on him, of which he could "easily" show the store employees, by not showing it to them he purportedly "failed to avail himself" of the "escape" path they had offered him. **That argument has no merit or applicability in the instant caseload, however,** as the Defendant has provided no evidence whatsoever that Plaintiff even had a receipt on him at the time they detained him during the August 6th and September 3rd incidents. While Plaintiff undoubtedly paid for his items on each occasion (as evidenced by his cell phone audio) the only evidence that presently exists in the record – with specific regards *to his receipt* – is his own sworn testimony on the subject that he probably "threw [them] away." *See PAFC #1 and #2 at ¶ 11.* As such, Plaintiff ***did not*** "indisputably [know] that showing his receipt would allow him to easily leave the store." *Def's MSJ at page 7.*

Alternatively, because the Defendant, on both occasions, physically "blocked all available pathways of his through all available exits," such actions prevented Plaintiff from leaving each store, which legally constitutes "confinement" for the purposes of defining false imprisonment. Indeed, on both occasions, Plaintiff told the store employees to stop blocking his path, but they would not. He even tried to step around them, but in response, they just stepped in front of him again. *PAFC #1 and #2 at ¶¶ 18–20.* Such actions are *more than* sufficient to constitute a completed false imprisonment. "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). "Without a showing of justification, any restraint, either by force or

fear, is unlawful and constitutes a false imprisonment." *Id. See also Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 55 (D. Mass. 2000). *See also Colo. Jury Instr. Civ. 21:2(1).*

II. THE DEFENDANT LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WITH

In Defendant's MOTION FOR SUMMARY JUDGMENT, it claims that it "is not responsible for Plaintiff's false imprisonment claim as a matter of law because [it] had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter." *See Defs' MSJ at page 8.* While it is certainly true that the viability of Plaintiff's case hinges on whether or not the Defendant had "reasonable grounds" to believe he had shoplifted in its stores, what the Defendant *claims* to have possessed, and what they *actually* possessed, **are two very different things**. As will be discussed next, it is unequivocally beyond dispute that the Defendant genuinely *lacked* "reasonable grounds" (i.e. "shopkeeper's privilege") to lawfully detain Plaintiff with.

a. Being "posted up" at a store's exit, and literally nothing more, is insufficient as a matter of law to establish shopkeeper's privilege with

Traditionally, when analyzing "shopkeeper's privilege," the Court has held that "[t]he test of liability is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the circumstances." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "And whether reasonable belief is established, is usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Id.* However, when the facts are not in dispute (as largely appears to be the case in Plaintiff's instant case), "reasonable belief," or "probable cause" as C.R.S. § 18-4-407 codifies it, "is not a question of fact for the jury, but one

of law for the court, to be decided in accordance with the circumstances at the time of the detention." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963).

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [ ] that somebody did or did not do something."** *Id.* **"The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting."** *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592, (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable.").

In Plaintiff's instant case, while on his way out of each WALMART SUPERSTORE, he was asked to show his receipt by store employees who had either been "posted up" at their exits, were walking past him, or who had otherwise appeared shortly thereafter from right around the corner, but whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout it as he shopped) until he finally saw them for the very first time as he proceeded to leave each. Thus, the Defendant, having been strictly and indisputably located

exclusively at each store's exit, **did not see or witness literally anything** that could *even begin* to fairly form a "reasonable [] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). This is because the Defendant "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* In such circumstances, the Court has manifestly held, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Id.*

b. Nor does refusing to show a receipt establish shopkeeper's privilege

A request to see a receipt is "a request for consent to search, [and] the customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without *particularized* facts to reasonably justify a stop, systematic detention of most or all customers may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause

requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.").

Moreover, refusal to consent to a police request cannot be the "single additional event that ripens [the officers'] preexisting concerns to the 'founded suspicion' that a *Terry* stop requires." *U.S. v. Sterling,* 909 F.2d 1078, 1082 (7th Cir. 1990). This is especially important to consider because of how in Plaintiff's instant caseload his refusal to show his receipt ***was*** the "single additional event" the Defendant used to finally detain him with.

c. Nor does not using plastic bags establish shopkeeper's privilege

In today's day and age, the use of non-environmentally friendly, one-time-use plastic bags is frowned upon. Some jurisdictions (Boulder County, Denver County, etc.) have even begun to "tax them out of existence" by way of charging customers 10¢ each time one is used. Thus, people are using them less and less (present company included). *See also https://youtu.be/1YgIx44zcPw.* Accordingly, when it comes to analyzing whether or not a shopkeeper has established "probable cause" to detain a suspected shoplifter with, categorizing people who forgo the use of such bags as "likely enough to be thieves" is untenable, as doing so "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this

case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980).

Moreover, just like with receipt checking as discussed above, because plastic bags are "not related to any fact of theft other than presence in the store, detention for failure [to use them] does not create an adequate basis for invoking the privilege." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). See also *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971). *See also Montgomery v. Calvano,* District Civil Case No. 1:19-cv-00387-PAB-MEH (ECF Doc. #48 at page 6) ("[C]arrying of an unbagged item does not, on its own, demonstrate that criminal activity may be afoot.").

d. Nor does not using front registers establish shopkeeper's privilege

It is well known that WALMART SUPERSTORES have scattered throughout them multiple points of sale that the general public utilize to purchase their various goods at. Registers are regularly located at the stores' cosmetics, electronics, paint, and automotive departments, to name a few. Not only does WALMART do this for the convenience of its customers, as the waiting lines at these registers are typically shorter than the ones found at the front of their stores, they do it for security, as they intentionally restrict certain goods from leaving certain departments until after they are purchased at that department's register (the cosmetics department being a prominent example).

After a customer buys their items at any of these alternate registers, they will invariably have to leave the store through one of its main [front] exits. Reasonably suspecting these

customers of shoplifting based on their route of departure, then, is untenable, as they ultimately have no choice in the matter. They are going to have to leave the store *somehow* – either by walking *past* the traditional registers located at the front, or *through* the traditional registers located at the front (and to which either path taken, when not paying at such front registers, invariably creates some suspicion). Indeed, a "damned if you, damned if you don't" scenario that would be manifestly unfair to the customer should it be usable to establish "shopkeeper's privilege" with. As such, store employees who are merely "posted up" at a store's exit, who see patrons leave from the back of the store and not from the front, cannot use a customer's route of departure as a valid basis to establish their "shopkeeper's privilege" with. *See Holguin v. Sally Beauty Supply Inc.*, 264 P.3d 732, 736 (N.M. Ct. App. 2011).

ABSOLUTELY CRITICAL TO NOTE HERE, is that this argument only applies to *Plaintiff's Claim #2* of the instant case, where he exited the store coming from an automotive register in the back. Therefore, the Defendant ***EVEN FURTHER*** lacked "shopkeeper's privilege" to detain him in *Claim #1* of this case, **WHERE PLAINTIFF LITERALLY EXITED THE STORE COMING FROM THE REGISTERS AT THE FRONT!!!** Quite positively, there is *no way on Earth* that the Defendant [or any merchant] would have the lawful right to detain *literally every single patron leaving their store after shopping*, for [what is literally the only argument remaining of] simply not using plastic bags! What a bunch of hogwash THAT would be otherwise!

e. Lack of intent to conceal also negates having shopkeeper's privilege

While leaving each WALMART SUPERSTORE in Plaintiff's instant case, he made no "effort to conceal" the merchandise that he had recently purchased. As such, the Defendant *even further* lacked "facts justifying a belief (a reasonable belief) on [their] part [] that Plaintiff intended to

commit a theft." *See Chelette v. Wal-Mart Stores, Inc., 535 So. 2d 558, 561 (La. Ct. App. 1989).*

III. THE DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF AS A THIEF

Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation *actionable per se*. *RESTATEMENT (SECOND) OF TORTS* § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). *"Actionable per se"* means that without adducing any evidence that he has in fact been harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. *P.H. WINFIELD, A TEXT-BOOK OF THE LAW OFTORT* § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed. *2 HARPER et al, supra* note 2, § 5.11, at 118.

Additionally, it is important to note that while "[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964).

As laid out in *Plaintiff's Claim #2*, the Defendant impermissibly imputed the crime of larceny onto him, specifically (and repeatedly) using the words "steal" and "stolen." Additionally, Defendant made such accusations "with knowledge that they were false, or with reckless disregard

for whether they were true or false," as they knew that other registers existed in the store from which Plaintiff could have easily paid for his items at. Moreover, one customer who witnessed the encounter even went so far as to offer to pay for Plaintiff's items, which reveals that members of the public were unjustly made to believe that he had stolen from the store.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 21st day of November, 2022.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of November, 2022, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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APPENDIX

The following are just a few of the cases, law reviews, news articles, and websites devoted to ***precisely*** this decades old, WELL IRONED OUT issue. Plaintiff's case is by no means a novel one.

Ball v. Wal-Mart, Inc., 102 F. Supp. 2d 44 (D. Mass. 2000)

Wal-Mart Stores, Inc. v. Odem, 929 S.W.2d 513 (Tex. App. 1996)

Victoria S. Salzmann, Big-Box Bullies Bust Benign Buyer Behavior:
WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)

Can a Store Legally Check Your Bag or Make You Show a Receipt?
https://wbkr.com/can-a-store-legally-check-your-bag-or-make-you-show-a-receipt/

Stop That Paying Customer! The Legality of Compulsory Receipt-Checking
https://thelegality.com/articles/stop-paying-customer-legality-compulsory-receipt-checking/

Am I Legally Obligated To Show My Receipt When I Leave A Store?
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Do You Have To Show Your Receipt At Walmart? – Know Your Rights!
https://www.sbxl.com/do-you-have-to-show-your-receipt-at-walmart/

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Verify: Can Walmart make you show a receipt?
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Am I Legally Required To Show My Receipt To A Walmart Greeter?
http://www.themillennialman.com/2017/11/legally-required-show-receipt-walmart-greeter

Can Walmart Check Your Receipt? (Know Your Rights)
https://querysprout.com/can-walmart-check-your-receipt/

Cop Records Himself Detained At Walmart Receipt Check
https://consumerist.com/2010/12/man-records-himself-being-detained-at-walmart-for-a-receipt-check.html

Colorado Court Of Appeals 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:53 PM
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Jason D. Carrithers** District Court Case Number: **20CV76**	
WILLIAM MONTGOMERY Plaintiff-Appellant vs. **WAL-MART STORES, INC., JOHN DOE.** Defendant-Appellees	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Court Of Appeals Case No: **2021CA359**
PLAINTIFF'S APPEAL OPENING BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his APPEAL OPENING BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My brief has **4,871** words, which is not more than the 9,500

word limit.

Included Sections: In the Arguments section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The Standard of Review: I let the Court of Appeals know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the Record on Appeal I raised the issue to the District Court and where the District Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
William Montgomery

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ISSUES ON APPEAL

1. Did the District Court err in finding that the Defendant did not, as a matter of law, false imprison Plaintiff?

2. Did the District Court err in finding that the Defendant did not, as a matter of law, steal from Plaintiff?

STATEMENT OF THE CASE

On March 31, 2019, Plaintiff attempted to leave a Walmart Store located in Lakewood, CO with three newly-purchased bags of ice with him. (Two of the bags Plaintiff took from the ice chest, to a nearby register, and then out of the store, while the third bag was picked up by Plaintiff on his way out, after prepaying for it at the register where he bought the other two bags at.) Upon leaving, Plaintiff was asked to show his receipt by two store employees who had been posted up at the store's exit. Plaintiff politely declined to show his receipt, and instead continued to attempt to leave the store. One of the aforementioned store employees – one who had been posted up at the far end of the store's exit and thus did not witness the prior sale that just occurred around the corner – then stepped in front of Plaintiff, cornered him against the wall in the exit's vestibule, and did not let him leave the store while once again asking (if not demanding at this point) to see his receipt. Plaintiff declined the receipt request once again, but at this point, having been fully prevented from

leaving, decided to place his three bags of ice on the ground so that he could lookup on his phone, and share with the store employee, the store's official receipt checking policy. While doing so, the employee took Plaintiff's bags of ice from in front of him, and returned them to the store. The employee then informed a nearby manager of the situation, and misinformed her that Plaintiff had stolen all three bags of ice (as in, he did not differentiate between the two Plaintiff took to the register, and the third he picked up on his way out). The manager then also asked Plaintiff to show his receipt, and who Plaintiff then also declined the request once again. The manager then asked Plaintiff to leave the store, and Plaintiff did so without issue, but without his bags of ice. Later, Plaintiff called the Lakewood Police Department to report the incident, but was ultimately told by them in follow up conversations that they would not be pressing charges against the store or its employees, and that if Plaintiff wanted his bags of ice back, he would have to pursue the matter in civil court.

On March 31, 2020, Plaintiff filed a lawsuit against the Defendants in the Jefferson County District Court, alleging that they a) stole his bags of ice from him (cumulatively valued at $5.17) and b) cornered him, blocked his path, and wouldn't let him leave on his way out of their store.

On January 19, 2021, the District Court Judge granted a Motion For Summary Judgment filed by the Defendants, which dismissed Plaintiff's case in its entirety. The

Judge held that Plaintiff failed to prove both claims as a matter of law. The Judge made errors of fact and/or law when making its ruling, however, and incorrectly granted the motion in contravention of clearly-established case law on the subject.

On March 9, 2021, Plaintiff filed this appeal, now seeking appellate review of the District Court Judge's adverse ruling entered against him, and to ultimately have the Defendants' Motion For Summary Judgment REVERSED and his case thereby REINSTATED and REMANDED to the Jefferson County District Court for further proceedings not inconsistent with its opinion.

ARGUMENT SUMMARY

The District Court made two errors in the case.

First, it erroneously found that Plaintiff did not prove, as a matter of law, that he had been confined by the store employee who stepped in front of him. Therefore, no false imprisonment had purportedly occurred.

Second, it erroneously found that Plaintiff did not prove, as a matter of law, that that same store employee did not take Plaintiff's ice from him with the intent to permanently deprive him of it. Therefore, no theft had purportedly occurred.

ARGUMENTS

Issue 1 – The Finding That The Defendant Did Not Confine Plaintiff

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of false imprisonment and confinement in his response to the Defendants' Motion For Summary Judgment. The District Court ruled on the issue in its Final Order, CF pg 69.

C. Discussion

In the District Court's Order granting the Defendants' Motion for Summary Judgment, it used abhorrently bad logic to determine that Plaintiff was never actually confined because of how he "could have left the store if he [simply] showed his receipts." CF at pg 73. "There is no dispute that Plaintiff knew of a reasonable means to leave the store by showing the receipts, and so, he was not completely confined." *Id.* **What a seriously, monumentally bad argument this is.**

First off, the District Court is wholly abusing the term "escape" in its Order. There is a BIG difference between having one's path blocked, *but seeing and being able to use an alternative exit*, for instance, to thereby *avoid altogether* an attempted confinement *in the first place* (i.e. an intellectually honest use of the term "escape"), and having one's only path blocked (a completed confinement) but then merely being given *the option* to be *set free* by the imprisoner *if one simply gives into the demand* to show one's receipt. That's not an intellectually honest use of the term "escape," that's a straight-up completed imprisonment coupled with a conditional (and technically not even guaranteed) release of the subject.

Next, *even if* the term "escape" could be so easily abused, the District Court's claim that "showing a receipt is an objectively reasonable action to escape imprisonment," CF at pg 73, is still not a correct one, in its own right. Simply put, showing a receipt is not an objectively reasonable action, under any circumstance. The onus **IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE** on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to *even begin* to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to. Moreover, such an obligation would produce patently absurd results in a situation like this. Aside from

the obvious conundrum that the act itself of showing one's receipt now begs the question of wholly consenting to the detention (and something no reasonable person could ever be expected to do), what if Plaintiff were to have thrown away his receipts in the nearest trash receptacle upon sale (and of which he has every right to do in the alternative)? Now, without access to any receipts, he would have no "reasonable means to leave the store," now would he!? Even more absurd would be that of an actual thief. With obviously no receipts on hand, a thief would likewise have no "reasonable means to leave the store by showing the receipts." Surely an actual thief would not have *more* of a standing than Plaintiff to challenge an imprisonment by a non-eyewitness, posted-up-at-the-exit-only, receipt checker! Yet such is precisely what the District Court is advocating. Ultimately, such absurdity can be summed up in just three sentences: "Hey," says the gang who just surrounded you, "give us five bucks and we'll let you go!" You had five bucks in your pocket that you knew you could have given them, but decided not to do so. I guess you don't have a claim for false imprisonment because you knew you had that five bucks on you, but chose not to give it to them!

Moving on, the District Court argues in the alternative that Plaintiff was never confined because "Defendant did [nothing] more than block his path." CF at pg 73. Even absent a personalized affidavit to positively assert that Plaintiff was

indeed "fully cornered," the record submitted to the District Court still contained enough evidence to fairly infer that Plaintiff was nevertheless confined by the Defendant – through a *combination* of both words *and* actions. "A false imprisonment may be committed by words alone, or by acts alone, or by both, and by merely operating on the will of the individual, or by personal violence, or by both." *Martin v. Houck,* 54 S.E. 291, 293-94 (N.C. 1906); accord *Adair v. Williams,* 210 P. 853, 856 (Ariz. 1922) ("All that is necessary to make out such a charge is that the individual be restrained of his liberty without any sufficient legal cause therefor, and by words or acts which he fears to disregard."); *Abner v. W.T. Grant Co.,* 139 S.E.2d 408, 410 (Ga. Ct. App. 1964) (recognizing that restraint constituting false imprisonment may arise out of words, acts, or gestures which induce a reasonable apprehension that force will be used if plaintiff does not submit); *Gust v. Montgomery Ward & Co.,* 136 S.W.2d 94, 97 (Mo. Ct. App. 1939) ("Words alone, are frequently sufficient to bring about the actual restraint of liberty."); *Black v. Clark's Greensboro, Inc.,* 139 S.E.2d 199, 201(N.C.1964); RESTATEMENT (SECOND) OF TORTS § 40 cmt. a ("[T]he actor's threat may be by words as well as by other acts."); 1 HARPER ET AL., supra note 1, § 3.8, at 337 ("In ordinary practice, words are sufficient to constitute an imprisonment " (quoting *Martin,* 54 S.E. at 293)). Thus, it wasn't merely the fact that the

Defendant blocked Plaintiff's path (through the only exit of the store, by the way), it was that fact *in combination with* the fact that prior to blocking his path the Defendant had stated in clear and unambiguous language to Plaintiff, *"Well I can't let you leave with the ice unless you're going to show me a receipt,"* (Defs' MSJ Exh. A at 1:00:07), that made Plaintiff reasonably believe that he was being detained by the Defendant. And even more so, the aforementioned blocking of Plaintiff's path (the final "cornering" of him) wasn't even the first time Defendant had stepped in front of Plaintiff while asking to see his receipt. FIRST, the Defendant can be heard at one point telling Plaintiff, *"Well I can't let you leave with the ice unless you're going to show me a receipt."* (Defs' MSJ Exh. A at 1:00:07). THEN, Plaintiff can be heard asking the Defendant, *"Are you not letting me leave?"* (Defs' MSJ Exh. A at 1:00:43). THIS particular response reveals that a first attempt had actually been made by the Defendant to block Plaintiff's path. AT THIS POINT, however, Plaintiff still sees a path around the Defendant, and takes it, as evidenced by his footsteps that can be heard in the background. BUT THEN, Plaintiff finally informs the Defendant, *"Excuse me. I have to go, I have some place I need to be."* (Defs' MSJ Exh. A at 1:00:53). THIS is the point at which Plaintiff's path is blocked ***a second time*** by the Defendant, and whereby he is now "fully cornered" and up against the wall in the vestibule, as the cornering of him is

what prompted Plaintiff to say "Excuse me." So that's ONE affirmative statement made to Plaintiff of *"Well I can't let you leave with the ice unless you're going to show me a receipt,"* followed by TWO steppings in front of him, the second of which is what caused him to stop walking and inform the Defendant that "he has to go." All "cornering" aside, the fact that such an intent was explicitly expressed to prevent Plaintiff from leaving, multiple attempts were made to prevent Plaintiff from leaving, and a final attempt appeared to be successful in preventing Plaintiff from leaving, such evidence is sufficient to constitute a genuine dispute of fact worthy of being submitted to the jury in a trial on the merits.

Last, but certainly not least, is the legal theory where once Plaintiff had his bags of ice taken from him, he felt obligated to "clear his name" by discussing with the employees the store's official receipt checking policy. This theory is worth mentioning because it still applies *even if* this Court holds that Plaintiff was never "confined" in the traditional sense of the term (as discussed above). Colorado Pattern Civil Jury Instructions 21:2(6) states that "A person's freedom of movement has been restricted when. . .[t]he person is stopped and prevented from leaving by another under circumstances that caused the person to reasonably believe that if he or she tried to leave, he or she would be immediately subjected to social disgrace." This means that, once Plaintiff's items were taken from him, he

would have **effectively admitted** to stealing them, should he have decided to resume exiting the store directly thereafter. Such "social disgrace" – that of instantly and publicly being labeled a thief – is precisely what said jury instruction plainly proscribes against. Thus, putting Plaintiff in such a predicament is a form of confinement, and therefore should likewise be an issue submitted to the jury.

Issue 2 – The Finding That The Defendant Did Not Have The Intent To Permanent Deprive Plaintiff Of His Merchandise

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of theft and intent in his response to the Defendants' Motion For Summary Judgment. The District Court ruled on the issue in its Final Order, CF pg 69.

C. Discussion

Regarding Plaintiff's second claim for relief – that he was stolen from – the District Court managed to intellectually dishonestly twist the tables on him in much the same fashion. Somehow, such a basic claim made out for a measly $5.17 has gotten lost in the abyss of sophistry and legalese. Plaintiff just wants his bags of ice back. Is that too much to ask? He called the police about it, but they wouldn't help; he was told he would have to sue. Getting back what is rightfully and obviously his (or simply the value thereof, at this point) should not require a freaking appeal to accomplish! Using an absolute modicum of common sense, any reasonable attorney, defendant, or judge could easily conclude that if Plaintiff didn't make out a valid claim for "theft" in the strict sense of the term, he at least made one out for "conversion." Other courts have looked past such formulaic semantics, and loosely used the word "stolen" in similar holdings. "There is sufficient evidence to allow a jury to find that after [Romanski] picked up an abandoned token that Defendants — by using the authority vested in them by the State of Michigan — surrounded her, arrested her, led her to the security office, prevented her from leaving the security office, and ***STOLE*** the five cents that she found from her. Afterwards, they surrounded her as they threw her out of the casino, and refused to let her use the restroom by herself. Defendants also prevented her from having lunch with her

friends [and] falsely told her friends that she had ***STOLEN*** from them." *Romanski v. Detroit Entertainment, L.L.C,* 428 F.3d 629 (6th Cir. 2005). Thus, Plaintiff, while not being an actual, official, fully-licensed, well-versed, "proper" attorney, nevertheless plead sufficient enough facts for an objectively reasonable, normal, ordinary jury to conclude – if presented with the issue and the correct jury instructions – that he simply deserves to receive his $5.17 worth of ice back to him. It is positively flabbergasting that such a simple issue over such a small amount has become so grossly convoluted so as to require an actual appeal to sort out.

Such flabbergast aside, Plaintiff still finds it hard to believe that the Defendant actually lacked the "specific intent required to permanently deprive" Plaintiff of the ice bags. Nowhere in the *Scott v. Scott* definition of civil theft to which the District Court quoted does it mention that the "intent" involved be tied to, say, "a mistaken belief of ownership" as Plaintiff now believes the District Court may potentially be referring to. Of course the Defendant mistakenly (but don't forget, unreasonably) concluded that Plaintiff was not the owner of the ice bags! That still goes to the very heart of Plaintiff's argument, though. Such a mistaken belief only serves to reinforce Defendant's intention to permanently deprive Plaintiff of the merchandise. All civil theft requires (again, according to the District Court itself) is that "the defendant knowingly obtains, retains, or

exercises control over anything of value of another" (CHECK) "without authorization or by threat or deception" (CHECK) "and acts intentionally or knowingly in ways that deprive the other person of the property permanently" (CHECK). Sounds like theft to Plaintiff. Perhaps the District Court is thinking of some sort of affirmative defense to the charge of theft based on the Defendant's "mistaken belief of ownership," but that doesn't change the fact that such a claim may still exist on its face, and be worthy of presenting to the jury in the interim. Indeed, such an affirmative defense could likely be rebutted by, say, a finding of the jury that the Defendant lacked shopkeeper's privilege in the matter, as the issue of being "reasonably mistaken" may ultimately be tied to that.

Moreover, Plaintiff believes the issue of intent is being muddied by *timing*. Sure, at the "exact" moment of [initial] taking, Defendant may have been in the midst of some dual intention – one to keep the merchandise should Plaintiff refuse to show his receipt, and one to return the merchandise should Plaintiff decide to show his receipt. But it is obvious that when Plaintiff stayed on his "side" of refusing to show his receipt, the Defendant decided to stay on his "side" of now permanently keeping the merchandise. Meaning, if it wasn't theft "at the moment of taking," it certainly became theft "at the moment of keeping." This is important because it flies in the face of Defendants' own argument on the issue. In their own

words, the Defendants said that "When the associate exercised control over the bags of ice, Plaintiff was not instructed to leave, nor was he accused of any crime." CF at pg 60. Yet shortly thereafter Plaintiff ***WAS*** instructed to leave, and ***WAS*** accused of a crime, but obviously did not have his merchandise returned to him yet. At that point, any intent Defendants had to "afford[] Plaintiff every chance to go home with the merchandise," CF at pg 26, quickly graduated into a full-blown intent to ***keep*** whatever merchandise they had reclaimed from him. It's nothing but semantics at this point to argue over "intent" when technically two such moments of "taking" had occurred – the [initial] moment of taking, and the [final] moment of keeping. If it's not obvious, Plaintiff is really only concerned with the second "moment" – the moment he was told to leave but had no reasonable means of leaving with his merchandise in hand.

Finally, it cannot be stressed here enough that, just like during false imprisonments as discussed above, the onus **WAS NOT, IS NOT, AND WILL NEVER BE** on a customer to show a merchant "proof of his innocence" – or if not, somehow ***forfeit*** ownership of property that is rightfully his to keep. This provides no good excuse for a merchant to commit theft (let alone false imprisonment) and is nothing more than mere sophistry used to skirt liability in the matter. Just think of how easy it would be for a merchant to curb shoplifting

occurrences if all it had to do was place employees at every exit, ask every customer on their way out for their receipts, detain every customer who didn't show them, and take back every item for which proof of purchase was not provided! Yeah, no. That's nothing but a checkpoint employed by thugs committing literally countless thefts and false imprisonments, all utterly repugnant to the Constitution as well as to any other rule of man in any other civilized nation. "It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

CONCLUSION

Ultimately, the Defendant ("John Doe") in this matter intended to, and did, detain Plaintiff Montgomery. It it irrelevant to the issue of "confinement" that Plaintiff knew he had any receipts on him, or that he could or should have showed them, as none of this changes the fact that a completed detention had already

occurred of him, and whereby any release from that detention can never be contingent on the showing of a receipt (or any other request, for that matter). Indeed, asking to provide a receipt is "essentially a request for consent to search, [and] a customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [and whereby] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* And finally, once Plaintiff had his items stolen from him, he had no choice but to stay and defend his innocence – or risk being publicly labeled a thief otherwise – thus constituting a false imprisonment of him regardless of the circumstances.

Even though the District Court did not specifically rule on the issue of "shopkeeper's privilege," it bears repeating that the Defendant, who had been standing in the store vestibule and about 10 to 15 feet away compared to where Plaintiff and the other associate had been standing, did not see or witness **literally anything** that would have *even begun* to fairly form a "reasonable [ ] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "In fact, [Defendant] never saw [Plaintiff] anywhere in the

store until [he was] walking out of the store." *Id.* Thus, **"When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion."** *Id.* Moreover, because the Defendant never once differentiated between the two bags of ice that he would have otherwise saw Plaintiff walk to a nearby register upon store re-entry (had he been posted up closer to inside the store) and the third bag of ice that Plaintiff had grabbed on his way back out, he himself – through his very own admissions – exposed that he didn't even remotely witness what could have possibly happened. "Probable cause cannot be based on mere belief [] that somebody did or did not do something. [] In other words, a person must have reasonable grounds to believe that another is stealing his property, as distinguished from those where the offense has been completed, that he is justified in detaining the suspect for a reasonable length of time for the purpose of investigating in a reasonable manner. [] The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *J. C. Penney Co. v. Cox*, 246 Miss. 1, 148 So. 2d 679 (Miss. 1963).

And finally, even though Plaintiff may have not sufficiently plead a claim for "theft," he most certainly did for a claim of "conversion." He is undoubtedly entitled

to relief for the $5.17 worth of merchandise taken from him – first temporarily, but then ultimately, permanently. And even then, the issue of "intent" may nevertheless apply to takings involving mistaken beliefs of ownership, as no such concept is anywhere to be found in the common law, civil definition of the tort of "theft."

WHEREFORE, the Court of Appeals should REVERSE the District Court's granting of Defendants' Motion For Summary Judgment, on both Plaintiff's claims for relief, thereby REINSTATING and REMANDING them to the Jefferson County District Court for further proceedings not inconsistent with its opinion.

Respectfully submitted on this, the 23rd day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 23rd day of June, 2021, the foregoing **PLAINTIFF'S APPEAL OPENING BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Colorado Court Of Appeals 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:49 PM
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Jason D. Carrithers** District Court Case Number: **2020CV76** CCOA Judges: **Judge Toe, Dailey, and Berger**	
WILLIAM MONTGOMERY Plaintiff-Appellant vs. **WAL-MART STORES, INC., JOHN DOE.** Defendant-Appellees	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Court Of Appeals Case No: **2021CA359**
COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals the following COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this COMBINED PETITION complies with all the requirements of C.A.R. 40 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, I certify that this COMBINED PETITION contains

3342 words, which does exceed the 1,900 word limit, but to which can be allowed by this Court via Plaintiff's attached MOTION TO EXEED WORD COUNT.

William Montgomery
William Montgomery

INTRODUCTION

Plaintiff's case is of significant national importance. For decades now, case law and public opinion have been ***extremely*** well settled on the issue that simply refusing to show your receipt on your way out of a store, to a merchant merely posted up at its exit, but who hasn't witnessed anything resembling you steal, does not provide sufficient lawful justification (i.e. shopkeeper's privilege) for them to legally detain you with. **Yet such is precisely what this Court of Appeals has just ruled the opposite to.** This tremendous injustice cannot be allowed to stand.

The following are just a few of the cases, law reviews, news articles, and websites devoted to ***precisely*** this issue. Plaintiff's case is by no means a novel one.

Ball v. Wal-Mart, Inc., 102 F. Supp. 2d 44 (D. Mass. 2000).

Victoria S. Salzmann, Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)).

Can a Store Legally Check Your Bag or Make You Show a Receipt?
https://wbkr.com/can-a-store-legally-check-your-bag-or-make-you-show-a-receipt/

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ARGUMENT

I. THE PANEL HAS MISREAD AND MISAPPREHENDED THE LAW

In the Court Of Appeals Order affirming Plaintiff's appeal, the panel refers to *Comment A* of the R*estatement (Second) of Torts § 36* to support the notion that Plaintiff was purportedly never confined by the Defendants because of how "being asked to show a receipt. . .is *at most* a 'slight inconvenience.'" *CCOA ORDER Dated May 12, 2022; page 6.* However, the panel has misread and misapprehended the *Comment*, which **literally**, **specifically,** and **explicitly** states the legislature's **plain** and **unambiguous** intent to define "escape," "inconvenience," etc. **as applying strictly to PRE-CONFINEMENT situations only** (and not to post-confinement ones, once they have occurred). *See Restatement (Second) of Torts § 36, Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** *imprison* to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). *Notice the Legislature's specific use of the* ***present-tense*** *phrase "intends to imprison"? That's not "has imprisoned," that's "intends to imprison."* **Meaning, if the Legislature wanted their definition of "escape" to apply to post-confinement situations in addition to pre-confinement ones, they would have plainly stated as much. BUT THEY DIDN'T.** Of course, Plaintiff's appeal panel did explicitly state their own view taken that "the term 'escape' [] simply

refer[s] to ending any confinement that may have occurred." However, this unsupported-by-statute-or-case-law view **directly contradicts** the "any amount of time, **no matter how short**" clause of the false imprisonment tort that is used to satisfy that particular element with. *See Colorado Civil Jury Instruction 21:1(2).* This means that, once a completed confinement takes place, **NO MATTER HOW SHORT**, the only issue left to decide is if it was lawfully justified (with reasonable suspicion, probable cause, shopkeeper's privilege, etc.). OF COURSE, this is not to say that a person, **post-confinement**, who **subsequently** discovers (or is given) a way to escape his imprisonment, should not utilize such a means. [It would certainly be incumbent upon him to do so.] THIS ONLY MEANS that such a **subsequently discovered (or given)** means of escape, *even if taken*, **does not nullify the PRIOR, COMPLETED, INITIAL, OUTRIGHT confinement of him from having occurred in the first place (and thus, still requiring reasonable suspicion, probable cause, shopkeeper's privilege, etc. to lawfully justify).**

II. THE PANEL'S MISINTERPRETATION OF THE LAW CREATES "ABSURD" RESULTS IN ITS APPLICATION

When a court interprets a statute, it should not do so in ways that defeat the legislature's obvious intent or render part of the statute either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,*

___ P.3d ____, 2005 WL 3312826 (Colo.App. No. 04CA1223, Dec. 8, 2005).

Colorado Civil Jury Instruction 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property."

a. The panel has misinterpreted the phrase "unreasonable risk of harm"

Here, the panel (and trial court, and Defendant) have misinterpreted the phrase "unreasonable risk of harm" in such a way that it defeats the legislature's obvious intent of the use of such a phrase (which thus, renders it absurd). The Merriam-Webster Dictionary defines "harm" as "physical or mental damage." Thus, it strains credulity that within the definition of "harm" the legislature would have intended to include anything other than physical or mental acts of violence. This is especially true considering that it further defined types of harm (and their attendant threats) in its following three instructions. *See Colorado Civil Jury Instruction 21:2(2–4).* Indeed, Plaintiff wholeheartedly agrees with everybody that "showing a valid receipt does not subject [him] to an 'unreasonable risk of harm.'" ***Of course it doesn't!*** A store employee simply holding a receipt in his hands while verifying store purchases is not a physically or mentally violent act at all. As such, the legislature would have never

intended as much. *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking your only way out of a store until they forcefully verify your receipt against your merchandise will practically always involve "an unreasonable risk of harm" as the phrase is correctly used.*

b. Equal application of the law compels a more broad definition of "escape" to be utilized

Next, the panel's interpretation of the term "escape" as purportedly encompassing within it the act of merely "showing a valid receipt" results in even more absurdity when its application is then uniformly applied across the population as a whole. That is, according to the panel, **customers who happen to throw away their receipt** and even **thieves** could claim false imprisonment, **while customers who keep their receipt could not**! Such a result is patently absurd, as a paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all three** categories of people actually have **equal** standing to lodge a valid claim of false imprisonment against an employee merely "posted up" at a store's exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with]. Additionally, Walmart (and several other stores like Walgreens, Best Buy, Micro Center, etc.) have now begun to offer the sending of email-only receipts to customers who pay with an associated credit or debit card. **So now people who pay with a card have**

more of a right against false imprisonment than people who pay with cash?

Such a result, is once again, clearly and manifestly ABSURD!

c. Showing a receipt and refusing to show a receipt cannot both be a form of consent

Next, because the act of "showing a receipt" is itself already construable as voluntarily giving consent to a detention, *see Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966), when coupled with the panel's position, even more absurdity results. This is because if their position were valid, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order "to vindicate themselves" as *Grayson* puts it), customers who decline to show their receipt would also be "choosing to stay" (i.e. "forgoing escape" as the panel puts it). However, this obviously creates a "damned if they do show it, damned if they don't show it" always-subject-to-a-detention-either-way scenario, and to which is patently absurd and manifestly unfair to the customer who is now unable to sue a merchant ***at all***, should they happen to be detained for refusing to show their receipt (and shopkeeper's privilege is lacking for their detention otherwise).

d. Being detained for suspected shoplifting is not a "slight inconvenience"

In a similar case Plaintiff filed in Arapahoe County, the Defendant claimed that showing a valid receipt would allow Plaintiff to **"immediately"** exit the

store. However, such a release of Plaintiff would by no means be "immediate." Not only does it take time for a customer to locate their receipt, remove it from their pocket/wallet/purse, and present it to a store employee (which alone is sufficient to satisfy the "any amount of time, **no matter how short**" element of false imprisonment, it invariably takes **an even more appreciable amount of time** for a store employee to stand there, analyze a receipt, and cross-check it against a patron's merchandise, before finally conditioning their release. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000), **A CASE DIRECTLY ON POINT** where the Court held that, ***even after*** Ms. Ball had provided the store employee with her receipt, there was enough evidence in the record for a jury to decide that "she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

e. Escape is a "one party" action, not a "two party" action

Also in the case Plaintiff filed in Arapahoe County, the Defendant defined "escape" as "to get away (as by flight)" or "to issue from confinement." Such definitions still naturally and logically hinge on the notion that a person "escaping" **would be doing so single-handedly and of their own volition** (i.e. "to [self] issue from confinement," ***not*** "to [be issued] from confinement"). In other words, if a

prisoner still requires ***permission*** from their captor in order to be ***set free*** by them, one can hardly call that a viable means of "escape." Rather, as already mentioned, that's nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (and importantly, *not even guaranteed*) release of the subject that doesn't actually occur **until after** the captor **grants** it. This is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.,* 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [ ] no physical restraint of her person was attempted." *Id.* As such, **there exists a critical window of time in between when a merchant confines a patron and when they decide to release them,** *and within which the patron may very have done everything asked of them,* but is still nevertheless **OUTRIGHT** detained by the merchant **pending an independent, conscious decision to be made by them** to finally and eventually be released by them. As in, **the store employee is not some infallible robotic gatekeeper that one can simply wave their receipt in front of and be 100% guaranteed their own way out.** Purchase verification invariably takes time to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee keep holding them until it's finally done.

f. If a person is forced to give up one right for another, they are "imprisoned" within the legal definition of the term

Last, but absolutely the most important reason why the panel's position is invalid, is because a Plaintiff who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [ ] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution; Fourth Amendment to the Colorado Constitution.* Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, to anybody, PERIOD.** There simply exists no law, no store policy, nothing remotely of the sort to even begin to create such a "right" for a merchant to see a customer's receipt.

Accordingly, because the Defendants required Plaintiff to show his receipt in order to leave their store, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – his right to be secure**

in his papers. Of course, Plaintiff never actually "gave up" his right of locomotion, as during his attempted store exiting his path was physically and continuously blocked by the Defendants who physically and continuously wouldn't let him leave despite his physical and continuous attempts to do so. However the original argument still stands – that *even if* "showing a valid receipt" could be considered some "avenue of escape," such would *still* not invalidate his false imprisonment claim.

II. THE TORT OF FALSE IMPRISONMENT DOES NOT REQUIRE MOVEMENT OF THE VICTIM

In the Court Of Appeals Order, the panel also claimed that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," that he was not false imprisoned. *CCOA ORDER Dated May 12, 2022; page 7.* However, none of these actions are necessary to fulfill the elements of false imprisonment. The essential elements of false imprisonment are simply that a person **a)** knowingly confines or detains another, **b)** without the other's consent, and **c)** without proper legal authority. *See C.R.S. § 18-3-303.* **THAT'S IT. No movement of the person is necessary** – that's what second degree kidnapping entails. *See People v. Arispe,* 191 Colo. 555, 555 P.2d 525 (1976).

Moreover, the panel further claimed that no such case exists "in which a store patron was found to have been falsely imprisoned in the absence of one or

more of those facts." Yet one such case does indeed exist – ***Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000).** Of course, a small difference lies between Plaintiff's instant case and that of *Ball v. Wal-Mart, Inc.* – that Plaintiff had his path physically blocked and was cornered ***outright*** by the Defendants (whereas Ms. Ball simply had her cart blocked by the store employee). But this only cuts *against* the notion that Plaintiff was not false imprisoned, not with it!

III. MERCHANTS CAN'T INVENT POLICIES THAT BREAK THE LAW

The Court Of Appeals panel also claimed that no statute exists "that prohibits a merchant from requiring customers to display a receipt before leaving a store with goods in hand." **However, while technically true on its face, merchants are still absolutely not free to make policies THAT VIOLATE THE LAW!** And indiscriminately detaining – without shopkeeper's privilege – all patrons who refuse to show their receipt on their way out, is one such policy. In fact, even when shopping at stores like Sam's Club, Costco, etc. where an actual membership agreement is signed that includes a patron's express consent to have their receipt checked on their way out, if that patron actually decides to refuse such a request, **all that merchant can do is revoke that patron's membership, and literally nothing more.** The merchant can't just start detaining the patron without having obtained shopkeeper's privilege in order to lawfully do so with! Of course, Walmart isn't even

a membership-based store, nor does it advertise compulsory receipt checking at its doors. Indeed, according to Walmart's official receipt checking policy, quite the opposite is true. *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000). But no, while Plaintiff certainly "remains free to opt not to frequent merchants who engage in this practice and to take his business elsewhere," merchants are certainly not free to detain, willy-nilly, anybody they want, for any reason, *even if they say so*, **unless of course they have shopkeeper's privilege to lawfully do so with.**

IV. PLAINTIFF WASN'T JUST ASKED TO SHOW HIS RECEIPT, HE WAS PREVENTED FROM LEAVING

Next, it should be noted here that Plaintiff isn't claiming that the act itself of being asked to show his receipt is what constituted his false imprisonment. Rather, he's claiming that **having his path PHYSICALLY BLOCKED and BEING CORNERED by the Defendants upon refusing to show his receipt** is what constituted his false imprisonment. This is a critical distinction that evidently needs to be made, as the wording of the Appeals panel is less than clear on this issue when it claimed that "No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment." *CCOA ORDER Dated May 12, 2022; page 7.*

V. PLAINTIFF WAS SUBJECTED TO SOCIAL DISGRACE ONCE HIS ITEMS WERE TAKEN FROM HIM

Last, the Appeal panel's claim that Plaintiff's "own conduct in refusing to produce the receipt as proof of purchase" somehow nullifies his claim that "leaving would subject him to 'social disgrace' and being labeled a thief" is both contrary to case law, and not supported by the facts.

First, law enforcement officers (and by extension, shopkeepers) "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). **Therefore, the Defendants cannot lay blame on Plaintiff for refusing to consent to a search, nor can such a refusal be the basis for "bootstrapping" their suspicions of him.**

Second, but more importantly, is that Plaintiff isn't claiming that leaving after

simply being asked to show his receipt is what would have subjected him to social disgrace / being labeled a thief, **he's claiming that leaving AFTER THE DEFENDANTS FORCIBLY TOOK REPOSSESSION OF HIS ITEMS is what would have subjected him to social disgrace / being labeled a thief.** Simply being asked to show a receipt (which the Defendants themselves admitted during the encounter wasn't meant to be construed as an accusation of theft) is a much less serious offense **than the act of reclaiming purportedly stolen goods**. At that point, such accusations of theft were full-blown (and naturally coincided with a merchant claiming shopkeeper's privilege). Thus, once Plaintiff's items were taken from him, any onlooker would have naturally concluded that he was guilty of shoplifting.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the Court of Appeals should **GRANT** Plaintiff's COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC in this matter.

Respectfully submitted on this, the 26th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 26th day of May, 2022, the foregoing **COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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SUPREME COURT, STATE OF COLORADO 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:49 PM
On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2021CA359**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WAL-MART STORES, INC. & JOHN DOE** Defendants / Respondent-Appellees	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Supreme Court Case No. **22SC503**
PETITION FOR WRIT OF CERTIORARI	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Supreme Court the following PETITION FOR WRIT OF CERTIORARI, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this PETITION complies with all the requirements of C.A.R. 32 and C.A.R. 53, including all formatting requirements set forth in these

rules. Specifically, I certify that this PETITION contains 3,796 words, which does not exceed the 3,800 word limit.

William Montgomery
William Montgomery

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ADVISORY LISTING OF THE ISSUES

1. Whether the act of a patron showing their receipt, ***after*** having been physically detained outright by a merchant, constitutes a viable avenue of "escape" [i.e. not just "release"] for them, such that said prior detention of them is then **nullified** from having occurred in the first place [and thus, no longer requiring legal justification – i.e. shopkeeper's privilege – to lawfully justify it with].

2. Whether being moved and/or arrested are necessary elements of a valid false imprisonment claim.

OPINION FROM WHICH RELIEF IS SOUGHT

A division of the Colorado Court Of Appeals issued an Opinion in Case No. 2021CA359 affirming the dismissal of Plaintiff's Complaint filed in the Jefferson County District Court. Plaintiff filed a *Petition For Rehearing* which was denied. The Court Of Appeals Opinion and the Order Denying Plaintiff's *Petition For Rehearing* are therefore attached to this *Petition For Writ Of Certiorari.*

BASIS OF JURISDICTION

Plaintiff filed a civil Complaint in the Jefferson County District Court, claiming false imprisonment and theft of goods. The District Court dismissed the Complaint upon the granting of Defendants' Motion For Summary Judgment of it. Plaintiff appealed the dismissal to the Colorado Court Of Appeals, Case No. 2021CA359. On

May 12, 2022, the Court Of Appeals issued an Opinion and Order affirming the dismissal. On May 26, 2022, Plaintiff filed a *Petition For Rehearing*. On June 9, 2022, the Court Of Appeals issued an Order denying the *Petition For Rehearing*. This *Petition For Writ Of Certiorari* is timely because it is filed within twenty-eight (28) days of the denial of the *Petition For Rehearing*. See C.A.R. 52(b).

REFERENCE TO PENDING CASES WITH THE SAME LEGAL ISSUES

Plaintiff is unaware of any pending cases with the same or similar legal issues.

STATEMENT OF THE CASE

One evening Plaintiff went shopping at a Lakewood Walmart Superstore. He walked in, grabbed two bags of ice from a cooler, walked the bags to a cashier, and paid for them. While at the register, Plaintiff bought a third bag of ice, which he then picked up from the cooler on his way back out of the store. On Plaintiff's way out, he was asked to show his receipt by a store employee who saw him grab the third bag of ice. Plaintiff politely declined. The employee then flagged a second employee down for assistance, who had been "posted up" about 10 or 15 feet around the corner and fully out of sight (who thus, had not witnessed Plaintiff grab the third bag of ice, let alone pay for all three immediately prior to). Plaintiff was then asked by this second employee to show his receipt, of which he again politely declined. Plaintiff then continued to exit

the store, was twice stepped in front of by this second employee only, who he then twice successfully stepped around in order to continue exiting. Then, a third attempt to stop Plaintiff from leaving was made by this second employee only, who at that point cornered Plaintiff against the wall in the store's vestibule in order to successfully prevent him from leaving. Next, Plaintiff set his three bags of ice down to begin arguing with the store about how they were violating their corporate policies and case law on the subject. Eventually, the second employee took all three bags of ice from Plaintiff (i.e. he did not differentiate between the first two, and the third, thereby exposing that he recklessly and erroneously believed Plaintiff had failed to pay for all three). Plaintiff was then told to leave the store, which he did.

A year later, Plaintiff sued Walmart and the second employee only (the one who detained him and took his items but didn't properly establish shopkeeper's privilege in order to lawfully do so with). At the Summery Judgment stage of the proceedings, the Judge casually dismissed Plaintiff's false imprisonment claim by concluding that "showing a receipt is an objectively reasonable action to escape imprisonment" that Plaintiff simply "chose" not to avail himself of.

REASON FOR ISSUING THE WRIT

For decades now, Courts in this country have unanimously and consistently held that merchants' bare, suspicionless, unparticularized, systematic, outright

detentions of patrons conducted *in order to* verify their receipts against their purchases [and nothing more] as well as outright detentions of them conducted solely *in response to* their mere refusal to show their receipts [and nothing more] are unlawful due to what is called "shopkeeper's privilege" lacking in the matter. Unfortunately, the Colorado Court Of Appeals has now unprecedentedly deviated from this well-settled legal principle, henceforth rendering justice categorically impossible to achieve for unsuspecting patrons who happen to get unjustifiably detained for simply refusing to show their receipts. The Appeals Court has accomplished this by irrationally and illogically merging into one single, unified, contemporaneous transaction the *asking* to show a receipt with the *detention* that follows it – so that they can "fit" the now heavily-downplayed act of "showing a receipt" into some purportedly autonomous "escape" path that a patron must not forgo using (when really, by definition, showing a receipt would only secure their conditional, ***post****-confinement* "release" from custody). **This is not what the Colorado Legislature had intended by their use of the term "escape."** As such, it is critically necessary for the Supreme Court to step in now to correct such a dangerous misconception made by the lower Courts. Patrons, like all citizens, deserve to have meaningful access to justice in this country. But until stopped, merchants now have **free reign** to detain whomever they want, whenever they want, **with 100% absolute impunity for their actions otherwise**.

ARGUMENT

I. THE COURT OF APPEALS HAS MISREAD AND MISAPPREHENDED THE LAW

a. The terms "escape" and "inconvenience" apply to pre-confinement situations only

In the Order affirming Plaintiff's dismissal, the Panel refers to *Comment A* of the R*estatement (Second) of Torts § 36* to support the notion that Plaintiff was purportedly never confined by the Defendants because of how "being asked to show a receipt. . .is *at most* a 'slight inconvenience.'" *CCOA Order at Page 6.* However, the Panel has misread and misapprehended the *Comment*, which **specifically** states the Legislature's plain and unambiguous intent to define "escape" [and more importantly, "inconvenience"] **as applying strictly to PRE-confinement situations only** (i.e. not to post-confinement ones, once they have occurred). *See Restatement (Second) of Torts § 36, Comment A* ("[I]t is unreasonable for one whom the actor ***intends to*** imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). *That's not "has imprisoned," that's "intends to imprison."* Therefore, the Panel's unique position taken – that "the term 'escape' [] simply refer[s] to ending any confinement that may have occurred" – **directly contradicts the established law.** Moreover, their position also directly contradicts the "any amount of time, **no matter how short**"

clause of the false imprisonment tort that is used to satisfy that particular element with. S*ee Colorado Civil Jury Instruction 21:1(2).* This means that, once a **completed** confinement takes place, **NO MATTER HOW SHORT**, the only issue left to decide is if it was lawfully justified (with shopkeeper's privilege, for instance). OF COURSE, this is not to say that a person, **post-confinement**, who **subsequently** discovers a way to escape their imprisonment (through, say, an exit they didn't know existed before) should not utilize such a means. [It would certainly be incumbent upon them to do so.] THIS ONLY MEANS that such a **subsequently discovered** avenue of escape, *even if taken*, **DOES NOT NULLIFY THE PRIOR, COMPLETED, INITIAL, OUTRIGHT DETENTION OF THEM FROM HAVING OCCURRED IN THE FIRST PLACE** (and thus, still requiring shopkeeper's privilege, for instance, in order to lawfully justify).

b. The jury instruction at issue encompasses "physical" harm only

Colorado Civil Jury Instruction 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers ***and*** does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property." (Emphasis added by Plaintiff). What this means is that the Legislature's use of the phrase "unreasonable risk of harm" [that

would be incurred during an escape] **was intended by them to be strictly associated with** "physical barriers" [that a person is being limited to]. "It must be presumed that the legislature has knowledge of the legal import of the words it uses. . .and that it intends each part of a statute to be given effect." *People v. Guenther,* 740 P.2d 971, 976 (Colo. 1987). "The legislative choice [of language may be concluded to be] a deliberate one calculated to obtain the result dictated by the plain meaning of the words." *Id.* "If the legislature had wished to use the term 'or' instead of 'and,' it could have easily done so." *City and County of Denver v. Gallegos,* 916 P.2d 509 (1996). Thus, the proper way to interpret Colorado Civil Jury Instruction 21:2(1) is to consider the "harm" it speaks of as that of **STRICTLY PHYSICAL HARM**, created by **STRICTLY PHYSICAL BARRIERS**, that one should not be required to take the "unreasonable risk" of incurring, during some escape attempt. As such, the obviously non-physically or mentally violent act of merely "showing a valid receipt" **does not fall within the scope of the instruction** as it was intended to be interpreted.

c. Showing a receipt only results in the [conditional] "release" of a person; it is not an [autonomous] avenue of "escape" for them

The Merriam-Webster Dictionary defines "escape" as "to get away (as by flight)" or "to issue from confinement." These definitions naturally and logically hinge on the notion that a person "escaping" **would be doing so single-handedly and**

of their own volition (i.e. "to [self] issue from confinement," ***not*** "to [be issued] from confinement"). In other words, if a prisoner still requires ***permission*** from their captor in order to be ***set free*** by them, one can hardly call that a viable avenue of "escape." Rather, that is nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (and importantly, *not even guaranteed*) **RELEASE** of the subject that doesn't actually occur **until after** the captor **grants** it. *[See Merriam-Webster Dictionary definition of "release," which aptly defines it as "to set free from restraint, confinement, or servitude."]* Indeed, this distinct lack of autonomy is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [] no physical restraint of her person was attempted." *Id.* As such, **there exists a critical window of time in between when a merchant confines a patron and when they decide to release them,** *and within which the patron may very well have done literally everything possible that has been asked of them,* but is ***still*** nevertheless **OUTRIGHT** detained by the merchant **pending an independent, conscious decision to be made by them,** to finally and eventually be released by them. As in, **a store employee is not some infallible robotic gatekeeper that one can simply wave**

their receipt in front of and be 100% guaranteed their instantaneous own way past. Purchase verification invariably takes time to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee keep holding them until such verification is accomplished.

d. One cannot "escape" a confinement <u>that has not yet been undertaken</u>

It appears that the Panel has attempted to reconcile this very conflict of "escape" vs. "release" – by somehow merging the Defendant's act of ***asking*** to see Plaintiff's receipt, with their ***detention*** of him that later followed it. *See CCOA Order at Page 8* ("No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."). **ABSOLUTELY CRITICAL TO NOTE HERE,** is that Plaintiff ***<u>never</u>*** claimed in his Complaint that the act *itself* of him being asked to show his receipt is what constituted his confinement. Rather, he ***<u>specifically</u>*** stated that the act ***of physically blocking his final pathway by cornering him against the wall*** is what actually constituted his confinement. *[Unfortunately, the Court Of Appeals Order is completely bereft of any mention to this critical fact of Plaintiff being <u>cornered</u>.]* Regardless, merging the act of *asking* with the act of *confining* into some single, unified, contemporaneous transaction carries with it its own set of logical fallacies. This is because in Plaintiff's claim it wasn't until ***<u>AFTER</u>*** he had

refused to show his receipt [by successfully twice stepping around the Defendants] that they finally decided to detain him [by cornering him against the wall]. BUT ONE CANNOT, **BY DEFINITION**, "ESCAPE" A CONFINEMENT THAT HAS NOT YET BEEN UNDERTAKEN. Thus, Plaintiff cannot be faulted for purportedly "failing to avail himself" of some purported "show us your receipt to escape" path that, **by definition,** DID NOT EXIST.

e. The Court Of Appeals interpretation of "escape" violates the Equal Protection Clause of the U.S. and Colorado Constitutions

When a court interprets a statute, it should not do so in ways that defeat the Legislature's obvious intent or render part of the statute either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,* ___ P.3d ____, 2005 WL 3312826 (Colo. App. No. 04CA1223, Dec. 8, 2005). However, in the present circumstance, the Panel's interpretation of the term "escape" as purportedly encompassing within it the act of merely "showing a valid receipt" results in patent absurdity when its application is then uniformly applied across the population as a whole. That is, according to the Panel, **customers who happen to throw away their receipts, customers who opt for e-mail only receipts**, and even **actual thieves** have a valid claim of false imprisonment, **while customers who keep their receipts do not**! Such a result is patently absurd, as a

paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all four** categories of people actually have an **equally** valid claim of false imprisonment against an employee merely "posted up" at a store exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with].

f. Showing a receipt and refusing to show a receipt cannot both be a form of consent

Courts have held that the act of "showing a receipt" already constitutes voluntarily giving consent to a detention. *See Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005). *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). Thus, when coupled with the Panel's position, even more absurdity results. This is because if the Panel's position were correct, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order to "establish their innocence" as *Broadnax* puts it), customers who decline to show their receipt would ***ALSO*** be "choosing to stay" (i.e. "choosing to not avail themselves of the exit" as the Panel puts it). However, this obviously creates a "damned if they do, damned if they don't" always-subject-to-a-detention-either-way scenario, which is patently absurd and manifestly unfair to the customer. That is, shopkeepers would thereby enjoy **literal absolute immunity** when detaining all customers who happen to have their receipt on them – regardless of how little

shopkeeper's privilege they may have in each matter – as no detainment of said patrons would EVER be able to occur either way, by definition, in the first place!

g. Being detained for suspected shoplifting is not a "slight inconvenience"

The Court Of Appeals claims that "being asked by a retailer to show a receipt as proof that an item was actually purchased. . .is at most a 'slight inconvenience.'" *CCOA Order at Page 7.* While the Panel may be correct that being ***asked*** to show a receipt is "at most a 'slight inconvenience,'" being ***detained*** in order to be ***force-exculpated*** is a much more serious occurrence. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court held that, ***even after*** Ms. Ball had provided the store employee with her receipt [which was not dispositive of the involuntariness of the encounter, as her cart had already been involuntarily stopped prior to], there was enough evidence in the record for a jury to decide that "she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

h. Merchants are not allowed to make store policies that systematically violate the law

The Court Of Appeals claims that no statute exists "that prohibits a merchant from requiring customers to display a receipt before leaving a store with goods in hand." *CCOA Order at Page 7.* **However, while that phrase is technically true**

on its face – "that no statute exists" – merchants are still absolutely not free to make store policies that systematically violate the law! *Yet indiscriminately detaining – without a lick of shopkeeper's privilege – literally any and all patrons who refuse to show their receipt on their way out, is one such systematically law-violating policy.* In fact, even when shopping at stores like Sam's Club, Costco, etc. where an actual membership agreement is signed that includes a patron's express consent to have their receipt checked on their way out, if that patron actually decides to refuse such a request, **all that merchant can do is revoke that patron's membership, and literally nothing more.** The merchant can't just start literally detaining that patron, right then and there, without having obtained shopkeeper's privilege in the matter in order to lawfully do so with!

The larger problem with the Panel's argument, though, is that it is actually Walmart's official store policy to ***NOT*** detain patrons who refuse to show their receipt on their way out! *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000). Thus, it is manifestly unfair (and rather illogical) to even say to Plaintiff, "if you don't like the store policy, you can shop elsewhere." Indeed, every time Plaintiff has ever shopped at a Walmart Superstore, **he has done so with the store's official receipt checking policy in mind**! OF COURSE he doesn't show his receipt when asked – Walmart itself has officially told him that he SHOULD NOT

be stopped if he doesn't! *Yet by faulting Plaintiff after the fact, on the occasions that he happens to become detained for literally following said policy, the Court Of Appeals has done nothing but pull a manifestly unfair "bait and switch" on him.*

i. If a person is forced to give up one right for another, they are "imprisoned" within the legal definition of the term

Another reason why the Panel's position is incorrect, is because a person who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution; Fourth Amendment to the Colorado Constitution.* Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, to anybody, ever, PERIOD.** Much like how no law or store policy exists that gives people the right to have $5 of another's, there exists no law or store policy that gives a merchant the right to see a customer's receipt, even for

a second, no matter how trivial of a request such may seem.

Accordingly, because the Defendants required Plaintiff to show his receipt in order to leave their store, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – his right to be secure in his papers**. Of course, Plaintiff never actually "gave up" his right of locomotion, either, as during his attempted store exiting his path was *physically* blocked by the Defendants who *physically* cornered him against the wall in the store's vestibule.

II. THE TORT OF FALSE IMPRISONMENT DOES NOT REQUIRE MOVEMENT OF THE VICTIM

In the Court Of Appeals Order, the Panel claims that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," that he was not false imprisoned. *CCOA Order at Page 7.* However, none of these actions are necessary to fulfill the elements of false imprisonment. The essential elements of false imprisonment are simply that a person **a)** knowingly confines or detains another, **b)** without the other's consent, and **c)** without proper legal authority. *See C.R.S. § 18-3-303.* **THAT'S IT. No movement of the person is necessary** – that's what second degree kidnapping entails. *See People v. Arispe,* 191 Colo. 555, 555 P.2d 525 (1976).

Moreover, the Panel further claims that Plaintiff has presented no case "in

which a store patron was found to have been falsely imprisoned in the absence of one or more of those facts." Yet Plaintiff most certainly has – *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000) and *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). *See also Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935) ("Physical force is not required to complete a false imprisonment.").

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff humbly requests that this Court **GRANT** his *Petition For Writ Of Certiorari* in this matter, so that a review of his District Court case can be undertaken, errors in it can be corrected, and dismissal of his false imprisonment claim contained therein be **REVERSED** and **REMANDED** for further instructions not inconsistent with the opinion.

APPENDIX

The May 12, 2022 Opinion issued by the Colorado Court Of Appeals in 2021CA359 and the June 9, 2022 Order denying Plaintiff's *Petition For Rehearing* are filed as an attachment to this pleading.

Respectfully submitted on this, the 7th day of July, 2022.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 7th day of July, 2022, the foregoing **PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:50 PM
Appeal From: **Adams County District Court** District Court Judge: **The Honorable Teri Vasquez** District Court Case Number: **2021CV68** (Consolidated: **2021CV88**)	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WALMART INC.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2023CA159** Adams County District Court Case No: **2021CV68** (Consolidated: **2021CV88**)
PLAINTIFF'S APPEAL OPENING BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his APPEAL OPENING BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My brief has **9,408** words, which does not exceed the 9,500 word limit allowed by this Court for appeal opening briefs.

Included Sections: In the Arguments section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The Standard of Review: I let the Court of Appeals know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the Record on Appeal I raised the issue to the District Court and where the District Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
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ISSUES ON APPEAL

1. Did the District Court err in finding that the Defendant did not, as a matter of law, confine Plaintiff?

2. Did the District Court err in finding that the Defendant possessed shopkeeper's privilege for its actions?

3. Did the District Court err in finding that Plaintiff did not prove, as a matter of law, that the Defendant had slandered him, *per se,* in front of others?

STATEMENT OF THE CASE

For several years [before being unjustifiably, arbitrarily, and retaliatorally banned from further doing so] Plaintiff shopped at, and refused to show his receipt on his way out of, numerous WALMART SUPERSTORES across the Colorado Front Range. On near all (read: *literally hundreds of*) occasions, he was permitted to leave without issue. Only on a select few occasions, at a select few stores, was Plaintiff unlawfully not permitted to leave. The two cases at bar, are two such occasions.

I. FACTS COMMON TO BOTH CASES (2021CV68 & 2021CV88)

In both of Plaintiff's Cases, Plaintiff entered a WALMART SUPERSTORE, to go shopping.

Just before entering each store, Plaintiff started an audio recording on his cellular

phone, so as to protect himself in the rare circumstance that his rights are violated while attempting to leave. Initially, Plaintiff did not start audio recordings before shopping, but once he experienced enough adverse encounters, he began doing so out of caution. Plaintiff otherwise routinely deletes the audio recordings of each mundane encounter (similar to what police do with uneventful bodycam footage) but saves the recordings that happen to capture the rare – but increasingly significant – adverse encounter.

Upon entering each store, Plaintiff did not observe there to be, anywhere at all, any store receipt checking policies posted on its walls, nor verbally mentioned to him by any store employees.

Once inside each store, Plaintiff traveled throughout its various departments, where he selected various items for purchase directly off the shelves.

While shopping, Plaintiff never once observed any store employees, police officers, or any people at all, follow him throughout the store.

After selecting what he needed to buy for the evening, Plaintiff either walked directly to the self-checkout registers located at the front of the store *(Case #1)*, or he walked directly to the nearest register located at the back of the store *(Case #2)*.

While traveling to each stores' respective payment register, Plaintiff once again, did not observe any store employees, police officers, or any people at all, follow him throughout the store.

Additionally, at no time whatsoever did Plaintiff ever once exit/re-enter each store while traveling from its various departments to its payment registers.

After shopping, Plaintiff either rang up his items himself at a self-checkout register *(Case #1)*, or he had a store employee ring up his items for him *(Case #2)*. He then paid for all the items he shopped for at the two stores that he visited.

At each store, after paying for his items, Plaintiff placed them back into his his hands so as to eschew the use of the typical, non-environmentally friendly, one-time-use plastic bags. **At no time whatsoever did Plaintiff ever once "conceal" any of his paid-for items** – either before OR after buying them – in any way that would have reasonably caused any store employees, police officers, etc. to reasonably believe that he had otherwise "stolen or failed to pay for them." He simply put each newly paid-for, price-tag-less item back into his hands, as any other customer would who eschews the use of said plastic baggery.

Regarding his receipts, Plaintiff doesn't recall if he kept each on him, or threw each away. Because he had no intention of returning what he had just purchased on each occasion, Plaintiff thinks he might have thrown each away.

After paying for his items, Plaintiff began to leave each store.

While traveling from each register he paid at, to each store's exit, Plaintiff never once observed any store employees, police officers, or any people at all,

follow him as he exited.

Additionally, at no time whatsoever did Plaintiff ever once exit/re-enter each store while traveling from its respective registers to its respective exits.

While on his way out of each store, Plaintiff was asked to show his receipt by store employees who had either been "posted up" at the exit *(Case #1)*, or who had walked past him just prior to him exiting *(Case #2)*, but whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each.

When asked to show his receipt, Plaintiff politely declined, and continued to attempt to leave. In response, either his sole exit path was blocked by the employees *(Case #1)*, or his exit and re-entry paths were simultaneously blocked by the employees *(Case #2)*. On both occasions, Plaintiff tried to step around the employees, but in response, they just stepped in front of him again. At this point, during both encounters, Plaintiff had no safe or realistic way of leaving each store, through any of its exits, without otherwise bumping into or having to physically push each of its various employees out of the way.

For the next few minutes, the respective store employees, at each store, repeatedly asked to see Plaintiff's receipt, upon which he repeatedly refused to

show one. Indeed, Plaintiff remained entirely silent on the issue of whether or not he even had a receipt on him, in the first place.

Eventually, after arguing, the respective employees stepped out of Plaintiff's way and allowed him to leave each store without incurring further issue.

II. FACTS UNIQUE TO CASE #2 (2021CV88)

In Plaintiff's Case #2, upon him attempting to exit the store, several store employees publicly accused him of "stealing" from the store. Upon overhearing such accusations, Plaintiff then observed a fellow store patron offer to pay for his items, before being told to leave thereafter.

III. SUBSEQUENT PROCEDURAL HISTORY

Following each incident, Plaintiff filed two (2) civil complaints against WALMART and its employees under theories of false imprisonment *(Cases #1 and #2)* and defamation *(Case #2)*. These two cases were eventually consolidated into a single, unified case (containing three unique claims).

On December 9, 2022, the Adams County District Court Judge granted a Motion For Summary Judgment filed by the Defendant, which dismissed Plaintiff's consolidated caseload in its entirety. The Judge held that Plaintiff failed to prove all claims as a matter of law. The Judge made numerous errors of both fact and law when making its ruling, however, and therefore incorrectly granted the Motion in

contravention of clearly established case law on the subject.

On January 27, 2023, Plaintiff filed this appeal, now seeking appellate review (on all claims) of the District Court Judge's adverse ruling entered against him, and to ultimately have the Defendant's Motion For Summary Judgment REVERSED and his consolidated case thereby REINSTATED and REMANDED (in its entirety) to the Adams County District Court for further proceedings not inconsistent with its opinion.

ARGUMENT SUMMARY

The District Court made three errors in the case.

First, it erroneously found that Plaintiff did not prove, as a matter of law, that the Defendant had "confined" him in each of his two cases. Therefore, no imprisonments (let alone false imprisonments) had purportedly occurred.

Second, it erroneously found, as a matter of law, that even if imprisonments had occurred, the Defendant possessed "shopkeeper's privilege" for its actions.

Third, it erroneously found that Plaintiff did not prove, as a matter of law, that the Defendant had slandered him, *per se,* as a thief in front of others.

ARGUMENTS

Issue 1 – The Finding That The Defendant Did Not Confine Plaintiff

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of false imprisonment and confinement in his Response To Defendant's MSJ. The District Court ruled on the issue in its Final Order, *CF at page 141.*

C. Discussion

THE COURT HAS MISREAD AND MISAPPREHENDED THE LAW

a. The term "escape" and "inconvenience" were misdefined. They legislatively apply to pre-confinement situations only.

In a similar case to the instant one, the Court Of Appeals affirmed the dismissal of Plaintiff's Complaint by relying on *Comment A* of the *Restatement (Second) of Torts § 36* to support their notion that Plaintiff was purportedly never confined by the

Defendant [in the first place] because of how "being asked to show a receipt. . .is *at most* a 'slight inconvenience.'" *CF at page 94.* However, the Panel misread and misapprehended the *Comment*, which **specifically** states the Legislature's plain and unambiguous intent to define "escape" [and more importantly, "inconvenience"] **as applying strictly to PRE-confinement situations only** (i.e. not to post-confinement ones, once they have officially occurred). *See Restatement (Second) of Torts § 36, Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). Therefore, the Panel's unique position taken – that "the term 'escape' [] simply refer[s] to ending any confinement that may have occurred" – **directly contradicts the established law.** Moreover, their position also directly contradicts the "any amount of time, **no matter how short**" clause of the false imprisonment tort that is used to satisfy that particular element with. *See Restatement (Third) of Torts: Intentional Torts to Persons § 7 TD (2018)* ("[I]mprisonment is…a total restraint of the liberty of the person, *for however short a time…*"). Meaning that, once a **completed** confinement takes place, **NO MATTER HOW SHORT**, the only issue left to decide is if the detention was lawfully justified. OF COURSE, this is not to say that a person, **post-confinement**, who **subsequently** discovers a way to escape (through, say, an exit they didn't know existed before)

should not utilize such a means once they discover it. [It would certainly be incumbent upon them to do so.] THIS ONLY MEANS that such a **subsequently discovered** avenue of escape, *even if taken*, **DOES NOT NULLIFY THE PRIOR, COMPLETED, INITIAL, OUTRIGHT DETENTION OF THEM FROM HAVING OCCURRED IN THE FIRST PLACE** (and thus, still requiring something like shopkeeper's privilege to lawfully justify it with).

In fact, the *Restatement* comment mentioned above explicitly provides the following example to illustrate its reasoning: "A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B." *Restatement (Second) of Torts § 36, Comment A*. **However, the example above is wholly inapposite to Plaintiff's instant caseload.** In Plaintiff instant caseload (as well as in *every single one* of his prior caseloads), the situation the happened to him can more accurately be described as follows: "A locks B in a room with a closed, locked window. A holds the key to the window, and informs B that if they do [insert any coerced action here] that A will unlock the window and allow B to leave through it. **However, until B does [insert any coerced action here] the window remains locked by A.** A has confined B (until it is satisfied that B has completed [insert any coerced action here])." Notice the difference? Showing a receipt is not some "open window" that a patron has

AUTONOMOUS access to, but otherwise "fails to avail themselves of," should they refuse to jump through it. Rather, showing a receipt is a **coerced**, **AFTER-THE-FACT** action that **feeds** the **conditional** decision of a merchant to **eventually**, **non-autonomously**, "open the window" to **RELEASE** a patron through only **after** it has **independently** become satisfied that its **coerced condition** has finally been met. So while an Adams County District Court Judge may certainly state that "If there is an exit within the party's control, even if inconvenient and even if some exit options are blocked, the party is not confined," *CF at 107,* **the exits in all of Plaintiff's claims were clearly NOT "within his control,"** they were within the control of the Defendant as evidenced by **THEIR CHOICE** to eventually step out of the way to allow Plaintiff to leave through them. *See also Adams County District Court Judge's Order inappositely comparing Jaquez v. Childs Dining Hall to Plaintiff's instant caseload, CF at page 107.*[1] ("She did not hold a receipt that would have allowed her to leave."). **[It was not the receipt that "allowed" Plaintiff to leave. It was the Defendant.]**

Moreover, the Merriam-Webster Dictionary defines "escape" as "to get away (as by flight)" or "to issue from confinement." These definitions naturally and logically hinge on the notion that a person "escaping," again, **would be doing so**

1 The Adams County District Court Judge's reference to *Sweeney v. F. W. Woolworth Co.,* 247 Mass. 277, 278 (Mass. 1924) was also inapposite. For in that case, unlike with Plaintiff, "the manager did not stand between him and the door." *Id.*

single-handedly and of their own volition (i.e. "to [self] issue from confinement," ***NOT*** "to [be issued] from confinement"). In other words, if a prisoner still requires ***permission*** from their captor in order to be ***set free*** by them, one can hardly call that a viable avenue of "escape." Rather, that is nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (*i.e. wholly promissory and not even guaranteed*) **RELEASE** of the subject that doesn't actually occur **until after** the captor **grants** it. *[See Merriam-Webster Dictionary definition of "release," which aptly defines it as "to* ***set free*** *from restraint, confinement, or servitude."]* Indeed, this distinct lack of autonomy is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.,* 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [] no physical restraint of her person was attempted." *Id.* As such, **there exists a critical window of time in between when a merchant confines a patron and when they decide to release them,** *and within which the patron may very well have done literally everything possible that has been asked of them – including showing a receipt,* but who is ***still*** nevertheless **OUTRIGHT** detained by the merchant **pending an independent, conscious decision to be made by them,** to finally and eventually be released by

them. In other words, **a store employee is not some wall-mounted electronic receipt scanner that one can simply autonomously wave a receipt in front of and be 100% guaranteed their instantaneous own way past.** Purchase verification invariably takes time and resources to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee keep holding said customer until such verification is actually accomplished.

b. One cannot "escape" a confinement that has not yet been attempted.

It appears that the Court Of Appeals attempted to reconcile this very conflict of "escape" vs. "release" – by somehow merging the act of ***asking*** to see a receipt, into the ***detention*** that follows it. *See CF at page 95* ("No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."). **ABSOLUTELY CRITICAL TO NOTE HERE,** is that Plaintiff has ***never*** claimed (nor does he now) that the ***act itself*** of him being ***asked*** to show a receipt is what constitutes his confinement. Rather, he has ***always*** claimed (as he does so now) that the ***act of physically blocking all available pathways of his through all available exits*** is what actually constitutes his confinement. Moreover, merging the act of *asking* with the act of *confining* into some single, unified, contemporaneous transaction carries with it its own set of logical

fallacies. This is because in all of Plaintiff's claims it wasn't until ***AFTER*** Plaintiff had refused to show his receipt that the Defendant finally decided to detain him. BUT ONE CANNOT, **BY DEFINITION**, "ESCAPE" A CONFINEMENT ***THAT HAS NOT YET BEEN ATTEMPTED***. Thus, Plaintiff cannot be faulted for purportedly "failing to avail himself" of some purported "show us your receipt to escape" path that, **by definition,** WHOLLY DID NOT EXIST YET. This leaves the Court with the preposterous notion that Plaintiff is perhaps legally obligated to "pre-escape" *all potential detentions* by having to show his receipt *before decisions have even been made to detain him in the first place!*[2] Such would be utterly absurd, however, as there exists no written law, anywhere on the books, for Plaintiff (or anyone else) to have prior notice of, in order to even begin to facilitate such compliance with. Thus, the only conclusion remains: once Plaintiff was confined **OUTRIGHT** and **INDEPENDENTLY** by the Defendant, the only thing left was **THEIR ACT** of choosing to **RELEASE** him after **THEIR CHOICE** to not keep **CONFINING** him.

c. The Court Of Appeals interpretation of "escape" violates the Equal Protection Clause of the U.S. and Colorado Constitutions.

When a court interprets a statute, it should not do so in ways that defeat the

2 The Adams County District Court Judge suggested the same preposterous notion, claiming that it was somehow Plaintiff's legal responsibility to "prevent detention" by showing his receipt [before even being detained in the first place]. *CF at page 145.* But again, Plaintiff has no legal obligation to "prevent detentions." *While the "last clear chance" doctrine may certainly apply to negligent torts, **it absolutely does not apply to intentional torts**!*

Legislature's obvious intent or render part of the statute either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,* ___ P.3d ____, 2005 WL 3312826 (Colo. App. No. 04CA1223, Dec. 8, 2005). However, in the present circumstance, the Panel's interpretation of the term "escape" as purportedly encompassing within it the act of merely "showing a valid receipt" results in patent absurdity when its application is then uniformly applied across the population as a whole. That is, according to the Panel, **customers who happen to throw away their receipts, customers who opt for e-mail only receipts**, and even **actual thieves** have a valid claim of false imprisonment, **while customers who keep their receipts do not**! Such a result is patently absurd, as a paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all four** categories of people actually have an **equally** valid claim of false imprisonment against an employee merely "posted up" at a store exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with].

d. The jury instruction at issue encompasses "physical" harm only

Colorado Civil Jury Instruction 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers ***AND*** does not know of any way to escape without causing an unreasonable

risk of harm to him or herself or to property." Meaning that, the Legislature's use of the phrase "unreasonable risk of harm" [that would be incurred during an escape] **was intended by them to be strictly associated with** "physical barriers" [that a person is being limited to]. "If the legislature had wished to use the term 'or' instead of 'and,' it could have easily done so." *City and County of Denver v. Gallegos,* 916 P.2d 509 (1996). As such, the obviously non-physically or mentally violent act of merely "showing a valid receipt" **does not fall within the scope of the jury instruction** as it was intended by the Legislature to be interpreted.

Alternatively, because the Defendant, on both occasions, physically blocked all available pathways of Plaintiff's through all available exits, such actions physically prevented him from leaving each store, which legally constitutes "confinement" for the purposes of defining false imprisonment. Indeed, on both occasions, Plaintiff tried to step around the store employees, but in response, they just stepped in front of him again. *CF at pages 129 and 134.* Such actions are more than sufficient to constitute a completed false imprisonment, as they are indisputably much "closer to total restraint than a partial obstruction." *CF at page 107. See also Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935) ("Physical force is not required to complete a false imprisonment."); *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 55 (D. Mass. 2000) ("Without a showing of justification, any restraint, either by force or fear, is unlawful

and constitutes a false imprisonment."). *See also Colo. Jury Instr. Civ. 21:2(1).*

e. Showing a receipt and refusing to show a receipt cannot both be a form of consent.

Courts have held that the act of "showing a receipt" already constitutes voluntarily giving consent to a detention. *See Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005). *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). Thus, when coupled with the Court Of Appeals position, even more absurdity results. This is because if the Panel's position were correct, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order to "establish their innocence" as the *Broadnax* Court puts it), customers who decline to show their receipt would ***ALSO*** be "choosing to stay" (i.e. "choosing to not avail themselves of the exit" as the Panel puts it). However, this obviously creates a "damned if they do, damned if they don't" always-subject-to-a-detention-either-way scenario, which is patently absurd and manifestly unfair to the customer. Disturbingly, shopkeepers would thereby enjoy **literal absolute immunity** when detaining all customers who happen to have their receipt on them – regardless of how little shopkeeper's privilege they may have in each matter – as no detainment of said patrons would EVER be able to occur either way, by definition, in the first place! But such is not the law. That is, while an Adam's County District Court

Judge may certainly state that "Private parties, including merchants, have the *right* to protect their property in a reasonable manner," *CF at 106,* that "right" has to be drawn from ***somewhere*** – and that somewhere is through the application of **"shopkeeper's privilege"** to the legality of **detentions**. No detentions even being *statutorily* capable of existing in the first place, as is the Court's position, means that you might as well repeal the law of "shopkeeper's privilege" in its entirety because when and where are you going to even apply it at this point!? No detentions anywhere!!!

f. Being detained for suspected shoplifting is not a "slight inconvenience."

The Court Of Appeals claims that "being asked by a retailer to show a receipt as proof that an item was actually purchased. . .is at most a 'slight inconvenience.'" *CF at page 94.* While the Panel may be correct that being ***asked*** to show a receipt is "at most a 'slight inconvenience,'" being ***detained*** in order to be ***FORCE-EXCULPATED*** is a much more serious occurrence. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court held that, ***even after*** Ms. Ball had provided the store employee with her receipt [which was not dispositive of the involuntariness of the encounter, as her cart, *just like Plaintiff's person,* had already been involuntarily stopped prior to], there was enough evidence in the record for a jury to decide that "she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

It strains credulity that Plaintiff would not have been likewise subjected to the same "interference," while waiting for his receipt to be verified, had he likewise decided to show it to the store employees. *See CF at page 107.*

g. Merchants are not allowed to make store policies that systematically violate the law.

The Court Of Appeals also claims that no statute exists "that prohibits a merchant from requiring customers to display a receipt before leaving a store with goods in hand." *CF at page 95.* **However, while that phrase is technically true on its face – "that no statute exists" – merchants are nevertheless absolutely not free to make store policies that systematically violate the law!** Yet indiscriminately detaining – without a lick of shopkeeper's privilege – literally any and all patrons who refuse to show their receipt on their way out of a store, is one such systematically law-violating policy. *See State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984) ("It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The

potential for abuse is apparent.").

The larger problem with the Panel's argument, though, is that it is actually Walmart's official store policy to ***NOT*** detain patrons who refuse to show their receipt on their way out! *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000). Thus, it is manifestly unfair (and rather illogical) to even say to Plaintiff, "if you don't like the store policy, you can shop elsewhere." Indeed, every time Plaintiff has ever shopped at a WALMART SUPERSTORE, **he has done so with the store's official, NON-COMPULSORY receipt checking policy in mind!** OF COURSE he doesn't show his receipt when asked – Walmart itself officially says that he is to NOT be stopped if he doesn't! *Yet by faulting Plaintiff **after the fact**, on the rare occasions that he happens to become detained by some **unbeknownst-to him, rogue, non-store-policy-following** employees, for literally **following** said policy, the Panel has done nothing but pull a manifestly unfair "bait and switch" on him.*

Most importantly, is the fact that while merchants certainly do have the right to make "reasonable rules and regulations" for their businesses (such as requiring a passenger who lost his ticket to pay his fare again) they are ***not*** legally allowed to detain people solely "in order to compel payment from them" [precisely what the Defendant did in Plaintiff's instant caseload]. *See Lynch v. Metropolitan El. R. Co.,* 90 N.Y. 77 (N.Y. 1882) ("But it had no regulation and

could legally have none that a passenger, before leaving its cars or its premises, should produce a ticket or pay his fare, and if he did not, that he should then and there be detained and imprisoned until he did do so.").

h. If a person is forced to give up one right for another, they are "imprisoned" within the legal definition of the term

Another reason why the Panel's position is incorrect, is because a person who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution; Fourth Amendment to the Colorado Constitution.* Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, to anybody, ever, PERIOD**. ***Not to law enforcement, as per the Fourth Amendment, LET ALONE to private citizens, merely operating as merchants.*** Much like how no law or policy exists that gives security guards the inherent right to know a

traveler's address when they pass through a non-gated community, or citizen militia the inherent right to see a driver's ID when they travel near a border, there exists no law or policy that gives a merchant the inherent right to see a patron's receipt – even for a second – *no matter how trivial of a request such may seem.*

Accordingly, because the Defendant required Plaintiff to show his receipt in order to leave its stores, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – <u>his right to be secure in his papers</u>**. Of course, Plaintiff never actually "gave up" his right of locomotion, *either*, as during his attempted store exitings his path was *physically* blocked by the Defendant, who *physically* wouldn't let him leave, despite his multiple legitimate attempts to do so.

i. All this talk of "receipt showing" is actually completely irrelevant!

In all previous ORDERS of the Court to which the Defendant refers, the underlying rational for each holding (its utterly nonsensical, failed logic notwithstanding) was that because Plaintiff had a receipt on him, of which he could "easily" show the store employees, by not showing it to them he purportedly "failed to avail himself" of the "escape" path they had offered him. **That argument has no merit or applicability in the instant caseload, however,** as the Defendant has provided no evidence whatsoever that Plaintiff even had a receipt on

him in the first place, at the time they detained him during both the August 6th and September 3rd encounters. While Plaintiff undoubtedly paid for his items on each occasion (as evidenced by his cell phone audio) the only evidence that presently exists in the record – with specific regards *to his receipt* – is his own sworn testimony on the subject that he probably "threw [them] away." *CF at pages 128 and 133.* As such, Plaintiff ***did not*** "indisputably [know] that showing his receipt would allow him to easily leave the store."

Moreover, the Adams County District Court Judge can't now move the goalpost by saying that "given Plaintiff's prior activity and knowledge in these various detention cases, if Plaintiff threw away the receipt it would be his actions that prevented his means of escape," *CF at page 145,* **as holding such would literally create a legal obligation for Plaintiff where there is none** – an obligation to literally keep his receipts on him at *all* times, on *all* shopping occasions, to combat the super rare circumstance where he might be unlawfully detained and coerced into showing one. What a bunch of hogwash that is! What's next? Plaintiff is personally never allowed to file another valid insurance claim, ever again, for a stolen catalytic converter, should he ever decide to park his vehicle on a particular street again, after having his catalytic converter stolen once before upon having already parked on that street prior to? Seriously, this Court

CANNOT, in good conscience, support such an utterly irrational argument.

Issue 2 – The Finding That The Defendant Possessed Shopkeeper's Privilege To Detain Plaintiff With

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of shopkeeper's privilege in his Response To Defendant's MSJ. The District Court ruled on the issue in its Final Order, *CF at page 141.*

C. Discussion

THE DEFENDANT LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WITH

In Defendant's MSJ, it claims that it "is not responsible for Plaintiff's false imprisonment claim as a matter of law because [it] had reasonable grounds to

believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter." *CF at page 50.* However, as will be discussed next, it is unequivocally beyond dispute that the Defendant genuinely *lacked* "reasonable grounds" (i.e. "shopkeeper's privilege") to lawfully detain Plaintiff with.

a. Being "posted up" at a store's exit, and literally nothing more, is insufficient as a matter of law to establish shopkeeper's privilege with.

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). "Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something." *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Zenik v. O'Brien,* 137 Conn. 592, (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable."). *See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994).

In Plaintiff's instant caseload, while on his way out of each store, Plaintiff was asked to show his receipt by employees who had either been "posted up" at the exit *(Case #1)*, or who had walked past him just prior to him exiting *(Case #2)*, but

whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. The Defendant, having been strictly and indisputably located exclusively near each store's exit, **did not see or witness literally anything** that could *even begin* to fairly form a "reasonable [] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). This is because the Defendant "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* In such circumstances, the Court has manifestly held, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Id.*

b. Nor does refusing to show a receipt establish shopkeeper's privilege.

A request to see a receipt is "a request for consent to search, [and] the customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without *particularized* facts to reasonably justify a stop, systematic detention of most or all customers

may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police."[3] *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.").

c. Nor does refusing to answer questions establish shopkeeper's privilege.

3 Such "bootstrapping" is precisely what the Adams County District Court Judge did when analyzing Plaintiff's false imprisonment claims. *See CF at page 145* ("No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for preventing a person from leaving their store with goods *for which the person refuses to show a receipt.*"). As such, patrons would "in effect have no way of declining to participate in a 'consensual' encounter" with a merchant, **thereby rendering LITERALLY 100% of their patronage indiscriminately subject to an involuntarily detention by them.** Such is clearly not the law.

In the same vein, a customer also retains the right to refuse to answer questions put to him by an employee (and likewise, such refusal "does not create an adequate basis for invoking the privilege").

"The Fifth Amendment, in relevant part, provides that no person 'shall be compelled in any criminal case to be a witness against himself.' It has long been held that this prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota v. Murphy,* 465 U.S. 420 (1984). *See also Michigan v. Tucker,* 417 U.S. 433, 440 (1974) ("Although the constitutional language in which the privilege is cast might be construed to apply only to situations in which the prosecution seeks to call a defendant to testify against himself at his criminal trial, its application has not been so limited."). *See also Combs v. Coyle,* 205 F.3d 269, 283 (6th Cir. 2000) ("[W]e believe that 'application of the privilege is not limited to persons in custody or charged with a crime; it may also be asserted by a suspect who is questioned during the investigation of a crime.").

d. Nor does not using plastic bags establish shopkeeper's privilege.

In today's day and age, the use of non-environmentally friendly, one-time-use plastic bags is frowned upon. Many jurisdictions (Boulder County, Denver County, etc.) have even begun to "tax them out of existence" by way of charging customers

10¢ each time one is used. Thus, people are using them less and less. *See https://youtu.be/1YgIx44zcPw.* Accordingly, when it comes to analyzing whether or not a shopkeeper has established "probable cause" to detain a suspected shoplifter with, categorizing people who forgo the use of such bags as "likely enough to be thieves" is untenable, as doing so "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980). **Indeed, federal courts have already agreed with Plaintiff on precisely this issue.** *See Montgomery v. Calvano,* District Civil Case No. 1:19-cv-00387-PAB-MEH, ECF Doc. #48 at page 6 ("The Court finds that plaintiff's carrying of an unbagged item [through an alternate exit, without receipt in hand] does not, on its own, demonstrate that criminal activity may be afoot.").

Moreover, just like with receipt checking as discussed above, because plastic bags are "not related to any fact of theft other than presence in the store, detention for failure [to use them] does not create an adequate basis for invoking the privilege." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). See also *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971).

Ultimately, regarding plastic bag use, "While innocent behavior may provide the basis for reasonable suspicion, innocent behavior that in no way distinguishes the person to be stopped from other law abiding citizens does not." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993).

e. Nor does not using front registers establish shopkeeper's privilege.

It is well known that WALMART SUPERSTORES have scattered throughout them multiple points of sale that the general public utilize to purchase their various goods at. Registers are regularly located at the stores' cosmetics, electronics, paint, and automotive departments, to name a few. Not only does WALMART do this for the convenience of its customers, as the waiting lines at these registers are typically shorter than the ones found at the front of their stores, they do it for security, as they intentionally restrict certain goods from leaving certain departments until after they are purchased at that department's register (the cosmetics department being a prominent example).

After a customer buys their items at any of these alternate registers, they will invariably have to leave the store through one of its main (front) exits. Reasonably suspecting these customers of shoplifting based on their route of departure, then, is untenable, as they ultimately have no choice in the matter. They are going to have to leave the store *somehow* – either by walking *past* the traditional registers located at the front, or *through* the traditional registers located at the front (and to which either path taken, when not observed paying at such front registers, invariably

creates some suspicion). Indeed, another "damned if you, damned if you don't" scenario that would be manifestly unfair to the customer. As such, employees who are merely "posted up" at a store's exit, who see patrons leave from the back of the store and not from the front, cannot use a customer's route of departure as a valid basis to establish their "shopkeeper's privilege" with. *See Holguin v. Sally Beauty Supply Inc.,* 264 P.3d 732, 736 (N.M. Ct. App. 2011).

ABSOLUTELY CRITICAL TO NOTE HERE, is that this argument only applies to *Plaintiff's Case #2*, where he exited the store coming from the automotive register in the back. That is, the Defendant ***EVEN FURTHER*** lacked "shopkeeper's privilege" to detain him in Case *#1,* **WHERE PLAINTIFF LITERALLY EXITED THE STORE COMING FROM THE SELF-CHECKOUT REGISTERS AT THE FRONT!!!** Quite positively, there is *no way on Earth* that the Defendant [or any merchant] would have the lawful right to detain *literally every single patron leaving their store after shopping*, for [what is literally the only argument remaining of] simply not using plastic bags! What a bunch of hogwash THAT would be!

f. Lack of intent to conceal also negates having shopkeeper's privilege.

While leaving each store in Plaintiff's instant caseload, he made no "effort to conceal" the merchandise that he had recently purchased. As such, the Defendant *even further* lacked "facts justifying a belief (a reasonable belief) on [their] part [] that Plaintiff intended to commit a theft." *See Chelette v. Wal-Mart Stores, Inc., 535 So. 2d 558, 561 (La. Ct. App. 1989).*

g. Even when factored together, shopkeeper's privilege is still lacking.

As just discussed, refusing to show a receipt, answer questions, use a plastic bag, or use a front register each fail, on their own, to establish "shopkeeper's privilege" with. The same holds true when factoring them together, as "it [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995). *See also United States v. Wood, 1*06 F.3d 942, 948 (10th Cir. 1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). Indeed, to hold otherwise, in the present circumstance, would allow shopkeepers **free reign to detain literally all customers** leaving their stores who simply purchase merchandise at the back of them, don't use plastic bags, and refuse to show their receipt while on their way out. In fact, the Court has already explicitly held "shopkeeper's privilege" to be lacking in precisely this scenario, where a patron left a store using a non-register exit, without a plastic bag, and whom didn't respond when asked if she could show her receipt. *See Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996).

Ultimately, the reason why none of the aforementioned factors can be used – either in isolation, OR together – to reasonably and fairly establish "shopkeeper's privilege" with, is because such factors are all strictly **exculpatory** in nature,

leaving absent entirely from the seizure analysis the use of any actual **inculpatory** based information, whatsoever. As Plaintiff has explained in times past, however, *"lack of evidence of innocence is not evidence of guilt."*

Issue 3 – The Finding That Plaintiff Did Not Prove, As A Matter Of Law, That Defendant Slandered Him, *Per Se*, In Front Of Others

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of slander in his Response To Defendant's MSJ. The District Court ruled on the issue in its Final Order, *CF at page 141.*

C. Discussion

THE DEFENDANT SLANDERED PLAINTIFF, *PER SE*, AS A THIEF IN FRONT OF OTHERS

Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation *actionable per se*. *RESTATEMENT (SECOND) OF TORTS* § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed. *2 HARPER et al, supra* note 2, § 5.11, at 118.

Additionally, it is important to note that while "[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964).

Here, the Adams County District Court Judge held that "Plaintiff has not produced any credible evidence of harm to his reputation." *CF at page 146.* Such a holding is erroneous, however, as Plaintiff clearly submitted audio evidence of his encounter with the Defendant, within which a fellow patron can be heard offering to pay for Plaintiff's items upon overhearing the baseless accusations of theft made by the Defendant. As such, and because Plaintiff has alleged a defamation *per se* claim, no more is required of him (to produce evidence of special damages, for instance).

CONCLUSION

Multiple times now, WALMART has decided to retaliate against one of their patrons for simply refusing to show their receipt on their way out of their store. How many times does this have to keep happening before they learn their lesson? Sorry, but Plaintiff isn't "going out of his way" to be detained by the Defendant. Nor is he "seeking to be detained" by them, or "provoking" them, or "concealing," or "displaying conspicuous behavior to suggest that he shoplifting." AS PLAINTIFF DOES AT ALL STORES THAT HE SHOPS AT (NOT JUST WALMART): he simply a) shops for items, b) uses whatever registers are available to him, c) doesn't use plastic bags, and d) refuses to show his receipt on his way out. **THAT'S IT!** It's no secret (nor has it been for literally decades now) that WALMART routinely and indiscriminately asks to see the receipts of whomever it wishes. But as the retired criminal judge Matthew M. Steven aptly puts it, "No store has the right to force you to display your receipt after you've made your purchase, nor do they have the right to detain you for not doing so. Companies like Sam's Club, BJ's and Costco are able to do this because it is a part of your agreement for membership. A store may detain you if they believe you're guilty of shoplifting, and they must tread exceptionally carefully when doing so, because the liability for falsely accusing and illegally detaining somebody is staggering. However, when an employee stationed at the exits asks to see customer receipts upon exiting, you

do not have to show it to them, nor will they argue unless they believe you have committed the crime of larceny. I ruled against WalMart on several occasions with regard to this, and even went so far as to charge members of their loss prevention department with unlawful imprisonment after an incident. I realize that retail theft is rampant in stores like WalMart, but that does not excuse accusing and causing damage to a law abiding citizen." *See https://tinyurl.com/yckn79et.*

In the end, Plaintiff has done nothing more than what any good police officer would do upon observing the same increasingly unchecked (yet patently illegal) behavior: **audit it.** *See https://tinyurl.com/4npw8cba.*

WHEREFORE, the Court of Appeals should **REVERSE** the District Court's granting of Defendant's Motion For Summary Judgment (on all claims for relief) thereby **REINSTATING** and **REMANDING** Plaintiff's consolidated case (in its entirety) to the Adams County District Court for further proceedings not inconsistent with its opinion.

Respectfully submitted on this, the 4th day of May, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 4th day of May, 2023, the foregoing **PLAINTIFF'S APPEAL OPENING BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:51 PM
Appeal From: **Adams County District Court** District Court Judge: **The Honorable Teri Vasquez** District Court Case Number: **2021CV68** (Consolidated: **2021CV88**)	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WALMART INC.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
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PLAINTIFF'S APPEAL REPLY BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his APPEAL REPLY BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My reply brief has **4,519** words, which does not exceed the 5,700 word limit allowed by this Court for appeal reply briefs.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
William Montgomery

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ARGUMENTS

I. USELESS IRRELEVANT "CONDUCT" BEING MENTIONED

To begin, in the Defendant's answer brief, it claims that "During the incidents at issue here, Appellant engaged in conduct which if observed, could reasonably be expected to arouse suspicion..." *Def's Answer Brief at page 10.* The Defendant then goes on to describe how Plaintiff "left the store to retrieve his wallet from the car and returned," and then later, that "Another time after starting the check-out process, he asked to have items rung up separately, then asked the cashier to void the separate sale." The problem with Defendant's two examples of purportedly "arising suspicion" is two-fold. First, such actions described by the Defendant have *literally nothing* to do with the act of shoplifting. In both circumstances, no "concealing" of property ever took place, no "dispossessing of property from a merchant" ever took place. No "failing to pay for merchandise" ever took place. *Literally nothing substantive whatsoever took place, period.* Indeed, Plaintiff is curious as to why the Defendant even brought up such "conduct" in the first place, as it is quite common for customers to forget wallets, ring items up separately, and void sales. As such, the Defendant has described nothing whatsoever, in either case, that actually supplies it with "shopkeeper's privilege" for its actions in each matter. Equally importantly, however, is the second part of the problem, which is that neither of the two examples provided

by the Defendant – of purportedly "arising suspicion" – were even observed by it, in the first place. ***THEY WERE PLAINLY NOT***. As in, the Defendant is alternatively living in some "***if*** observed" fantasy land, where none of the conduct it describes actually even has the capacity of being used to support it purportedly having "shopkeeper's privilege" in each matter. Again, Plaintiff is curious as to why the Defendant even brought up such utterly benign, totally irrelevant "conduct" in the first place. Again, as thoroughly explained in Plaintiff's briefs, he was approached and detained by store employees who had either been "posted up" at their exits, were walking past him while he exited, or who had otherwise appeared shortly thereafter from right around the corner, but whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout it as he shopped) until he finally saw them for the very first time as he proceeded to leave each. Thus, literally all suspicious "conduct" the Defendant describes in its answer brief is behavior that occurred ***prior*** to Plaintiff leaving, rendering such *completely irrelevant* to each situation, and what would, once again, *even have the capacity to* supply the Defendant with "shopkeeper's privilege" in the matter. Indeed, Defendant's mention of the Jefferson County case in which Plaintiff was detained after purchasing several bags of ice suffers from the exact same failed defense. For in that case, Plaintiff didn't sue the "Walmart associate who was stationed at the exit watched Montgomery go to

the cooler, get the third bag of ice, and proceed toward the exit." **He sued the Walmart associate that unlawfully detained him, who appeared from around the corner** after witnessing LITERALLY NOTHING that would have supplied it with "shopkeeper's privilege" in the matter. Indeed, from all these inapposite examples, it appears that the Defendant is resorting to petty "let's throw everything against the wall in hopes that something will stick," tactics, but where in the end, time and time again, Plaintiff has actually only sued store employees who simply don't observe enough [read: anything] to supply themselves with "shopkeeper's privilege" in each matter.

II. FAILED SERIAL LAWSUIT SCAMMER ACCUSATIONS

Next, the Defendant attempts to defame Plaintiff as being some failed serial lawsuit scammer by listing off all the cases in which Plaintiff was unsuccessful in suing over his rights being infringed. *But see U.S. v. Chanthasouxat,* 342 F.3d 1271 (11th Cir. 2003), where the Court held that, despite the officer's defense of "having written more than 100 tickets for lack of an inside rear-view mirror," his actions were still, nonetheless, wholly objectively unreasonable in nature. *Id.* So it is definitely possible for law enforcement officers, district attorneys, and even judges, to *all* have the capacity to get the law *utterly* wrong, ***repeatedly***, before an objectively reasonable person ever comes along to clear through all the bullshit. Plaintiff's circumstance is easily no different. Moreover, it should be worth noting

that the Defendant left out a couple of cases where Plaintiff ***DID*** succeed in suing over his rights being infringed. *See Montgomery v. Arrick et al,* District Civil Case No. 1:21-cv-02410-PAB-MEH (case voluntarily dismissed after settlement agreement reached between parties), and *Montgomery v. Lore,* District Civil Case No. 1:21-cv-02553-PAB-MEH (defendant's motion to dismiss denied in part). So clearly, despite the overwhelming amount of sheer fraud, corruptions, and retaliation being perpetuated against Plaintiff for simply exercising his rights, a few of his cases *have* managed to make it through.

III. LAWFULLY, PLAINTIFF WAS DETAINED BY FORCE

Next, the Defendant claims that "In neither Case No. 2021CV68 or Case No. 2021CV88 did Appellant allege, let alone introduce evidence that Walmart personnel held him by force." *Def's Answer Brief at page 14.* However, Plaintiff plainly stated in both Affidavits that store employees "quickly blocked [his] only path, which prevented [him] from leaving. [He] then tried to step around the employee[s], but in response, [they] just stepped in front of [him] again." *Plaintiff's Affidavit for Claims #1 and #2 at ¶ 18. See also Plaintiff's audio clips of each event.* Indeed, the Court has historically and unanimously held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). "Without a showing of justification, any

restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Id. See also Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 55 (D. Mass. 2000). *See also Colo. Jury Instr. Civ. 21:2(1).*

IV. A CRITICAL WINDOW OF TIME EXISTED BETWEEN WHEN PLAINTIFF WAS DETAINED, AND WHEN HE WAS TOLD HOW HE COULD BE LET GO

Next, the Defendant claims that "on both occasions Appellant knew that all he had to do to escape detention was to show his receipt." *Def's Answer Brief at page 14.* In Plaintiff's *Claim #1* of the instant case, however, while he was physically prevented from leaving the store at about 17:29 into the encounter, it wasn't until 17:49 that he was ***FIRST*** told by the employees that if he showed his receipt, he'd be let go. Meaning, for **20 SECONDS** Plaintiff was detained ***O-U-T-R-I-G-H-T*** by the Defendant, before any sort of "knowledge" could have been fairly imputed onto him that he'd be let go if he showed his receipt. Then, in Plaintiff's *Claim #2*, while he was physically prevented from leaving the store at 15:41 into the encounter, it wasn't until 16:37 that he was ***FIRST*** told by the Defendant that if he showed his receipt, he'd be let go. Meaning, that for **56 SECONDS** Plaintiff was detained ***O-U-T-R-I-G-H-T*** by the Defendant, before any sort of "knowledge" could have been fairly imputed onto him that he'd be let go if he showed his receipt. These amounts of time are not insignificant. They are real, countable time frames in which Plaintiff was detained,

outright, by store employees, with no fair idea as to how *these particular* employees, of *these particular* stores, on *these particular* days, would be willing to let him go, until they ***first*** and ***finally*** told him, ***themselves***, what conditions Plaintiff was required to meet. It is unfair and impermissible to impute onto Plaintiff some generalized "knowledge" from some long-previous, *entirely-different-store* employees (i.e. Jefferson County District Case No. 20CV76 as Defendant suggests), that *these particular* employees, at *these particular* locations, on *these particular* days, would actually act in the same way [until, of course, they ***personally*** and ***finally*** stated as much to him]. These were whole new employees, at whole new stores, on whole new days, with what Plaintiff could only imagine were whole new agendas and reasonings as to why he was being detained by them, let alone what would constitute his release. Sure, Plaintiff certainly "knew it was 'Walmart's policy to ask for receipts from customers exiting the stores." *Def's Answer Brief at page 15,* but Plaintiff also knew that it was Walmart's official policy that "If a customer refused to have his or her bag checked, the policy allowed the person to pass." *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 47 (D. Mass. 2000). Thus, when Plaintiff refused to show his receipt on these two occasions, he cannot be blamed for making such a decision based on the *official* knowledge of the *official* policy he *did* have in each matter. Nor can the subsequent actions of *these particular* **non-policy-following** store employees to detain him be

placed on his shoulders, either. He didn't know if they were rogue employees. He didn't know if he was going to be detained by them. And when they did detain him – for 20 and 56 seconds respectively – he didn't know, with any sort of reasonable fairness, that *these particular* **non-policy-following** rogue store employees on *these particular* occasions even had any explicit conditions for him to meet, in the first place, to ensure his release from them [until, again, they themselves ***personally, explicitly, and finally*** told him such]. It is inappropriate and unlawful for the Defendant and the Court to pretend that these *real* time-frames do not exist, or that such prior *specific* knowledge from such prior *specific* shopping experiences can be fairly imputed onto him for *all shopping experiences with all employees at all stores in general*. Seriously, why does the Defendant and this Court think Plaintiff threw away his receipts in the first place? He had no idea at the time [until several years later by way of the lower Court's order in this very case] that such a purported "requirement" to hold onto such receipts would actually be imputed onto him. It should go without saying how fundamentally unfair it is to retroactively apply the law in such a way. So while Plaintiff certainly agrees with the Defendant that he "clearly knew that retaining the receipts might be important in order to show Walmart personnel that he had paid for his merchandise," *Def's Answer Brief at page 14,* he most certainly did not know at the time that it was ***actually legally necessary*** for him

to hold onto them otherwise.

V. THE RECEIPT IS NOT THE KEY, THE DEFENDANT'S PERSONAL DECISION TO RELEASE IS THE KEY

Next, the Defendant claims that Plaintiff "always had control of the metaphorical key to the window and could have used it at any time. He had control of the receipts and knew that if he showed the receipts to the Walmart personnel, he could leave." *Def's Answer Brief at page 20.* The Defendant, once again, has literally no earthly idea what it is talking about. The receipts themselves aren't the "key," **the Defendant's own, personal, independent act of satisfactorily cross-checking the receipts against the merchandise** is the "key," and to which is obviously [well evidently not!] **OUTSIDE** the control of Plaintiff. Let's say for argument sake that Plaintiff *did* show his receipt to the Defendant. Does the Defendant *ACTUALLY* believe that it *would not* continue to detain Plaintiff's person, ***outright***, *in the mean time*, until *after* it completed its *own* independent verification of the purchases at hand? Hah! What a load of crap that is! It would be incumbent upon this Court to not fall for such total horseshit. *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court ***already explicitly ruled on this very issue*** by holding that "a reasonable person would have apprehended that he or she was not free to leave until Mr. Harris concluded his inspection of Ms. Ball and

permitted her and the others behind her to leave." Read that again. **THAT'S MR. HARRIS CONCLUDING HIS INSPECTION OF MS. BALL**, that resulted in her eventually being **PERMITTED**, **BY HIM**, for her and the others behind her to leave. That's not some lone receipt simply being autonomously flashed in front of a door like some ID to a badge scanner. Or a turnstile at a subway. That's a ***person***, who ***personally*** continued to detain someone, ***outright***, ***after*** a receipt ***was*** shown to them, but who was ***still*** appropriately held accountable for their unlawful actions in the matter. Indeed, to date, Plaintiff has yet to see **A SINGLE INSTANCE** of this particular argument being sufficiently addressed, *let alone refuted*, by either the Defendant, or the Court. In fact, ***not once*** in ***any*** of Defendant's briefs, let alone in ***any*** of the Court Of Appeals' orders, has this 100% valid legal conclusion held in *Ball v. Walmart* ***ever*** been addressed by either party. HOW THE FUCK IS THIS EVEN POSSIBLE? Are you guys even reading Plaintiff's briefs!?!? If so, this is truly disturbing, truly intellectually dishonest behavior that absolutely cannot be allowed to continue. You guys have now been *repeatedly* informed about a case **that literally addresses AND resolves this exact issue**, yet you cannot even bring yourselves to acknowledge its very existence? What is wrong with you!? Also worth noting at this point is the equally inapposite notion that Plaintiff's audio recordings were also the "keys" to his release. Sorry, but there were no devices

located beside each blocked exit for Plaintiff to **autonomously** insert his audio recordings into! At most, there were ***store employees***, physically blocking his path, ***outright***, who would have had to ***personally*** listen to the audio, ***themselves***, before ***independently*** ***C-H-O-O-S-I-N-G*** to release Plaintiff upon ***THEIR OWN PERSONAL SATISFACTION*** that his purchases were verified. How does this not compute with you guys? Do you not realize that it is supremely impermissible and profoundly illogical to literally exalt store employees to that of infallible automated ID badge scanners? Come on guys! Are you serious? SUCH IS NOT THE LAW!!!

VI. THE BURDEN OF PERSUASION RESTS ON THE DEFENDANT TO SHOW THAT RECEIPT CHECKING IS INDEED LEGAL

Next, the Defendant claims that "Appellant has Produced No Authority for the Argument that Receipt Checking is Illegal." *Def's Answer Brief at page 20.* Such a claim, however, rests on Defendant's mistaken belief that the burden falls on Plaintiff in the first place. It does not. Rather, it is the Defendant that carries the burden of persuasion during claims of false imprisonment. Having "shopkeeper's privilege" is certainly a defense to an accusation, but it the Defendant that is still required to show precisely *how* it had "shopkeeper's privilege" to detain a particular patron. *See People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940) ("The existence of justification is a matter which ordinarily

lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." So, much like how refusing to consent to a search of one's vehicle does not provide law enforcement with probable cause to now literally begin detaining and searching the vehicle (i.e. "bootstrapping" as Plaintiff has *repeatedly* explained) the ***same exact act*** of refusing to show a receipt (i.e. refusing to consent to a search) does not provide "shopkeeper's privilege" to now literally begin detaining a patron in order to search them [or through the functional equivalent of forcefully extorting them to show it or face continued detention otherwise]. Indeed, and contrary to Defendant's assertions, "bootstrapping" **IS** *per se* illegal. This is because "shopkeeper's privilege" is the same as "probable cause," *see C.R.S. 18-4-407*, and probable cause is rooted in *particularized* suspicions, and one can never achieve lawful justification to detain by simply pointing to a refusal to consent [because in effect, that's not *particularized* at all]. Rather, that's a merchant who can ask literally anybody (i.e. everybody) to see their receipt, **thus subjecting literally 100% of the population to a compulsory detention** [through either voluntary consent or forced detention otherwise]. How does this not compute with the Defendant? IT IS ILLEGAL TO CONDUCT 100% COMPULSORY CHECKPOINTS AT

STORE EXITS THAT PERMIT 100% DETENTION OF 100% OF THE POPULATION JUST BECAUSE YOU WANT TO SEE A RECEIPT!!! "Shopkeeper's privilege" is just that – a privilege. A privilege to detain *a select few patrons* based on legally justified, **PARTICULARIZED** suspicions of them actually shoplifting. It is not, nor ever has been, a "right" to detain ***outright***.

VII. THE BURDEN OF PERSUASION RESTS ON THE DEFENDANT TO SHOW THAT NO BAG USE PROVIDE SHOPKEEPER'S PRIVILEGE

Next, but in the exact same vein as the previous discussion, Defendant claims that "Appellant Has Not Shown that Walmart Could Not Rely Upon Unbagged Merchandise as Reasonable Grounds for Stopping Appellant to Ask to See a Receipt." *Def's Answer Brief at page 26.* Absolutely critical here, is that it is not Plaintiff that has to show that the Defendant *COULD NOT* rely upon unbagged merchandise as reasonable grounds for detaining a patron, it is the Defendant that has to show that it ***CAN*** rely upon unbagged merchandise as reasonable grounds for detaining a patron. And of course, the Defendant has not provided any case law, any legal argument, anywhere, *to date*, that even remotely begins to support its proposition that non-plastic-bag use actually supplies "shopkeeper's privilege" in a matter. **Plaintiff, however, has supplied more than enough cases to illustrate quite the opposite.** In *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div.

1985), the Court held that "The absence of any indication that the merchandise was 'unpurchased' justifies the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." The *Henry* Court was referring, of course, to *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971), where an ascot to which plaintiff wore on his way out of a store was ***not*** tagged so as to provide any meaningful "indication that the merchandise was 'unpurchased.'" In *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), the Court held that, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Id.* In *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963), the Court held that "Probable cause cannot be based on mere belief [] that somebody did or did not do something." *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *Id.* In *Zenik v. O'Brien,* 137 Conn. 592, (Conn. 1951), the Court held that "Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which

make it reasonable."). *See also Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993) ("While innocent behavior may provide the basis for reasonable suspicion, innocent behavior that in no way distinguishes the person to be stopped from other law abiding citizens does not."). Of course, none of these cases stand for some grand "blanket rule" concerning unbagged merchandise, as the Defendant puts it. But they DO all stand for the common-sense, decades-old, fully-ironed-out ABSOLUTE LEGAL REQUIREMENT that "shopkeeper's privilege" be "based on more than mere conjecture or suspicion." But merely seeing a patron walk out of a store without a plastic bag, *to which the Defendant knows full well occurs on an absolutely regular and routine basis*, is about as close to "mere conjecture" as one can get. Seriously. Does the Defendant *ACTUALLY* believe that it has the legal right to detain LITERALLY EVERY SINGLE CUSTOMER WHO DOESN'T USE A PLASTIC BAG?!?!? Without a doubt, this is a new low that Plaintiff has never seen Defendant stoop to before. It would be incumbent upon this Court to not fall for such total horseshit.

VIII. PLAINTIFF ONLY PERFORMS "STINGS," HE DOES NOT "ENTRAP" HIS CAPTORS

Last, but certainly not least, is the issue surrounding Plaintiff behavior of purportedly "enter[ing] Walmart stores 'with the intent to and then actually act[ing]

in a manner intended to provoke Walmart employees' and 'which he knew would lead to being detained and asked for his receipts.'" *Def's Answer Brief at page 24.* Ahh, the "sting." Never has Plaintiff been more insulted in his life to see his slowly but easily developed ***intuition*** twisted into some totally-unsupported-by-fact-or-law argument that he is somehow "entrapping" the Defendant into detaining him. Does the Defendant and this Court not actually know what a "sting" is? Plaintiff finds this hard to believe. Nevertheless, the Merriam-Webster dictionary definition of "sting" is "a game worked by undercover police in order to catch criminals." **Think bait car.** The whole point of a bait car is to establish a situation that is indistinguishable from any other. To the would-be car thief, the bait car is wholly indistinguishable from any other car on the street. Yet the officer's intuition allows him to place the car in such a high crime area that he knows he is bound to get a few bites. But later, the fact that the car is found out to be a bait car by the thief who steals it ***is obviously not a legal defense to the crime of grand larceny***. Plaintiff's long-running "sting" operation of anybody who foolishly chooses to false imprison him without "shopkeeper's privilege" is literally no different. He doesn't "conduct himself [in such a way so as to reasonably] cause [] Walmart employees to believe that his intent [is] to commit a crime." *Def's Answer Brief at page 24.* He literally conducts himself in such a way so as to render himself **indistinguishable** from all other

innocent customers who shop from the back of the store, don't use plastic bags, and don't consent to searches upon request. The only difference is that his prior experience with the legal system has allowed him to develop ***an intuition*** of when and where certain pitfalls exist with regards to illegal detentions of supposed shoplifters [enough to start audio recordings ahead of time in case he happens to catch such behavior]. One such pitfall he has discovered is that merchants [and police] often impermissibly "bootstrap" simple refusals to consent to searches into the very purported justification to search [that otherwise renders that consent meaningless]. Indeed, as this type of behavior continues to go unchecked, Plaintiff is by no means alone with regards to developing such an intuition. *See https://tinyurl.com/4npw8cba* for a perfect example of a police officer of 20 years honing in on the same epidemic. In the example provided, the officer simply refused to show his receipt on his way out of a Walmart, just like Plaintiff, only to be detained, just like Plaintiff, for nearly half an hour before he was finally let go by them. One cannot reasonably refer to such benign behavior as "entrapment." [See Merriam-Webster definition of "entrap" as "to cause (a person) to commit a crime by means of undue persuasion, encouragement, or fraud in order to later prosecute."]. As such, Plaintiff's decision to go shopping at any and all stores, all the time, to see if he can "catch" this type of illegal behavior "with the intent to sue for

false arrest," *Def's Answer Brief at page 11,* is no different than a seasoned police officer who lays out a bait car "with the intent to catch a car thief." It is truly a sad thing that Plaintiff has been prompted to actually spell this out for the Defendant and the Court. Do you guys *really* think that the only time Plaintiff starts an audio recording on his phone is the only time he "acts" a certain way in order to catch [read to you: induce] such fraud in order to subsequently sue over it? Newsflash. Plaintiff has started, but later deleted, LITERALLY HUNDREDS [IF NOT THOUSANDS] OF AUDIO RECORDINGS at this point, upon the conclusion of every mundane encounter in which he shops from the back of the store, doesn't use a plastic bag, refuses to consent to being searched, BUT IS OTHERWISE NOT DETAINED BY STORE EMPLOYEES ON HIS WAY OUT for performing such truly mundane "actions." The only reason you are seeing him in Court is for the dozen or so situations that he has managed to catch over the course of SEVERAL YEARS OF MUNDANE SHOPPING EXPERIENCES. To otherwise frame Plaintiff as being some innocent-detention-inducing "lawsuit scammer" is just insulting. Truly, truly insulting. It's nothing short of victim shaming, and it shows how incredibly immature and biased this Court is. Seriously. Go screw yourselves. All Plaintiff does is not show his receipt, and you'd rather scapegoat *him* as the perpetrator rather than hold the obvious perpetrators accountable otherwise? TRULY

DISPICABLE INDEED. With such warped and compromised mentalities, you don't deserve to be attorneys, let alone judges. You should be ashamed of yourselves.

CONCLUSION

NEVERTHELESS, Plaintiff respectfully requests that this Court of Appeals **REVERSE** the District Court's granting of Defendant's Motion For Summary Judgment (on all claims for relief) thereby **REINSTATING** and **REMANDING** Plaintiff's consolidated case (in its entirety) to the Adams County District Court for further proceedings not inconsistent with its opinion.

Respectfully submitted on this, the 19th day of July, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of July, 2023, the foregoing **PLAINTIFF'S APPEAL REPLY BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Colorado Court Of Appeals 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:51 PM
Appeal From: **Adams County District Court** District Court Judge: **The Honorable Teri Vasquez** District Court Case Number: **2021CV68** (Consolidated: **2021CV88**) CCOA Judges: **Judge Schutz, Tow, and Grove**	
WILLIAM MONTGOMERY Plaintiff-Appellant vs. **WALMART INC.** Defendant-Appellee	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2023CA159** Adams County District Court Case No: **2021CV68** (Consolidated: **2021CV88**)
COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals the following COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this COMBINED PETITION complies with all the requirements of C.A.R. 40 and C.A.R. 32, including all formatting requirements set

forth in these rules. Specifically, I certify that this COMBINED PETITION contains 4,738 words, which does exceed the 1,900 word limit, but to which can be allowed by this Court via Plaintiff's attached MOTION TO EXEED WORD COUNT.

William Montgomery
William Montgomery

INTRODUCTION

Prior rulings by this Court on Plaintiff's multiple "receipt checking" cases have now created nationwide controversy, as the public has never actually been in disagreement that Walmart shoppers "are not legally required to show their receipts," **yet this Court has now officially ruled otherwise**. *See Walmart is found not liable after detaining a customer who refused to show receipts at the door,* Business Insider, https://tinyurl.com/yvzax7m2 (Jun 5, 2023) ("Shoppers are not legally required to show receipts."); *Walmart Can't Be Sued For Wrongly Disdaining Customer William Montgomery, He Lost His Lawsuits,* NewsOnyx, https://tinyurl.com/2p9ecf4x (Jun 2023) ("It is not legally required for one to show their receipts."); *I refused to show my receipt at Walmart and was detained even though it's not illegal – a judge ruled in store's favor,* The U.S. Sun, https://tinyurl.com/24pxecm4 (Oct 24, 2023) ("It is not mandatory by law for customers to show receipts at stores like Walmart.").

This Court's most recent ruling in Plaintiff's instant case – to continue the same *modus operandi* of routinely striking down his claims – will almost surely keep that pendulum swinging in the wrong direction, thus making it *even more* difficult than it already is for law abiding citizens to exercise their rights to not be falsely imprisoned. As such, it is in this Court's absolute best interest, as a servants of the public who depend on it, to step back and take an honest, humble second look at its most recent ruling, and admit that it has erred. It's okay to err – after all, we're only human. But the facts and the law, as applied to Plaintiff's claims, can lead objectively reasonable people to only one conclusion: that even if Plaintiff "knew" ahead of time that he *might* be detained by non-policy-following store employees, such *intuition* is not something to be punished, but rather praised. As merchants crack down on theft – which they have every right and reason to do today – it is simply not okay for them to now cross the ultimate threshold into the realm of literally treating every one of their customers as "guilty until proven innocent." That's why the legal system gave them "shopkeeper's privilege." A *privilege*, that can be *lost*, if *abused*, by not supporting it with *individualized* suspicion of wrongdoing. As law enforcement officers are not allowed to "bootstrap" refusals to consent to searches into the very justification itself to search, merchants are not allowed to "bootstrap" refusals to show receipts into the very justification itself to detain in order to otherwise *force* the very showing of it.

ARGUMENTS

I. IT IS NOT WALMART'S OFFICIAL STORE POLICY TO DETAIN CUSTOMERS WHO REFUSE TO SHOW THEIR RECEIPTS, AND AS SUCH, PLAINTIFF HAS NEVER AGREED TO ANY ROGUE, RETRACTIVELY APPLIED, PSUEDO-POLICY DETENTIONS

Dispersed throughout the Court Of Appeals Order affirming Defendant's MSJ, this Court repeatedly refers to Walmart's "receipt checking policy" as being one where employees are instructed to detain patrons who refuse to show their receipts [and that because Plaintiff "knew" of this policy, he purportedly "failed to avail himself" of a way to "escape" the ensuing confinement by "refusing to show his receipt"]. *See CCOA Order at Page 8* ("Montgomery was aware of Walmart's policy of stopping some exiting customers to ask for receipts. Montgomery was also aware that if he chose not to produce a receipt, he might be briefly detained as employees investigated the matter. At the same time, Montgomery also knew that if he retained and produced his receipt, he would not be detained."); *CCOA Order at Page 10* ("Montgomery was fully aware of the Walmart receipt policy; had been subjected to the receipt policy on numerous prior occasions; [and] continued to shop at Walmart while expressly contemplating that he would likely be asked for a receipt and briefly confined if he chose not to produce it.").

The chief problem with this Court's position, however, **is that "detention**

for failure to provide a receipt" IS NOT WALMART'S POLICY! *It never was, and it still isn't currently.* Walmart's official "receipt checking policy" is as follows: "Wal-Mart employees stationed near the exits would check the shopping bags against the patrons' receipt as they left the store. The bag check was to take place inside the store and within view of the checkout counters. If the store was busy employees were instructed to check as many bags as they could. If a customer refused to have his or her bag checked, **the policy allowed the person to pass**." *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000). *See also 'Walmart fr can't stop you for the receipt it's in our training': Walmart worker exposes how it's store policy to not push customers on receipt checks*, dailydot, https://tinyurl.com/yhadxksn (May 29, 2023) ("In a viral video posted to TikTok, a Walmart employee gave viewers a look at his training modules and subsequently revealed that receipt checks cannot be enforced if a customer declines them."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("A recent TikTok video posted by a Walmart employee has shed light on the company's receipt check policies. The viral video, viewed over 745,900 times at the time of writing, exposed training modules that revealed an interesting fact – Walmart employees cannot enforce receipt checks if a customer declines. . .The video showed a page

outlining instructions for a scenario titled 'Customer Refuses a Receipt Check.' The instructions explicitly stated that employees should not force a receipt check on an unwilling customer but rather express gratitude for their patronage.").

Therefore, as one can quickly see, this Court is doing nothing more than impermissibly ***shielding*** the non-store-policy-following ROGUE employees from liability, by using the store's official policy as ***cover*** for it's employees' unofficial actions, when those actions were NEVER ONCE authorized or approved by Walmart in the first place! Put another way, by misapprehending the official store policy, this Court is impermissibly holding Plaintiff to a double standard. That is, while Plaintiff was undoubtedly always [and to which is the very crux of his "sting" operation] "aware that if he chose not to produce a receipt, he might be briefly detained," **he was also always aware** [from his personal knowledge of the **official** store policy] that if he *did* refuse to show his receipt, **policy-following employees would allow him to leave**. Thus, this Court cannot expect Plaintiff to go shopping at Walmart, follow one store policy [the official store policy] of refusing to show his receipt "in order to pass," but then pull a full-on bait and switch on him, *after-the-fact*, once he does refuse, by otherwise claiming that he *must* now abide by the new, *retroactively-applied*, rogue-store-employee-proffered "policy" [if one could even call it that, as such was never sanctioned by Walmart] that otherwise

purportedly *does* require him to show his receipt in order to pass. So which is it? Does Plaintiff have to show his receipt, or not? This Court's use of Walmart's official store policy to supplant it's rogue employees' mere excuses has created a real-life contradiction that must not be allowed to continue.

Ultimately, while having "knowledge" of an official store policy is one thing, having "knowledge" that some rogue store employee ***might***, on some rare occasion, violate that policy, is not the same type of "knowledge" to which this Court seeks to apply. It's more like having *intuition* that a tortfeaser *may* commit a tort. **But merely having intuition that one may potentially be torted does not necessarily create an obligation under the law to avoid that tortuous behavior.** In some circumstances (i.e. situations involving negligence) the "last clear chance doctrine" may certainly apply. But said doctrine does not apply (nor has it ever) to intentional torts committed by others. Take a predatory towing company for example. Say you park at a mall with full "knowledge" (read: *intuition* from your own prior experiences or investigation] that said towing company routinely waits only 1 hour and 55 minutes to begin towing vehicles parked in a 2 hour spot (so as to ever so slightly increase its revenue without significant risk of getting caught). If you purposely wait to move your car until 1 hour and 58 minutes have passed, but are prematurely towed three minutes prior, can it really be said that you no longer have a right to sue the company

because you "knew" that such ***might*** happen? HARDLY. Indeed, no matter how many times you get your car unlawfully towed at 1 hour and 55 minutes, because you wait until 1 hour and 58 minutes to move it, no Court would EVER deny you justice in your multiple, repeated, identical lawsuits. In fact, the Court would probably award you higher and higher punitive damages for the repetitively flagrant, law-violating behavior. Same goes with Plaintiff's instant circumstance. Any person with a modicum of social connection has heard of Walmart's official store policy to **ASK** for receipts. Yet any person with a modicum of legal experience on the subject has probably also read cases like *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513 (Tex. App. 1996) or *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000). Does every person then, after having read those cases, forgo the right to sue and win against Walmart, should the same thing happen to them? HARDLY. Indeed, say Ms. Odem and Mrs. Ball, *themselves*, revisited the same exact stores they were torted at in their suits, to see if the same exact thing might happen to them again. Would they not have the same exact right to sue and win against Walmart, ***all over again***, even though they could be deemed to have had personalized "knowledge," according to this Court, that such intentional torts might happen to them again? HARDLY.

It should also be worth noting, at this point, that such a "double standard" proffered by this Court strips Plaintiff of his rights to sue and win, *regardless* of the

situation. Obviously, this Court has already held that by Plaintiff REFUSING to show his receipt, he purportedly "fails to avail himself" of some "escape" path, thereby forfeiting his right to sue for false imprisonment. Yet, multiple Courts have already held that a patron's act of SHOWING a receipt ***already*** forfeits their right to sue for false imprisonment, as such behavior ***already*** constitutes "voluntarily giving consent to a detention." *See Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005). *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). So which is it? Does one forfeit their right to sue for false imprisonment by showing a receipt, or not showing it? It can't be both, as such an unlucky position would be **manifestly unfair** to the regular customer who chooses to shop at Walmart, a NON-membership store whose official receipt checking policy is, according to they themselves, **NON-COMPULSORY** in nature. Indeed, Plaintiff went shopping at Walmart WITH such personalized knowledge, after having read *Broadnax* and *Anderson* prior to, that if he voluntarily showed his receipt he would indeed be consenting to the detention, and would thus be forfeiting his right to sue should he be detained in the alternative. THAT'S WHY HE REFUSED TO SHOW HIS RECEIPT! Plaintiff, like any reasonable person, was *already* made aware that SHOWING a receipt is the act that constitutes "consenting to a detention," not REFUSING to show it! This Court cannot reasonably expect Plaintiff to

VOLUNTARILY consent to detentions that, again, according to Walmart's OWN policy, that Plaintiff ALSO knew and was ALSO following, to the tee, at all times, **HE DOESN'T HAVE TO CONSENT TO!!!**

II. PLAINTIFF EXITED THROUGH THE ONLY AVAILABLE EXIT, AND DEFENDANT WAS FULLY AWARE OF THAT

Next is a small, but significant issue surrounding the exit in 2021CV68. In the Court Of Appeals Order affirming Defendant's MSJ, this Court states that "The exit closest to the self-checkout machine was closed, so Montgomery walked to the next exit, carrying the purchased items." *CCOA Order at Page 3.* The problem here is that the record is completely devoid of any evidence whatsoever to substantiate that the eastern exit [the closed one] was the "exit ***closest*** to the self-checkout machine." Rather, Plaintiff merely stated in his Affidavit that "Because the eastern exit of the store was closed at the time, [he] had no choice but to leave through its western exit." *PAFC #1 at ¶ 12.* See? No mention of which exit was "closer." Ultimately, this generalized "fact" surrounding which exits were closed vs opened was only mentioned by Plaintiff in order to ensure that the Court understood that by blocking Plaintiff's only available exit – the only exit that remained open that evening – a "completed" imprisonment had occurred [a necessary element of the tort]. It was not mentioned by Plaintiff to establish, in any way, that he "walked to the *next* exit" [as

this Court puts it in a sort of way that impermissibly eludes to him perhaps circumventing the regular exit procedure in order to unfairly "dupe" or "entrap" the employees at the other exit into imprisoning him "just so he could sue them"].

Moreover, such a distinction of which exits were closed vs. open is actually an entire moot point, as the employees stationed up at the only remaining exit would have known that the other exit was closed off, thereby knowing that anybody coming from that direction would naturally be coming a self-checkout register located on that side of the store [if indeed one was located there]. So either way, no additional suspicion can fairly be gleamed from the situation, regardless of where the self-checkout registers were located in relation to the exits. [Of course, the self-checkout registers WERE located directly next to the only available exit in the store, which only ***cuts against*** the employees having shopkeeper's privilege in the matter.]

III. SHOPKEEPER'S PRIVILEGE DOES NOT CLOTHE MERCHANTS WITH IMMUNITY WHEN THEY RESORT TO SLANDER

Regarding Plaintiff's claim of defamation *per se* in 2021CV88, the Court Of Appeals concluded that "the brief detention and questioning – including an accusation of theft – were made in a reasonable manner to ascertain whether a theft occurred. *CCOA Order at Page 13.* However, such a holding – that the "accusation of theft [was] made in a reasonable manner" – is unsupported by the law. Specifically, while

"[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964). In layman's terms, while the Defendant in case number 2021CV88 may have had the perfect right to tell Plaintiff, in front of others, that "we suspect you *may* be shoplifting, and are investigating you to *confirm* our suspicions," they are are **absolutely not allowed** to say things like "Give us our stol*en* stuff back," *Def's MSJ Exhibit B at 15:49,* "Give us our stol*en* stuff," *Id. at 15:51,* and "*When* you steal from the store, that can't happen." *Id. at 16:41.* These ***conclusory*** statements of a ***past***, ***completed*** theft far exceed what is permissible to say during a mere ***investigation*** occurring in the ***present***, and are much closer to what could fairly be said ***only after*** a ***conviction*** for shoplifting has been obtained. As such, they are not statements that are protected by the "shopkeeper's privilege" statute, and the Defendant is liable for uttering them in the presence of the public.

IV. ALL AVAILABLE FACTORS, WHETHER USED INDIVIDUALLY OR TOGETHER, ARE 100% INCAPABLE OF PROVIDING THE DEFENDANT WITH "SHOPKEEPER'S PRIVILEGE"

Toward the end of the Court Of Appeals Order Affirming Defendant's MSJ, this Court claims that a "combination of unique circumstances" existed surrounding Plaintiff's purchases sufficient enough to provide Defendant with shopkeeper's privilege in the matter. It listed four factors to support its position: "purchases and subsequent rescission of some of the purchases," "use of the automotive register to purchase food items," "eschewing the use of a bag," and "persistent failure to produce a receipt when requested." *CCOA Order at Page 12.* Under a correct analysis of the law, however, none of these factors, together ***or*** separately, have the capacity *in the first place* to provide the Defendant with "shopkeeper's privilege."

Let's start with the most important factor: "persistent failure to produce a receipt when requested." The problem with this factor is that it is LITERALLY nothing more than impermissible and unjustifiable "bootstrapping." "[O]fficers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part

of the basis for finding the reasonable suspicion that makes consent unnecessary."). Specifically, if a merchant asks *anybody*, coming from *any* register, *with or without* a bag, to see their receipt, the merchant either a) gets to detain that person through their own voluntary consent to that detention [by way of their own voluntary showing of their own receipt], or b) gets to detain them anyways if they happen to refuse to show the receipt [by using the very refusal as the very justification to detain them with directly thereafter.] As such, the *act itself* of "asking to see the receipt" is actually an **entirely moot point**. The customer – again, coming from *any* register, *with or without* a bag – is detained **either way**. The request itself is **irrelevant**. Therefore, it LITERALLY cannot be part of a shopkeeper's privilege analysis, **nor be used to "bootstrap" other factors with.** Only individualized suspicion has the capacity of providing genuine "shopkeeper's privilege." And being able to effectively detain *anybody*, coming from *anywhere*, with *anything* in their hands, *regardless* of what they say or do, is **literally the opposite** of "individualized." Only other factors can possibly be used [but to which, as will be discussed next, are *still* not enough to justify detaining Plaintiff with].

Next is the factor: "purchases and subsequent rescission of some of the purchases." This factor is **100% incapable** of providing the Defendant with "shopkeeper's privilege" because of the simple fact that it had absolutely no idea

that this had happened when it first confronted Plaintiff. Upon Plaintiff observing the Defendant for "the very first time upon leaving," *PAFC #2 at ¶ 16,* the Defendant had **no earthly idea whatsoever** that any "rescission of some of the purchases" had taken place. For all it knew, what Plaintiff was observed to have been walking out with was exactly, *and only,* what he had purchased that day. As such, this Court is not allowed to inject this "fact" into the analysis when no such fact was ***ever*** used by the Defendant to detain Plaintiff with *in the first place*.

Next is the factor: "use of the automotive register to purchase food items." This factor is also **100% incapable** of providing the Defendant with "shopkeeper's privilege" because of the simple fact that it knew full-well that numerous registers existed throughout its store, ***and*** that no restrictions on what was allowed or not allowed to be purchased at those registers was ever in place, either. As such, the Defendant is not allowed to pull a "bait and switch" on an unsuspecting customer who was *personally* given the opportunity, *by them*, to buy whatever items at whatever registers he so chose to. Again, the hallmark of probable cause (i.e. shopkeeper's privilege) is that suspicion is "individualized" to a "particular" individual, with **actual facts** to support that suspicion. Put another way, "Probable cause cannot be based on mere belief [ ] that somebody did or did not do something. . .The investigation should be based on more than mere conjecture or

suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). As such, because the Defendant "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store," this Court **must** accept that it is "confronted with little more than unfounded naked suspicion. . .that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). Importantly, it should be noted, is that *even if* this particular factor of "coming from a back register" could potentially be used by the Defendant to supply it with shopkeeper's privilege in a matter, it absolutely, unequivocally cannot be used in Plaintiff's case number 2021CV68. For in that case, **Plaintiff literally exited the store directly from the self-checkout registers located at the front of it!** This means that ONE AND **LITERALLY** ONLY ONE possible factor remains in that particular case to analyze shopkeeper's privilege with – the act of not using a plastic bag [but to which, as will be discussed next, is *still* not enough to justify detaining Plaintiff with].

Last, but certainly not least, is the factor: "eschewing the use of a bag." The problem with this factor is that it, once again, does absolutely nothing to *individualize* suspicion with. Far too many customers don't use plastic bags, especially now that stores are charging 10¢ or so for them. Walmart has never had a bag policy in place,

either, regarding their use or non-use by customers. **Most importantly, the retail giant itself has actually ELIMINATED them altogether in Colorado, Connecticut, New York, Maine, New Jersey and Vermont!** See *Walmart stores in 6 states no longer provide single-use bags at checkout: Which states are next?,* The Hill, https://tinyurl.com/bdfcmtzp, (Jan 21, 2023). Ultimately, the reason why this factor is **100% incapable** of being used, especially in a shoplifting suspicion context, is because "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985) (discussing *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971). In *Coblyn*, the Plaintiff was unlawfully detained for wearing an untagged, purchased ascot on his way out of the store. In Plaintiff's instant case, he was likewise unlawfully detained for carrying untagged, purchased food items on his way out of the store. As such, the Defendant is liable for detaining him.

It is also worth noting, that *even though* such factors, as just discussed, are **100% incapable** of being individually used during a shopkeeper's privilege analysis, they are *still* not capable of being used together, either. *See Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995) ("[I]t [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there

are concrete reasons for such an interpretation." *See also United States v. Wood,* 106 F.3d 942, 948 (10th Cir. 1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). This is especially true with regards to the "refusing to show a receipt" factor, which as previously discussed, involves a merchant being able to ask literally *anybody*, coming from *anywhere*, with *anything* in their hands, to show their receipt, but whereby such detention for failure to show **is merely "bootstrapping" those other factors**, i.e. leaving only them in existence to fall back on. For example, in Plaintiff's case number 2021CV68, the only two factors purportedly capable of being used for the Defendant's shopkeeper's privilege analysis are that Plaintiff a) didn't use a plastic bag, and b) refused to show his receipt when asked. But because, like previously discussed, the ***act itself*** of asking is rendered entirely ***moot*** (as the merchant gets to have their detention either way), the analysis is mathematically reduced by that invalid factor. Meaning, if all non-plastic-bag users are effectively detainable, *either way*, when asked to show their receipt, the only factor that can legitimately remain is that they didn't use a plastic bag. And of course, as just discussed, merely not using a plastic bag is not an individualizable enough way to fairly separate the "wheat from the chaff" to begin to lawfully detain a patron over. As such, because Plaintiff did LITERALLY EVERYTHING

IDENTICAL TO A PAYING CUSTOMER WHO SIMPLY DOESN'T USE PLASTIC BAGS, *and even left the store from the front registers,* the Defendant is liable for detaining him. For this Court to hold otherwise, would be to **literally sanction 100% compulsory checkpoints at all store exits to ARREST literally every single customer who doesn't use a plastic bag** (because that is what probable-cause-driven "shopkeeper's privilege" means – to ***arrest*** [not merely *detain;* only police have powers to *detain* – i.e. *Terry* stop].

V. THE DEFENDANT PERMITTING PLAINTIFF TO LEAVE WAS THE "KEY" TO HIS RELEASE, *NOT HIS RECEIPT*

Finally, during its analysis, this Court also misapprehended the dispositive argument made by Plaintiff regarding *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000). The reason why Plaintiff mentioned *Ball* was because in that case, where the Plaintiff ***did*** show her receipt to the Defendant, it was the fact that the Defendant continued to detain Ms. Ball, ***outright***, *in the mean time*, ***until after*** it completed its ***own*** independent verification of the purchases at hand, that constituted her unlawful imprisonment. The *Ball* Court specifically held that "a reasonable person would have apprehended that he or she was not free to leave *until Mr. Harris concluded his inspection of Ms. Ball and permitted her and the others behind her to leave*." Read that again. **THAT'S MR. HARRIS CONCLUDING HIS**

INSPECTION OF MS. BALL, that resulted in her eventually being **PERMITTED**, **BY HIM**, for her and the others behind her to leave. This is what Plaintiff meant in his past arguments surrounding the critical difference between "escape" and "release," and that receipts themselves aren't the autonomous "key" to a patron's release, **the merchant's own, personal, independent act of satisfactorily cross-checking a receipt against merchandise is** [and to which was always **OUTSIDE** the control of Plaintiff in his circumstances]. Most importantly, this issue of properly applying the definition "escape" vs "release" has nothing whatsoever to do with whether or not Ms. Ball "knew about the receipt checking policy." The Merriam-Webster dictionary definitions of "escape" and "release" are the same across the country, regardless of what jurisdiction a case is brought in.

CONCLUSION

In the end, all one has to do is ask oneself: **can a private investigator lawfully detain a bystander until they provide their name to them?** Private investigators have an interest in detecting crime, just like merchants. And all a bystander has to do in order to secure their release is to provide their name, just like a customer who shows their receipt. Yet no such legal power has EVER been granted to private investigators to conduct such draconian detentions. Of course, one may think oneself,

"Well, merchants have shopkeeper's privilege to draw their authority from, that private investigators do not, right?" But they'd be wrong, because this Court has literally just written out ***the very capacity itself*** for the privilege to even be invokable, as shopkeeper's privilege is only a defense to a false ***imprisonment*** claim, and this Court has now held that "showing a receipt" is a viable "escape" path ***which literally renders the detention to have paradoxically never existed in the first place.***

WHEREFORE, for all the foregoing reasons, the Court of Appeals should **GRANT** Plaintiff's COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC in this matter.

Respectfully submitted on this, the 9th day of November, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 9th day of November, 2023, the foregoing **COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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SUPREME COURT, STATE OF COLORADO 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:51 PM
On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2023CA159**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WALMART INC.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Supreme Court Case No: **2023SC931**
PETITION FOR WRIT OF CERTIORARI	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Supreme Court the following PETITION FOR WRIT OF CERTIORARI, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this PETITION complies with all the requirements of C.A.R. 32 and C.A.R. 53, including all formatting requirements set forth in these rules. Specifically, I certify that this PETITION contains **3,790** words, which does not exceed the 3,800 word limit.

William Montgomery
William Montgomery

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1. Whether a patron has the legal right to refuse to show their receipt to a non-membership store that is open to the general public. [YES.]

2. Whether it is Walmart's "official" store policy to not actually require patrons to show their receipts upon exiting their stores. [IT IS.]

3. Whether patrons are required, by law, to abide by rogue, non-store policies that rogue, non-store-policy-following employees invent for them. [NO.]

4. Whether mere "intuition" that a tort *might* possibly occur counts as having "personalized, irrefutable, undeniable knowledge" that it absolutely *will* occur (enough to invalidate all future legal claims over). [NO.]

5. Whether an intuition-driven "sting" (that is still indistinguishable from innocent customer behavior) is an illegitimate "lawsuit scam" or a legitimate "audit" / "secret shopping." [AUDIT / SECRET SHOPPING.]

6. Whether patrons are required, by law, to keep their receipts on them, at all times, in order to "prevent" future detentions from happening to them. [NO.]

7. Whether the merchant or the patron has the "last clear chance" to avoid a detention undertaken upon the patron's refusal to show a receipt. [THE MERCHANT.]

8. Whether imprisonments are defined objectively by their "outrightness," or subjectively by their individualized time constraints. [OUTRIGHTNESS.]

OPINION FROM WHICH RELIEF IS SOUGHT

A division of the Colorado Court Of Appeals issued an Opinion in Case No. 2023CA159 affirming the dismissal of Plaintiff's Complaint filed in the Adams County District Court. Plaintiff filed a *Petition For Rehearing* which was denied. The Court Of Appeals Opinion and the Order Denying Plaintiff's *Petition For Rehearing* are therefore attached to this *Petition For Writ Of Certiorari*.

BASIS OF JURISDICTION

Plaintiff filed a civil Complaint in the Adams County District Court, claiming false imprisonment and defamation. The District Court dismissed the Complaint upon the granting of Defendant's Motion For Summary Judgment of it. Plaintiff appealed the dismissal to the Colorado Court Of Appeals, Case No. 2023CA159. On October 26, 2023, the Court Of Appeals issued an Opinion and Order affirming the dismissal. On November 13, 2023, Plaintiff filed a *Petition For Rehearing*. On November 30, 2023, the Court Of Appeals issued an Order denying the *Petition For Rehearing*. On December 15, 2023, Plaintiff filed a *Motion For Extension Of Time To File A Petition For Writ Of Certiorari*. The Court granted the motion. This *Petition For Writ Of Certiorari* is timely because it is filed within the twenty-eight (28) day extension period that Plaintiff was subsequently granted to file it within. See C.A.R. 52(b).

REFERENCE TO PENDING CASES WITH THE SAME LEGAL ISSUES

Plaintiff is unaware of any pending cases with the same or similar legal issues.

STATEMENT OF THE CASE

On two separate occasions Plaintiff went shopping at a Westminster and Aurora Walmart Superstore. During his shopping experiences, he simply walked in, purchased items like any other customer, and walked out. On his way out, he was asked to show his receipt by store employees who were either posted up at the store's exit, or who had walked past him just as he was leaving. On both occasions, because no employees had established "shopkeeper's privilege" to fairly believe that Plaintiff had stolen anything, he politely declined the receipt requests and continued to exit the stores. Unfortunately, Plaintiff was stopped from leaving both stores, by both sets of employees, just for refusing to show his receipt, and was made to stay until they decided some time later to finally release him.

Afterwards, Plaintiff sued Walmart for not properly establishing shopkeeper's privilege to lawfully detain him with. At the Summery Judgment stage of the proceedings, the District Court Judge casually dismissed Plaintiff's two-claim case by concluding that because he purportedly "knew that all he had to do to prevent detention was to show his receipt," no imprisonment of him had ever

occurred in the first place. Upon appeal, the Colorado Court Of Appeals affirmed the lower Court's holding using the same argument.

REASON FOR ISSUING THE WRIT

For decades now, Courts in this country have unanimously and consistently held that merchants' bare, suspicionless, unparticularized, systematic, outright detentions of patrons conducted *in order to* verify their receipts against their purchases [and nothing more] as well as outright detentions of them conducted solely *in response to* their mere refusal to show their receipts [and nothing more] are unlawful due to what is called "shopkeeper's privilege" lacking in the matter. Unfortunately, the Court Of Appeals has now unprecedentedly deviated from this well-settled legal principle, henceforth rendering justice categorically impossible to achieve for patrons who get unjustifiably detained for simply refusing to show their receipts. The Court has accomplished this by irrationally and illogically merging into one single, unified, contemporaneous transaction the *asking* to show a receipt with the *detention* that follows it – so that they can "fit" the now heavily-downplayed act of "showing a receipt" into some purportedly autonomous, only "*slightly* inconveniencing" "escape" path that a patron must not forgo "choosing" (when really, by definition, showing a receipt only secures a conditional, ***post***-*confinement* "release" from custody). **This is not what the Colorado Legislature**

intended by their use of the term "escape." Nor has the Colorado Legislature ever codified that a patron must now actively "prevent" all future detentions of a merchant by now being forced to keep on them, at all times, and show upon request, at all times, their receipts. As such, it is critically necessary for the Supreme Court to step in now to correct such a dangerous misconception made by the lower Courts. Patrons, like all citizens, deserve to have meaningful access to justice in this country. But until stopped, according to the Court Of Appeals, merchants now have **free reign** to detain whomever they want, whenever they want, **with 100% absolute impunity for their actions otherwise**. As can be seen below via national news outlets that have already begun to cover the very controversy to which the Colorado Court Of Appeals has created, this is not what courts, attorneys, stores themselves, their employees, or the public at large, decided long, long ago, is the law. Rather, society has already uniformly determined that detentions executed during what are strictly suspicionless checkpoints to merely verify receipts is unlawful because of how "shopkeeper's privilege" is sorely lacking on the part of the merchants. As such, it is time for the rogue employees (and now rogue Courts) in Colorado to be corrected of their exceedingly faulty thinking.

See Walmart is found not liable after detaining a customer who refused to show receipts at the door, Business Insider, https://tinyurl.com/yvzax7m2 (Jun 5, 2023)

("Shoppers are not legally required to show receipts.");

Walmart Can't Be Sued For Wrongly Disdaining Customer William Montgomery, He Lost His Lawsuits, NewsOnyx, https://tinyurl.com/2p9ecf4x (Jun 2023) ("It is not legally required for one to show their receipts.");

I refused to show my receipt at Walmart and was detained even though it's not illegal – a judge ruled in store's favor, The U.S. Sun, https://tinyurl.com/24pxecm4 (Oct 24, 2023) ("A lawyer revealed that it is not mandatory by law for customers to show receipts at stores like Walmart.");

I'm a lawyer – retailers like Walmart can't legally check your receipt if you refuse but Costco has found a loophole, The U.S. Sun, https://tinyurl.com/43cm6fzm (Oct 23, 2023) ("They can ask you to show your receipt and you can consensually allow them to do it. But there is no power or authority to detain you if you say no." "Stores like Walmart [] could risk legal issues if they attempt to enforce these checks." "[I]f non-membership stores attempted to detain customers for this consumers would be able to sue for false imprisonment if they did not commit a crime.");

I'm a criminal attorney – there's a big problem Walmart & Target staff ignore when they demand to see your receipt, The U.S. Sun, https://tinyurl.com/mrxzw248 (Oct 31, 2023) ("[E]mployees can still ask for your receipt but a customer doesn't have to show it if they don't want to. 'Even the police, they have no right to stop you

and force you to show a receipt without reasonable suspicion to stop you and probable cause to search you.'");

Walmart 'cannot come after you' for refusing to show receipt at self-checkout unless they spot key details, expert warns, The U.S. Sun, https://tinyurl.com/yfhnn5xc (Dec 31, 2023) ("[Y]ou can invoke your rights and refuse to show your receipt to the worker at the door when asked.");

'You can walk on by,' cop tells Walmart shoppers about receipt checks – but a specific law makes things 'tricky,' The U.S. Sun, https://tinyurl.com/3chf9xwh (Jan 3, 2024) ("Failing to show a receipt at a store's exit isn't enough of a reason for a store like Walmart to detain a suspected stealer.");

Walmart can't force you to show receipt or have bag checked at the door unless they have a vital excuse, lawyer warns, The U.S. Sun, https://tinyurl.com/mu8cnysf (Jan 17, 2024) ("[W]ithout probable cause to establish Shopkeeper's Privilege," – i.e. "suspicion of shoplifting through other behaviors or actions," – "a receipt check inquiry can be refused legally at Walmart.");

'That's false imprisonment,' lawyer insists as he warns Walmart and major retailers about unnecessary receipt checks, The U.S. Sun, https://tinyurl.com/ycj27x7a (Jan 20, 2024) ("If you haven't done anything wrong and they can't confirm with video cameras or eyewitnesses...and they detain you without

consent, that's false imprisonment.").

ARGUMENT

I. IT IS NOT WALMART'S OFFICIAL STORE POLICY TO DETAIN CUSTOMERS WHO REFUSE TO SHOW THEIR RECEIPTS

Dispersed throughout the Court Of Appeals Order affirming Defendant's MSJ, the Court repeatedly refers to Walmart's "receipt checking policy" as being one where employees are instructed to detain patrons who refuse to show their receipts [and that because Plaintiff "knew" of this policy, he purportedly "failed to avail himself" of a way to "escape" the ensuing confinement by "refusing to show his receipt"]. *See CCOA Order at Page 8* ("Montgomery was aware of Walmart's policy of stopping some exiting customers to ask for receipts. Montgomery was also aware that if he chose not to produce a receipt, he might be briefly detained as employees investigated the matter. At the same time, Montgomery also knew that if he retained and produced his receipt, he would not be detained."); *CCOA Order at Page 10* ("Montgomery was fully aware of the Walmart receipt policy; had been subjected to the receipt policy on numerous prior occasions; [and] continued to shop at Walmart while expressly contemplating that he would likely be asked for a receipt and briefly confined if he chose not to produce it.").

a. Because Plaintiff never agreed to any rogue, retroactively-applied, pseudo-policy detentions, he was subjected to a "bait and switch"

The chief problem with the Court Of Appeal's position, however, **is that "detention for failure to provide a receipt" IS NOT WALMART'S POLICY!** *It never was, and it still isn't currently.* Walmart's official "receipt checking policy" is as follows: "Wal-Mart employees stationed near the exits would check the shopping bags against the patrons' receipt as they left the store. The bag check was to take place inside the store and within view of the checkout counters. If the store was busy employees were instructed to check as many bags as they could. If a customer refused to have his or her bag checked, **the policy allowed the person to pass**." *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000). *See also 'Walmart fr can't stop you for the receipt it's in our training': Walmart worker exposes how it's store policy to not push customers on receipt checks*, dailydot, https://tinyurl.com/yhadxksn (May 29, 2023) ("In a viral video posted to TikTok, a Walmart employee gave viewers a look at his training modules and subsequently revealed that receipt checks cannot be enforced if a customer declines them."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that employees should not force a receipt check on an unwilling customer but rather express gratitude for their patronage.").

Therefore, as one can quickly see, the Court Of Appeals is doing nothing

more than impermissibly ***shielding*** the non-store-policy-following ROGUE employees from liability, by using the store's official policy as ***cover*** for its employees' unofficial actions, when those actions were **NEVER ONCE** authorized or approved by Walmart in the first place! Put another way, by misapprehending the official store policy, the Court is impermissibly holding Plaintiff to a double standard. That is, while Plaintiff was undoubtedly always [and to which is the very crux of his "sting" operation] "aware that if he chose not to produce a receipt, he might be briefly detained," **he was also always aware** [from his personal knowledge of the **official** store policy] that if he *did* refuse to show his receipt, **POLICY-FOLLOWING EMPLOYEES WOULD ALLOW HIM TO LEAVE**. Thus, the Court cannot expect Plaintiff to go shopping at Walmart, follow one store policy [the official store policy] of refusing to show his receipt "in order to pass," **but then pull a full-on bait and switch on him**, *after-the-fact*, once he does refuse, by otherwise claiming that he *must now* abide by the new, *retroactively-applied*, rogue-store-employee-proffered "policy" [if one could even call it that, as such was never sanctioned by Walmart] that purportedly *does* require him to show his receipt "in order to pass." **So which is it?** Does Plaintiff have to show his receipt, or not? The Court Of Appeal's abuse of Walmart's official store policy to supplant its rogue employees' mere excuses has created a real-life contradiction,

executed as a real-life "bait and switch," that must not be allowed to continue.

b. Therefore, it was the Defendant who had the "last clear chance" to avoid detaining plaintiff (not Plaintiff to avoid shopping there)

Ultimately, it appears that the Court Of Appeals is making little more than a crude "last clear chance doctrine" argument when claiming that Plaintiff's detentions were purportedly illegitimate because of his own "aware[ness] that if he chose not to produce a receipt, he might briefly detained." However, having "knowledge" that some rogue store employee ***might***, on some rare occasion, violate a policy, is not the same type of "knowledge" to which the Court Of Appeals seeks to apply. Meaning, it's more like having *intuition* that a tortfeaser *may* commit a tort. **But merely having *intuition* that one may *potentially* be torted does not necessarily create an obligation under the law to now *actively avoid* that tortuous behavior.** Indeed, in Plaintiff's instant circumstance, it is indisputable that it was *the Defendant* who had the **exclusive** "last clear chance" to avoid unlawfully detaining him [right before **they** decided to do so]. To say otherwise, would be to [intellectually dishonestly] say that Plaintiff detained himself! Which is obviously not what happened to him.

c. Showing a receipt, and refusing to show a receipt, cannot both be a form of consent

It should also be worth noting, at this point, that such a "double standard"

proffered by the Court Of Appeals strips Plaintiff of his rights, *regardless* of the situation. Obviously, the Court has already held that by Plaintiff REFUSING to show his receipt, he purportedly "fails to avail himself" of some "escape" path, thereby forfeiting his right to sue for false imprisonment. Yet, Courts have already held that a patron's act of SHOWING a receipt ***already*** forfeits their right to sue for false imprisonment, as such behavior ***already*** constitutes "voluntarily giving consent to the detention." *See Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005). *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). **So which is it?** Does one forfeit their right to sue for false imprisonment by showing a receipt, or not showing it? It can't be both, as such an "unlucky position" would be **manifestly unfair** to the regular customer who chooses to shop at Walmart, a NON-membership store whose official receipt checking policy is, according to they themselves, **NON-COMPULSORY** in nature. Indeed, Plaintiff went shopping at Walmart WITH such personalized knowledge, after having read *Broadnax* and *Anderson* prior to, that if he voluntarily showed his receipt he would indeed be consenting to the detention, and would thus be forfeiting his right to sue should he be detained in the alternative. THAT'S WHY HE REFUSED TO SHOW HIS RECEIPT! Plaintiff, like any reasonable person, was *already* made aware that **SHOWING** a receipt is the act that constitutes

"consenting to a detention," not REFUSING to show it! Ultimately, the Court cannot reasonably expect Plaintiff to VOLUNTARILY consent to detentions that, again, according to Walmart's OWN policy, *to which Plaintiff knew and was following at all times*, **HE DOESN'T HAVE TO CONSENT TO!!!**

II. THE COURT OF APPEALS IS MAKING A PURELY PERSONAL, SUBJECTIVE DECISION USING OBJECTIVE ONLY LAW

a. The amount of time that a person is detained for is not what defines their imprisonment, the raw "outrightness" of their detention is

In previous Appellate Orders affirming dismissal of Plaintiff's similar Complaints, the Court Of Appeals has referred to *Comment A* of the R*estatement (Second) of Torts § 36* to support the notion that Plaintiff was purportedly never confined by the Defendant because of how "being asked to show a receipt. . .is *at most* a 'slight inconvenience.'" The problem with this position, however, **is that it is a purely subjective one**, without a single iota of support from the actual law on the subject. The ACTUAL law is already clear that an "imprisonment" **OBJECTIVELY** occurs when a person is detained "for any amount of time, **no matter how short.**" S*ee Colorado Civil Jury Instruction 21:1(2).* Therefore, *even if* it only takes "but a fleeting moment" for Plaintiff to merely show his receipt, **a full-blown, objectively-held detention of him has already – BY LAW – occurred** [and as such, the Defendant is liable for unlawfully undertaking such behavior].

Indeed, if the Court Of Appeals position were correct, they would quickly be allowed to *also* **subjectively** decide [depending entirely on how they are feeling, which is the point], that, say, a private investigator now has the right to lawfully detain a citizen until they tell them their name. Or, a security guard has the right to lawfully detain a neighborhood resident until they show them their ID. In both examples, it would surely only take "but a fleeting moment" for the people to comply. BUT THAT'S NOT HOW THE LAW WORKS. The law, as written, is objectively outright driven, not merely time-constraint driven.

Indeed, it only takes but one example to show precisely how faulty the Court Of Appeals exclusively-subjectively-driven position is on the subject: a mother of seven with a full cart of groceries. It's obviously no longer a mere "slight inconvenience" for the mother to wait 10+ minutes to have *her* entire cart of purchases verified [and who would thus likely enjoy the full protections available against false imprisonment, according to the Court of Appeals' position], **yet somehow Plaintiff purportedly does NOT have that same right against false imprisonment, just because he only buys one or two items at a time?**

b. The Court of Appeals subjective position hinges entirely on their incorrect use and definition of the words "escape" and "release"

The Merriam-Webster Dictionary defines "escape" as "to get away (as by

flight)" or "to issue from confinement." These definitions naturally and logically hinge on the notion that a person "escaping" **would be doing so single-handedly and of their own volition** (i.e. "to [self] issue from confinement," ***not*** "to [be issued] from confinement"). In other words, if a prisoner still requires ***permission*** from their captor in order to be ***set free*** by them, one can hardly call that a viable avenue of "escape." Rather, that is nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (and importantly, *not even guaranteed*) **RELEASE** of the subject that doesn't actually occur **until after** the captor **grants** it. *[See Merriam-Webster Dictionary definition of "release," which aptly defines it as "to set free from restraint, confinement, or servitude."]* Indeed, this distinct lack of autonomy is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [ ] no physical restraint of her person was attempted." *Id.* As such, **there exists a critical window of time in between when a merchant confines a patron and when they decide to release them,** *and within which the patron may very well have done literally everything possible that has been asked of them,* but is ***still*** nevertheless **OUTRIGHT** detained by the merchant **pending an independent, conscious**

decision to be made by them, to finally and eventually be released by them. As in, **a store employee is not some infallible robotic gatekeeper that one can simply wave their receipt in front of and be 100% guaranteed their instantaneous own way past.** Purchase verification invariably takes time to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee keep holding them until such verification is accomplished.

CONCLUSION

Just as police officers aren't allowed to "bootstrap" refusals to consent to being searched into the very justification itself to search, merchants are not allowed to "bootstrap" refusals to show receipts into the very justification itself to detain in order to now otherwise force the showing of it. "Moreover, it is clear that law enforcement officers may draw *no* inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717 (). "The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis

for finding the reasonable suspicion that makes consent unnecessary." *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993).

WHEREFORE, for all the foregoing reasons, Plaintiff humbly requests that this Court **GRANT** his *Petition For Writ Of Certiorari* in this matter, so that a review of his District Court case can be undertaken, errors in it can be corrected, and dismissal of his false imprisonment claims contained therein be **REVERSED** and **REMANDED** for further instructions not inconsistent with its opinion.

Respectfully submitted on this, the 25th day of January, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 25th day of January, 2024, the foregoing **PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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APPENDIX

The October 26, 2023 Opinion issued by the Colorado Court Of Appeals in 2023CA159 and the November 30, 2023 Order denying Plaintiff's *Petition For Rehearing* are filed as an attachment to this pleading.

SUPREME COURT, STATE OF COLORADO 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:52 PM
On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2023CA159**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WALMART INC.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Supreme Court Case No: **2023SC931**
PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Supreme Court the following REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this REPLY complies with all the requirements of C.A.R. 32 and C.A.R. 53, including all formatting requirements set forth in these rules. Specifically, I certify that this PETITION contains **2,984** words, which does not exceed the 3,150 word limit.

William Montgomery
William Montgomery

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ARGUMENT

I. PLAINTIFF ONLY PERFORMS "STINGS" LIKE POLICE OFFICERS DO; HE DOES NOT "ENTRAP" MERCHANTS

In Defendant's Opposition Brief, it claims that Plaintiff "engaged in a pattern of behavior involving **deliberate** confrontations..." *Def's Opp. Brief at Page 1. See also Def's Opp. Brief at Page 1* ("Montgomery's **deliberate** actions to incite incidents..." . . . "[T]he appeals court affirmed the summary judgments, underscoring the repeated and **deliberate** nature of Montgomery's actions...").

The problem with this heavy-handed position adopted by the Defendant [and the Court Of Appeals] is that it is an unfounded legal conclusion, couched in an unfounded factual conclusion, that is wholly and utterly unsupported by the record. **Basically, Plaintiff is being framed as a "lawsuit scammer" in order to not take his claims seriously.** That is, the Defendant and the Court Of Appeals appear to be of the belief that: a) the only time Plaintiff started an audio recording on his phone prior to entering a Walmart Superstore was the only time that he "acted" a certain way, b) the only time that he "acted" a certain way was the only time that he was asked to show his receipt, c) the only time that he was asked to show his receipt was the only time that he was detained, and d) the only time that he was detained was the only time that he sued over it. **Completely absent** from such a shoddy analysis,

however, is the **LITERAL HUNDREDS** [IF NOT THOUSANDS] OF AUDIO RECORDINGS AT THIS POINT that Plaintiff started prior to shopping, ***BUT SUBSEQUENTLY DELETED***[1] upon the conclusion of the totally mundane shopping encounter in which he a) went shopping, b) didn't use a plastic bag, and c) refused to show his receipt, **BUT D) WAS OTHERWISE NOT DETAINED BY STORE EMPLOYEES ON HIS WAY OUT** for performing such truly mundane "acts" that literally any other customer would take in his position. Indeed, the only reason why anybody is even seeing Plaintiff in Court these days is for the dozen or so adverse shopping encounters that he has unsurprisingly ***eventually*** experienced OVER THE COURSE OF LITERALLY YEARS AND YEARS OF COMPLETELY MUNDANE SHOPPING EXPERIENCES. To otherwise frame Plaintiff as being some sort of deliberate, innocent-detention-inducing (i.e. "entrapping") lawsuit scammer is **wildly inappropriate**. [See Merriam-Webster definition of "entrap" as "to cause (a person) to commit a crime by means of undue persuasion, encouragement, or fraud in order to later prosecute."] Rather, such is a classic example of "victim shaming," and to which may very well hint upon just how intellectually dishonest and statistically frauded the Defendant and the Court of

1 Just like police officers who routinely delete uneventful bodycam footage upon the completion of a mundane patrol shift, or businesses who routinely delete uneventful security camera footage upon the completion of a mundane business day. In each circumstance, the need to proactively protect oneself is obviously and perpetually present, but not otherwise considered to be disingenuous or "deliberate" behavior on the part of the specific entity doing the recording.

Appeals has ended up becoming in this matter. [If Plaintiff could put it any other way, he absolutely would. But it is what it is, and the correct terminology must be used to accurately describe what is likely going on right now.]

Instead, what this Court needs to realize and appreciate is that Plaintiff's "act" of routinely shopping "with the intent to sue for false arrest" is no different than a seasoned police officer's "act" of routinely laying out a bait car "with the intent to catch a car thief." Technically, the police officer is simply parking his own personal vehicle on the side of the road, just like how any other citizen would. But because he has the ***intuition*** to know ahead of time that his car ***may*** get stolen, he goes ahead and starts audio/video recordings beforehand in order to collect evidence of grand larceny, *should such an act* ***eventually*** *present itself.*[2] [See Merriam-Webster dictionary definition of "sting" as "a game worked by undercover police in order to catch criminals."]. Of course, to the thief who steals it, the fact that the car happens to be a bait car ***is obviously not a legal defense to the crime of grand larceny***. Plaintiff's long-running "sting" operation of anybody who happens to false imprison him absent "shopkeeper's privilege" is literally no different. Sorry, but Plaintiff does not "conduct himself [in such a way so as to reasonably] cause [] Walmart employees to believe that his intent [is] to commit a crime." *Def's Appeal*

2 That is, the crime of grand larceny may very well never occur, just like how a merchant may very well never unlawfully detain Plaintiff. But such does not mean that the police officer or Plaintiff should not be ready to catch it with ongoing surveillance, just in case it does occur.

Answer Brief at page 24. Rather, he literally conducts himself in such a way so as to render himself **indistinguishable** from all other innocent customers – just like how the bait car is indistinguishable from all other vehicles parked on the side of the road.

Ultimately, as can be seen online in the myriad of news articles, forum posts, and cell phone videos uploaded to YouTube over the last several years, Plaintiff is by no means the only one to become legitimately concerned about such increasingly illegal behavior enough to start "pre-recording" himself as a type of "sting" operation. Specifically, see the Consumerist news article *https://tinyurl.com/4npw8cba* for a perfect example of a police officer of 20 years honing in on the same epidemic. In the example provided, the officer simply refused to show his receipt on his way out of a Walmart [just like Plaintiff], only to be unlawfully detained [just like Plaintiff] for nearly half an hour before he was finally let go. Thus, one cannot reasonably refer to such benign customer behavior of merely "refusing to show a receipt" as being some actual form of "entrapment." It's just good police work, and literally nothing more.

II. THE DEFENDANT LACKED SHOPKEEPER'S PRIVILEGE, REGARDLESS OF THE CIRCUMSTANCES IN EACH CASE

In Defendant's Opposition Brief, it claims that the statement made by Plaintiff that "merchants now have free reign to detain whomever they want, whenever they want, with 100% absolute impunity for their actions otherwise" is

an "overly broad argument . . . unsupported by any facts or controlling law." To support such a position, Defendant then reports that "the Court of Appeals expressly stated that 'Our holding should not be interpreted to mean that any one of these factors, standing alone, would be sufficient to provide probable cause under the shopkeeper's privilege.'" The problem here is that such a holding made by the Court Of Appeals is wildly inaccurate, as it is grossly unsupported by the record.[3]

Specifically, toward the end of the Court Of Appeals Order Affirming Defendant's MSJ, the Court claimed that a "combination of unique circumstances" existed surrounding Plaintiff's purchases sufficient enough to provide Defendant with shopkeeper's privilege in the matter. It then listed four factors to support its position: "purchases and subsequent rescission of some of the purchases," "use of the automotive register to purchase food items," "eschewing the use of a bag," and "persistent failure to produce a receipt when requested." *CCOA Order at Page 12.* Under a correct analysis of the facts and the law, however, none of these factors, together ***or*** separately, have the capacity *in the first place* to provide the Defendant with "shopkeeper's privilege."

---

3 Technically, the Court Of Appeals never conceptually reached the argument surrounding "shopkeeper's privilege" in the first place, because of how it ironically wrote out ***the very capacity itself*** for the privilege to even be invokable, *as shopkeeper's privilege is only a defense to a false* ***IMPRISONMENT*** *claim*, and the Court Of Appeals alternatively held that "showing a receipt" is a viable "escape" path ***which literally renders the detention to have paradoxically never existed in the first place.***

Let's start with the most important factor: "persistent failure to produce a receipt when requested." The problem with this factor is that it is LITERALLY nothing more than impermissible and unjustifiable "bootstrapping," as Plaintiff has explained numerous times now. "[O]fficers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717. *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary."). Specifically, if a merchant asks ***anybody***, coming from ***any*** register, ***with or without*** a bag, to see their receipt, the merchant either a) gets to detain that person through their own voluntary consent to that detention [by way of their own voluntary showing of their receipt], or b) gets to detain them anyways if they happen to refuse to show their receipt [by using the very refusal as the very justification to detain them with directly thereafter.] As such, the *act itself* of "asking to see the receipt" is actually an **entirely moot point**. The customer – again, coming from *any* register, *with or*

without a bag – is effectively detained **either way**. Thus, the request itself is **irrelevant**. Therefore, it LITERALLY cannot be part of a shopkeeper's privilege analysis, **nor be used to "bootstrap" other factors with.** Only individualized suspicion has the capacity of providing genuine "shopkeeper's privilege." And being able to effectively detain ***anybody***, coming from ***anywhere***, with ***anything*** in their hands, ***regardless*** of what they say or do, is **LITERALLY THE OPPOSITE** of "individualized." Only other factors can possibly be used [but to which, as will be discussed next, are *still* not enough to justify detain Plaintiff with].

Next is the factor: "purchases and subsequent rescission of some of the purchases." This factor is also **100% incapable** of providing the Defendant with "shopkeeper's privilege" because of the simple fact that it had absolutely no idea that this had happened when it first confronted Plaintiff. That is, upon Plaintiff observing the Defendant for "the very first time upon leaving," *Plaintiff's Affidavit For Claim #2 at ¶ 16,* the Defendant had **no earthly idea whatsoever** that any "rescission of some of the purchases" had taken place. For all it knew, what Plaintiff was observed to have been walking out with was exactly, *and only,* what he had purchased that day. As such, the Court of Appeals was not allowed to inject this "fact" into the analysis when no such fact was ***ever*** used by the Defendant to detain Plaintiff with ***in the first place***.

Next is the factor: "use of the automotive register to purchase food items." This factor is also **100% incapable** of providing the Defendant with "shopkeeper's privilege" because of the simple fact that it knew full-well that numerous registers existed throughout its store, ***and*** that no restrictions on what was allowed or not allowed to be purchased at those registers was ever put in place, either. As such, the Defendant is not allowed to pull a "bait and switch" on an unsuspecting customer who was *personally* given the opportunity, *by them*, to buy whatever items at whatever registers he so chose to. Again, the hallmark of probable cause (i.e. shopkeeper's privilege) is that suspicion be "individualized" to a "particular" individual, with **actual facts** to support that suspicion. Put another way, "Probable cause cannot be based on mere belief [] that somebody did or did not do something. . .The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). As such, because the Defendant "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store," this Court **must** accept that it is "confronted with little more than unfounded naked suspicion. . .that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App.

1996). **CRITICALLY IMPORTANT**, it should be noted, is that *even if* this particular factor of "coming from a back register" could potentially be used to supply the Defendant with shopkeeper's privilege in Plaintiff's case number 2021CV88, it absolutely and unequivocally cannot be used to supply them with shopkeeper's privilege in Plaintiff's case number 2021CV68. For in that case, **Plaintiff literally exited the store directly from the self-checkout registers located a whopping ten feet in front of it!** This means that ONE AND **LITERALLY** ONLY ONE possible factor remains in that particular case to analyze shopkeeper's privilege with – the act of not using a plastic bag [but to which, as will be discussed next, is *still* not enough to justify detaining Plaintiff with].

Last, but certainly not least, is the factor: "eschewing the use of a bag." The problem with this factor is that it, once again, does absolutely nothing to *individualize* suspicion with. Far too many customers don't use plastic bags, especially now that stores are charging 10¢ or so for them. Walmart has never had a bag policy in place, either, regarding their use or non-use by customers. **Most importantly, the retail giant itself has actually ELIMINATED them altogether in Colorado, Connecticut, New York, Maine, New Jersey and Vermont!** See *Walmart stores in 6 states no longer provide single-use bags at checkout: Which states are next?,* The Hill, https://tinyurl.com/bdfcmtzp, (Jan 21, 2023). Ultimately, the reason why this

factor is also **100% incapable** of being used, especially in a shoplifting suspicion context, is because "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985) (discussing *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971). In *Coblyn*, the Plaintiff was unlawfully detained for wearing an untagged, purchased ascot on his way out of the store. In Plaintiff's instant case, he was likewise unlawfully detained for carrying untagged, purchased food items on his way out of the store. As such, the Defendant is liable for detaining him.

Now, for the final issue, where *even though* such factors, as just discussed, are **100% incapable** of being individually used during a shopkeeper's privilege analysis, they are *still* not capable of being used together, either. *See Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995) ("[I]t [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *See also United States v. Wood, 1*06 F.3d 942, 948 (10th Cir. 1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). This is especially true with regards to the "refusing to show a receipt" factor, which, as previously discussed, involves a merchant being able to ask literally ***anybody***, coming from ***anywhere***, with

anything in their hands, to show their receipt, but whereby such detention for failure to show **is merely "bootstrapping" those other factors**, i.e. leaving only them in existence to fall back on. For example, in Plaintiff's case number 2021CV68, the only two factors seemingly capable of being used to supply Defendant with shopkeeper's privilege are that Plaintiff a) didn't use a plastic bag, and b) refused to show his receipt when asked. But because, like previously discussed, the ***act itself*** of asking any and all non-plastic-bag users is rendered entirely ***moot*** (as the merchant gets to have their detention ***either way***), the analysis is mathematically reduced by that invalid factor. That is, if all non-plastic-bag users are ***EFFECTIVELY*** detainable, ***EITHER WAY THEY ANSWER***, the only factor that can possibly remain is that they: didn't use a plastic bag. And of course, as just discussed, the act of not using a plastic bag is just not an individualizable enough way to fairly separate "the wheat from the chaff" to begin to lawfully detain a patron over. As such, because Plaintiff did LITERALLY EVERYTHING IDENTICAL TO A PAYING CUSTOMER WHO SIMPLY DOESN'T USE PLASTIC BAGS, ***and even left the store from the front registers in case number 2021CV68***, the Defendant is unquestionably liable for detaining him.

CONCLUSION

"It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law

enforcement authorities then to be allowed to establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

WHEREFORE, for all the foregoing reasons, Plaintiff humbly requests that this Court **GRANT** his *Petition For Writ Of Certiorari* in this matter, so that a review of his District Court case can be undertaken, errors in it can be corrected, and dismissal of his false imprisonment claims contained therein be **REVERSED** and **REMANDED** for further instructions not inconsistent with its opinion.

Respectfully submitted on this, the 15th day of February, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 15th day of February, 2024, the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	DATE FILED September 19, 2024 3:52 PM
Appeal From: **Arapahoe County District Court** District Court Judge: **The Honorable Peter F. Michaelson** District Court Case Number: **2020CV148** (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235)	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **WALMART INC. &** **ALBERTO CARLOS CORDERO-DUARTE** Defendants / Respondent-Appellees	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd PMB 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Court Of Appeals Case No: **2022CA625**
PLAINTIFF'S AMENDED APPEAL OPENING BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his AMENDED APPEAL OPENING BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My brief has **9,999** words, which does not exceed the 10,000 word limit allowed by this Court via its ORDER dated September 22, 2022.

Included Sections: In the Arguments section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The Standard of Review: I let the Court of Appeals know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the Record on Appeal I raised the issue to the District Court and where the District Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
William Montgomery

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ISSUES ON APPEAL

1. Did the District Court err in finding that the Defendants did not, as a matter of law, confine Plaintiff?

2. Did the District Court err in finding that the Defendants possessed shopkeeper's privilege for their actions?

3. Did the District Court err in finding that Plaintiff did not prove, as a matter of law, that the Defendants had maliciously prosecuted him?

4. Did the District Court err in finding that Plaintiff did not prove, as a matter of law, that the Defendants had slandered him in front of others?

STATEMENT OF THE CASE

I. FACTS COMMON TO ALL CLAIMS

In all of Plaintiff's Claims, Plaintiff entered various WALMART SUPERSTORES, to go shopping.

While shopping, Plaintiff never once observed any store employees, police officers, or any people at all, follow him throughout the store.

At no time whatsoever did Plaintiff ever once exit/re-enter each store, until proceeding to exit each for the very first time since initially entering each, once he had concluded his entire shopping experience inside of each.

After shopping, Plaintiff either had a store employee ring up his items for him, or he rang them up himself at a self-checkout register. He then paid for all the items he shopped for at all the stores he visited.

At each SUPERSTORE, after paying for his items, Plaintiff placed them back into his cart or his hands, so as to eschew the use of the typical, non-environmentally friendly, one-time-use plastic bags. At no time whatsoever did Plaintiff ever once "conceal" any of his paid-for items – either before OR after buying them – in any way that would have reasonably caused any store employees, police officers, etc. to reasonably believe that he had otherwise stolen or failed to pay for them. He simply put each newly paid-for, price-tag-less item back into his cart or his hands, as any other customer would who eschews the use of said plastic baggery.

After paying for his items, Plaintiff began to leave each SUPERSTORE. While on his way out, Plaintiff was asked to show his receipt by store employees who had either been "posted up" at their exits, or who had otherwise appeared shortly thereafter from right around the corner, and whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each.

When asked to show his receipt, Plaintiff politely declined. In response, his path was blocked by the employees, as well as further blocked by other employees

who soon thereafter joined them. On each occasion, Plaintiff told the employees to stop blocking his path, but none of them would. He then tried to step around them, but in response, they just stepped in front of him again. At this point, during all encounters, Plaintiff had no safe or realistic way of leaving each SUPERSTORE, through any of its exits, without otherwise bumping into or having to physically push each of its various employees out of the way.

II. FACTS UNIQUE TO CLAIMS #1 AND #6

In Plaintiff's Claims #1 and #6, Plaintiff argued for a few minutes with the employees who had been blocking his path and preventing him from leaving. While arguing, employees at both stores slandered Plaintiff as a thief in front of others.

Eventually, after arguing, the respective employees stepped out of Plaintiff's way and allowed him to leave.

III. FACTS UNIQUE TO CLAIM #2

In Plaintiff's Claim #2, Plaintiff was physically moved into a SUPERSTORE'S loss prevention office by an employee who had been blocking his path, ALBERTO CARLOS CORDERO-DUARTE. Once inside the office, Plaintiff argued with CORDERO-DUARTE until he was eventually let go and told to leave by the employee, which Plaintiff did. Plaintiff then remained stationed outside the store so that he could eventually tell his side of the story to the local

police who had been summoned for assistance.

After ten or fifteen minutes, two AURORA police officers arrived on scene, OFFICER KAYCIE SAWYER and OFFICER SCOTT BAKER. BAKER directed Plaintiff to provide his ID, which he did, while SAWYER went inside to speak with CORDERO-DUARTE.

Once inside, CORDERO-DUARTE told SAWYER that he "was on the floor walking, [and] saw [Plaintiff] pick the merchandise out of the shelf, and, he walked out."

SAWYER eventually asked CORDERO-DUARTE if he would like to charge Plaintiff with shoplifting, which he said he did.

SAWYER then went back outside, directed Plaintiff to take off his backpack, and arrested Plaintiff for what she told him was "theft."

Once SAWYER finished handcuffing Plaintiff, he informed her that he had receipts for his merchandise, and that the employee she spoke with had lied to her in addition to her not appropriately viewing the store's video footage for herself. SAWYER then obtained Plaintiff's receipts, went back inside to speak with CORDERO-DUARTE again, and left Plaintiff in handcuffs outside next to BAKER.

Once back inside, CORDERO-DUARTE confessed to SAWYER that he had only been posted up at the store's exit, "in the corner, [where] somebody was talking to [him]," when he first saw Plaintiff leaving and had initially decided to confront him.

Eventually, SAWYER came back outside, and was asked by BAKER if the store wanted Plaintiff "trespassed." She then went back inside to speak with CORDERO-DUARTE again, who said he did want Plaintiff "trespassed."

After a minute or two, SAWYER came back outside, and removed her handcuffs from Plaintiff. Plaintiff was then told that he was "free to go," and that if he wanted to stay until his "trespass notice" was issued, that he could freely do so, which he did. SAWYER then went back inside to obtain from CORDERO-DUARTE Plaintiff's "trespass notice."

Once back inside, CORDERO-DUARTE told SAWYER that he "was on the floor, [he] was walking the floor when [he] saw [Plaintiff] taking the merchandise."

Later that evening, SAYWER wrote in her police report that she spoke with CORDERO-DUARTE, who told her that he "observed what appeared to be Montgomery, William 07071985 (CODL) conceal various merchandise including; oil stabilizer, antifreeze, a gallon of water, and juice." She further wrote that CORDERO-DUARTE "watched Montgomery select these numerous items and place them in his backpack and walk past all points of sale."

IV. FACTS UNIQUE TO CLAIM #4

In Plaintiff's Claim #4, after CORDERO-DUARTE physically moved Plaintiff into the store's loss prevention office, he let go of him, told him to have a seat, and

continued to stand in his way while Plaintiff continued to try to leave.

For the next few minutes, Plaintiff told CORDERO-DUARTE to let him leave, that he was committing crimes, and that he would be fired from his job for doing so. CORDERO-DUARTE responded by continuing to tell Plaintiff to drop his merchandise, or show his receipt.

Eventually, CORDERO-DUARTE stopped arguing with Plaintiff, and told him that he could leave the store. The exact words CORDERO-DUARTE said to Plaintiff were, "Do you want to walk out with the merchandise? Okay, go ahead, go ahead."

After CORDERO-DUARTE told Plaintiff that he could leave the store, Plaintiff told him that he had a medical problem, and that he needed to spit into a nearby trashcan. The exact words Plaintiff said to CORDERO-DUARTE were, "I have a medical problem. I have to, keep spitting." Plaintiff then turned to his left and spat into a nearby trashcan.

Neither prior to, nor while, nor after spitting, nor at any other time in the evening, did Plaintiff ever get close to CORDERO-DUARTE'S face, nor did he make any motion whatsoever with his mouth or his body that would have led any reasonable person in CORDERO-DUARTE'S position to believe that he was going to try to spit saliva on them. CORDERO-DUARTE never said to Plaintiff anything to the effect of, "Don't spit on me," and Plaintiff never said to CORDERO-

DUARTE anything to the effect of, "I will spit on you if you do not let me go."

Once Plaintiff finished spitting into the nearby trashcan, he resumed his attempt to leave the store. This time CORDERO-DUARTE let him.

After ten or fifteen minutes, two AURORA police officers arrived on scene, OFFICER KAYCIE SAWYER and OFFICER SCOTT BAKER. BAKER directed Plaintiff to provide his ID, which he did, while SAWYER went inside to speak with CORDERO-DUARTE.

Once inside, CORDERO-DUARTE told SAWYER that Plaintiff "tried to spit in [his] face." He then made a spitting motion with his mouth and body. Next, he pointed into a nearby trashcan, reporting to the officer that that was where Plaintiff had spat into. Then, CORDERO-DUARTE finally told the officer, "When I saw the first time that he tried to spit, and then I saw his spit here, 'get out the office I don't want you here, get out.'"

After speaking with CORDERO-DUARTE regarding Plaintiff spitting, SAWYER spoke with him regarding Plaintiff shoplifting. She then came back outside and arrested Plaintiff for "theft." In response, Plaintiff provided her with his receipts, which she then used to exonerate him with. After that, she removed her handcuffs from Plaintiff, told him he was "free to go," and went back inside to obtain from CORDERO-DUARTE a "trespass notice" he requested that Plaintiff be given.

Once back inside, CORDERO-DUARTE told SAWYER that during his encounter with Plaintiff, he said to him, "Don't spit on my face," and that Plaintiff replied to him with, "I will, get off me!" He then told the officer that Plaintiff further said to him, "I will, I have a medical condition, blah blah blah blah blah blah blah blah," and that he further replied to Plaintiff with, "Okay, whatever dude, just leave the store." Then, after being asked one last time if Plaintiff had indeed threatened to spit on him, CORDERO-DUARTE confirmed that he indeed said to Plaintiff, "Don't spit on me," and that Plaintiff indeed said to him, "I will, if you don't let me go. I have to go, I have to go, let me go. I'm, I'm good, I'm good to go, let me go right now."

Eventually, SAWYER came back outside and placed Plaintiff into handcuffs again. This time she told Plaintiff that he was being arrested for "disorderly conduct."

After being handcuffed, SAWYER drove Plaintiff to the AURORA POLICE STATION, where he was booked.

Later that evening, SAYWER wrote in her police report that she spoke with CORDERO-DUARTE, who told her that Plaintiff "stood up, [] got close to his face, [and] made a motion with his mouth that would lead him to believe he was going to try to spit saliva on him." She further wrote that CORDERO-DUARTE told her he said something to Plaintiff to the effect of, "Don't spit on me," and that Plaintiff replied something to the effect of "I will spit on you if you do not let me

go." She then concluded her report by writing, "Due to the above information and Cordero's account of Montgomery threatening to spit on him, Montgomery was arrested and charged with 94-42(4) Harassment."

Plaintiff was held overnight at the police station, after which he was then released on a PR bond.

Plaintiff spent the next two months attending court until December 10, 2018, the date on which the Aurora Municipal Court granted a MTD filed by the City Attorney, citing "lack of evidence" as his reasoning.

V. FACTS UNIQUE TO CLAIM #5

In Plaintiff's Claim #5, before entering the store, and while still in his vehicle parked in the store parking lot, Plaintiff put two previously purchased RV lights into his jacket pocket that he was contemplating on returning that day.

After being prevented from leaving both store exits by both store employees, Plaintiff was involuntarily escorted by a third store employee into a loss prevention office located just around the corner.

While inside the office, the third employee told Plaintiff, in front of three other employees, "I need my merchandise back."

At the same time, KADYN MOYER, the second employee who stopped Plaintiff from leaving, called the police to report that he had a "shoplifter" in his

security office.

For the next several minutes Plaintiff stayed in the office with its employees until members of the ARAPAHOE COUNTY SHERIFF'S OFFICE arrived on scene. SERGEANT COHN then entered the office to speak with Plaintiff and the employees, while DEPUTY CUAZ stationed himself just around the corner.

Once inside, COHN directed Plaintiff to provide his ID, which he did. He then asked the third employee if Plaintiff had a receipt for his items. The third employee told him, "No," followed by, "That's my stuff."

COHN then asked Plaintiff multiple times to show his receipt. In response, Plaintiff simply laid mute, exercising both his right to remain silent and his right to not be searched without a warrant.

Eventually COHN told Plaintiff that he would be "tak[ing] [his silence] as a no," [that he had not paid for the merchandise], and that he would now be cited for shoplifting.

COHN then began to reach for Plaintiff's items, upon which Plaintiff finally said to him, "That's my stuff, man." COHN then called out to CUAZ and said to him, "Hey Cuaz, come here, he doesn't want to let us take his stuff, so we need to put him in cuffs." CUAZ then placed Plaintiff into handcuffs.

Once Plaintiff was in handcuffs, he was patted down, his pockets were emptied, and his personal property and recently paid-for merchandise was taken from him.

After that, Plaintiff was left in handcuffs by the police for the next several minutes while they cross referenced his receipt against his merchandise.

Eventually, the police concluded that Plaintiff had paid for some items, but not others. Plaintiff actually had a separate receipt for his non-food items, that the officers had surprisingly not discovered during their search of him, but to which nonetheless led to him being charged by them for purportedly shoplifting two rolls of paper towels valued at 50¢ each. Additionally, the officers charged Plaintiff for purportedly shoplifting the two RV lights, even though he obviously had not.

Once the police concluded their investigation, they issued Plaintiff a citation for shoplifting the paper towels and RV lights, and then let him go.

Later that day, CUAZ wrote in his police report that he spoke with MOYER, who told him that "he was alerted by another employee that William had come into the store and walked past the point of final sale and was exiting the store on the grocery side, [that] he intervened and blocked him from leaving, [that] William was escorted to the security office where he had a blank stare on his face while they were speaking with him, [and that] he was in possession of multiple stolen items, 2 paper towel rolls (value .50 each), 2 LED flashlights (value $7.87 each)." CUAZ concluded his report by writing, "After investigation it was determined that William had paid for some items, but not others. William was issued a summons (#928194) for theft.

Walmart took possession of the stolen items. A request was made for video footage. William was given all his property back and the items he bought. He was verbally trespassed by Walmart and released on scene."

Later that day, MOYER also provided the police with his own written statement detailing the events that had just occurred, saying, "I, Kadyn moyer (APA) at Walmart I apprehended William Montgomery at 14:07. I was informed by my APCH that he tried to walk out with merchandise. When I approached him at the grocery entrance he tried to walk past me and my apch. After about two minutes of pacing back and forth he turned around and tried to walk out the other side where the actual apprehension was made. I contacted law enforcement after he entered my office because he was not cooperating. Police came and gave him a ticket and he was given a trespass from my partner."

Plaintiff spent the next two months attending court until March 12, 2020, the date on which he appeared at the County Courthouse, spoke with his Public Defender, and was informed by her that the District Attorney had dropped his charges.

VI. SUBSEQUENT PROCEDURAL HISTORY

Following each incident, Plaintiff filed five (5) civil complaints against WALMART and its employees under theories of false imprisonment, false arrest, malicious prosecution, and defamation. These five cases were eventually

consolidated into a single, unified case (containing nine unique claims).

On February 25, 2022, the Arapahoe County District Court Judge granted a Motion For Summary Judgment filed by the Defendants, which dismissed Plaintiff's consolidated caseload in its entirety. The Judge held that Plaintiff failed to prove all claims as a matter of law. The Judge made numerous errors of both fact and law when making its ruling, however, and therefore incorrectly granted the Motion in contravention of clearly established case law on the subject.

On April 15, 2022, Plaintiff filed this appeal, now seeking appellate review (on all claims) of the District Court Judge's adverse ruling entered against him, and to ultimately have the Defendants' Motion For Summary Judgment REVERSED and his consolidated case thereby REINSTATED and REMANDED (in its entirety) to the Arapahoe County District Court for further proceedings not inconsistent with its opinion.

ARGUMENT SUMMARY

The District Court made four errors in the case.

First, it erroneously found that Plaintiff did not prove, as a matter of law, that he had been "confined" by the store employees in each of his claims. Therefore, no false imprisonments had purportedly occurred.

Second, it erroneously found, as a matter of law, that even if imprisonments had

occurred, the Defendants possessed "shopkeeper's privilege" for their actions.

Third, it erroneously found that Plaintiff did not prove, as a matter of law, that the Defendants had maliciously prosecuted him.

Fourth, it erroneously found that Plaintiff did not prove, as a matter of law, that the Defendants had slandered him as a thief in front of others.

ARGUMENTS

Issue 1 – The Finding That The Defendants Did Not Confine Plaintiff

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of false imprisonment and confinement in his Cross-MSJ. The District Court ruled on the issue in its Final Order, *CF at page 329.*

C. Discussion

THE COURT HAS MISREAD AND MISAPPREHENDED THE LAW

a. The term "escape" and "inconvenience" apply to pre-confinement situations only

In a similar case to the instant one, the Court Of Appeals affirmed the dismissal of Plaintiff's Complaint by relying on *Comment A* of the *Restatement (Second) of Torts § 36* to support their notion that Plaintiff was purportedly never confined by the Defendants because of how "being asked to show a receipt. . .is *at most* a 'slight inconvenience.'" *See Montgomery v. Walmart Stores Inc. et al, CCOA Case No. 2021CA359, Order Dated May 12, 2022, Page 6.* However, the Panel misread and misapprehended the *Comment*, which **specifically** states the Legislature's plain and unambiguous intent to define "escape" [and more importantly, "inconvenience"] **as applying strictly to PRE-confinement situations only** (i.e. not to post-confinement ones, once they have occurred). *See Restatement (Second) of Torts § 36, Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). Therefore, the Panel's unique position taken – that "the term 'escape' [] simply refer[s] to ending any confinement that may have occurred" – **directly contradicts the established law.** Moreover, their position also directly

contradicts the "any amount of time, **no matter how short**" clause of the false imprisonment tort that is used to satisfy that particular element with. *See Colorado Civil Jury Instruction 21:1(2).* Meaning that, once a **completed** confinement takes place, **NO MATTER HOW SHORT**, the only issue left to decide is if the detention was lawfully justified. OF COURSE, this is not to say that a person, **post-confinement**, who **subsequently** discovers a way to escape (through, say, an exit they didn't know existed before) should not utilize such a means. [It would certainly be incumbent upon them to do so.] THIS ONLY MEANS that such a **subsequently discovered** avenue of escape, *even if taken*, **DOES NOT NULLIFY THE PRIOR, COMPLETED, INITIAL, OUTRIGHT DETENTION OF THEM FROM HAVING OCCURRED IN THE FIRST PLACE** (and thus, still requiring something like shopkeeper's privilege to lawfully justify it with).

b. The jury instruction at issue encompasses "physical" harm only

Colorado Civil Jury Instruction 21:2(1) states that "[A person's freedom of movement has been restricted when:] A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers ***AND*** does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property." Meaning that, the Legislature's use of the phrase "unreasonable risk of harm" [that would be incurred during an

escape] **was intended by them to be strictly associated with** "physical barriers" [that a person is being limited to]. "If the legislature had wished to use the term 'or' instead of 'and,' it could have easily done so." *City and County of Denver v. Gallegos,* 916 P.2d 509 (1996). As such, the obviously non-physically or mentally violent act of merely "showing a valid receipt" **does not fall within the scope of the jury instruction** as it was intended by the Legislature to be interpreted.

c. Showing a receipt only results in the [conditional] "release" of a person; it is not an [autonomous] avenue of "escape" for them

The Merriam-Webster Dictionary defines "escape" as "to get away (as by flight)" or "to issue from confinement." These definitions naturally and logically hinge on the notion that a person "escaping" **would be doing so single-handedly and of their own volition** (i.e. "to [self] issue from confinement," ***not*** "to [be issued] from confinement"). In other words, if a prisoner still requires ***permission*** from their captor in order to be ***set free*** by them, one can hardly call that a viable avenue of "escape." Rather, that is nothing more than a **completed** and **continuing** imprisonment coupled with a **conditional** (*i.e. wholly promissory and not even guaranteed*) **RELEASE** of the subject that doesn't actually occur **until after** the captor **grants** it. *[See Merriam-Webster Dictionary definition of "release," which aptly defines it as "to* ***set free*** *from restraint, confinement, or servitude."]* Indeed,

this distinct lack of autonomy is precisely what the *Jacques* Court meant by their use of the phrase **"The situation was in the control of the defendant."** *Jacques v. Childs Dining Hall Co.,* 244 Mass. 438, 441 (Mass. 1923). "The restraint or duress imposed by the mode of investigation. . .was for the accomplishment of the defendant's purpose, even if [] no physical restraint of her person was attempted." *Id.* As such, **there exists a critical window of time in between when a merchant confines a patron and when they decide to release them,** *and within which the patron may very well have done literally everything possible that has been asked of them – including showing a receipt,* but who is ***still*** nevertheless **OUTRIGHT** detained by the merchant **pending an independent, conscious decision to be made by them,** to finally and eventually be released by them. In other words, **a store employee is not some wall-mounted electronic ID scanner that one can simply wave an ID in front of and be 100% guaranteed their instantaneous own way past.** Purchase verification invariably takes time and resources to complete; but without consent by a customer to wait for its completion, a false imprisonment is indisputably committed should a store employee keep holding said customer until such verification is actually accomplished.

d. One cannot "escape" a confinement that has not yet been attempted

It appears that the Court Of Appeals attempted to reconcile this very conflict

of "escape" vs. "release" – by somehow merging the act of ***asking*** to see a receipt, into the ***detention*** that follows it. *See Montgomery v. Walmart Stores Inc. et al, CCOA Case No. 2021CA359, Order Dated May 12, 2022, Page 8* ("No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."). **ABSOLUTELY CRITICAL TO NOTE HERE,** is that Plaintiff has ***never*** claimed (nor does he now) that the ***act itself*** of him being asked to show a receipt is what constitutes his confinement. Rather, he has ***always*** claimed (as he does so now) that the ***act of physically blocking all available pathways of his through all available exits*** is what actually constitutes his confinement. Moreover, merging the act of *asking* with the act of *confining* into some single, unified, contemporaneous transaction carries with it its own set of logical fallacies. This is because in all of Plaintiff's claims it wasn't until ***AFTER*** Plaintiff had refused to show his receipt that the Defendants finally decided to detain him. BUT ONE CANNOT, **BY DEFINITION**, "ESCAPE" A CONFINEMENT ***THAT HAS NOT YET BEEN ATTEMPTED***. Thus, Plaintiff cannot be faulted for purportedly "failing to avail himself" of some purported "show us your receipt to escape" path that, **by definition,** WHOLLY DID NOT EXIST YET.

e. The Court Of Appeals interpretation of "escape" violates the

Equal Protection Clause of the U.S. and Colorado Constitutions

When a court interprets a statute, it should not do so in ways that defeat the Legislature's obvious intent or render part of the statute either meaningless or absurd. *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996); *People v. Bostelman,* ___ P.3d ____, 2005 WL 3312826 (Colo. App. No. 04CA1223, Dec. 8, 2005). However, in the present circumstance, the Panel's interpretation of the term "escape" as purportedly encompassing within it the act of merely "showing a valid receipt" results in patent absurdity when its application is then uniformly applied across the population as a whole. That is, according to the Panel, **customers who happen to throw away their receipts, customers who opt for e-mail only receipts**, and even **actual thieves** have a valid claim of false imprisonment, **while customers who keep their receipts do not**! Such a result is patently absurd, as a paying customer surely enjoys more rights than a thief! [SIDE NOTE: **all four** categories of people actually have an **equally** valid claim of false imprisonment against an employee merely "posted up" at a store exit who thereby lacks "shopkeeper's privilege" to lawfully detain them with].

f. Showing a receipt and refusing to show a receipt cannot both be a form of consent

Courts have held that the act of "showing a receipt" already constitutes

voluntarily giving consent to a detention. *See Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005). *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). Thus, when coupled with the Court Of Appeals position, even more absurdity results. This is because if the Panel's position were correct, while customers who decide to show their receipt would be "choosing to stay" (i.e. consenting to the detention in order to "establish their innocence" as *Broadnax* puts it), customers who decline to show their receipt would ***ALSO*** be "choosing to stay" (i.e. "choosing to not avail themselves of the exit" as the Panel puts it). However, this obviously creates a "damned if they do, damned if they don't" always-subject-to-a-detention-either-way scenario, which is patently absurd and manifestly unfair to the customer. Disturbingly, shopkeepers would thereby enjoy **literal absolute immunity** when detaining all customers who happen to have their receipt on them – regardless of how little shopkeeper's privilege they may have in each matter – as no detainment of said patrons would EVER be able to occur either way, by definition, in the first place!

g. Being detained for suspected shoplifting is not a "slight inconvenience"

The Court Of Appeals claims that "being asked by a retailer to show a receipt as proof that an item was actually purchased. . .is at most a 'slight inconvenience.'" *See Montgomery v. Walmart Stores Inc. et al, CCOA Case No. 2021CA359, Order Dated May 12, 2022, Page 7.* While the Panel may be correct that being ***asked*** to show a

receipt is "at most a 'slight inconvenience,'" being ***detained*** in order to be ***FORCE-EXCULPATED*** is a much more serious occurrence. Such was precisely the issue addressed in *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000), where the Court held that, ***even after*** Ms. Ball had provided the store employee with her receipt [which was not dispositive of the involuntariness of the encounter, as her cart had already been involuntarily stopped prior to], there was enough evidence in the record for a jury to decide that "she was not free to leave until [the store employee] concluded his inspection of [her] and permitted her and the others behind her to leave."

h. Merchants are not allowed to make store policies that systematically violate the law

The Court Of Appeals also claims that no statute exists "that prohibits a merchant from requiring customers to display a receipt before leaving a store with goods in hand." *See Montgomery v. Walmart Stores Inc. et al, CCOA Case No. 2021CA359, Order Dated May 12, 2022, Page 7.* **However, while that phrase is technically true on its face – "that no statute exists" – merchants are nevertheless absolutely not free to make store policies that systematically violate the law!** Yet indiscriminately detaining – without a lick of shopkeeper's privilege – literally any and all patrons who refuse to show their receipt on their way out of a store, is one such systematically law-violating policy. *See State v. Smith,* 674 P.2d 562 (Okla.

Crim. App. 1984) ("It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish fixed checkpoints, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts or be subject to arrest everytime they go shopping? The potential for abuse is apparent.").

The larger problem with the Panel's argument, though, is that it is actually Walmart's official store policy to ***NOT*** detain patrons who refuse to show their receipt on their way out! *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000). Thus, it is manifestly unfair (and rather illogical) to even say to Plaintiff, "if you don't like the store policy, you can shop elsewhere." Indeed, every time Plaintiff has ever shopped at a Walmart Superstore, **he has done so with the store's official, NON-COMPULSORY receipt checking policy in mind**! OF COURSE he doesn't show his receipt when asked – Walmart itself officially says that he is to NOT be stopped if he doesn't! *Yet by faulting Plaintiff after the fact, on the occasions that he happens to become detained for literally following said policy, the Panel has done nothing but pull a manifestly unfair "bait and switch" on him.*

Most importantly, is the fact that while merchants certainly do have the

right to make "reasonable rules and regulations" for their businesses (such as requiring a passenger who lost his ticket to pay his fare again) they are ***not*** legally allowed to detain people "in order to compel payment from them" [precisely what every Defendant did in Plaintiff's instant caseload]. *See Lynch v. Metropolitan El. R. Co.,* 90 N.Y. 77 (N.Y. 1882) ("But it had no regulation and could legally have none that a passenger, before leaving its cars or its premises, should produce a ticket or pay his fare, and if he did not, that he should then and there be detained and imprisoned until he did do so.").

i. If a person is forced to give up one right for another, they are "imprisoned" within the legal definition of the term

Another reason why the Panel's position is incorrect, is because a person who "gives up the right of locomotion 'as the only available alternative to relinquishment of another right, [] is restrained, or imprisoned, in the sense that imprisonment is an element of tortious false imprisonment.'" *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 56 (D. Mass. 2000) (quoting *Foley,* 400 Mass. at 91, 508 N.E.2d at 77).

It is indisputable that Plaintiff, as well as every other citizen, enjoys the unquestionable right "to be secure in their persons, houses, **PAPERS**, and effects, against unreasonable searches and seizures." *Fourth Amendment to the United States Constitution; Fourth Amendment to the Colorado Constitution.*

Therefore, it is not merely "Plaintiff's own subjective desire not to show his receipt," **it is his absolute, unequivocal, 100% OBJECTIVE right to not show it, to anybody, ever, PERIOD.** ***Not to law enforcement, as per the Fourth Amendment, LET ALONE to private citizens, operating as merchants.*** Much like how no law or store policy exists that gives people the right to have $5 of another's, there exists no law or store policy that gives a private citizen the right to see another private citizen's personal property – even for a second – *no matter how trivial of a request such may seem.*

Accordingly, because the Defendants required Plaintiff to show his receipt in order to leave their store, **he "[gave] up the right of locomotion as [his] only available alternative to relinquishment of another right" – his right to be secure in his papers**. Of course, Plaintiff never actually "gave up" his right of locomotion, *either*, as during his attempted store exitings his path was *physically* blocked by the Defendants, who *physically* wouldn't let him leave, despite his multiple legitimate attempts to do so.

Issue 2 – The Finding That The Defendants Possessed Shopkeeper's Privilege To Detain Plaintiff With

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo,

applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.*, 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of shopkeeper's privilege in his Cross-MSJ. The District Court ruled on the issue in its Final Order, *CF at page 329.*

C. Discussion

THE DEFENDANTS LACKED "SHOPKEEPER'S PRIVILEGE" TO LAWFULLY DETAIN PLAINTIFF WITH

In Defendants' MSJ, they claim that they "are not legally responsible for Plaintiff's false imprisonment and false arrest claims because [they] had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter." However, as will be discussed next, it is unequivocally beyond dispute that the Defendants genuinely *lacked* "reasonable grounds" (i.e. "shopkeeper's privilege") to lawfully detain Plaintiff with.

a. Being "posted up" at a store's exit, and literally nothing more, is insufficient as a matter of law to establish shopkeeper's privilege with

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). "Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something." *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person that saw enough to justify [their] belief that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Zenik v. O'Brien,* 137 Conn. 592, (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable."). *See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994).

In Plaintiff's instant caseload, while on his way out of all WALMART SUPERSTORES, he was asked to show his receipt by employees who had been "posted up" at each store's exit, and whom Plaintiff had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. The Defendants, having been strictly, indisputably, and even self-admittedly "posted up" at each store's exit, **did not see or witness literally anything** that could *even begin* to fairly form a "reasonable [] belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). This is

because the Defendants "never saw [Plaintiff] anywhere in the store until [he was] walking out of the store." *Id.* In such circumstances, the Court has manifestly held, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than unfounded naked suspicion. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Id.*

b. Nor does refusing to show a receipt establish shopkeeper's privilege

A request to see a receipt is "a request for consent to search, [and] the customer. . .always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without *particularized* facts to reasonably justify a stop, systematic detention of most or all customers may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as the Court has repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae*

Supporting Petitioner at 25, Florida v. Bostick, No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) ("The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.").

Moreover, refusal to consent to such a request cannot be the "single additional event that ripens [the officers'] preexisting concerns to the 'founded suspicion' that a *Terry* stop requires." *U.S. v. Sterling,* 909 F.2d 1078, 1082 (7th Cir. 1990). This is especially important because of how in all of Plaintiff's claims against the Defendants his refusal to show his receipt ***was*** the "single additional event" they used to finally detain him with.

c. Nor does refusing to answer questions establish shopkeeper's privilege

In the same vein, a customer also retains the right to refuse to answer questions put to him by an employee (and likewise, such refusal "does not create an adequate basis for invoking the privilege").

"The Fifth Amendment, in relevant part, provides that no person 'shall be

compelled in any criminal case to be a witness against himself.' It has long been held that this prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also 'privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Minnesota v. Murphy,* 465 U.S. 420 (1984). *See also Michigan v. Tucker,* 417 U.S. 433, 440 (1974) ("Although the constitutional language in which the privilege is cast might be construed to apply only to situations in which the prosecution seeks to call a defendant to testify against himself at his criminal trial, its application has not been so limited."). *See also Combs v. Coyle,* 205 F.3d 269, 283 (6th Cir. 2000) ("[W]e believe that 'application of the privilege is not limited to persons in custody or charged with a crime; it may also be asserted by a suspect who is questioned during the investigation of a crime.").

d. Nor does not using plastic bags establish shopkeeper's privilege

In today's day and age, the use of non-environmentally friendly, one-time-use plastic bags is frowned upon. Many jurisdictions (Boulder County, Denver County, etc.) have even begun to "tax them out of existence" by way of charging customers 10¢ each time one is used. Thus, people are using them less and less. *See https://youtu.be/1YgIx44zcPw.* Accordingly, when it comes to analyzing whether or not a shopkeeper has established "probable cause" to detain a suspected shoplifter with, categorizing people who forgo the use of such bags as "likely enough to be

thieves" is untenable, as doing so "describe[s] a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia,* 448 U.S. 438 (1980). **Indeed, federal courts have already agreed with Plaintiff on precisely this issue.** *See Montgomery v. Calvano,* District Civil Case No. 1:19-cv-00387-PAB-MEH, ECF Doc. #48 at page 6 ("The Court finds that plaintiff's carrying of an unbagged item [through an alternate exit, without receipt in hand] does not, on its own, demonstrate that criminal activity may be afoot.").

Moreover, just like with receipt checking as discussed above, because plastic bags are "not related to any fact of theft other than presence in the store, detention for failure [to use them] does not create an adequate basis for invoking the privilege." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). See also *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971).

Finally, many items for sale to the public are simply too large to fit into a plastic bag. Or, some customers may forgo their use simply because they are only purchasing a single item and it would be silly to use a plastic bag (as is the case in Plaintiff's *Claim #1*). Thus, "While innocent behavior may provide the basis for

reasonable suspicion, innocent behavior that in no way distinguishes the person to be stopped from other law abiding citizens does not." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993).

e. Nor does not using front registers establish shopkeeper's privilege

It is well known that WALMART SUPERSTORES have scattered throughout them multiple points of sale that the general public utilize to purchase their various goods at. Registers are regularly located at the stores' cosmetics, electronics, paint, and automotive departments, to name a few. Not only does WALMART do this for the convenience of its customers, as the waiting lines at these registers are typically shorter than the ones found at the front of their stores, they do it for security, as they intentionally restrict certain goods from leaving certain departments until after they are purchased at that department's register (the cosmetics department being a prominent example).

After a customer buys their items at any of these alternate registers, they will invariably have to leave the store through one of its main (front) exits. Reasonably suspecting these customers of shoplifting based on their route of departure, then, is untenable, as they ultimately have no choice in the matter. They are going to have to leave the store *somehow* – either by walking *past* the traditional registers located at the front, or *through* the traditional registers located at the front (and to which either path taken, when not observed paying at such front registers, invariably creates some suspicion). Indeed, another "damned if you, damned if you don't"

scenario that would be manifestly unfair to the customer. As such, employees who are merely "posted up" at a store's exit, who see patrons leave from the back of the store and not from the front, cannot use a customer's route of departure as a valid basis to establish their "shopkeeper's privilege" with. *See Holguin v. Sally Beauty Supply Inc.,* 264 P.3d 732, 736 (N.M. Ct. App. 2011).

f. Lack of intent to conceal also negates having shopkeeper's privilege

While leaving each WALMART SUPERSTORE in each of Plaintiff's claims, Plaintiff made no "effort to conceal" the merchandise that he had recently purchased. **THIS FACT IS OF ABSOLUTE CRITICAL IMPORTANCE** because how the District Court Judge explicitly [but supremely erroneously] held the precise opposite to be true. *See District Court Order, CF at page 353* ("Further, the undisputed facts show that Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store."). **BUT PLAINTIFF NEVER CONCEALED ANYTHING!!!!! HE DID *LITERALLY* THE OPPOSITE!!! HE CARRIED AWAY HIS RECENTLY PAID-FOR, UNBAGGED MERCHANDISE IN HIS CART OR IN HIS HANDS!!!** Thus, he did nothing of the sort to "provoke" store employees into [reasonably] believing that he was stealing. AT MOST, he only "provoked" them into merely *asking* to see his receipt, but to which everybody knows that WALMART routinely and indiscriminately asks patrons who don't have items in bags to see their receipts! As

such, the Defendants lacked specific, particularized "facts justifying a belief (a reasonable belief) on [their] part [] that Plaintiff intended to commit a theft." *Chelette v. Wal-Mart Stores, Inc.,* 535 So. 2d 558, 561 (La. Ct. App. 1989).

g. Even when factored together, shopkeeper's privilege is still lacking

As just discussed, refusing to show a receipt, answer questions, use a plastic bag, or use a front register each fail, on their own, to establish "shopkeeper's privilege" with. The same holds true when factoring them together, as "it [is] impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *Karnes v. Skrutski,* 62 F.3d 485, 496 (3d Cir. 1995). *See also United States v. Wood, 1*06 F.3d 942, 948 (10th Cir. 1997) ("Reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion."). Indeed, to hold otherwise, in the present circumstance, would allow shopkeepers **free reign to detain literally all customers** leaving their stores who simply purchase merchandise at the back of them, don't use plastic bags, and refuse to show their receipt while on their way out. In fact, the Court has already explicitly held "shopkeeper's privilege" to be lacking in precisely this scenario, where a patron left a store using a non-register exit, without a plastic bag, and whom didn't respond when asked if she could show her receipt. *See Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996).

Ultimately, the reason why none of the aforementioned factors can be used – either in isolation, OR together – to reasonably and fairly establish "shopkeeper's privilege" with, is because such factors are all strictly **exculpatory** in nature, leaving absent entirely from the seizure analysis the use of any actual **inculpatory** based information, whatsoever. As Plaintiff has explained in times past, however, *"lack of evidence of innocence is not evidence of guilt."*

Issue 3 – The Finding That Plaintiff Did Not Prove, As A Matter Of Law, That Defendants Maliciously Prosecuted Him

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of malicious prosecution in his Cross-MSJ. The District Court ruled on the issue in its Final Order, *CF at page 329.*

C. Discussion

THE DEFENDANTS MALICIOUSLY PROSECUTED PLAINTIFF FOR BOTH HARASSMENT AND THEFT

a. Cordero-Duarte lacked probable cause to fairly believe Plaintiff had threatened to spit on him

It has long been held that "A police officer has probable cause only when he discovers reasonably reliable information that the suspect has committed a crime." *Beck v. Ohio,* 379 U.S. 89, 91 (1964). However, with regards to Plaintiff's unfounded "harassment" charge instigated by Defendant ALBERTO CARLOS CORDERO-DUARTE, no such probable cause existed **WHATSOEVER.** This is because literally ***NO*** inculpatory information was ***EVER*** fairly collected by him that would have ***EVEN BEGUN*** to actually constitute "reasonably reliable information" that Plaintiff had indeed "threatened to spit" on him. "Good faith is not enough to constitute probable cause. That faith must be grounded on ***FACTS*** within knowledge of the [accuser] which in the judgment of the court would make his faith reasonable." *Director General v. Kastenbaum,* 263 U.S. 25, 28 (1923). **THUS, IT CANNOT BE STRESSED HERE ENOUGH:** NO VERBAL THREATS WERE ***EVER*** MADE TOWARD CORDERO-DUARTE BY PLAINTIFF, PERIOD. NO SPITTING MOTIONS – USING ANYTHING LIKE A MOUTH, BODY, ETC. – WERE ***EVER*** MADE BY PLAINTIFF, EITHER. **THESE WERE ALL 100% L-**

I-E-S DELIBERATELY FABRICATED BY CORDERO-DUARTE IN ORDER TO RETALIATE AGAINST PLAINTIFF, BUT TO WHICH WERE 100% DISPROVEN VIA PLAINTIFF'S AUDIO AND AFFIDAVIT. Simply put, it is NOT illegal, under any law, to simply spit into a trashcan. PERIOD.

Moreover, during the encounter, Plaintiff can even be heard apologizing and excusing his embarrassing medical behavior directly after carrying it out, that while not necessary to have done, nevertheless wholly negated probable cause from existing under the circumstances, *even if* it may have at one point in time. This is because "Evidence that tends to negate the possibility that a suspect has committed a crime is relevant to whether the officer has probable cause. An officer contemplating an arrest is not free to disregard plainly exculpatory evidence, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists." *Kuehl v. Burtis,* 173 F.3d 646, 650 (8th Cir. 1999). *See also Dietrich v. Burrows,* 167 F.3d 1007, 1012 (6th Cir. 1999) ("In obtaining. . .reliable information, an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence. Rather, the officer must consider the totality of the circumstances, recognizing both the inculpatory and exculpatory evidence, before determining if he has probable cause to make an arrest."). *See also Bigford v. Taylor,* 834 F.2d 1213, 1218 (5th Cir.1988) ("As a corollary. . .of the rule that the police may rely on the

totality of facts available to them in establishing probable cause, they also may not disregard facts tending to dissipate probable cause.").

b. The Defendants lacked probable cause to fairly believe that Plaintiff had shoplifted

As discussed *supra*, the Defendants lacked "shopkeeper's privilege" to fairly believe that Plaintiff had committed the crime of shoplifting. As such, they equally lacked "probable cause" to initiate criminal proceedings against him in *Claims #2 and #5* where they subsequently **L-I-E-D** to the police to arrest Plaintiff for the same reason.

c. The Defendants made statements with knowledge that they were false

Next, while the District Court is absolutely correct in holding that "statements made to peace officers are recoverable only if the alleged statements were made with malice i.e. 'knowledge that they were false or with reckless disregard for whether they were true or false,'" *Burke v. Greene,* supra; *Seible v. Denver Post Corp.,* 782 P.2d 805 (Colo. App. 1989); **SUCH IS PRECISELY THE CASE IN LITERALLY ALL OF PLAINTIFFS MALICIOUS PROSECUTION CLAIMS.** In *each and every* claim of Plaintiff's in which the police were summoned, the Defendants **FLAT OUT L-I-E-D** to them upon arrival, falsely claiming that they had ***personally witnessed*** Plaintiff steal from them [uninterruptedly, from wall, past registers, out the door] (a flat out lie) or that they

had ***personally witnessed*** Plaintiff threaten to split on them [verbally, with motions] (a flat out lie). **IT CANNOT BE STRESSED HERE ENOUGH: t**hese aren't just innocent reports of suspicious circumstances being lawfully conveyed to police under the protection of a qualified privilege, **they are absolutely, unequivocally, 100% FACTUALLY FABRICATED L-I-E-S** consciously conjured up by the Defendants in order to cover up their misdeeds in not fairly investigating Plaintiff for theft, or to retaliate against him otherwise. Thus, considering how *specific* and *explicit* these reports to police were, ***BUT HOW 100% PROVEN VERIFIABLY FALSE THEY ALSO WERE BY WAY OF PLAINTIFF'S AUDIO OF EACH EVENT,*** *in addition to the Defendants' own confessions on the subject,* it is indisputable that the Defendants – in all of Plaintiff's malicious prosecution claims – had full, complete, and personal "knowledge that [what they were reporting] [was] **false**."

Issue 4 – The Finding That Plaintiff Did Not Prove, As A Matter Of Law, That Defendants Slandered Him In Front Of Others

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v.*

C.R. Eng., Inc., 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of slander in his Cross-MSJ. The District Court ruled on the issue in its Final Order, *CF at page 329.*

C. Discussion

THE DEFENDANTS SLANDERED PLAINTIFF AS A THIEF IN FRONT OF OTHERS

Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation *actionable per se*. *RESTATEMENT (SECOND) OF TORTS* § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.*, 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed. *2 HARPER et al, supra* note 2, § 5.11, at 118.

Additionally, it is important to note that while "[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting. . .the

rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964).

As just discussed, *supra,* the Defendants impermissibly imputed the crime of larceny onto Plaintiff. Additionally, because they made such accusations "with full knowledge that they were false, or with reckless disregard for whether they were true or false," they are not entitled to the "qualified privilege" that would otherwise exist when providing ***honest*** reports of suspicions to the police.

CONCLUSION

Multiple times now, WALMART has decided to retaliate against one of their patrons for simply refusing to show their receipt on their way out of their store. How many times does this have to keep happening before they learn their lesson? Sorry, but Plaintiff isn't "going out of his way" to be detained by the Defendants. Nor is he "seeking to be detained" by them, or "provoking" them, or "concealing," or "displaying conspicuous behavior to suggest that he shoplifting." AS PLAINTIFF DOES AT ALL STORES THAT HE SHOPS AT (NOT JUST WALMART): he simply a) shops for items, b) uses whatever registers are available to him, c) doesn't use plastic bags, and d)

refuses to show his receipt on his way out. **THAT'S IT!** It's no secret (nor has it been for literally decades now) that WALMART routinely and indiscriminately asks to see the receipts of whomever it wishes. But as the retired criminal judge Matthew M. Steven aptly puts it, "No store has the right to force you to display your receipt after you've made your purchase, nor do they have the right to detain you for not doing so. Companies like Sam's Club, BJ's and Costco are able to do this because it is a part of your agreement for membership. A store may detain you if they believe you're guilty of shoplifting, and they must tread exceptionally carefully when doing so, because the liability for falsely accusing and illegally detaining somebody is staggering. However, when an employee stationed at the exits asks to see customer receipts upon exiting, you do not have to show it to them, nor will they argue unless they believe you have committed the crime of larceny. I ruled against WalMart on several occasions with regard to this, and even went so far as to charge members of their loss prevention department with unlawful imprisonment after an incident. I realize that retail theft is rampant in stores like WalMart, but that does not excuse accusing and causing damage to a law abiding citizen." *See https://tinyurl.com/yckn79et.*

In the end, Plaintiff has done nothing more than what any good police officer would do upon observing the same increasingly unchecked (yet patently illegal) behavior: **audit it.** *See https://tinyurl.com/4npw8cba.*

WHEREFORE, the Court of Appeals should **REVERSE** the District Court's granting of Defendants' Motion For Summary Judgment (on all claims for relief) thereby **REINSTATING** and **REMANDING** Plaintiff's consolidated case (in its entirety) to the Arapahoe County District Court for further proceedings not inconsistent with its opinion.

Respectfully submitted on this, the 6th day of October, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 6th day of October, 2022, the foregoing **PLAINTIFF'S AMENDED APPEAL OPENING BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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NON-EXHAUSTIVE LIST OF RECENT NEWS ARTICLES CONDEMNING RECEIPT CHECKPOINTS AS UNLAWFUL

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Cop Records Himself Detained At Walmart Receipt Check, The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010) ("[S]tores cannot legally prevent you from leaving if you decide to not show your receipt.");

Walmart is found not liable after detaining a customer who refused to show receipts at the door; Business Insider, https://tinyurl.com/yvzax7m2 (Jun 5, 2023) ("Shoppers are not legally required to show receipts.");

Walmart Can't Be Sued For Wrongly Disdaining Customer William Montgomery, He Lost His Lawsuits, NewsOnyx, https://tinyurl.com/2p9ecf4x (Jun 2023) ("It is not legally required for one to show their receipts.");

I refused to show my receipt at Walmart and was detained even though it's not illegal – a judge ruled in store's favor; The U.S. Sun, https://tinyurl.com/24pxecm4 (Oct 24, 2023) ("A lawyer revealed that it is not mandatory by law for customers to show receipts at stores like Walmart.");

I'm a lawyer – retailers like Walmart can't legally check your receipt if you refuse but Costco has found a loophole, The U.S. Sun, https://tinyurl.com/43cm6fzm (Oct 23, 2023) ("They can ask you to show your receipt and you can consensually allow them to do it. But there is no power or authority to detain you if you say no." "Stores like Walmart [] could risk legal issues if they attempt to enforce these checks." "[I]f non-membership stores attempted to detain customers for this consumers would be able to sue for false imprisonment if they did not commit a crime.");

I'm a criminal attorney – there's a big problem Walmart & Target staff ignore when they demand to see your receipt, The U.S. Sun, https://tinyurl.com/mrxzw248 (Oct 31, 2023)

("[E]mployees can still ask for your receipt but a customer doesn't have to show it if they don't want to. 'Even the police, they have no right to stop you and force you to show a receipt without reasonable suspicion to stop you and probable cause to search you.'");

Walmart 'cannot come after you' for refusing to show receipt at self-checkout unless they spot key details, expert warns, The U.S. Sun, https://tinyurl.com/yfhnn5xc (Dec 31, 2023) ("[Y]ou can invoke your rights and refuse to show your receipt to the worker at the door when asked.");

'You can walk on by,' cop tells Walmart shoppers about receipt checks – but a specific law makes things 'tricky,' The U.S. Sun, https://tinyurl.com/3chf9xwh (Jan 3, 2024) ("Failing to show a receipt at a store's exit isn't enough of a reason for a store like Walmart to detain a suspected stealer.");

Walmart can't force you to show receipt or have bag checked at the door unless they have a vital excuse, lawyer warns, The U.S. Sun, https://tinyurl.com/mu8cnysf (Jan 17, 2024) ("[W]ithout probable cause to establish Shopkeeper's Privilege," – i.e. "suspicion of shoplifting through other behaviors or actions," – "a receipt check inquiry can be refused legally at Walmart.");

'That's false imprisonment,' lawyer insists as he warns Walmart and major retailers about unnecessary receipt checks, The U.S. Sun, https://tinyurl.com/ycj27x7a (Jan 20, 2024) ("If you haven't done anything wrong and they can't confirm with video cameras or eyewitnesses…and they detain you without consent, that's false imprisonment.");

Walmart needs to remember customer rights before receipt checks – expert advises walk away if they don't have evidence, The U.S. Sun, https://tinyurl.com/u3577pss (Jun 29, 2024) ("If the customer has done nothing wrong, the store would then be engaged in unlawfully confining the innocent customer, resulting in a sort of false imprisonment.").

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Records of Official Actions and Criminal Justice Records and the names, addresses, telephone numbers and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The Official custodian shall deny any person access to records of Official Actions and Criminal Justice Records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

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Incident/Offense Report

PLEASE NOTE
The following information is necessary to process your request. Please fill out all sections. Colorado law and department procedures require you identify the record requested by supplying information that is specific enough to identify the exact record/person/report sought.

Case Report Number or Event Number:

Date of Incident:
11/25/2022

Location of Incident:
Best Buy @ 9369 Sheridan Blvd, Westminster, CO, 80031

Subject Involved:
Last Name, First Name, Middle Initial

Date of Birth:

Describe the Record(s) Requested:
Greetings! I am looking to obtain a record of all calls for service originating from this location on November 25, 2022. Specifically, I am looking for any calls for service that any Best Buy employees may have made, that might show up as a "shoplifting" incident, that might have been called in by said employees (if they even made such a call in the first place) and to which would have likely been made by them around 2:19pm that day. Ultimately, if no such calls for service were made on the date, around that time, an "empty" record report showing that no such calls were made on that date, around that time, is what I am alternatively seeking. Thanks!

Please be specific with your request to narrow our search and respond to you quickly and efficiently.

Preferred Method to Receive Records:
Electronic via Records Center

Acknowledgment

I have read the statute above and do hereby affirm and attest that the records requested by me shall not be used for the direct solicitation of business for pecuniary gain and that the information obtained in the reports requested and/or copies of said reports shall not be further disseminated by me except for as allowed by law.

Type Your Name To Sign:
William Montgomery

New Message ✕ Return to List

Messages 3 Print Messages (PDF)

On 9/10/2024 8:42:09 AM, Westminster CORA Request wrote:

Subject: [Records Center] Police Records Request :: Z000422-090424
Body:
Attached is the completed calls for service that you requested last week.
Please note, we usually charge $30.00 per hour for redaction on requests, but since there was only 2 calls for service and no redactions necessary I am not adding the charge to this request.

Thank you
Dawn Neelands

On 9/4/2024 5:22:26 PM, Westminster CORA Request wrote:

On 9/4/2024 5:22:26 PM, William Montgomery wrote:

Powered by GovQA

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PRTDMSJ Exhibit #15.04

CAD Incident Number: **WPD2022103786**
Case Number:

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Location	Commonplace Name	Beat
9369 N SHERIDAN BLVD Westminster, CO 80031	**BEST BUY**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:14**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **471** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched: **11/25/2022 08:14** Unit Arrived: **11/25/2022 08:14** Unit Cleared: **11/25/2022 08:15**

Call Comments

Location: BEST BUY

11/25/2022 8:15:11 AM, Performed By: TS

Comment: [1] 131 - C4

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PRTDMSJ Exhibit #15.05

CAD Incident Number: **WPD2022103788**
Case Number:

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:15**	**11/25/2022 08:33**

Call Location	Commonplace Name	Beat
9369 N Sheridan Blvd Westminster, CO 80031	**Best Buy**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:15**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **131** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched: **11/25/2022 08:15** Unit Arrived: **11/25/2022 08:15** Unit Cleared: **11/25/2022 08:33**

Person(s) Involved

Last Name	First Name	Phone Number
Herring	**Justin**	

Vehicle(s) Involved

License Plate	Plate State	Year	Make	Model	Color
AXDZ04	**CO**	**2005**	**Chevrolet**	**Silverado**	**White**
BGC010	**CO**				

Call Comments

Location: Best Buy

11/25/2022 8:19:00 AM, Performed By: TS

Comment: [1] [Query] 131, QP Combo Query: USRID/2061.LIC/AXDZ04.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:22:57 AM, Performed By: TS

Comment: [2] [Query] 131, QP Combo Query: USRID/2061.LIC/BGC010.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:33:27 AM, Performed By: TS

Comment: [3] 131 - C4

FILED
COMBINED COURT
JEFFERSON COUNTY

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	2024 SEP 16 PM 3:47 DATE FILED September 19, 2024
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S AFFIDAVIT OF THE EVENT	

COMES NOW that William Montgomery, proceeding *pro se*, respectfully submits to the Court the following Affidavit:

1. My name is WILLIAM MONTGOMERY. I am a United States citizen, and a permanent resident of Denver, CO. I am over the age of 21 years, and am of sound mind. I am the Plaintiff in this action, and I have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify competently to these particular facts and matters. I submit this Affidavit in support of my Response in Opposition to Defendant's Motion for Summary Judgment, in addition to my own Cross-Motion for Summary Judgment.

2. On or about November 25, 2022, at approximately 2:19pm, I was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for my brother.

3. I had been standing on the east side of said building for about five minutes before I was approached by several Best Buy employees.

4. I saw that two of the employees, identified by company name tag as "Mahmoud" and "Shane," were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this affidavit as "John Doe"].

5. Prior to being approached by Mahmoud, Shane, and John Doe, at no time whatsoever had I ever once met, seen, identify, pass by, or been located anywhere physically near such Best Buy employees on that day of November 25, 2022. Rather, this was the very first time that I had ever become aware as to the very existence of said Best Buy employees, whatsoever, in the first place.

6. Upon approach, Mahmoud told me something to the effect of, "I need my stuff back." I was never asked to "show a receipt" by Mahmoud, Shane, or John Doe.

7. Upon hearing Mahmoud's statement, of which I felt to be an accusation of theft, I discreetly activated my body-worn pen camera, located in my front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by me as "2022.11.25 @ 2.19pm ~ Detained By Best Buy Employees (Plaintiff's Bodycam)" [Exhibit #1]. Later, a transcript of what I personally heard that day was also prepared by me [Exhibit #2].

8. The three Best Buy employees' choice to interact with me took me by surprise, as I had never had any adverse interactions with Best Buy or its employees in the past. That's why I had activated my body-worn pen camera only upon their initial accusing of me.

9. For the next several seconds into our interaction, Mahmoud repeatedly told me, "I'm gonna need that back," while Shane kept telling me, "The cops are coming."

10. At one point Mahmoud told me, "I want what's in your pocket, too. Let me get that shit, man." John Doe also told me, "Fucking touch me, dude, and I will wreck you, I promise you."

11. At about a minute into our interaction, I tried to walk away from where I had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told me, "And you're not bigger than any of us."

12. For the next several minutes I tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented me from doing so. All three Best Buy employees had physically "corralled" me against the building's wall, leaving me with no place to go [without otherwise having to physically touch the employees in order to move past them, but to which I was unable to do for fear that I would be assaulted in return].

13. At one point, John Doe called me a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." I heard these insults and accusations be made in a loud and brash tone, in front of several people walking by who would have also heard them be said to me.

14. Then, for the next several seconds, all three employees began taunting me, telling me that it will be "fun" for them to watch the cops "jump me," "tase me," and "fuck me up."

15. After that, as I continued to try to step around the Best Buy employees, Mahmoud once again told me, "You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."

16. About a minute after that, John Doe then asked me, "Who you waiting for?" I responded to him by saying that I was "Trying to fucking leave, man." He then replied back to me with the statement, "you're gonna have to go through me, and I'm not having a good day."

17. Eventually, after several more minutes of taunting, path blocking, and theft accusing, Mahmoud asked me, "What do you even got in there?" This question was followed up with John Doe saying to Mahmoud in front of me, "Oh we'll find out soon enough."

18. About a minute after that, John Doe finally told me that I could leave. But then I heard him say to his fellow employees, in front of me, "Or he can run off camera." He then confirmed what he meant by that by telling me, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera."

19. I then said to the three Best Buy employees, "I don't feel safe leaving now," after which Mahmoud told me, "You shouldn't," followed by some laughter. John Doe then chimed in and said to me, "I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also."

20. After being told once again by John Doe to "Walk away," I once again responded to the three Best Buy employees by saying, "Yeah I don't feel like getting jumped off camera." Mahmoud replied by saying, "Then give me my stuff, dude." A few second later, after I reaffirmed that "I don't feel safe leaving now," Mahmoud once again followed up by saying, "You'll have zero problems if you hand me what's in your pocket, and what's in your coat."

21. Once again, after being told by Mahmoud of my "chance" to leave, I told him, "Like I'm just gonna trust him that he's not gonna jump me." Mahmoud then responded by saying, "You shouldn't trust him that he's not. You should give me my stuff. That's what you should do."

22. Eventually, after another minute or so, Mahmoud told me to "Have a good one dude. See ya later." All three employees then quickly stepped away from me and proceeded back into the Best Buy building.

23. I then spent the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe I felt that I might still get jumped, off camera, by the three employees who said to me they would. [Throughout that 14 minutes, no cops ever came, either].

24. At no point in time, on that day of November 25, 2022, had I ever once "concealed" anything in front of (let alone not in front of) anybody, ever, period.

25. At no point in time, on that day of November 25, 2022, had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees.

26. At no point in time, in my entire life, have I ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere have I ever seen such a policy posted in any Best Buy store, nor spoken to me by any Best Buy employee, nor available for me [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, I still have literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place].

27. Overall, this experience triggered numerous manifestations of significant mental anguish and emotional distress in me. During this encounter I felt helpless, angry, and frustrated that I could not leave the side of the building. I also became quite shocked and disappointed that I had become, yet again, subjected to another false imprisonment, this time for reasons completely unbeknownst to me. Honestly, I am getting sick and tired of being illegally detained by random strangers who don't care enough to do their jobs correctly. I also felt very embarrassed and humiliated on this occasion after being so quickly, easily, and publicly accused of being a thief. Even more so, I felt severe indignity, as people were willing to bully and threaten me in front of so many other people. I felt like a second class citizen, a degenerate. Somebody, who perhaps just by the way he looks or acts, deserves to be treated a certain way? Unfortunately, this experience has only fueled my state of perpetual apprehensiveness and anxiety whenever I go out in public. I now have a pervasive mistrust in authority, which only gets worse upon each subsequent adverse encounter. I now walk around with a pen camera almost every where I go, just in case I need to activate it. I feel silly having to do this upon every mundane occasion. But I just can't risk not protecting myself should the need arise. As a result, I now suffer from a marked diminishment in quality of life. This is especially true considering that my estranged parents, family, and the courts continue to believe me less and less that actual crimes keep being committed against me. They don't help me anymore. As a result, I have become quite bitter. My relationship with my brother has become strained. I suffer from insomnia as I lay awake at night thinking about my defenses / obtaining justice for the wrongs committed against me. And when I begin to file my cases in civil court, I get victim-shamed and scapegoated for wrongs that *others* have committed against *me!* Ultimately, while I know I must always "stand my ground" when it comes to exercising my rights, my overall interactions with the various merchants I have met across the front range have left me with overwhelming grief, as I have lost all hope in American culture as a result. I always thought "innocent until proven guilty" actually meant something in this country, but evidently it does not. In the end, after I get my justice, I plan on leaving this area to seek out more wholesome cultures and communities elsewhere in the country (if not world). About the only good thing I can think of regarding this particular experience is that it only serves to reinforce the concerns I have raised in my other adverse experiences. Hopefully once people see that each of my incidents are not isolated in nature, and that a larger problem of discrimination *does in fact* exist in this country, then maybe my other cases, and my caseload as a whole, will get the attention that it deserves.

FURTHER AFFIANT SAYETH NAUGHT.

I, WILLIAM MONTGOMERY, do hereby declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed on this, the 19th day of September, 2024.

William Montgomery

William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S AFFIDAVIT OF THE EVENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery

William Montgomery

FILED
COMBINED COURT
JEFFERSON COUNTY
DATE FILED
September 19, 2024

JDF 76	**Motion to/for** Submit Video Exhibit For Plaintiff's C-MSJ SEP 19 PM 3:16 2024

1. Court: ☒ District ☐ County
Colorado County: Jefferson
Mailing Address: 100 Jefferson County Pkwy, Golden, CO 80401

2. Parties to the Case:
Plaintiff/Petitioner: WILLIAM MONTGOMERY
&
Defendant/Respondent: BEST BUY STORES, L.P.

This box is for court use only.

3. Filed by:
Name: William Montgomery
Mailing Address: 2443 S University Blvd # 129
City: Denver St: CO Zip: 80210
Phone: (970) 412-5463
Email: zoinbergs@gmail.com

4. Case Details:
Number: 2023CV226
Division: 6
Courtroom: 520

5. Other Parties Response *Skip this section in criminal cases.*

I checked to see if the other parties agree with my request. They:

☐ Agree. ☐ Disagree. ☐ Did Not Respond.
☒ Other: "Do not oppose".

6. My Request

I want the Court to:
Allow me to submit my body-worn pen camera video footage of the event (if it can't already accept my link to it).

7. Discussion

The Court should grant my request, because:
The video is obviously a very important piece of evidence that will aid in fairly ruling on Plaintiff's Cross-Motion for Summary Judgment.

8. Certificate of Service

I certify that on *(enter date)* September 19, 2024, I gave a copy of this document to the other parties by: *(select at least one)*

- ☐ Colorado Courts E-Filing. *(Only available for lawyers.)*
- ☒ Email or Fax to: lbell@mac-legal.com, sboutsicaris@mac-legal.com
- ☐ Regular Mail, addressed to: *(name, full address)* ☐ Hand Delivery, to: *(name, place)*

1) _____.
2) _____.
3) _____.

9. Sign & Date

Print Your Name: William Montgomery
Be sure to complete: Section 3 – Filed By on page 1.

Signature: William Montgomery Date: 2024/09/19

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 SEP 19 P 3:18

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED September 19, 2024
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
TRANSCRIPT OF PLAINTIFF'S BODYCAM FOOTAGE OF THE EVENT	

Plaintiff, proceeding *pro se*, respectfully submits to the Court the following transcript, as prepared by himself, of his bodycam footage that he captured at 2:19pm on November 25, 2022:

TRANSCRIPT

0:00 MAHMOUD I'm gonna need that back, my man.

0:01 WILLIAM Don't you fucking touch me.

0:02 MAHMOUD I'm gonna need that back.

0:03 WILLIAM Don't you touch me.

0:04 MAHMOUD I'm gonna need that back.

0:04 SHANE Hey, the cops are coming, bro.

0:05 MAHMOUD Yeah, you can just give it back to us now, and you can leave...

0:09	WILLIAM	Don't touch me.
0:10	MAHMOUD	I'm gonna need that back.
0:11	WILLIAM	Don't touch me.
0:11	MAHMOUD	I'm gonna need that back.
0:13	WILLIAM	Please.
0:13	SHANE	The cops will be here dude, in one second. I already said something.
0:15	MAHMOUD	Yeah, we'll just hang out here till the cops get here. I'll, I'll come with you. You can walk wherever you want, I'll be here.
0:22	SHANE	Or you can just give us our product back, dude, and you can go on your own way.
0:28	MAHMOUD	I want what's in your pocket, too. Let me get that shit, man.
0:43	MAHMOUD	We got all day, man.
0:43	JOHN DOE	Fucking touch me, dude, and I will wreck you, I promise you.
0:46	WILLIAM	So, so I get mad when he tries to touch me...
0:48	SHANE	Alright, dude.
0:49	WILLIAM	...and then you threaten me, when I'm not trying to touch you?
0:51	SHANE	Hell yeah.
0:52	MAHMOUD	You got my shit? Give it back.
0:54	WILLIAM	I'm trying to leave.
0:56	SHANE	Dude, I promise, I promise, bro.
0:57	MAHMOUD	It'll be a bad decision.
0:57	WILLIAM	I'm not gonna touch you, man...
0:58	JOHN DOE	Then give me my shit back.

0:59	WILLIAM	...but if you won't let me leave?
1:01	MAHMOUD	Give me my product.
1:04	WILLIAM	Okay, so...
1:05	SHANE	It's okay, the cops will be right here, bro.
1:08	MAHMOUD	You're not going anywhere, dude. You're not going anywhere.
1:12	JOHN DOE	[Laughter]
1:13	MAHMOUD	Give me my stuff, dude. We're not gonna play this game with you.
1:17	WILLIAM	Oh, man.
1:20	SHANE	You think it's okay to fucking steal?
1:26	WILLIAM	Leave me alone.
1:27	SHANE	Give me the product, and I'll leave you alone, you can go on your way, you can go to, go to Walmart, go somewhere else. We got you. I have camera footage already. I got the cops coming. If you want to leave without any issues, then just give me my product. You want an issue, you're gonna get more and more of it, I promise.
1:40	WILLIAM	Do you, do you work here?
1:40	JOHN DOE	I do. Yeah, we're all here for ya.
1:43	WILLIAM	Cool, cool.
1:44	MAHMOUD	Yeah, we'll just, we'll hang out with you until you give us your shit, or until the cops show up.
1:47	WILLIAM	Where's your, where's your name tag?
1:48	MAHMOUD	Fuck off, dude. You're not asking questions, bro. You're giving us our shit, and leaving, or the cops are gonna take you. That's the options you have, so which option do you want to take?
2:01	MAHMOUD	It'd be so much easier to just give me my shit, dude, 'cause you're not going anywhere.

2:04	JOHN DOE	And you're not bigger than any of us.
2:06	WILLIAM	Well I'm not touching you.
2:08	JOHN DOE	This is not the day for it.
2:10	MAHMOUD	Give me my shit, or you're gonna be right fucking here.
2:11	JOHN DOE	Then give me my shit. It's gonna be a long motherfucking day for you.
2:16	MAHMOUD	You can give us the shit, and leave.
2:17	SHANE	You picked the wrong store. Go pick a different store, try another day buddy.
2:18	JOHN DOE	You can leave without incident. Give me my shit, you can walk away, or, you're going to jail, dumbfuck, let's go.
2:28	JOHN DOE	Yes, I'm talking to you.
2:30	MAHMOUD	Give me my shit.
2:30	JOHN DOE	You're fucking a thief. I don't care what you think of me, give me my shit. Keep staring at me you dumb mother, I'm not assaulting you, nor touching you.
2:40	MAHMOUD	You're not going anywhere, you're giving us our shit back. You're not leaving.
2:44	JOHN DOE	You're not leaving.
2:45	MAHMOUD	You're not leaving with our stuff.
2:51	MAHMOUD	You can give it to us now, and get the fuck outta here, the cops are on the way. I would love to see you get arrested, don't get me wrong.
2:57	JOHN DOE	We'll just wait until they jump him.
2:57	MAHMOUD	Yeah.
2:58	JOHN DOE	I'll let him get tased.
2:59	SHANE	I like when they put handcuffs on you, and they put you on the ground.
3:01	MAHMOUD	That'll be fun for us. Yeah.
3:04	JOHN DOE	'Cause I can't tell you to touch me, so.

3:07	MAHMOUD	You're not going anywhere, bro. He's not going anywhere.
3:12	WILLIAM	I ain't touching you, man.
3:12	JOHN DOE	Yeah, I know you will.
3:13	MAHMOUD	Then you're not going anywhere.
3:13	JOHN DOE	Then you're gonna be right there.
3:17	MAHMOUD	Then you're gonna stay right there until the cops come here and fuck you up. That's your options.
3:20	JOHN DOE	I don't give a fuck what they do to you. They don't either.
3:29	SHANE	You can make it easy, dude, just give me my stuff that you took.
3:34	MAHMOUD	You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here. So are you gonna give me my product, and leave, or are you gonna wait until the cops show up? We'll just make it easy, it's two options, which one are you taking?
3:51	MAHMOUD	Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit.
4:02	SHANE	Alright.
4:03	MAHMOUD	You're not going anywhere, bro.
4:27	MAHMOUD	You're making the wrong decision, bro. You're making the wrong decision.
4:36	JOHN DOE	Who you waiting for?
4:37	WILLIAM	Trying to fucking leave, man.
4:38	MAHMOUD	Then give me my shit and you can leave!
4:41	JOHN DOE	Otherwise, you're gonna have to go through me, and I'm not having a good day.
4:46	SHANE	Or, when PD gets here, 'cause again, I have everything, I got a video, I got it on video, I got you concealing, I have you walking out without paying, so.

4:53	MAHMOUD	I'm gonna tell you this man, it's a bad day to test us. You picked a bad day to test us. So give me my stuff.
4:59	SHANE	You can go to, you can get a ticket, go to possibly go to jail, possibly have police officers do that, or you can just put the stuff on the trashcan, you can walk away.
5:11	MAHMOUD	You're not moving, dude. You're where you're gonna be until the cops get here. I don't know how else to explain it to you.
5:25	SHANE	I know it sounded like a good idea to steal today, but it's not. So again, if you give me my product, I promise, you can go to Walmart, you can go different, somewhere else, but...
5:36	JOHN DOE	You can steal the rest of the day, just not here. Hey, hey Dustin what's the ETA would you say, man?
5:54	MAHMOUD	Alright, I guess we're waiting?
5:55	JOHN DOE	Yep, we'll wait it out.
5:59	WILLIAM	Well I don't wanna wait.
6:00	MAHMOUD	Well then give me my stuff, dude. You're not moving, man. Give me my stuff.
6:06	JOHN DOE	This is the easiest decision of your entire life, right now, you can walk, within that 30 seconds before they show up here, or when they get here, they're not going to play, especially if we gave you a choice, and you didn't take it. They're going to call you a dumbfuck also, and then they're going to throw you on the ground, and they may tase you. I've watched it happen at this location, countless times.
6:28	MAHMOUD	That's alright, he doesn't want to [inaudible] any of us, he can find out.
6:30	JOHN DOE	They don't play around.
6:31	MAHMOUD	This is nice little break for us, anyway.
6:34	SHANE	I like the weather.
6:36	WILLIAM	It is pretty nice today.
6:39	JOHN DOE	[Laughter]
7:25	MAHMOUD	You're not going anywhere, dude.

7:58 MAHMOUD Let me see the shit you grabbed, dude. What do you even got in there?

8:04 MAHMOUD Okay.

8:06 JOHN DOE Oh we'll find out soon enough.

8:08 MAHMOUD Yeah. We've had some dumb ones, we haven't had people stand here and wait for us to come out and get 'em though, so thanks for doing that, you make my job easier.

8:47 MAHMOUD You're pretty slow, too, dude.

8:50 WILLIAM Well I ain't gonna charge you.

8:51 MAHMOUD Okay, then you're gonna stand there until the cops show up. Or you can just give me my stuff, and leave. What do you think is gonna happen, like can you walk me through your thought process? Like what's your best case scenario, you think you're just gonna walk away and we're just gonna get tired and leave, or what?

9:08 MAHMOUD I'm asking you a question.

9:10 JOHN DOE I don't know if he has a thought process. That's probably part of the problem.

9:17 MAHMOUD I want my stuff.

9:23 JOHN DOE Actually, just let him leave, I'll wait. Or he can run off camera. Walk away.

9:30 WILLIAM You're gonna make me, let me leave?

9:31 JOHN DOE Yeah, oh yeah, walk away.

9:32 WILLIAM You're gonna let me leave now?

9:33 JOHN DOE Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera.

9:38 WILLIAM Aww.

9:40 JOHN DOE Yeah, walk away dude.

9:41 WILLIAM So you're threatening me?

9:42 JOHN DOE No, no no no. Walk away. Have a great day. We'll stay right out of your way.

9:48 WILLIAM I don't feel safe leaving now.

9:50 MAHMOUD You shouldn't. [Laughter]

9:52 JOHN DOE I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also.

9:59 MAHMOUD That's what happens.

10:07 JOHN DOE Walk away.

10:08 MAHMOUD I'm giving you space, bro, here you go.

10:10 WILLIAM Did you just hear him?

10:11 MAHMOUD I didn't hear shit. All I know is that you have my stuff, and you're not giving it back.

10:17 WILLIAM Yeah I don't feel like getting jumped off camera.

10:19 MAHMOUD Then give me my stuff, dude.

10:20 JOHN DOE Give him his stuff.

10:22 MAHMOUD You have something in your pocket, you have something in your coat, just give it to me, and you can leave.

10:27 JOHN DOE You can leave, anyway. I don't care. Or you can give it to me. You give me a reason. Have a good day!

10:37 MAHMOUD What's up, dude?

10:39 JOHN DOE [Inaudible] fucked.

10:44 WILLIAM Like I said I don't feel safe leaving now.

10:47 MAHMOUD Then give me my shit.

10:47 JOHN DOE Give me my shit.

10:48 MAHMOUD You'll have zero problems if you hand me what's in your pocket, and what's in your coat.

10:54 JOHN DOE You can just walk away. Go on to go steal the rest of your life away, you miserable human. Do you know how hard people have to work, to be able to afford things like that? I mean, you know how much we have to do, to deal with people like you, who just come in and steal from us? What a miserable human being. Have a great day! See you later!

11:27 MAHMOUD There's are your chance.

11:28 WILLIAM Like I'm just gonna trust him that he's not gonna jump me.

11:31 MAHMOUD You shouldn't trust him that he's not. You should give me my stuff. That's what you should do.

11:37 JOHN DOE That's what I would do.

11:38 WILLIAM Get away from me dude.

11:38 JOHN DOE No, I'm staying right here. How about now? Give me my stuff.

11:43 MAHMOUD Just give us our stuff.

11:44 WILLIAM Don't...

11:45 JOHN DOE Would you like to give me my stuff? Would you like to give me my stuff? How about now? Would you like to give me my stuff? It's alright, we'll wait all day. We'll see where you go. I don't have anywhere to be. I have a job.

12:08 MAHMOUD You might be the dumbest motherfucker I ever met in my life. Just give us our shit.

12:15 MAHMOUD Have a good one dude. See ya later.

12:16 – 26:16 *William spends the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he feels that he may still get jumped, off camera, by the three employees who said to him they would.*

CONCLUSION

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **TRANSCRIPT OF PLAINTIFF'S BODYCAM FOOTAGE OF THE EVENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
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Attorneys for Defendant

William Montgomery
William Montgomery

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 SEP 19 P 3:18

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED September 19, 2024
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
MOTION TO EXCEED PAGE LIMITATION REGARDING PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	

Plaintiff, proceeding *pro se*, hereby moves this Court for an exception to C.R.C.P. Rule 121 § 1-15(1)(a) pertaining to page limitations, so as to permit him **six (6) additional pages** for his RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it does not take a position on the MOTION, but instead, defers to the Court's judgment on whether or not to grant it.

ARGUMENT

1. On July 25, 2024, Defendant filed a MOTION FOR SUMMARY JUDGMENT in this matter. Plaintiff's deadline to file a RESPONSE to this MOTION is September 20, 2024.

2. C.R.C.P. Rule 121 § 1-15(1)(a) limits the number of PAGES that may be offered in RESPONSE to such a MOTION, to 25 pages.

3. Defendant's MOTION includes **an absolute plethora** of legal arguments that it raises – by way of incorporating *all* previous orders entered against Plaintiff in *all* previous cases that have *ever* been filed by him against a wholly different merchant – and to which includes legal arguments surrounding the concepts of: *freedom of movement, unreasonable risk of harm, escape, shopkeeper's privilege, false imprisonment, defamation, assault, and even entrapment.*

4. In response, not only must Plaintiff adequately address all of these matters raised in Defendant's MOTION, he must also present his own supporting facts and legal arguments.

5. Plaintiff has not made any prior requests to exceed the page limit of his RESPONSE, so he does not believe Defendant or this Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** this here motion, so as to permit Plaintiff to exceed the page limitation set forth in C.R.C.P. Rule 121 § 1-15(1)(a) by **six (6) pages** when RESPONDING to Defendant's MSJ.

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **MOTION TO EXCEED PAGE LIMITATION REGARDING PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Attorneys for Defendant

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FILED
COMBINED COURT
JEFFERSON COUNTY
2024 SEP 19 P 3:27
DATE FILED
September 19, 2024 4:25 PM

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendant's MOTION FOR SUMMARY JUDGMENT *(herein "Def's MSJ")*, and in support thereof, states as follows:

INTRODUCTION

Never before in Plaintiff's life has he ever seen a Defendant claim ***so much***, yet offer ***so little*** [read: ***literally nothing***] to otherwise *even begin to* substantiate such bold claim(s) with. Defendant's reliance on Plaintiff's prior cases (filed against a wholly different merchant) is equally unavailing. This is because Defendant has failed to show this Court, with **ANY** tangible, admissible evidence, *whatsoever*; that Plaintiff's instant case *has anything to do with receipts*. Moreover, Courts have certainly been known to "get it wrong," *see U.S. v. Chanthasouxat,* 342 F.3d 1271 (11th Cir. 2003); *and Dred Scott v. Sandford,* 60 U.S. 393 (1856), so this Court should be mindful of that when familiarizing itself with said "prior cases." Let's see just how wrong Defendant also "got it," now...

RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See Plaintiff's Response To Defendant's MSJ (herein "PRTDMSJ") Exhibit #1.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

2. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #2.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

3. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

4. Plaintiff ADMITS that he filed said Complaint. **However, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

5. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

6. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related**

to his instant case that Defendant has failed to show *has anything to do with receipts.*

7. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

8. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

9. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #5 through #7.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

10. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #8 through #12.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

11. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #13.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

Plaintiff incorporates, as if fully set forth herein, the above Briefs, Responses, Replies, Petitions, and Writs – contained in Exhibits #1 through #13 – into his current RESPONSE.

12. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Specifically, Plaintiff's generic use of the phrase "I have it all planned"

means nothing more than him refusing thenceforth to "prove his innocence" [which he thought would surely help him prove a Defendant's guilt; and to which in a fair courtroom, naturally would] as doing so has ultimately shown to not benefit him due to how attorneys and judges have decided to impermissibly twist and warp such "pre-arguments" of his to be *miraculously* used ***against*** him! In other words, no longer will Plaintiff be so kind. Rather, when discussing a Defendant's affirmative defenses, Plaintiff will forevermore be placing the burden of persuasion strictly back to where it belongs – exclusively on the Defendant.

13. Plaintiff DENIES that the asserted material fact – that he "targeted" the Best Buy store located in Westminster, CO – is true. If Defendant wants to call any and all patrons who happen to visit its stores [and who happen to know their rights while doing so] "targeters" of its particular business, it certainly can. But this would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Moreover, Plaintiff DENIES that he "exited" the store, or that he did so with any of the store's "merchandise" in his possession, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, to substantiate the validity of either fact. Moreover, neither of these asserted facts are material to the outcome of Plaintiff's case (i.e. neither are required for him to prove his False Imprisonment claim with / both are strictly tied to Defendant's own affirmative defense of "shopkeeper's privilege" in the matter). However, Plaintiff does ADMIT that he produced bodycam video of the encounter, as captured via his pen camera.

14. Plaintiff DENIES that this asserted material fact is true. Nowhere in Plaintiff's bodycam video does it show that he "did not show a receipt to Best Buy staff," let alone that they "requested [that he] do so." *See Plaintiff's Affidavit (herein "PA") at ¶ 6. Not only should Defendant be charged with violating Colorado Revised Statutes § 18-8-306 [Attempt to influence a public servant by means of deceit] for making this claim, it should be reprimanded, sanctioned, and reported by this Court to the Attorney Regulation Council for violating Colorado Bar*

Association Rules Of Professional Conduct Rule 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] and 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice]. Moreover, this is a perfect example of the downright **flagrant** intellectual dishonesty that Plaintiff has had to endure an umpteen number of times now in Court, whereby attorneys will do just about anything to "win" a case – including breaking the law. *Aren't attorneys supposed to be pretty much the most honest, upstanding members of society?*

15. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Moreover, while said Best Buy employees may certainly have "suspected" Plaintiff of stealing items from their store, the dispositive inquiry is whether or not they **reasonably** suspected him of stealing from it [and to which they categorically **DID NOT reasonably** suspect such].

16. Plaintiff ADMITS that this asserted material fact is true. Indeed, Defendant's own self-admitting statement made of, "we haven't had people stand here and wait for us to come out and get 'em though" is substantive evidence that it **lacked** "shopkeeper's privilege" to [lawfully] detain him that day. That is, such a statement made establishes that Defendant **had not** "ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022" prior to approaching him for the very first time on the side of its particular building [and that it likewise **had not** ever been "posted up" at its store's exit, nor "followed" Plaintiff "out" of said store, either]. *See PA at ¶ 5.*

17. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case.

18. Plaintiff ADMITS that this asserted material fact is true. Indeed, after nearly ten minutes of being detained by Defendant, Plaintiff was finally released after it failed in its ***sloppy, backwards, post-hoc, bootstrapped*** investigation to reasonably establish that he stole anything from its store.

19. Plaintiff ADMITS that the asserted fact is true – that "At no time during the

interaction did Best Buy employees touch Plaintiff" – but DENIES that it is material to the outcome of his case. This is because "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). However, Plaintiff DENIES that "At no time during the interaction did Best Buy employees . . . threaten to harm him." Rather, Defendant made ***numerous*** implicit threats to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him**. This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def's Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

20. Plaintiff DENIES that this asserted material fact is true, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff even had a receipt on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated. Moreover, ***EVEN IF*** these facts could be assumed, such "receipt showing" would ***STILL*** be **legally incapable** of being the *a-c-t-u-a-l* *cause* of Plaintiff's release [as will be discussed later].

21. Plaintiff ADMITS that this asserted material fact is true.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

22. On or about November 25, 2022, at approximately 2:19pm, Plaintiff was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for his brother. *See PA at ¶ 2. See Def's Exhibit M.*

23. Plaintiff had been standing on the east side of said building for about five minutes before he was approached by several Best Buy employees. *See PA at ¶ 3.*

24. Two of the employees, identified by company name tag as "Mahmoud" and "Shane,"

were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this C-MSJ as "John Doe"]. *See PA at ¶ 4. See Def's Exhibit M.*

25. Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022. Said employees had never been "posted up" at the store's exit, nor had they ever "followed" Plaintiff "out" of said store, either. Again, Plaintiff had been standing on the side of the Best Buy building for a full five minutes, "waiting for [them] to come out" (Defendant's words, not Plaintiff's, as Plaintiff was actually waiting for his brother at the time, see *Fact #23* above). *See PA at ¶ 5. See Def's Exhibit M at timestamp 8:08.*

26. Upon approach, Mahmoud told Plaintiff something to the effect of, "I need my stuff back." Plaintiff was never asked to "show a receipt" by Mahmoud, Shane, or John Doe. *See PA at ¶ 6.*

27. Upon hearing Mahmoud's statement, Plaintiff discreetly activated his body-worn pen camera, located in his front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by Plaintiff based on the date/time he started recording it on/at. *See PA at ¶ 7. See Def's Exhibit M.* Later, a transcript of what Plaintiff personally heard that day was also prepared by him. *See Transcript Of Plaintiff's Bodycam Footage Of The Event.*

28. The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him. *See PA at ¶ 8.*

29. Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for *whatever* existed in one of his pant pockets, too. Said employees did not know if what Plaintiff had on him was a) store merchandise, b) stolen store merchandise, c) non-store merchandise, d) previously paid for store merchandise chosen by Plaintiff not to be returned, e) non-store merchandise Plaintiff had

erroneously attempted to return to the wrong store, f) personal items, g) medication, h) etc. Specifically, by their very own admissions, said Best Buy employees ***did not even tell the difference between*** what Plaintiff held in his hands, and what existed in one of his pant pockets, **but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period**. *See PA at ¶ 25. See Def's Exhibit M at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 8:06 ("Oh we'll find out soon enough."), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Moreover, ***EVEN IF*** what Plaintiff had on him was, in fact, stolen merchandise, such would ***STILL*** not have changed the **COMPLETELY-UNKNOWN-TO-THEM-AND-COMPLETELY-UNIDENTIFIED-TO-THEM-AT-ALL-TIMES-AND-PLACES** nature of the item(s), as said employees would not have known literally anything about anything, ABOUT ANYTHING, *regardless of the situation,* and regardless of the pocket, because of how they had only seen Plaintiff **for the very first time standing outside their building** (and thereby would have never seen him take whatever-the-heck-he-may-have-had-on-him-that-day "from any walls, past any points of sale, and out any doors," *whatsoever*, **period**). *See PA at ¶ 5.*

30. At about a minute into the interaction, Plaintiff tried to walk away from where he had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told Plaintiff, "And you're not bigger than any of us." *See PA at ¶ 11. See Def's Exhibit M at timestamps 1:08 and 2:04.*

31. For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so. All three Best Buy employees had physically "corralled" Plaintiff against the building's wall, leaving him with no place to go [without otherwise having to physically touch the

employees in order to move past them, but to which he was unable to do for fear that he would be assaulted in return].[1] *See PA at ¶ 12. See Def's Exhibit M from timestamp 2:05 onward.*

32. At one point, John Doe called Plaintiff a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." These insults and accusations were made in a loud and brash tone, in front of several people walking by who would have also heard them be said to Plaintiff. *See PA at ¶ 13. See Def's Exhibit M at timestamps 2:18 and 2:30.* Later, John Doe continued to insult Plaintiff by repeatedly calling him a "miserable human being." *See Def's Exhibit M at timestamp 10:54.* Toward the end of the interaction, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See Def's Exhibit M at timestamp 12:08.*

33. At another point, all three employees began taunting Plaintiff, telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." *See PA at ¶ 14. See Def's Exhibit M from timestamp 2:51 to 3:20, and 6:06.*

34. Throughout the encounter, as Plaintiff continued to try to step around the Best Buy employees in order to leave the area, Mahmoud repeatedly affirmed his intent to detain him [and to which was accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go]. *See PA at ¶ 15. See Def's Exhibit M at timestamps 2:10 ("Give me my shit, or you're gonna be right fucking here."), 2:40 ("You're not going anywhere, you're giving us our shit back. You're not leaving."), 3:34 ("You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."), 3:51 ("Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit."), 4:03 ("You're not going anywhere, bro."), 5:11 ("You're not moving, dude. You're where*

1 One Appellate Panel **impermissibly** held that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," his false imprisonment claim purportedly failed. *See Def's Exhibit I at page 8.* However, **such is not the law**, as the Court has long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid. See also McDonald v. Lakewood Country Club,* 170 Colo. 355, 461 P.2d 437 (1969).

you're gonna be until the cops get here. I don't know how else to explain it to you."), 6:00 ("Well then give me my stuff, dude. You're not moving, man. Give me my stuff."), 7:25 ("You're not going anywhere, dude."), and 8:51 ("Okay, then you're gonna stand there until the cops show up.").

35. Finally, after being harassed and bullied by the three Best Buy employees for nearly ten minutes, John Doe finally told Plaintiff that he could leave. But then he immediately said to his fellow employees, "Or he can run off camera." John Doe then confirmed what he meant by that by telling Plaintiff, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera." *See PA at ¶ 18. See Def's Exhibit M from timestamp 9:23 to 9:33.*

36. Plaintiff then said to the three Best Buy employees, "I don't feel safe leaving now," after which Mahmoud told him, "You shouldn't" [followed by some laughter]. John Doe then chimed in and said to Plaintiff, "I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also." *See PA at ¶ 19. See Def's Exhibit M from timestamp 9:48 to 9:52.*

37. After being told once again by John Doe to "Walk away," Plaintiff once again responded to the three Best Buy employees by saying, "Yeah I don't feel like getting jumped off camera." Mahmoud replied by saying, "Then give me my stuff, dude." A few second later, after Plaintiff reaffirmed that he "doesn't feel safe leaving now," Mahmoud once again followed up by saying, "You'll have zero problems if you hand me what's in your pocket, and what's in your coat." *See PA at ¶ 20. See Def's Exhibit M from timestamp 10:07 to 10:48.*

38. Once again, after being told by Mahmoud of his "chance" to leave, Plaintiff told him, "Like I'm just gonna trust him that he's not gonna jump me." Mahmoud then responded by saying, "You shouldn't trust him that he's not. You should give me my stuff. That's what you should do." *See PA at ¶ 21. See Def's Exhibit M from timestamp 11:27 to 11:36.*

39. After Mahmoud told Plaintiff to "Have a good one," all three employees quickly stepped away from Plaintiff and proceeded back into the Best Buy building. Plaintiff then spent

the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would. [Throughout that 14 minutes, no cops ever came, either]. *See PA at ¶ 23. See Def's Exhibit M from timestamp 12:16 to 26:16.*

40. During Plaintiff's detention by the three Best Buy employees, he counted at least 192 people that had walked past him [and who would have thus been within earshot of the conversation that took place between he and the three employees]. *See Def's Exhibit M generally.* Many times, people that were passing by looked directly at Plaintiff and the employees. One person even stopped literally *right* next to Plaintiff and the three employees to explicitly listen to the conversation that had been taking place between them. *See Def's Exhibit M from timestamp 4:36 to 4:53.*

41. At no point in time, on that day of November 25, 2022, had Plaintiff ever once "concealed" anything in front of [let alone not in front of] anybody, ever, period.[2] *See PA at ¶ 24.*

42. At no point in time, on that day of November 25, 2022, had Plaintiff ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in his pant pockets remained there before, throughout, and after his interaction with the Best Buy employees. *See PA at ¶ 25.*

43. At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere has Plaintiff ever seen such a policy posted in any Best Buy store, nor spoken to him by any Best Buy employee, nor available for

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2 Such "concealing" is **precisely** what a District Court Judge *miraculously* **[but impermissibly]** held Plaintiff do in *Montgomery v. Walmart, Inc.,* Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235). *See Def's Exhibits C / D / E / H, Order at page 25* ("Further, the undisputed facts show that Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was **concealing** property of the store, which he knew would lead to being detained and asked for his receipts."). **OF COURSE,** Plaintiff has obviously **never** "concealed" *anything*, from *anybody*, on *any* shopping occasion, ***ever, period, in the history of his existence,*** for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter! Moreover, in all those cases, Plaintiff was FIRST asked to show his receipt, THEN detained. **Not the other way around!** Indeed, as Plaintiff argued, it was the mere refusal to show the receipts **that was the cause of** the detentions [i.e. "bootstrapping"].

him [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, Plaintiff still has literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place]. *See PA at ¶ 26.*

44. On November 25, 2022, Defendant made no "calls for service" to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store. *See PRTDMSJ Exhibit #15.*

45. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant. Such manifestations include (but are not limited to): helplessness, anger, frustration, shock, disappointment, inconvenience, embarrassment, humiliation, severe indignity, devastation, reputational damage, apprehensiveness, anxiety, mistrust in authority, marked diminishment in quality of life, bitterness, insomnia, and overwhelming grief. *See PA at ¶ 27.*

ARGUMENT

I. DEFENDANT FALSELY IMPRISONED PLAINTIFF, AND LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

a. Defendant misinterpreted and abused the relevant jury instructions at issue

Defendant begins its argument by listing off the various elements of a False Imprisonment claim, but then it fixates on the definition of "Restriction Of Freedom Of Movement" as defined in Colorado Civil Jury Instruction 21:2(1). Of course, it is surely doing this in high hopes of "piggy backing" off of previous arguments made on the subject. As will be discussed next, however, such arguments are **wholly without merit**, as they not only warp the English Language into nonsensical mumbo jumbo, they create "absurd" results not intended for by the Colorado Legislature.

Let's begin by reviewing the Colorado Civil Jury Instruction at issue, **21:2(1)**. When reviewing the interpretation of a statute [or in this case, a jury instruction], "A court's primary goal in interpreting [it] is to determine and give effect to the intent of the legislature, and a court should first look to the plain and ordinary meaning of the statutory language." *Ball Corp. v.*

Fisher, 51 P.3d 1053, 1056 (Colo. App. 2002). Moreover, when a court construes a [jury instruction], it should read and consider the [jury instruction] "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts." *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003); *see also People v. Andrews,* 871 P.2d 1199, 1201 (Colo. 1994) ("Legislative intent is the linchpin of statutory construction."). Most importantly, a court should not interpret a [jury instruction] in ways that defeat the legislature's obvious intent or render part of the [jury instruction] either "meaningless" or "absurd." *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996).

Colorado Civil Jury Instruction 21:2(1) states that "A person's freedom of movement has been restricted when . . . A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property."

First, the phrase "physical barriers" is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it "defeats the legislature's obvious intent" of the use of such a phrase [and to which, then, renders such interpretation manifestly "absurd"]. The Merriam-Webster Dictionary defines "barrier" as "something material that blocks or is intended to block passage" and/or "a natural formation or structure that prevents or hinders movement or action." These definitions traditionally include things like "highway," "concrete," and "tree root" barriers, as the Dictionary suggests. Moreover, said Dictionary then goes on to suggest several synonyms that can be used in place of the word "barrier," like "barricade," "fence," "hedge," and "wall." Thus, **it strains credulity** that the Legislature would have intended to include ***ACTUAL PEOPLE*** as some "physical barrier," **especially when said Legislature already specifically refers to *PEOPLE* as a source of "restriction of freedom of movement" IMMEDIATELY NEXT in their list of possible ways to achieve a false imprisonment.** *See CJI 21:2(2)* (defining "the person is restrained by physical force" as a method of restriction); *and CJI 21:2(5)* (defining "the

person submits to another" as a method of restriction). Therefore, including ***actual people*** as a "physical barrier" would be duplicitous, at best [and intellectually dishonest, at worst].

Next, the phrase "unreasonable risk of harm" is being equally misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a phrase [and to which, then, also renders such interpretation manifestly "absurd"]. This is **ESPECIALLY** true when "reading and considering" the phrase **in conjunction with** its "physical barrier" counterpart [see above] "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts." *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003). The Merriam-Webster Dictionary defines "harm" as "physical or mental damage." Thus, **it strains credulity** that within the definition of "harm" the Legislature would have intended to include anything other than *physical or mental acts of violence*. **This is especially true considering that said Legislature further defines specific types of harm *INFLICTED BY PEOPLE* in its following three instructions.** *See CJI 21:2(2–4).* Indeed, Plaintiff wholeheartedly *agrees* with Defendant that "showing a valid receipt" would not subject him to "physical or mental damage." OF COURSE IT WOULDN'T! A store employee simply holding a receipt in their hands while cross-referencing it against a patron's purchases is not a physically or mentally violent act at all. **Thus, the Legislature would never have intended to mean as much when drafting said jury instruction.** *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking a patron's only path out of a store until they forcefully verify their receipt against their merchandise* ***will practically always involve "an unreasonable risk of harm."*** *In other words, this particular situation would be the only way to make meaningful sense of the jury instruction at issue, as presented, based on the specific use of its attendant phrase, "limited to a certain area."*

Next, ***but equally as important on this issue***, is that the definition of "escape" is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a word. To begin, there is a BIG difference

between having one's path **PARTIALLY blocked**, but whereby they can still **see** and **are able to use** "other avenues open to [them]" *(see Colorado Civil Jury Instruction 21:2, Notes On Use #3)* in order to **avoid altogether** some **ATTEMPTED** confinement of them **from occurring in the first place** *(see Merriam-Webster Dictionary definition of "escape" as meaning "to get away (as by flight)" or "to issue from confinement")*[3] and having **one's ONLY path FULLY blocked IN ALL DIRECTIONS, after which** they are merely **given the option** to **subsequently** be **SET FREE** by the imprisoner **AFTERWARDS if** (and only if) **they give into the imprisoner's demands** *(see Merriam-Webster Dictionary definition of "release" as aptly meaning "to set free from restraint, confinement, or servitude").* Specifically, the ***latter*** definition is what Defendant [and prior Courts] are attempting to apply when discussing their term "escape," *but whereby such is not *actually* an intellectually honest use of the term* [because the ***former*** definition is].[4] In other words, "detention for / after failing to provide a receipt" is strictly a **COMPLETED** and **CONTINUING**

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3 Specifically, the definition of "escape" naturally and logically hinges on the notion that a person "escaping" is doing so single-handedly and of their own volition (i.e. "to [self] issue from confinement," not "to [be issued] from confinement."

4 One Appellate Panel even went so far as to preposterously hold that Plaintiff has some unwritten legal obligation to **"pre-escape"** all detentions (i.e. "prevent" them occurring in the first place) by otherwise requiring him to now literally keep *all* receipts on him, at *all* times, on *all* shopping occasions, in order to show them upon leaving "should the need *[if ever!?]* arise." *See Def's Exhibit J at page 10* ("Similarly, no reasonable juror could conclude that it was an unreasonable burden to expect Montgomery, under these circumstances, **to retain his receipt** and show it to the Walmart employee as he exited. Simply put, Montgomery had a reasonable means of both **avoiding** confinement and "escaping" confinement by using a receipt."). **Of course, neither Plaintiff, nor any other person in this country, versed in the law or not, has any legal obligation, *whatsoever*, to actually keep *all* possible receipts on them in order "prevent" *all* possible detentions.** "Entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed." *Mora v. People,* 172 Colo. 261, 262 (Colo. 1970). This is because **merchants** are the ones who ultimately have the **"last clear chance"** to avoid or prevent false imprisonments from occurring, **not patrons!** ***Moreover***, because Defendant's choice to interact with Plaintiff took him by surprise [whereby he didn't start recording until just after the confrontation began], it cannot even be said that Plaintiff had been "acting" in some disingenuous "premeditated" manner, either [not that starting recordings ahead of time is disingenuous behavior in the first place]. *Compare PA at ¶ 8 to Def's Exhibit J at page 10* ("Given Montgomery's repetitive interactions with Walmart, **coupled with his recorded contemplation of his anticipated detention,** the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision."). ***Of critical importance on this subject, however,*** is that this whole **"pre-escape"** argument **IS ACTUALLY AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.* Specifically, Defendant had no earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when it approached him [and whereby Plaintiff could have very easily been holding "non-store merchandise he had erroneously attempted to return to the wrong store"]. *See Plaintiff's Additional Material Fact #29, above.* Under such a circumstance, it would be unreasonable to assume that Plaintiff was ever "provided a receipt" by Defendant, in the first place [for which he might have otherwise been "required to retain" as the Appellate Panel impermissibly argued].

imprisonment [now subject to requiring lawful justification for] coupled with a **CONDITIONAL RELEASE** of the patron that has **YET** to occur **UNTIL AFTER** the merchant's demands (i.e. the receipt has been handed over **AND** it has been cross-referenced with the patron's purchases) are satisfactorily met.[5] This means that, *even if* satisfactorily "showing a receipt" results in the **RELEASE** [again, not escape] of a patron, doing such **would not nullify** their **prior** confinement **from having occurred in the first place** – any more than satisfactorily blowing into a breathalyzer at a DUI checkpoint would nullify a motorist's prior confinement from having occurred in the first place, satisfactorily posting bail at the local jail would nullify a prisoner's prior confinement from having occurred in the first place, etc. ***Most importantly on this topic,*** is that Section 36 of the Restatement (Second) Of Torts – on which Colorado Civil Jury Instruction 21:2(1) relies – contains a Comment to the provision that **SPECIFICALLY** and **EXPLICITLY** clarifies the Legislature's plain and unambiguous intent to define "escape" **as applying strictly to PRE-CONFINEMENT situations only** (and not to post-confinement ones, once they have occurred). *See Restatement (Second) Of Torts § 36 Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** *imprison* to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). *Note the Legislature's specific use of the phrase "**intends to** imprison." That's not "has [already] imprisoned," that's "intends to [but has not actually done so yet] imprison."* OF COURSE, this is not to say that a person, **POST-confinement**, who **subsequently** discovers a way to escape his **already completed** imprisonment, should not utilize such a means. [It would certainly be incumbent upon him to do so, and he would presumably not be able to recover damages beyond this point in time, either]. However, like previously mentioned, such a **SUBSEQUENTLY discovered** avenue of escape, *even*

5 Specifically, Plaintiff has ***never*** claimed that the ***act itself*** of him being ***ASKED*** to show a receipt is what has constituted his confinement. Rather, he has ***always*** claimed that the ***act of physically blocking all available pathways of his through all available exits*** is what has actually constituted his confinement. However, this is **precisely the exact opposite** of what one Appellate Panel impermissibly held on the subject. *See Def's Exhibit I at page 8* ("No reasonable juror could conclude that **being asked to show proof of purchase** before leaving a store would constitute confinement for purposes of false imprisonment.").

if taken, **DOES NOT NULLIFY the prior, COMPLETED, initial, OUTRIGHT confinement of him FROM HAVING OCCURRED IN THE FIRST PLACE** [and to which, again, now requires some affirmative defense like "shopkeeper's privilege" to lawfully justify it with].

It should also be worth noting, at this point, that such a ***double standard*** proffered by Defendant [and prior Courts] impermissibly strips patrons of their rights, *regardless of the situation.* Obviously, Courts that have ruled against Plaintiff in the past have all held that by a patron REFUSING to show their receipt, they purportedly "fail to avail themselves" of some "escape" path, thereby "forfeiting their right to sue for false imprisonment." Yet, other Courts **have already held** that a patron's act of SHOWING a receipt *already* forfeits their right to sue for false imprisonment, as such behavior *already* constitutes "voluntarily giving consent to the detention" in order to "establish their innocence," as *Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) puts it, or to "vindicate themselves," as *Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966) puts it. *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). So which is it? Does one forfeit their right to sue for false imprisonment by SHOWING a receipt, or by NOT SHOWING it? It can't be both, as such an "unlucky position" would be manifestly unfair to the regular customer. Indeed, Plaintiff has gone shopping in the past [at Walmart, for example] WITH such personalized knowledge – after having read *Broadnax, Grayson,* and *Anderson* prior to – that if he *voluntarily* showed his receipt he would indeed be "consenting to the detention" [and would thus be forfeiting his right to sue should he be detained in the alternative].[6] **THAT'S WHY HE ALWAYS REFUSES TO**

6 One Appellate Panel *miraculously* **[but impermissibly]** held **precisely the exact opposite** on this subject, negligently ruling that because Plaintiff "was fully aware of the Walmart **receipt policy**, [and] had been subjected to the **receipt policy** on numerous prior occasions," his false imprisonment claim purportedly failed. *See Def's Exhibit J at page 10.* However, it has always been Walmart's **very own official receipt checking policy** to only ***ASK*** patrons to see their receipts, **NEVER to detain them if they choose to refuse to show one.** *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) ("If a customer refused to have his or her bag checked, **the policy allowed the person to pass**."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage."). As a result, what the Appellate Panel did was actually **pull a full-on bait and switch on Plaintiff,** whereby he went shopping and followed one store policy [the official one] of refusing to show his receipt "in order to pass," but then was expected to, *after-the-fact*, abide by some new, *retroactively-applied*, **unofficial**, rogue-store-employee-proffered "policy" that purportedly *does* require him to

SHOW HIS RECEIPT! Plaintiff, like any reasonable person, has *already* been made aware that SHOWING a receipt is the act that constitutes "consenting to a detention," not REFUSING to show it!

Finally, ***but of absolute paramount and critical importance on this subject***, is that all this talk about "receipt showing" **IS AN ENTIRELY MOOT POINT.** This is because Plaintiff's instant case *has nothing to do with receipts*. **Defendant has failed to show this Court that it asked Plaintiff to show a receipt, let alone that he refused to show one upon request, let alone that he had one on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated.**[7] Moreover, Plaintiff has never been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." *See Plaintiff's Additional Material Fact #43, above.*

b. The amount of time that a person is detained for is not what defines their imprisonment, the raw "outrightness" of their detention is

Next, Defendant attempts to argue that Plaintiff was never confined because of how "being asked to show a receipt" is purportedly, *at most*, "a slight inconvenience." The problem with this position, however, **is that it is a purely subjective one**, without a single iota of support from the actual law on the subject. The ACTUAL law is already clear that an "imprisonment" **OBJECTIVELY** occurs when a person is detained "for any amount of time, **no matter how short.**" *See Colorado Civil Jury Instruction 21:1(2).* Therefore, *even if* it only takes "but a fleeting moment" for some patron to merely "show their receipt," **a full-blown, objectively-held detention of them has**

show his receipt "in order to pass." **So which is it?** Does a patron have to show their receipt "in order to pass," **OR NOT?!?**

7 This last point is **especially** important, because *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was **a customer** of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have "had a receipt on him" that day, in the first place [for which he might have otherwise been "required to show" as merchants and Courts have impermissibly argued]. In other words, **it can never legally be assumed, IN EITHER DIRECTION** (i.e. that Plaintiff was either a customer, or he was a thief) just because he was merely located "near" [and thus potentially at one point in time "inside"] a store, **because of how such an argument is simply a false dichotomy.**

already, BY LAW, occurred.[8] Indeed, assuming *arguendo* that Defendant's position were correct, a private investigator would then have the right to lawfully detain unidentified citizens until they "simply tell them their name." Or, a security would then have the right to lawfully detain unidentified neighborhood residents until they "simply show them their ID." In both examples, it would surely only take "but a fleeting moment" for the people to comply. BUT SUCH IS NOT THE LAW. The law, as written, is objectively **outright** driven, **not merely time-constraint driven [nor do merchants enjoy any "extra special privileges" to see receipts, either, *just because they're merchants*].**

Moreover, it only takes but one example to show precisely how faulty Defendant's exclusively-subjectively-driven position is on the subject: a mother of seven with a full cart of groceries. It's obviously no longer a mere "slight inconvenience" for the mother to wait 10+ minutes to have ***her*** entire cart of purchases verified [and who would thus likely enjoy the full protections available against false imprisonments, according to Defendant's position], **yet somehow Plaintiff purportedly does *not* have that same right against false imprisonments, just because he can only afford to buy one or two items at a time?** Sorry, but again, SUCH IS NOT THE LAW. The law, as written, applies equally to every U.S. citizen, **no matter the size of their shopping cart.**

Once again, though, ***it cannot be stressed enough,*** all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

c. A receipt is legally incapable of being the "key" to a patron's release; rather, a merchant's personal decision to release him is the actual "key"

Next, Defendant attempts to argue that because Plaintiff purportedly "had the tools of escape, [] Best Buy cannot be held liable for False Imprisonment." This is yet another recycled [but failed] argument on the subject. As mentioned earlier, receipts themselves aren't the *a-c-t-u-a-l*

8 This is **precisely the opposite** of some "open window" to which prior merchants and Courts have **impermissibly** argued. Specifically, an "open window" is something that **always** exists [such that any attempted imprisonment, *from beginning to end*, **never** occurs because of it]. However, showing a receipt is [a consent to] an *actual* detention, (*followed by* a release). In other words, ***fully stopping*** to show one's receipt **is not the same as** merely ***changing directions*** toward an open window.

"tool" or "key" or "cause" of a patron's release, **a merchant's own, personal, INDEPENDENT act of satisfactorily cross-referencing the receipt against the merchandise is** [but to which is obviously **OUTSIDE** the control of the patron]. Assuming *arguendo* that Plaintiff *did* have a receipt on him, and that he *did* show it to Defendant. Does Defendant *ACTUALLY* believe that it *would not* continue to detain Plaintiff, ***outright***, *in the mean time*, until *AFTER* it had completed its *OWN* independent verification of his purchases at hand? **HARDLY SO.** Fortunately, Courts have **already explicitly ruled on this exact issue**, so this argument isn't even a novel one. *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000) (held that "a reasonable person would have apprehended that he or she was not free to leave until Mr. Harris concluded his inspection of Ms. Ball and permitted her and the others behind her to leave." Read that again. That's **MR. HARRIS** concluding **HIS** inspection of Ms. Ball, that resulted in her eventually being **PERMITTED, BY HIM**, for her and the others behind her to leave. That's not some lone receipt simply being autonomously flashed in front of a door like some ID to a badge scanner. Or a turnstile at a subway. That's a ***person***, who ***personally*** chose to detain someone, ***OUTRIGHT***, EVEN **AFTER** A RECEIPT **WAS** SHOWN TO THEM, but who was ***STILL*** nevertheless appropriately held accountable for their unlawful actions in the matter).

ONCE AGAIN, though, ***it absolutely has to be repeated,*** all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

d. Merchants do not enjoy *carte blanche* authority to detain their patrons

Next, ***but by far the most disturbing of Defendant's arguments***, is its statement made of "If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not have proof of purchase, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff's claims."

Let's take a step back and analyze what Defendant is ultimately saying here. Somebody

please correct Plaintiff if he's mistaken, but it looks like Defendant is literally making the argument, "If Plaintiff paid, we're not liable. If he stole, we're also not liable." **WOW.** It looks like Defendant is simply *unsuable* then! **Completely untouchable.** Completely legally immune, *in literally all capacities*, ***from even being CAPABLE of being held accountable for its actions***, regardless of the situation. It doesn't even need to show up to Court with a single affidavit! Just throw down this legal argument, and BAM, it's not liable. **YEAH, NO.** Not only is this quite possibly the most arrogant statement Plaintiff has ever seen a Defendant make, it's obviously not how the law works.

First, Plaintiff has already discussed that *even if* he was a customer of Defendant's, showing such "proof of purchase" *after the fact* **does not nullify** the prior, **COMPLETED**, initial, **OUTRIGHT** confinement of him **from having occurred in the first place** [and to which, again, requires some affirmative defense like "shopkeeper's privilege" to lawfully justify it with, but to which Defendant has still utterly failed to (read: *even begun to*) provide this Court with].

Next, regarding the second half of Defendant's statement, it appears that Defendant is unaware that **even criminals have rights, too.** That is, for somebody who even *does* steal, a merchant is *still* required to have "shopkeeper's privilege" in order to initially detain them. See *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) ("The test of liability is not based on the store patron's **actual guilt** or innocence, **but rather on the reasonableness of the store employee's action** under the circumstances."). Indeed, criminal defendants are routinely granted "motions to suppress" actual contraband found on them when it is unlawfully seized by police officers who lack "probable cause" for their actions in the matter. Perhaps Defendant is thinking of the affirmative defense, "Guilt Of Person Arrested," Colorado Civil Jury Instruction 21:18? Problem there is that Defendant has failed to show this Court that Plaintiff was ever convicted of any shoplifting offense in this matter, **let alone that it even called the cops that day of November 25, 2022, in the first place!** *See Plaintiff's Additional Material Fact #44, above.*

Last, Defendant's haughty statement made is nothing more than **a false dichotomy**, as

Plaintiff just discussed in a footnote, earlier. That is, *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was ***either*** a customer, ***or*** a thief, of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have "had a receipt on him" that day, in the first place [for which he might have otherwise been "required to show" as merchants and Courts have impermissibly argued].

e. Merchants, just like police, are not allowed to "bootstrap" their detentions

Finally, ***and equally important on this subject***, is that a request to see a receipt is "a request for consent to search, [and] the customer . . . always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without ***particularized*** facts to reasonably justify a stop, ***systematic*** detention ***of most or all customers*** may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as Courts have repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police."[9] *Brief of the United States as*

9 Such "bootstrapping" is **precisely** what a District Court Judge **impermissibly** did in *Montgomery v. Walmart, Inc.*, Adams County District Court Case No. 2021CV68 (Consolidated: 2021CV88). *See Def's Exhibits F / G, Order at page 5* ("No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for

Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick, No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) (**"The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary."**).

Therefore, because "shopkeeper's privilege" is the same exact legal standard as "probable cause" *(see Colorado Revised Statutes § 18-4-407)*, and "probable cause" is rooted **STRICTLY** in ***individualized*** and ***particularized*** suspicions, a merchant can **NEVER**, **by law and by logic**, achieve lawful justification to detain a patron by simply pointing to their mere "refusal to show a receipt" to them. **This is *especially* true because of how they are the ones who control who they ask.** Indeed, to argue the opposite would be to allow all merchants to ***SYSTEMATICALLY*** detain **literally all patrons** whom they ask to see a receipt (which would mean *everybody*), **thus effectively subjecting literally 100% of the population to "compulsory" detentions** [that is, through either voluntary consent, or forced detention otherwise]. THAT'S ILLEGAL, and not what the Legislature would have envisioned *in the least* when drafting the law of the land as it stands. "It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish **fixed checkpoints**, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts **or be subject to arrest** everytime they go shopping?

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preventing a person from leaving their store with goods **for which the person refuses to show a receipt.**").

The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

ONCE AGAIN, though, ***it forever has to be repeated***, all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

f. Because "shopkeeper's privilege" cannot be based on "mere conjecture or suspicion," Defendant is 100% liable for falsely imprisoning Plaintiff

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [] that somebody did or did not do something."** *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person **that saw enough to justify [their] belief** that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, **no matter how sincere it may be**, is not enough, since it must be based on circumstances which make it reasonable.").

Here, today, in Plaintiff's instant case, Defendant has failed to provide this Court with **LITERALLY ANY EVIDENCE**, *whatsoever*, to support it's affirmative defense of "shopkeeper's privilege." Defendant has not shown that it saw Plaintiff *enter its store*. It has not shown that it saw him *anywhere in its store*. It has not shown that it saw him *shop [or not shop]*. It has not shown that it saw him *take anything off a shelf*. It has not shown that it saw him *pay [or not pay]*. It has not shown that it saw him *conceal [or not conceal] anything on his person*. It has not shown that it saw

him *use [or not use] a plastic bag*. It has not shown that it saw him *leave its store*. It has not shown that it *called the police*. It has not shown that it *even asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place,* let alone that *whatever he had been holding in his hands that day was even store merchandise for which one might have been associated*]. In the end, it is painfully apparent that Defendant has failed to show this Court, *with literally ANY evidence at all,* that it **ever once** saw – be it by way of personal affidavit or by video surveillance otherwise – Plaintiff **do literally anything** "until the confrontation occurred" outside its particular building. **Absolutely ZERO evidence has been provided by Defendant to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store.** Therefore, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than **unfounded naked suspicion**. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996). As such, because Defendant completely and wholeheartedly lacked "shopkeeper's privilege" to detain Plaintiff – **by way of failing to satisfy EVEN A SINGLE IOTA of EVEN ONE of its critical elements of its affirmative defense on the subject** – it is indisputably liable for falsely imprisoning him.

II. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

Defendant claims that because "Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic," his defamation claim purportedly fails. ***However,*** Plaintiff didn't lodge a claim of Defamation, he lodged a claim of Defamation ***Per Se***. *See Plaintiff's Complaint.* **This is because accusing someone of being A THIEF, when such accusation is untrue and is overheard and understood by a third person, is defamation "actionable *per se.*"** Restatement (Second) Of Torts § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). "Actionable *per se*" means that without adducing any evidence that he has in fact been

harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. P.H. Winfield, A Text-Book Of The Law Of Tort § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. **The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed.** 2 Harper et al, supra note 2, § 5.11, at 118.

As such, because Defendant made statements that Plaintiff stole **"with knowledge that they were false, or with reckless disregard for whether they were true or false,"** it is indisputably liable for defaming him. This is because Defendant **utterly lacked** "shopkeeper's privilege" to **fairly** and **reasonably** believe that Plaintiff had stolen anything from its store that day. *See Section II (f), above.*

III. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

Defendant claims that it purportedly [only] told Plaintiff [once] to "walk away; we'll take this off camera." ***However,*** Defendant made ***numerous*** implicit threats to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him**. This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def's Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

Defendant also claims that it "[made] no other action nor [took] any other step to show hostility towards Plaintiff." ***However,*** Defendant made ***numerous*** PHYSICAL ACTS **[that accompanied its threats]** to *actively* and *repeatedly* step in front of Plaintiff in order to *actually* prevent him from leaving the area. *See Plaintiff's Additional Material Facts #31 and #34, above.*

As such, Defendant is indisputably liable for assaulting Plaintiff.

IV. PLAINTIFF NEVER "ENTRAPPED" DEFENDANT [NOR ANY OTHER MERCHANT FOR THAT MATTER, EITHER]

a. Entrapment requires inducement [and reluctance to that inducement]

Throughout Defendant's MSJ, it attempts to skirt liability for its actions by having the audacity to claim that **it** was actually the *victim* of Plaintiff's **"entrapment"** [so as to not look like the *perpetrator* of his false imprisonment, otherwise]. It uses all the same "hot words" that previous merchants have attempted to use on the subject – that Plaintiff inexorably "targeted," "orchestrated," and "baited" it into detaining him – all in high hopes of obfuscating the facts and the law so as to sway them in its favor. As will be discussed next, however, Defendant's "entrapment" argument **utterly fails to pass constitutional muster** [not to mention that it's a callow form of *victim shaming*].

In Colorado, the entrapment defense is governed by Colorado Revised Statutes § 18-1-709, which states, in part, that "an offense is not criminal if the defendant engaged in the proscribed conduct because he was induced to do so . . . and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, **but for such inducement**, would not have conceived of or engaged in conduct of the sort induced." *Critically,* the Legislature then completes its definition of entrapment by emphasizing that "**Merely affording a person an opportunity to commit an offense is not entrapment** even though representations or inducements calculated to overcome the offender's fear of detection are used."

Now, under Colorado Revised Statutes § 18-1-710, entrapment is a considered an affirmative defense. "Accordingly, once a defendant has presented some credible evidence on the issue, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped." *People v. Sprouse,* 983 P.2d 771, 775 (Colo. 1999). "Depending upon the particular circumstances of the case, the prosecution may offer a wide variety of evidence and testimony in an attempt to demonstrate that a defendant was predisposed to commit a particular crime." *Id.* "The most commonly invoked forms of proof include . . . whether [the defendant] evidenced reluctance to commit the offense; the amount of persuasion the government was required to employ in order to overcome any reluctance; [and] the nature of the defendant's ability to

perform the illegal acts." *Id.* "Courts and commentators have noted that of these types of evidence, the defendant's response to the inducement, that is, whether he or she demonstrates strong reluctance, mild reluctance, indifference, or eagerness, is often the most persuasive evidence of his or her state of mind just prior to the governmental inducement." *Id.*

Here today, in Plaintiff's instant case, his bodycam footage of the event indisputably shows **that literally no inducement of any kind, at all, took place by him** prior to his detention by Defendant. Specifically, Plaintiff didn't do *anything* – other than say to such strangers he had never met before, "Don't touch me," and "I'm trying to leave," neither statement of which could ever reasonably be construed as intending to induce such a detention.[10] It cannot be stressed here enough: **Plaintiff didn't *ask* Defendant to detain him that day. He did *coax* it into detaining him. He didn't *pressure* it into detaining him, *in any way, shape, or form*.** Moreover, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff *even refused to show it some receipt* [let alone that it *even asked him to show one in the first place*] prior to hastily detaining him that day.[11] As such, Defendant has failed to show not only that Plaintiff **ever once** even *intended* to induce it into detaining him, but that it **had any reluctance whatsoever to detain him otherwise** [and in fact, it appears from the video footage that it actually had genuine ***indifference*** and quite possibly even ***eagerness*** to otherwise detain him].

Of absolute critical importance on this subject, however, is that "Because entrapment is an affirmative defense, it does not apply where a defendant denies committing the crime." *People v. Hendrickson,* 45 P.3d 786, 791 (Colo. App. 2002). "Thus, we view the rule in

10 Alternatively, Defendant offers but a single fleeting sentence on this subject to purportedly justify its actions. *On page 10 of its MSJ,* it states "Plaintiff left the Best Buy store with merchandise **in a manner** that caused Best Buy employees to suspect Plaintiff did not pay for said items." This statement, however, suffers from the classic **"conclusory statement"** logical fallacy. That is, Defendant is *actually* just saying, "we detained him, because he got us to detain him." Yet within such a statement there obviously exists no *actual* independent evidence that *even begins to* describe precisely "how" Plaintiff "acted" in order to [lawfully] "cause" Defendant to detain him.

11 Of course, the act of merely refusing to show a receipt is not a valid form of inducement anyways, as discussed *supra*, because of how such "bootstrapping" is **patently illegal.** That is, "The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary." *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993).

Colorado to require a defendant to admit committing acts that would otherwise constitute an offense before being entitled to assert an affirmative defense of entrapment." *Id.*

Here today, Defendant has chosen to **outright deny** that it ever committed the crime of False Imprisonment against Plaintiff [by way of claiming that it either didn't conceptually detain him in the first place, or that it had "shopkeeper's privilege" for its actions in the alternative]. As such, Defendant is, **BY LAW,** not even "entitled to assert an affirmative defense of entrapment" in this matter.

b. Defendant [and prior Courts] are guilty of committing statistics fraud

Finally, on this subject, is that somehow because of Plaintiff's "prior history" of "lodging similar false imprisonment claims," he ***must*** be "instigating" and "targeting" Best Buy [his next victim] with yet another "failed sting operation." The problem with this position, is that it is **profoundly intellectually dishonest** and **completely statistically frauded.**

The first part of this statistics fraud has to with the ***pool*** from which such statistics are being gathered. Sadly, in today's day and age, more and more **mindless lemmings** are choosing to voluntarily answer whatever questions are put to them and/or show whatever proofs of purchase are asked of them, by whomever may be "posted up" at a store's exit, in order to "assuage the perceived evil" of shoplifting. **But that doesn't mean *Plaintiff* has to now give up *his* right to not be accosted when *he* exits those same stores after shopping.** "Moved by whatever momentary evil has aroused their fears, officials — perhaps even supported by a majority of citizens — may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of 'the right to be let alone — the most comprehensive of rights and the right most valued by civilized men.'" *New Jersey v. T. L. O,* 469 U.S. 325, 361-62 (1985) (*citing Olmstead v. United States,* 277 U.S. 438, 478 (1928)). **In other words, Plaintiff merely exercising his constitutional right "to be let alone" when shopping is only beginning to look like he is "targeting" stores because of how *everybody else has chosen to NOT exercise that same***

right of theirs. If everybody else began refusing to be accosted when exiting stores after shopping, this Court [and many others] would likely get INUNDATED with [equally as valid as Plaintiff's] False Imprisonment claims stemming directly from such accostings. Fortunately, correcting for such statistics fraud is not beyond reach, as it takes but a few moments to look online to see just how rampant unlawful "receipt checkpoints" are becoming in today's society. *See PRTDMSJ Exhibit #14.*

The second part of this statistics fraud has to do with Plaintiff's ***intuition***. Over the years, Plaintiff [like anybody] has become keenly aware that torts may be committed against him when leaving certain business establishments. As a result, he has resorted to using audio (and now video) recording devices to protect himself / ensure that his rights remain intact. Over time, with increasingly violative merchants [Walmart for example] he has learned to begin recordings *before he even enters the store,* in order adequately to protect himself. This is not to say that he is now *intentionally* "acting" a certain way when he shops at these stores – because such would be as preposterous as saying that "all drivers who start their dashcams upon leaving each morning are *intentionally* seeking to be hit on the road." Other times [this instant case for example] Plaintiff was not expecting to be torted, and thus, did not think to start his recording device ahead of time. *See Plaintiff's Additional Material Fact #28, above.* Nevertheless, absent from all prior Court analyses on this subject is the fact that **Plaintiff has gone shopping thousands of times, at hundreds of merchants, nearly all without issue,** and whereby whatever recordings he may have started prior to were simply deleted after each mundane encounter (much like how police delete whatever bodycam footage they may have started prior to after each uneventful shift). Therefore, to label Plaintiff as some *intentional* "targeter" / "baiter" / "lawsuit scammer" / [insert all other synonyms here] for simply a) shopping, b) knowing his rights, and c) protecting himself with recording devices, would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Technically every car parked on the side of the road for which an owner has placed a GPS tracker and camera system inside is a "bait"

car, but it would be preposterous to call such owners *intentional* "targeters" of car thieves. Same goes with people who go shopping who want to also protect themselves from being potentially falsely imprisoned. Case in point: a police officer of 20 years merely refusing to show his receipt on his way out of a Walmart, only to be detained for nearly half an hour before he was finally let go. *See Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010). Seriously, one cannot reasonably refer to such benign buyer behavior as anything resembling "entrapment." **Rather, that's just good police work,** and whereby, *"Merely affording a person an opportunity to commit an offense is not entrapment."*

Therefore, what has happened in Plaintiff's instant case is nothing more than a common situation where some merchant got "fat and happy" accosting its droves of lemmings at its doors – by way of them all choosing to "assuaging the perceived evil" – but whereby Plaintiff simply came along and promptly exposed said merchant for candidly committing *routine* violations of the law. **In other words, Defendant forgot that it needs to perform *actual investigatory homework* before detaining its patrons, and is simply butthurt that it got "secret shopped" [but failed the audit miserably].** *Meanwhile, countless other stores that Plaintiff has visited over the years have all had no trouble, whatsoever, with following the law, otherwise.*

ONCE AGAIN, though, ***it must be repeated one last time,*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.*

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 03, 2024 4:35 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6

DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE A REPLY BRIEF FOR ITS MOTION FOR SUMMARY JUDGMENT

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby moves the Court to permit a one-week extension of time for Defendant Best Buy to file its reply brief for its Motion for Summary Judgment, with a new deadline of October 10, 2024. In support thereof, Best Buy states as follows:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with pro se Plaintiff concerning the substance of this Motion. Plaintiff does not oppose the relief requested herein.

MOTION

1. The Court for cause shown may, at any time in its discretion, with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order. C.R.C.P. 6 (b).

2. Here, Plaintiff was granted an additional 38 days to files his response to the Motion for Summary Judgment and also requested to exceed the page limit by six pages.

3. Because of the length of Plaintiff's motion and the allegations that Best Buy must address, Best Buy is requesting a brief one-week extension to file its reply brief in support of its Motion for Summary Judgment, with a new deadline of October 10, 2024.

4. No party will be prejudiced by this extension, as Plaintiff has filed his own motion for summary judgment that is still in the briefing stage.

5. As such, there is good cause for this extension.

CONCLUSION

WHEREFORE, for the forgoing reasons, Best Buy hereby requests that this Court to permit a one-week extension of time for Defendant Best Buy to file its reply brief for its Motion for Summary Judgment, with a new deadline of October 10, 2024.

Filed October 3, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 3, 2024, a true and correct copy of the foregoing **DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE A REPLY BRIEF FOR ITS MOTION FOR SUMMARY JUDGMENT** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
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☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 03, 2024 4:35 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE A REPLY BRIEF FOR ITS MOTION FOR SUMMARY JUDGMENT

THIS COURT, having reviewed Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for Its Motion for Summary Judgment, and having found good cause, hereby GRANTS this Motion. Defendant's reply brief for its Motion for Summary Judgment may be filed up to and including October 10, 2024.

So ordered on_____.

_____
Presiding Judge,
District Court for Jefferson County

GRANTED BY COURT
10/04/2024

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 04, 2024 10:49 AM CHRISTOPHER CLAYTON ZENISEK District Court Judge
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE A REPLY BRIEF FOR ITS MOTION FOR SUMMARY JUDGMENT

THIS COURT, having reviewed Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for Its Motion for Summary Judgment, and having found good cause, hereby GRANTS this Motion. Defendant's reply brief for its Motion for Summary Judgment may be filed up to and including October 10, 2024.

So ordered on_____.

_____
Presiding Judge,
District Court for Jefferson County

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 10, 2024 8:35 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT	

Defendant, Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response to Plaintiff's Cross Motion for Summary Judgment, as follows:

INTRODUCTION

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff's factual assertions by way of affidavit. *See, Scott v. Harris,* 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party's version of events when

contradicted by video evidence). The first video, **Ex. L,** demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings with other companies,[1] demonstrates Plaintiff's modus operandi[2] – to engage in behavior that raises suspicion of shoplifting,[3] to get detained, and to not show his receipts[4] or take any other action to end the detention in order to test his perceived "rights."[5] Based upon this video, combined with the 29 pages of receipts showing Plaintiff's fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable questionable of material fact that the subject incident followed Plaintiff's modus operandi, which he has previously executed a plethora of times. **Ex. N.** Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the "shopkeepers' privilege" to detain him to investigate the same created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned any stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing

[1] **Ex. A-K.**
[2] "That's the crux of my whole sting operation!" **Ex. M,** 5:55.
[3] **Ex. M,** 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[4] Now I don't show my receipt everywhere I shop." **Ex. M,** approximately 1:25.
[5] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. M,** 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. M;** 8:09.

unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).*Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

Response to Plaintiff's Statement of Undisputed Material Facts

1. Defendant Best Buy denies Plaintiff's description of the events. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19). Defendant Best Buy notes that during the 29-minute video produced by Plaintiff, his brother does not appear. **Exh. 1**, to PCMSJ (video identified by Plaintiff).

2. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19).

3. For purposes of this Motion, only, Defendant will not dispute that "Shane," Mahmoud," and a third employee (James Robinson) encountered Plaintiff outside of the Best Buy Store.

4. Plaintiff's statements contained in paragraph 4 and nonsensical and confusing. However, the receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV **Ex. N,** p. 18-19 (DEF_0000018-19). While in the Best Buy Store, Plaintiff was observed placing JLab earbuds in his pocket, declining to produce a receipt at the door and exiting the store. **Exh. P** Affidavit of Mahmoud Abu-Shaweesh.

5. Admitted, in part. The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud. See **Exh. 1 to PCMSJ**. However, Plaintiff was asked to show a receipt inside of the store. **Exh. P** (Affidavit of Mahmoud Abu-Shawessh).

6. Defendant does not dispute the contents of the video recoding at **Exh. 1**.

7. Defendant denies that Plaintiff was surprised at being contacted by Best Buy employees. Plaintiff has had numerous encounters with Best Buy stores and its employees. In particular, on the day of the subject encounter, he made nine purchases at three Best Buy stores before arriving at the subject store and then proceeded to four additional Best Buy stores to make five more purchases of the same or similar products. Plaintiff travelled a total of 125 miles visiting various Best Buy stores, in furtherance of his modus operandi. **Exh. N, O** (Map of Plaintiff's travels on November 25, 2022, and purchases at each location).

8. Denied. Plaintiff's alleged facts are speculative and confusing. Plaintiff was observed by Mahmoud Abu-Shaweesh removing JLab earbuds from the display and placing them in his pocket. **Exh. P.** Further, receipts demonstrate that Plaintiff was in fact, in the store, prior to the encounter, at 2:20pm and made a purchase of a Chromecast with Google TV. **Ex. N,** p. 18-19 (DEF_0000018-19).

9. Defendant does not dispute the contents of the video.

10. Denied. See **Exh. 1**.

11. Defendant does not dispute the contents of the video.

12. Defendant does not dispute the contents of the video.

13. Defendant does not dispute the contents of the video.

14. Defendant Best Buy admits that after being told that officers had been contacted, Plaintiff ended the encounter and returned to the store. Regarding the remaining alleged facts, Best Buy does not dispute the contents of the video.

15. Defendant does not dispute the contents of the video.

16. Defendant does not dispute the contents of the video.

17. Defendant does not dispute the contents of the video.

18. Defendant does not dispute the contents of the video.

19. Defendant does not dispute the contents of the video.

20. Defendant can neither admit nor deny the allegation regarding the number of people Plaintiff counted.

21. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

22. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

23. Plaintiff's allegations are statements of opinion rather than fact. As such, the Court should find in favor of Defendant on Fact No. 23 and hold that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

24. Denied. Defendant Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols. See **Exh. 2 to Plaintiffs' PCMSJ**.

25. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 83.6 miles

to do so. **Ex. N,** p. 18-29; **Ex. O.** He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N,** p. 19, 23, 27. Further, prior to the encounter at issue herein, Plaintiff made six similar purchases and two identical purchases at three other Best Buy Stores. See **Exh. N** and **Exh. O** (Map of Plaintiff's travels on November 25, 2022 and purchases at each location).

Defendant's Additional Undisputed Material Facts

26. Plaintiff was present inside the Best Buy store located at 9369 Sheridan Blvd., Westminster, CO 80031 ("store") on November 25, 2022, the date of the incident, where he purchased Chromecast with Google TV. **Ex. N, p. 18-19** (Plaintiff's store receipts dated November 25, 2022).

27. Plaintiff has a long history of attempting to "sting" stores "so he can sue them for false arrest." **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

28. Plaintiff's modus operandi is to buy or appear to steal an item[s] from a store; not place the item[s] in a bag; all of which he knows is likely to provoke a suspicion that he has stolen and lead to his detention or arrest; and to not take any reasonable action such as show a receipt, produce the item[s] and/or otherwise prove that he owns the item to end the detention or arrest. **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

29. On the date of the incident, Best Buy employee, Mahmoud, observed Plaintiff inside the store and observed him to appear to steal store merchandise by placing it in his pocket and walking out of the store without paying for it. **Exh. P.**

30. After Mahmoud Abu-Shaweesh and other employees, Shane Rusch and James Robinson, stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store

merchandise. Plaintiff never showed a receipt for merchandise upon exiting the store and did not return the merchandise when asked to do so.

31. Plaintiff also did not take any other reasonable action, such as proving his pockets were empty and/or proving whatever was in his pockets belonged to him, that would have ended the detention because it was his intent to provoke to the detention.

32. Plaintiff was not damaged by any derogatory allegations related to the belief that he stole from the store because Plaintiff intentionally created the impression that he had stolen from the store. See, **Exh. P and R.**

33. During the subject incident, no employees of Best Buy ever touched Plaintiff.

Exh. 1.

RESPONSE TO ARGUMENT

A. Plaintiff Cannot Prove False Imprisonment as a Matter of Law Because He Intentionally Provoked the Detention and Knew of a Way to Escape That Would Not Cause an Unreasonable Risk of Harm to Him.

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad undisputed material facts, including but not limited to Plaintiff's YouTube video footage of the subject incident and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed Courts that indisputably prove that Plaintiff intended, *inter alia,* to provoke the detention in the subject incident. Best Buy's Additional Undisputed Material Facts ("AUMF"), nos. 2-3. Further, because Plaintiff intended to provoke the detention, once the detention occurred, he took no reasonable

action such as showing his receipts from the store that he undeniably possessed, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. Best Buy's AUMF, nos. 26, 27, 28 and 31.

As such, Plaintiff cannot prove two elements of his cause of action for False Imprisonment and he is not entitled to summary judgment regarding the same: 1) Best Buy did not restrict Plaintiff's freedom of movement, as this can only happen when Plaintiff "does not know anyway to escape without causing an unreasonable risk of harm to himself;" (CJI-21:2) and 2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention i.e., intended to be in one place for a period of time. *Id.*

B. Defendant is Entitled to The Shopkeeper's Privilege Because Plaintiff Intended to Create the Appearance That He Had Stolen From the Store, He Did Create Such Appearance and Plaintiff Admits the Detention was for Less Than 10 Minutes.

Where the evidence is not in dispute, the Court shall determine as a matter of law that Best Buy's employees "acted in good faith and upon probable cause based upon reasonable grounds" in their detention of Plaintiff pursuant to the Shopkeeper's Privilege. *J.S. Dillon & Sons Stores Co. v. Carrington*, 455 P.2d 201, 204 (CO 1969). In the instant case, as set forth above, the facts are undisputed that Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store. Best Buy's AUMF, nos. 27-28. Furthermore, Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen; Mahmoud observed Plaintiff take store merchandise (directly and on camera), place it in his pocket and leave the store without showing a receipt when requesting or attempting to pay for it.[6] Best

[6] Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets. Plaintiff's Undisputed Material Fact, no. 8, pg. 5.

Buy's AUMF, no. 29. As such, under the undisputed material facts of this case, it can and should be decided as a matter of law that Best Buy's employees acted in good faith and had probable cause based upon reasonable grounds to believe that Plaintiff concealed upon his person unpurchased goods and/or otherwise carried away unpurchased goods – an element of the Shopkeeper's Privilege. C.R.S 18-4-407.

In regard to the other elements of the Shopkeeper's Privilege, Plaintiff has admitted that the individuals who detained him were Best Buy employees. Plaintiff's Cross-MSJ, pg. 11, ¶6. Further, although Plaintiff takes false umbrage at some of the statements made by the Best Buy employees during his detention, Plaintiff admits that he was detained less than ten (10) minutes and that the interaction ended with Mahmoud telling him to "Have a good one dude. See ya later." Plaintiff's Undisputed Material Facts, no. 18, pg. 8. Plaintiff also does not allege any physical violence or that he was even touched during the detention. As such, the undisputed facts demonstrate that Best Buy detained and questioned the Plaintiff in a reasonable manner for the purpose of determining whether the Plaintiff committed theft – the last element of the Shopkeeper's Privilege. C.R.S 18-4-407. As such, Plaintiff is not entitled to summary judgment on his cause of action for False Imprisonment and it should be dismissed.

C. Plaintiff Cannot Prove Defamation For Being Called a Thief or Words to That Effect When His Sting Was Executed With The Intention That He Appear To Be a Thief and He Published a Video Wherein He Brags About the Sting.

In regard to Plaintiff's cause of action for Defamation Per Se, Plaintiff cannot prove that calling him a thief is defamatory under the circumstances; he can not prove any negligence on the part of Best Buy's employees in making such a statement; and he cannot prove actionability of the

statement irrespective of special damages. *Han Ye Lee v. Colorado Times, Inc.*, 222 P.3d 957, 961(Colo. App. 2009)(listing the elements for defamation). As set forth above, Plaintiff created an intentional sting whereby he would cause employees of shop owners such as Best Buy to think he stole and cause them to detain him. Best Buy's AUMF, nos. 27-28. Indeed, Plaintiff posted a YouTube video wherein he bragged of his sting. Best Buy's AUMF, nos. 27-28. On the day of the subject incident, he then executed his sting once again, successfully causing a Best Buy employee to believe he stole. Best Buy's AUMF, no. 29. Under these circumstances, it is not defamatory to call Plaintiff a thief or make statements of a similar ilk.

Additionally, Plaintiff cannot prove any fault on the part of the Best Buy employees, including negligence, as Plaintiff *intended* that the Best Buy employees think he stole from the store. Best Buy's AUMF, nos. 27-28. Finally, even assuming *arguendo* that calling someone a thief when untrue is actionable *per se* as Plaintiff argues (Plaintiff's Cross MSJ, pg. 17-18), it is not actionable *per se* in regard to Plaintiff because, as part of his sting, he wants others to believe he is a thief and he brags about convincing others that he is a thief in his YouTube video. Best Buy's AUMF, nos. 27-28. As such, Plaintiff is not entitled to summary judgment on his cause of action for Defamation *Per Se* and it should be dismissed.

D. Plaintiff Cannot Meet Any of The Elements of Assault Where Plaintiff Admits Defendants Never Threatened to Harm Him and Plaintiff Intentionally Did Not End the Detention.

Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to "jump" him they merely did not correct him when he used the word "jump." Plaintiff's Cross MSJ, pg. 20, ¶3. Further, clearly Plaintiff was not placed in "apprehension of immediate physical contact"

wherein the subject incident was a sting he was carrying out and one that he had carried out almost innumerous times before. Best Buy's AUMF, nos. 27-28. In addition, as argued *supra,* if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not. Best Buy's AUMF, no. 31. As such, Plaintiff is not entitled to summary judgment on his cause of action for Assault and it should be dismissed.

CONCLUSION

WHEREFORE for all of the reasons set forth above, Defendant Best Buy, L.P. respectfully requests that the Court deny Plaintiff' Cross Motion for Summary Judgment in its entirety, along with any other relief deemed appropriate by the Court.

Respectfully submitted October 10, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 10, 2024 a true and correct copy of **DEFENDANT BEST BUY, L.P.'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/Jaime L. Gress
Jaime L. Gress, Paralegal

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October 10, 2024 8:35 PM

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1000014980030226391797625078577695O

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-022639-179762-507857-76950
0164 024 3401 11/25/22 10:15

Duplicate Receipt
****

EXHIBIT N

6480937 B08XVYZ1Y5 24.99
FIRE TV STICK 4K
49.99 Was Price
25.00- Sale Discount
Sales Tax 1.94

Subtotal 24.99
Sales Tax 1.94
===
Total 26.93
**********1264 ChipRead USD$ 26.93
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 001273
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 24410154554009
Other Savings: 25.00
Total Savings: 25.00
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WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
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LONE TREE, CO 80124

Val:100001-498003-249004-070574-762141-41085
0164 057 6368 11/25/22 10:28

Duplicate Receipt
****

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 21251HFDE4T3RR
Sales Tax 3.12

Subtotal 39.99
Sales Tax 3.12

Total 43.11
**********1264 ChipRead USD$ 43.11
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 000434
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 57710281200320
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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10000149800697736625832442282315410

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8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498006-977366-258324-422823-15410
0164 060 1540 11/25/22 10:45

Duplicate Receipt
****

EXHIBIT N

6501931 43UQ9000PUD 299.99
LG 43UQ9000 4K UHD SMART WEBO
349.99 Was Price
50.00- Sale Discount
Sales Tax 23.44

Subtotal	299.99
Sales Tax	23.44
Total	323.43
**********4073 ChipRead USD$	323.43

Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02573B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 50.00
Total Savings: 50.00
My Best Buy
Member ID 4552643388

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Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-440761-276893-73350
1171 019 8947 11/25/22 11:19

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
===
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02531B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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10000149800323568849535514596563661

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Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-495355-145965-63661
1171 060 4620 11/25/22 11:25

Duplicate Receipt
****

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27141HFDE75CP9
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02590B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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10000149800295606133688695420397330

********* Duplicate Receipt *********

Welcome to Best Buy #210
5395 S WADSWORTH BLVD
LAKEWOOD, CO 80123

Val:100001-498002-956061-336886-954203-97330
0210 064 2607 11/25/22 12:02

Duplicate Receipt
****

EXHIBIT N

6517336 GA03131-US 19.99
STREAMING SNOW
29.99 Was Price
10.00- Sale Discount
Sales Tax 1.59
6453900 DIGITAL ITE 0.00
GET 3 MONTHS OF YOUTUBE PREMI
Sales Tax 0.00

Subtotal 19.99
Sales Tax 1.59

Total 21.58
**********4073 ChipRead USD$ 21.58
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02535B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

Enjoy 3 months free to YouTube Premium
with your Best Buy purchase.
To redeem your YouTube Premium offer,
go to:
youtube.com/redeem
and enter the code below.

TONQ2VVRIFFX

Or follow the emailed instructions emailed
to You

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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and Dec. 31, 2022 qualify for our Holiday
Return and Exchange promise and most
purchases may be returned through
Jan. 14, 2023. Activatable devices have a
14-day return policy (30 days for
Verizon activatable devices). Major
appliances have a 15-day return policy.
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0210 064 2607 112522

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900407989627512143086

********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                   LAKEWOOD, CO 80123



Val:100001-498003-249004-079896-275121-43086
       0210 064 2616 11/25/22 12:25

                  Duplicate Receipt
                 ******************
```


EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.17

Subtotal 39.99
Sales Tax 3.17
===
Total 43.16
**********4073 ChipRead USD$ 43.16
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02545B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
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Your My Best Buy balance as of 11/25/2022
Posted points: 0
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Your Customer Service PIN is:
0210 064 2616 112522

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

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10000149800411451671905758504420805

********* Duplicate Receipt *********

Welcome to Best Buy #1224
384 S WADSWORTH BLVD
LAKEWOOD, CO 80226

Val:100001-498004-114516-719057-585044-20805
1224 056 6368 11/25/22 13:19

Duplicate Receipt
****

EXHIBIT N

6498806 E410MA-TB.C 99.99
ASUS E410MA-TB.CL464BK SMB
249.99 Was Price
150.00- Sale Discount
Public Improvement 2.50
Sales Tax 5.62

Subtotal 99.99
Public Improvement Fee 2.50
Sales Tax 5.62
==========
Total 108.11
**********0527 USD$ 108.11
Mastercard - MASTERCARD
Approval 32431B
CARD ENTRY: Contactless MODE: Issuer
AID: A0000000041010
Other Savings: 150.00
Total Savings: 150.00
My Best Buy
Member ID 4552643388

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Sincerely,

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10000149800324900408522249982315411

********* Duplicate Receipt *********

```
          Welcome to Best Buy #209
             9369 SHERIDAN BLVD
                 WESTMINSTER, CO 80031



Val:100001-498003-249004-085222-499823-15411
        0209 068 7367 11/25/22 14:20

                  Duplicate Receipt
                 ******************
```


EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 26291HFDE6USKP
        Sales Tax              3.34
                               ----------
                      Subtotal    39.99
                     Sales Tax     3.34
                               ==========
                         Total    43.33
**********0527   ChipRead USD$    43.33
         Mastercard - MASTERCARD
         MONTGOMERY/WILLIAM
              Approval 72572B
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
             My Best Buy
           Member ID 4552643388

                WILLIAM,
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             Posted points: 0
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and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 14, 2023. Activatable devices have a
    14-day return policy (30 days for
   Verizon activatable devices). Major
 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
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        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           0209 068 7367 112522
```

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10000149800324900401732911599493232

********* Duplicate Receipt *********

Welcome to Best Buy #1416
104 W 104TH AVE
DENVER, CO 80234

Val:100001-498003-249004-017329-115994-93232
1416 017 6112 11/25/22 15:35

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 69102B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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1416 017 6112 112522

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10000149800324900402131930321463765

********* Duplicate Receipt *********

Welcome to Best Buy #1079
210 KEN PRATT BLVD
LONGMONT, CO 80501

Val:100001-498003-249004-021319-303214-63765
1079 020 6714 11/25/22 16:59

Duplicate Receipt
****

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 29011HFDE7AW8C
Sales Tax 3.40

Subtotal	39.99
Sales Tax	3.40
Total	43.39
**********0527 ChipRead USD$	43.39

Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 38951B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010

Other Savings:	10.00
Total Savings:	10.00

My Best Buy
Member ID 4552643388

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1079 020 6714 112522

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10000149800324900408523856908813914

********* Duplicate Receipt *********

Welcome to Best Buy #1416
104 W 104TH AVE
DENVER, CO 80234

Val:100001-498003-249004-085238-569088-13914
1416 068 5385 11/25/22 17:43

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72872B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
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Member ID 4552643388

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Sincerely,

Your Customer Care Team

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********* Duplicate Receipt *********

```
          Welcome to Best Buy #1134
               3511 N SALIDA CT
                      AURORA, CO 80011



Val:100001-498003-249004-018656-919056-17118
        1134 018 6211 11/25/22 18:40

                    Duplicate Receipt
                  ******************
```


EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27121HFDE7AB6Q
Sales Tax 3.40

Subtotal 39.99
Sales Tax 3.40

Total 43.39
**********0527 ChipRead USD$ 43.39
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 46618B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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1134 018 6211 112522

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10000149800324900401864470901491231

********* Duplicate Receipt *********

Welcome to Best Buy #217
13801 E MISSISSIPPI AVE
AURORA, CO 80012

Val:100001-498003-249004-018644-709014-91231
0217 018 6470 11/25/22 20:01

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.20

Subtotal 39.99
Sales Tax 3.20
Total 43.19
**********0527 ChipRead USD$ 43.19
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
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CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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0217 018 6470 112522

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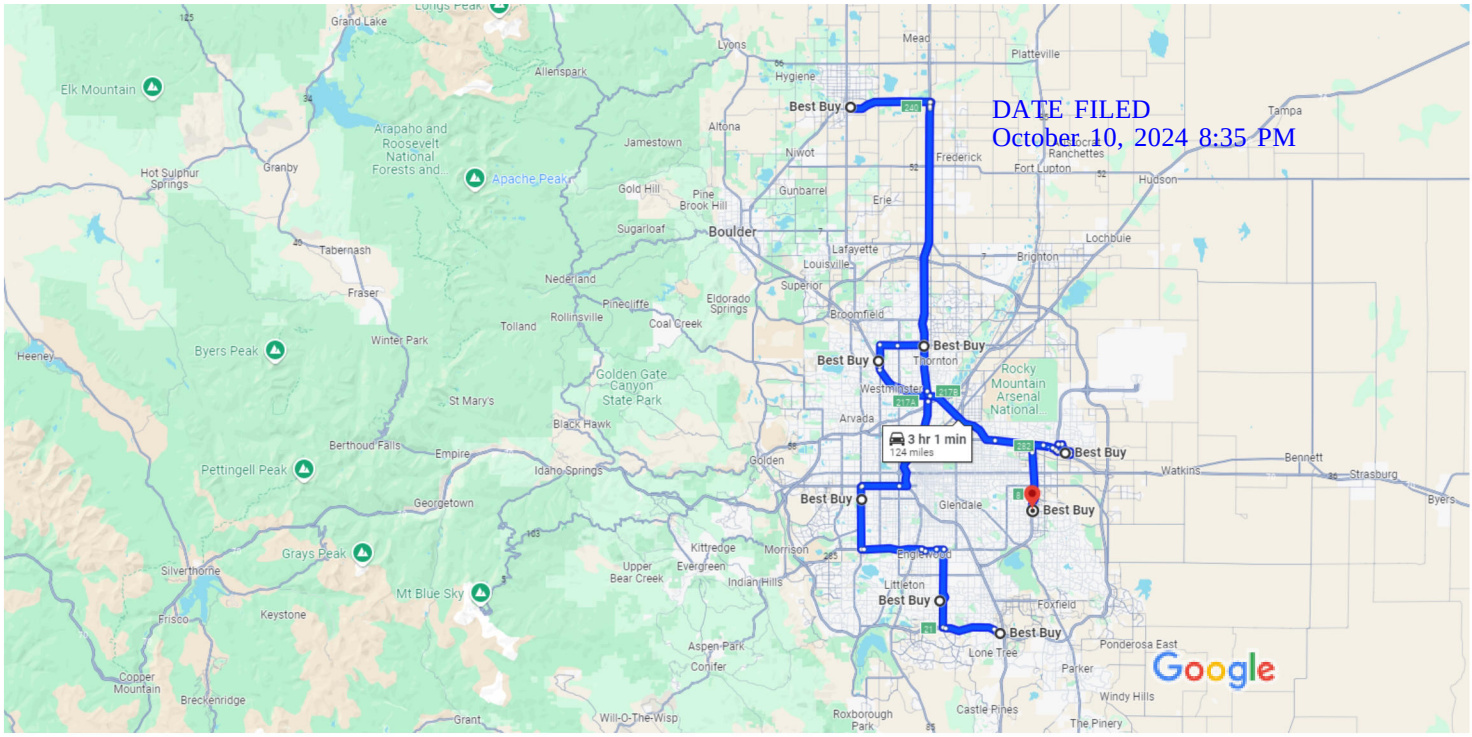
Google Maps

Best Buy, 8682 Park Meadows Center Dr, Lone Tree, CO 80124 to Best Buy, 13801 E Mississippi Ave, Aurora, CO 80012

Drive 124 miles, 3 hr 1 min



Map data ©2024 Google 5 mi

Best Buy
8682 Park Meadows Center Dr, Lone Tree, CO 80124

Get on CO-470 W from Park Meadows Center Dr

4 min (0.8 mi)

1. Head northeast toward Park Meadows Center Dr

7 ft

2. Turn right toward Park Meadows Center Dr

161 ft

3. Turn left toward Park Meadows Center Dr

177 ft

4. Turn right toward Park Meadows Center Dr

269 ft

5. Turn left onto Park Meadows Center Dr

0.3 mi

6. Use the middle 2 lanes to take the ramp onto CO-470 W

0.3 mi

Follow CO-470 W to CO-177 N/S University Blvd in Highlands Ranch. Take exit 21 from CO-470 W

4 min (4.2 mi)

7. Merge onto CO-470 W

EXHIBIT O

3.9 mi

8. Use the right lane to take exit 21 to merge onto CO-177 N/S University Blvd

0.3 mi

Continue on CO-177 N/S University Blvd to your destination in Centennial

6 min (2.5 mi)

9. Merge onto CO-177 N/S University Blvd

Pass by Chase Bank (on the right in 1.9 mi)

2.1 mi

10. Use the left lane to turn left onto E Arapahoe Rd

0.2 mi

11. Turn left onto S Vine St

0.1 mi

12. Turn right

230 ft

13. Turn right

256 ft

14 min (7.4 mi)

Best Buy
6707 S Vine St d, Centennial, CO 80122

Take E Arapahoe Rd to S University Blvd

2 min (0.3 mi)

14. Head south toward S Vine St

184 ft

15. Turn left toward S Vine St

243 ft

16. Turn left onto S Vine St

459 ft

17. Turn right onto E Arapahoe Rd

0.2 mi

Continue on S University Blvd. Take US Hwy 285 S and CO-121 N/S Wadsworth Blvd to W Alameda Ave in Lakewood

27 min (14.7 mi)

18. Use the left 2 lanes to turn left onto S University Blvd

4.1 mi

19. Use the left 2 lanes to turn left onto E Hampden Ave

20. Continue onto Hampden Bypass/E Jefferson Ave — 0.6 mi

0.9 mi

21. Continue straight to stay on Hampden Bypass/E Jefferson Ave
Continue to follow Hampden Bypass

0.3 mi

22. Continue onto W Hampden Ave/US Hwy 285 S
Continue to follow US Hwy 285 S
Pass by Taco Bell (on the left)

4.6 mi

23. Take the CO-121/Wadsworth Blvd exit

0.2 mi

24. Keep right at the fork and merge onto CO-121 N/S Wadsworth Blvd
Pass by McDonald's (on the right in 2.1 mi)

4.0 mi

Take S Vance St to your destination

1 min (0.2 mi)

25. Turn right onto W Alameda Ave

325 ft

26. Turn right onto S Vance St

423 ft

27. Turn right
Destination will be on the left

308 ft

30 min (15.3 mi)

Best Buy
384 S Wadsworth Blvd, Lakewood, CO 80226

Get on US-6 E from S Wadsworth Blvd

4 min (1.3 mi)

28. Head east toward S Vance St

308 ft

29. Turn left onto S Vance St

328 ft

30. Turn left onto W Alameda Ave

417 ft

31. Turn right onto S Wadsworth Blvd

0.9 mi

32. Use the right lane to take the ramp onto US-6 E

0.1 mi

Continue on US-6 E. Take I-25 N and US-36 W to Sheridan Blvd in Westminster. Take the CO-95 S/Sheridan Blvd exit from US-36 W

17 min (16.2 mi)

33. Merge onto US-6 E

2.9 mi

34. Use the right 3 lanes to merge onto I-25 N

8.1 mi

35. Use the left 2 lanes to take exit 217A to merge onto US-36 W toward Boulder

4.9 mi

36. Take the CO-95 S/Sheridan Blvd exit toward 92nd Ave

0.2 mi

37. Slight right onto the ramp to Sheridan Blvd

138 ft

38. Take the ramp onto Sheridan Blvd

243 ft

Continue on Sheridan Blvd to your destination in Jefferson County

3 min (0.5 mi)

39. Merge onto Sheridan Blvd

0.3 mi

40. Use the left 2 lanes to turn left onto 9300 N

276 ft

41. Turn right

367 ft

42. Turn left

390 ft

43. Turn right

75 ft

25 min (18.0 mi)

Best Buy
9369 Sheridan Boulevard, Westminster, CO 80031

Continue to Sheridan Blvd

2 min (0.2 mi)

44. Head north

112 ft

45. Turn right

EXHIBIT O

404 ft

46. Turn left toward 9400 N

446 ft

47. Continue onto 9400 N

230 ft

Follow Sheridan Blvd and W 104th Ave to Northglenn

10 min (4.6 mi)

48. Turn left onto Sheridan Blvd

0.1 mi

49. Keep left to stay on Sheridan Blvd

1.1 mi

50. Turn right onto W 104th Ave

1.4 mi

51. Keep right to stay on W 104th Ave

Pass by Panda Express (on the right in 0.4 mi)

2.0 mi

Drive to your destination

1 min (410 ft)

52. Turn right

354 ft

53. Turn left

56 ft

14 min (4.9 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 N from W 104th Ave

3 min (0.5 mi)

54. Head west toward Bannock St

249 ft

55. Turn right onto Bannock St

335 ft

56. Turn right onto W 104th Ave

Pass by Applebee's Grill + Bar (on the right)

0.2 mi

57. Use the 2nd from the left lane to turn left to merge onto I-25 N

0.3 mi

Follow I-25 N to CO-119 in Weld County. Take exit 240 from I-25 N

16 min (18.9 mi)

58. Merge onto I-25 N

18.5 mi

59. Take exit 240 for CO-119 W toward Firestone/Longmont

0.3 mi

Follow CO-119 to your destination in Longmont

11 min (6.6 mi)

60. Turn left onto CO-119 (signs for Longmont)

6.5 mi

61. Turn right

138 ft

62. Turn left

69 ft

63. Turn right

233 ft

64. Turn right

62 ft

30 min (26.0 mi)

Best Buy
210 Ken Pratt Blvd Suite 100, Longmont, CO 80501

Get on I-25 S in Weld County from CO-119

12 min (6.9 mi)

65. Head east toward S Martin St

0.2 mi

66. At the traffic circle, take the 1st exit onto S Martin St

312 ft

67. Use the left 2 lanes to turn left onto CO-119

6.1 mi

68. Turn right onto W I-25 Frontage Rd (signs for I-25 S)

0.2 mi

69. Use any lane to merge onto I-25 S via the ramp to Denver

0.4 mi

Follow I-25 S to W 104th Ave in Northglenn. Take exit 221 from I-25 S

16 min (18.6 mi)

70. Merge onto I-25 S

18.4 mi

71. Take exit 221 to merge onto W 104th Ave

0.2 mi

Take Bannock St to your destination

2 min (0.2 mi)

72. Merge onto W 104th Ave

325 ft

73. Turn left onto Bannock St

404 ft

74. Turn left

249 ft

30 min (25.7 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 S

2 min (0.4 mi)

75. Head west toward Bannock St

249 ft

76. Turn right onto Bannock St

335 ft

77. Turn right onto W 104th Ave
Pass by Applebee's Grill + Bar (on the right)

308 ft

78. Turn right to merge onto I-25 S

0.2 mi

Follow I-25 S, I-270 and I-70 E to N Airport Blvd in Aurora. Take exit 285 from I-70 E

17 min (15.8 mi)

79. Merge onto I-25 S

3.4 mi

80. Use the left 2 lanes to take exit 217B for I-270 E toward Airport/Aurora/Limon

0.5 mi

81. Merge onto I-270

6.6 mi

82. Merge onto I-70 E

4.5 mi

83. Take exit 285 for Airport Blvd

0.3 mi

EXHIBIT O

84. Use the left lane to take the Airport Blvd N ramp

0.5 mi

Continue on N Airport Blvd to your destination

4 min (1.8 mi)

85. Merge onto N Airport Blvd

0.6 mi

86. Turn right onto E 40th Ave

0.3 mi

87. Turn right onto Salida St

0.7 mi

88. Turn right onto N Salida Ct/Waco Wy

0.1 mi

89. Turn right

Destination will be on the left

121 ft

24 min (17.9 mi)

Best Buy
3511 N Salida Ct Ste 10, Aurora, CO 80011

Get on I-70 W from Salida St and Tower Rd

4 min (0.9 mi)

90. Head southeast toward Waco Wy

121 ft

91. Turn left toward Waco Wy

331 ft

92. Continue onto Waco Wy

364 ft

93. Turn right onto Salida St

0.3 mi

94. Turn right onto Tower Rd

0.3 mi

95. Use the right lane to take the ramp onto I-70 W

0.2 mi

Continue on I-70 W. Take I-225 S to E Alameda Ave in Arapahoe County. Take exit 8 from I-225 S

8 min (7.1 mi)

96. Merge onto I-70 W

2.1 mi

97. Use the right 2 lanes to take exit 282 for I-225 S toward Colorado Springs/Aurora

1.4 mi

98. Continue onto I-225 S

3.3 mi

99. Use the right 2 lanes to take exit 8 for Alameda Avenue

0.4 mi

Take S Abilene St to your destination

4 min (1.2 mi)

100. Use the middle lane to turn left onto E Alameda Ave

0.1 mi

101. Turn right at the 1st cross street onto S Abilene St

1.1 mi

102. Turn right

371 ft

Docusign Envelope ID: CC674C72-BB57-4751-AB8A-281C0282948F

DATE FILED
October 10, 2024 8:35 PM

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6

AFFIDAVIT OF MAHMOUD ABU-SHAWEESH

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits the Affidavit of Mahmoud Abu-Shaweesh:

Affidavit of Mahmoud Abu-Shaweesh

1. My name is Mahmoud Abu-Shaweesh. I am over the age of 18 and competent to make this affidavit based on personal knowledge of the facts of the encounter at issue in this lawsuit, as set forth below.

EXHIBIT Q
Exhibit P

2. I am currently employed as the General Manager of Best Buy Store Number 447, located at 17364 Southcenter Pkwy, Tukwila, Washington.
3. On November 25, 2022, I was the Assistant Manager of Best Buy Store Number 209, located at 9369 Sheridan Blvd, Westminster, CO 80031.
4. On November 25, 2022, I was working on the sales floor and observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store.
5. I observed the same activity on the store security video.
6. As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do.
7. I exited the store to request that Mr. Montgomery return the product from his pocket.
8. Mr. Montgomery refused to return the product.
9. Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery.

I, Mahmoud Abu-Shaweesh, declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Signed by:
54BDD2EBFBE5469...

Mahmoud Abu-Shaweesh

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 10, 2024 11:04 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY L.P.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its reply brief in support of its Motion for Summary Judgment. In support thereof, Best Buy states as follows:

INTRODUCTION

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff's factual allegations asserted by way of affidavit. *See, Scott v. Harris,* 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party's version of events

when contradicted by video evidence). The first video, **Ex. L,** demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation that often involves a brief detention, and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings against other companies,[1] demonstrates Plaintiff's modus operandi[2] – to engage in behavior that raises suspicion of shoplifting,[3] to get detained, and to not show his receipts[4] in order to test his perceived "rights."[5] Based upon this video, combined with Plaintiff's receipts showing fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable questionable of material fact.[6] Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the "shopkeepers' privilege" created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned the stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See,*

---

[1] **Ex. A-K.**
[2] "That's the crux of my whole sting operation!" **Ex. M,** 5:55.
[3] **Ex. M,** 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[4] Now I don't show my receipt everywhere I shop." **Ex. M,** approximately 1:25.
[5] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. M,** 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. M;** 8:09.
[6] **Ex. N;** *see also,* **Ex. O** (a Google map demonstrating the travel required to complete such purchases).

Montgomery v. Walmart, Inc., No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The Colorado Court of Appeals held summary judgment is properly granted on either theory – (1) that Plaintiff was not confined because he knew he could escape without causing unreasonable harm to himself, or (2) that Plaintiff's intended to provoke store employees into believing he was concealing property of the store in order to induce detention. *Id.* Likewise, the Court can find summary judgment here on either grounds, or both grounds. Thus, summary judgment is warranted here.

REPLY TO MATERIAL FACTS

To the extent that Best Buy fails to respond to every allegation in Plaintiff's lengthy response brief, Best Buy denies any allegations not explicitly admitted herein.

1-11. Plaintiff's partial denials of each paragraph rest upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Facts Nos. 1 through 11 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

12. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 12 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

13. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 13 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

14. Plaintiff presents no evidence demonstrating that he showed a receipt to Best Buy employees during the alleged false imprisonment. As such, the Court should find that there is no

genuine issue of fact that Plaintiff did not show a receipt. *See,* C.R.C.P. 56(e). However, Best Buy concedes there is a question of fact whether Best Buy employees made an explicit request to see Plaintiff's receipt[7] and that the Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

15. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 15 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

16. Plaintiff's partial denial rests upon a paragraph in Plaintiff's Affidavit that appears wholly unrelated to the corresponding fact at issue in Best Buy's Motion. As such, the Court should find in favor of Best Buy on Fact No. 16 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

17. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 17 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

18. Plaintiff admitted Fact No. 18; thus, there is no genuine issue of fact.

19. Plaintiff admits that Best Buy employees did not physically touch Plaintiff; thus, there is no genuine issue of fact. Best Buy disputes Plaintiff's allegations in ¶¶18 through 21 of his affidavit to the extent that they contradict the video submitted as **Ex. M.** *See, Scott v. Harris,* 550 U.S. 372 (2007) (on summary judgment, a court is not required to rely upon a party's version of events when discredited by video evidence). Best Buy concedes that there is a genuine issue of fact concerning whether there was an "implicit" threat to Plaintiff and that the Court can find in

[7] *See,* **Ex. P,** ¶ 6.

favor Plaintiff for this fact for purposes of determining this Motion. Plaintiff's remaining allegations concern Plaintiff's personal opinion, subjective commentary on the incident, or unsupported allegations and should not be considered by the Court in determining this Motion. *See,* C.R.C.P. 56(e).

20. Plaintiff's denial rests upon mere allegations, or are statements of opinion rather than fact. Furthermore, Plaintiff understood that stores will cease As such, the Court should find in favor of Best Buy on Facts No. 20 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

21. Plaintiff admitted Fact No. 21; thus, there is no genuine issue of fact.

RESPONSES TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS

22. Best Buy will not dispute this fact for purposes of this Motion only. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

23. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19). Based on this objective evidence, the Court should find in favor of Best Buy that Plaintiff had been inside the Best Buy making a purchase within the five minutes prior to Best Buy employees approaching him. *See, Scott v. Harris,* 550 U.S. 372 (2007) (where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.)

24. For purposes of this Motion only, Best Buy will not dispute this fact that "Shane," "Mahmoud," and a third employee (James Robinson) were involved in the alleged incident. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

25. Best Buy denies that Plaintiff correctly quoted the video. **Ex. M.** Furthermore, there is objective documentation that Plaintiff had been inside Best Buy shortly before the Plaintiff's recording of the incident began. **Ex. N,** p. 18-19 (receipt for William Montgomery at 14:20, compared to timestamps for **Ex. M** beginning at 2:19pm). In light of this objective evidence, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on this fact. *Scott v. Harris,* 550 U.S. 372 (2007).

26. Best Buy admits that Mahmoud told Plaintiff something to the effect of "I need my stuff back." **Ex. M.** Best Buy concedes that there is a genuine issue of fact concerning whether Best Buy employees made an explicit request to see a receipt; thus, the Court can find in favor Plaintiff for this fact for purposes of determining this Motion. *See,* **Ex. P,** ¶ 6.

27. Best Buy will not dispute this fact for purposes of determining this Motion only.

28. Best Buy has no way of confirming or denying whether Plaintiff "had any adverse interactions with Best Buy or its employees in the past." However, for purposes of this Motion only, the Court can find in favor of Plaintiff on this fact. Best Buy denies that the "employees' choice to interact with Plaintiff took him by surprise," as Plaintiff deliberately elicited this type of interaction and it was not a "surprise." On the date of the incident, Plaintiff made fourteen purchases across eight Best Buy locations, traveling approximately 124 miles to do so, all with the purpose of eliciting the precise response he received from the three Best Buy employees. **Ex. N-O;** *see also,* **Ex. L** (describing Plaintiff's modus operandi for eliciting theft investigations from stores). Best Buy denies that the interaction can be characterized as Best Buy employees "accosting" Plaintiff. *See,* **Ex. M.** In light of the objective evidence in the record, because no

rational trier of fact would find for the nonmoving party on these remaining facts in paragraph 28, the Court should find in favor of Best Buy. *Scott v. Harris,* 550 U.S. 372 (2007).

29. Best Buy admits that Plaintiff had an object in his pockets. *See also,* **Ex. M,** 0:38. 10:25; **Ex. P**. The remaining facts alleged here are based upon Plaintiff's speculation and are insufficient to summary judgment. *People v. Hernandez & Assocs., Inc.,* 736 P.2d 1238, 1240 (Colo. App. 1986). Plaintiff is merely speculating about what Best Buy knew or did not know about the object in Plaintiff's pockets and has no personal knowledge of this fact. A sworn affidavit by Mahmoud Abu-Shaweesh states that he had personal knowledge of the items in Plaintiff's pockets. **Ex. P.** Thus, the Court should find that Best Buy had information about the nature of objects in Plaintiff's pockets. *See,* **Ex. P, ¶** 4.

30. For purposes of this Motion only, Best Buy does not dispute this fact.

31. For purposes of this Motion only, Best Buy will admit that Plaintiff tried to leave the area. Best Buy denies Plaintiff's remaining characterization of the Best Buy employees' actions to the extent that it is contradicted by the video attached as **Ex. M.** Best Buy denies that Plaintiff had "no place to go without otherwise having to physically touch the employees," as Plaintiff knew he could have left upon showing proof of purchase or by returning any allegedly stolen merchandise. **Ex. A-M.**

32- 39. Best Buy denies Plaintiff's characterization of the Best Buy employees' actions to the extent that it is contradicted by the video of the incident, attached as **Ex. M.** *See, Scott v. Harris,* 550 U.S. 372 (2007).

40. For purposes of this Motion only, Best Buy does not dispute this fact.

41. Best Buy denies this fact. **Ex. A-L.** Plaintiff visibly had an object in his pocket during the interaction. **Ex. M**, 0:38. 10:25; **Ex. P.** In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris,* 550 U.S. 372 (2007).

42. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. However, Plaintiff made a purchase shortly before he began recording the video of the subject incident, and Plaintiff visibly had an object in his pocket during the interaction. **Ex. M**, 0:38. 10:25; **Ex. N**.

43. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. To the extent Plaintiff is denying knowledge of Best Buy's practices and policies concerning "receipt showing," Best Buy denies this. Plaintiff is generally aware that stores will allow suspected shoplifters to leave upon showing proof of purchase. **Ex. L.**

44. For purposes of this Motion only, Best Buy will not dispute this fact.

45. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 80 miles to do so. **Ex. N,** p. 18-29; **Ex. O.** He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N,** p. 19, 23, 27. In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris,* 550 U.S. 372 (2007).

ARGUMENT

I. Plaintiff's freedom of movement was not restricted here.

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad indisputable material facts, including but not limited to Plaintiff's YouTube video,[8] receipts from the date of the incident,[9] and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed.[10] The record unquestionably proves that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident. Further, once the detention occurred, Plaintiff took no reasonable action such as showing his receipts, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. **Ex. M; Ex. P.**

As such, Plaintiff cannot prove the elements of his cause of action for false imprisonment because (1) Best Buy did not restrict Plaintiff's freedom of movement, as this can only happen when Plaintiff "does not know anyway to escape without causing an unreasonable risk of harm to himself;" and (2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention, i.e., intended to be in one place for a period of time. *See,* CJI 21:2; *Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023). There is overwhelming evidence that Plaintiff acted with an intent to be detained by Best Buy employees and failed to avail himself of a reasonable means of escape; thus, Best Buy is entitled to summary judgment here.

II. Real or perceived threats by Best Buy employees do not void the shopkeeper's privilege

[8] **Ex. L.**
[9] **E. N.**
[10] **Ex. A-K.**

C.R.S. § 18-4-407 codifies the "shopkeeper's privilege" and provides a complete affirmative defense to false imprisonment, slander, false arrest, malicious prosecution, or unlawful detention if a "merchant . . . acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft." To prove a claim of false imprisonment, one must prove the element of restriction of freedom of movement. CJI 12:1. While this element can be met by an array of conduct, two ways of meeting this element are to demonstrate (1) that the claimant is "restrained by physical force, however slight, which overpowered the person or to which the person submitted," or (2) that the claimant "complied with actual or apparent threats that he . . . will be immediately harmed if he . . . moves beyond . . . a certain area." CJI 21:2 (2)-(3).

Because false imprisonment by nature often involves some level of physical force or the threat of physical force, the shopkeeper's privilege inherently provides a defense even when there are threats of physical force – or even actual physical force[11] – provided that such force or threat of physical force is reasonable. *See, Guijosa v. Wal-Mart Stores, Inc*., 101 Wash. App. 777, 792, 6 P.3d 583, 591 (Wash. App. 2000) (the authority to detain under the shopkeeper's privilege must necessarily carry with it the privilege of using all reasonable force); *Huynh v. Wal-mart Stores Texas, LLC*, No. CV 18-4257, 2020 WL 8300520, at *6 (S.D. Tex. Oct. 8, 2020) ("Shopkeeper's privilege is not vitiated when there is *any* use of force Instead, it is the reasonableness of a defendant's conduct . . . that controls."); *In re Sienna B*., No. D079535, 2022 WL 2712116, at *3 (Cal. Ct. App. July 13, 2022) (shopkeeper's privilege permits a merchant to use reasonable force);

[11] No actual physical force is alleged by any party here. *See,* Plaintiff's response to Fact No. 19.

Cruz v. Johnson, 823 A.2d 1157, 1160 (R.I. 2003) (merchant may use non-deadly force when the force is necessary to prevent escape or to prevent loss of property).

Here, Best Buy employees detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets. Best Buy employees allegedly threatened to use force on Plaintiff if he attempted to escape.[12] Thus, shopkeeper's privilege is a complete affirmative defense because Best Buy had reasonable grounds to detain Plaintiff and only used reasonable threats of force in the event that Plaintiff attempted to escape. As such, summary judgment is warranted under the shopkeeper's privilege affirmative defense.

CONCLUSION

Wherefore, for the forgoing reasons, Best Buy requests that this Court grant summary judgment in favor of Best Buy.

Filed **October 10, 2024.**

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell

Attorney for Best Buy Stores, L.P.

[12] "Defendant made numerous implicit threats to 'jump' Plaintiff 'off camera' should he attempt to leave in that direction." Plaintiff's Response Brief, ¶ 6; "For the next several minutes Plaintiff tried to step around [the Best Buy employees] in order to leave the area." *Id.* at ¶ 31.

CERTIFICATE OF SERVICE

I hereby certify that, on **DEFENDANT BEST BUY L.P.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Stephanie Boutsicaris

Please keep this email for your records.

View: Web

DATE FILED
October 10, 2024 11:04 PM

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800302263917976250785776950

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-022639-179762-507857-76950
0164 024 3401 11/25/22 10:15

Duplicate Receipt
****

EXHIBIT N

6480937 B08XVYZ1Y5 24.99
FIRE TV STICK 4K
49.99 Was Price
25.00- Sale Discount
Sales Tax 1.94

Subtotal 24.99
Sales Tax 1.94
===
Total 26.93
**********1264 ChipRead USD$ 26.93
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 001273
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 24410154554009
Other Savings: 25.00
Total Savings: 25.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0164 024 3401 112522

Deal of the Day Mobile App Credit Cards Support Center

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EXPERT SERVICE. UNBEATABLE PRICE:
*See Price Match Details in store or online at BestBuy.com/PMG.

Best Buy 7601 Penn Avenue South, Richfield, MN 55423-3645

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Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900407057476214141085

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-249004-070574-762141-41085
0164 057 6368 11/25/22 10:28

Duplicate Receipt
****

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 21251HFDE4T3RR
Sales Tax 3.12

Subtotal 39.99
Sales Tax 3.12

Total 43.11
**********1264 ChipRead USD$ 43.11
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 000434
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 57710281200320
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0164 057 6368 112522

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*See Price Match Details in store or online at BestBuy.com/PMG.

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Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

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We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800697736625832442282315410

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498006-977366-258324-422823-15410
0164 060 1540 11/25/22 10:45

Duplicate Receipt
****

EXHIBIT N

6501931 43UQ9000PUD 299.99
LG 43UQ9000 4K UHD SMART WEBO
349.99 Was Price
50.00- Sale Discount
Sales Tax 23.44

Subtotal 299.99
Sales Tax 23.44
===
Total 323.43
**********4073 ChipRead USD$ 323.43
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02573B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 50.00
Total Savings: 50.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0164 060 1540 112522

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EXPERT SERVICE. UNBEATABLE PRICE:
*See Price Match Details in store or online at BestBuy.com/PMG.

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View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800323568844076127689373350

********* Duplicate Receipt *********

Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-440761-276893-73350
1171 019 8947 11/25/22 11:19

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
===
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02531B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
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Your Customer Service PIN is:
1171 019 8947 112522

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View: Web

Member ID: 4552643388

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800323568849535514596563661

********* Duplicate Receipt *********

Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-495355-145965-63661
1171 060 4620 11/25/22 11:25

Duplicate Receipt
****

EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 27141HFDE75CP9
        Sales Tax              2.70
                                ----------
                       Subtotal    39.99
                     Sales Tax      2.70
                                ==========
                          Total    42.69
**********4073   ChipRead USD$    42.69
         Mastercard - MASTERCARD
           MONTGOMERY/WILLIAM K
              Approval 02590B
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
             My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/25/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 14, 2023. Activatable devices have a
    14-day return policy (30 days for
   Verizon activatable devices). Major
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        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           1171 060 4620 112522
```


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Sincerely,

Your Customer Care Team

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********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                    LAKEWOOD, CO 80123



Val:100001-498002-956061-336886-954203-97330
       0210 064 2607 11/25/22 12:02

                  Duplicate Receipt
                 ******************
```


EXHIBIT N

6517336 GA03131-US 19.99
STREAMING SNOW
29.99 Was Price
10.00- Sale Discount
Sales Tax 1.59
6453900 DIGITAL ITE 0.00
GET 3 MONTHS OF YOUTUBE PREMI
Sales Tax 0.00

Subtotal 19.99
Sales Tax 1.59

Total 21.58
**********4073 ChipRead USD$ 21.58
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02535B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
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Member ID 4552643388

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with your Best Buy purchase.
To redeem your YouTube Premium offer,
go to:
youtube.com/redeem
and enter the code below.

TONQ2VVRIFFX

Or follow the emailed instructions emailed
to You

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Posted points: 0
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appliances have a 15-day return policy.
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0210 064 2607 112522

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Sincerely,

Your Customer Care Team

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10000149800324900407989627512143086

********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                   LAKEWOOD, CO 80123


Val:100001-498003-249004-079896-275121-43086
       0210 064 2616 11/25/22 12:25

                  Duplicate Receipt
                 ******************
```


EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.17

Subtotal 39.99
Sales Tax 3.17
===
Total 43.16
**********4073 ChipRead USD$ 43.16
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02545B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
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0210 064 2616 112522

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10000149800411451671905758504420805

********* Duplicate Receipt *********

Welcome to Best Buy #1224
384 S WADSWORTH BLVD
LAKEWOOD, CO 80226

Val:100001-498004-114516-719057-585044-20805
1224 056 6368 11/25/22 13:19

Duplicate Receipt
****

EXHIBIT N

6498806 E410MA-TB.C 99.99
ASUS E410MA-TB.CL464BK SMB
249.99 Was Price
150.00- Sale Discount
Public Improvement 2.50
Sales Tax 5.62

Subtotal 99.99
Public Improvement Fee 2.50
Sales Tax 5.62
==========
Total 108.11
**********0527 USD$ 108.11
Mastercard - MASTERCARD
Approval 32431B
CARD ENTRY: Contactless MODE: Issuer
AID: A0000000041010
Other Savings: 150.00
Total Savings: 150.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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1224 056 6368 112522

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Sincerely,

Your Customer Care Team

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10000149800324900408522249982315411

********* Duplicate Receipt *********

Welcome to Best Buy #209
9369 SHERIDAN BLVD
WESTMINSTER, CO 80031

Val:100001-498003-249004-085222-499823-15411
0209 068 7367 11/25/22 14:20

Duplicate Receipt
****

EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 26291HFDE6USKP
        Sales Tax              3.34
                                ----------
                       Subtotal    39.99
                     Sales Tax      3.34
                                ==========
                          Total    43.33
**********0527   ChipRead USD$    43.33
         Mastercard - MASTERCARD
        MONTGOMERY/WILLIAM
             Approval 72572B
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
              My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
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             Posted points: 0
     Go to BestBuy.com for more info

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 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           0209 068 7367 112522
```

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

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10000149800324900401732911599493232

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1416
               104 W 104TH AVE
                      DENVER, CO 80234



Val:100001-498003-249004-017329-115994-93232
        1416 017 6112 11/25/22 15:35

                   Duplicate Receipt
                  ******************
```


EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 69102B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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1416 017 6112 112522

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Sincerely,

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Your Best Buy Receipt

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10000149800324900402131930321463765

********* Duplicate Receipt *********

Welcome to Best Buy #1079
210 KEN PRATT BLVD
LONGMONT, CO 80501

Val:100001-498003-249004-021319-303214-63765
1079 020 6714 11/25/22 16:59

Duplicate Receipt
****

EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 29011HFDE7AW8C
        Sales Tax              3.40
                                ----------
                       Subtotal    39.99
                     Sales Tax     3.40
                                ==========
                          Total    43.39
**********0527   ChipRead USD$    43.39
         Mastercard - MASTERCARD
        MONTGOMERY/WILLIAM
             Approval 38951B
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
              My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/25/2022
             Posted points: 0
     Go to BestBuy.com for more info

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           1079 020 6714 112522
```

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900408523856908813914

********* Duplicate Receipt *********

Welcome to Best Buy #1416
104 W 104TH AVE
DENVER, CO 80234

Val:100001-498003-249004-085238-569088-13914
1416 068 5385 11/25/22 17:43

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72872B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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1416 068 5385 112522

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900401865691905617118

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1134
               3511 N SALIDA CT
                      AURORA, CO 80011



Val:100001-498003-249004-018656-919056-17118
        1134 018 6211 11/25/22 18:40

                   Duplicate Receipt
                  ******************
```


EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27121HFDE7AB6Q
Sales Tax 3.40

Subtotal 39.99
Sales Tax 3.40
===
Total 43.39
**********0527 ChipRead USD$ 43.39
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 46618B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900401864470901491231

********* Duplicate Receipt *********

Welcome to Best Buy #217
13801 E MISSISSIPPI AVE
AURORA, CO 80012

Val:100001-498003-249004-018644-709014-91231
0217 018 6470 11/25/22 20:01

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.20

Subtotal 39.99
Sales Tax 3.20
Total 43.19
**********0527 ChipRead USD$ 43.19
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 63864B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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Posted points: 0
Go to BestBuy.com for more info

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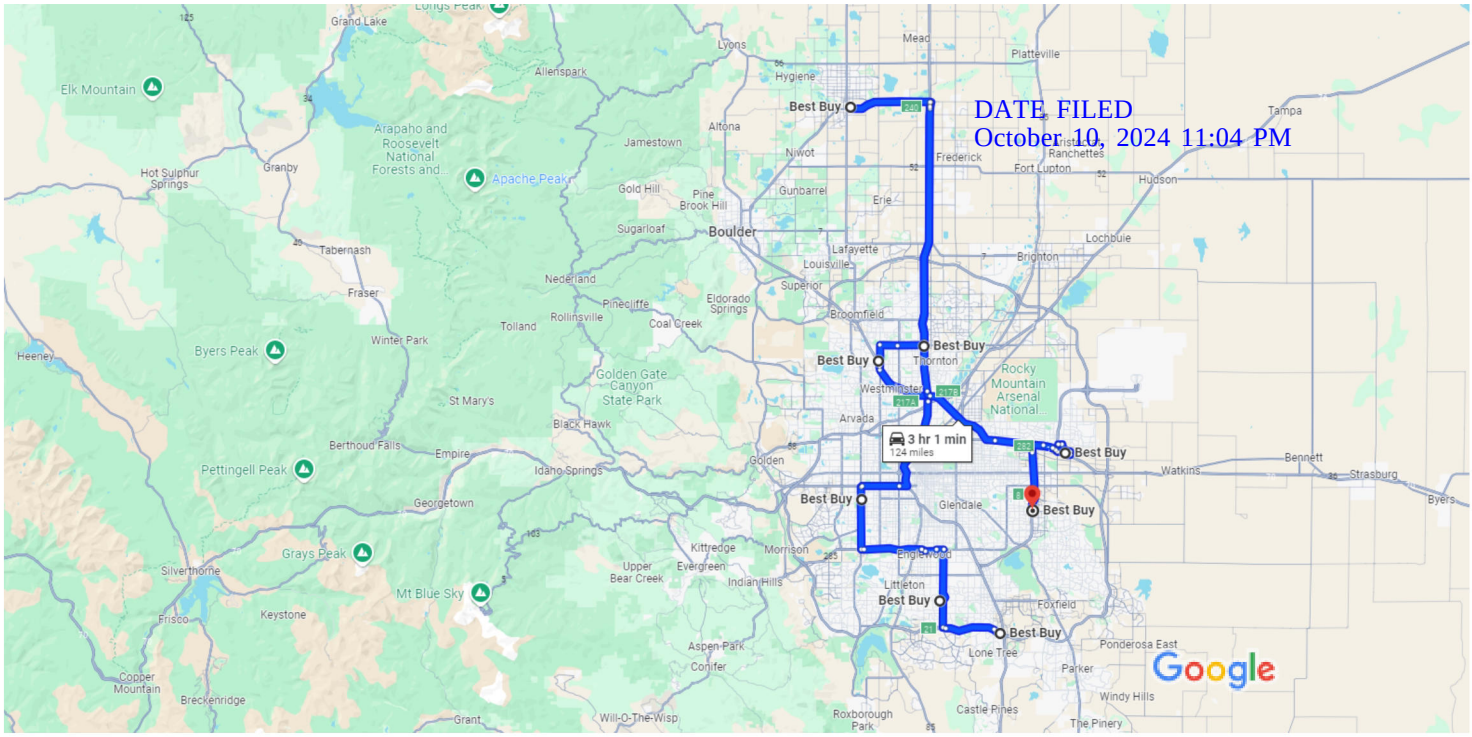
Google Maps

Best Buy, 8682 Park Meadows Center Dr, Lone Tree, CO 80124 to Best Buy, 13801 E Mississippi Ave, Aurora, CO 80012

Drive 124 miles, 3 hr 1 min



Map data ©2024 Google 5 mi

Best Buy
8682 Park Meadows Center Dr, Lone Tree, CO 80124

Get on CO-470 W from Park Meadows Center Dr

4 min (0.8 mi)

1. Head northeast toward Park Meadows Center Dr

7 ft

2. Turn right toward Park Meadows Center Dr

161 ft

3. Turn left toward Park Meadows Center Dr

177 ft

4. Turn right toward Park Meadows Center Dr

269 ft

5. Turn left onto Park Meadows Center Dr

0.3 mi

6. Use the middle 2 lanes to take the ramp onto CO-470 W

0.3 mi

Follow CO-470 W to CO-177 N/S University Blvd in Highlands Ranch. Take exit 21 from CO-470 W

4 min (4.2 mi)

7. Merge onto CO-470 W

EXHIBIT O

3.9 mi

8. Use the right lane to take exit 21 to merge onto CO-177 N/S University Blvd

0.3 mi

Continue on CO-177 N/S University Blvd to your destination in Centennial

6 min (2.5 mi)

9. Merge onto CO-177 N/S University Blvd

Pass by Chase Bank (on the right in 1.9 mi)

2.1 mi

10. Use the left lane to turn left onto E Arapahoe Rd

0.2 mi

11. Turn left onto S Vine St

0.1 mi

12. Turn right

230 ft

13. Turn right

256 ft

14 min (7.4 mi)

Best Buy
6707 S Vine St d, Centennial, CO 80122

Take E Arapahoe Rd to S University Blvd

2 min (0.3 mi)

14. Head south toward S Vine St

184 ft

15. Turn left toward S Vine St

243 ft

16. Turn left onto S Vine St

459 ft

17. Turn right onto E Arapahoe Rd

0.2 mi

Continue on S University Blvd. Take US Hwy 285 S and CO-121 N/S Wadsworth Blvd to W Alameda Ave in Lakewood

27 min (14.7 mi)

18. Use the left 2 lanes to turn left onto S University Blvd

4.1 mi

19. Use the left 2 lanes to turn left onto E Hampden Ave

20. Continue onto Hampden Bypass/E Jefferson Ave — 0.6 mi

0.9 mi

21. Continue straight to stay on Hampden Bypass/E Jefferson Ave
Continue to follow Hampden Bypass

0.3 mi

22. Continue onto W Hampden Ave/US Hwy 285 S
Continue to follow US Hwy 285 S
Pass by Taco Bell (on the left)

4.6 mi

23. Take the CO-121/Wadsworth Blvd exit

0.2 mi

24. Keep right at the fork and merge onto CO-121 N/S Wadsworth Blvd
Pass by McDonald's (on the right in 2.1 mi)

4.0 mi

Take S Vance St to your destination

1 min (0.2 mi)

25. Turn right onto W Alameda Ave

325 ft

26. Turn right onto S Vance St

423 ft

27. Turn right
Destination will be on the left

308 ft

30 min (15.3 mi)

Best Buy
384 S Wadsworth Blvd, Lakewood, CO 80226

Get on US-6 E from S Wadsworth Blvd

4 min (1.3 mi)

28. Head east toward S Vance St

308 ft

29. Turn left onto S Vance St

328 ft

30. Turn left onto W Alameda Ave

417 ft

31. Turn right onto S Wadsworth Blvd

0.9 mi

32. Use the right lane to take the ramp onto US-6 E

0.1 mi

Continue on US-6 E. Take I-25 N and US-36 W to Sheridan Blvd in Westminster. Take the CO-95 S/Sheridan Blvd exit from US-36 W

17 min (16.2 mi)

33. Merge onto US-6 E

2.9 mi

34. Use the right 3 lanes to merge onto I-25 N

8.1 mi

35. Use the left 2 lanes to take exit 217A to merge onto US-36 W toward Boulder

4.9 mi

36. Take the CO-95 S/Sheridan Blvd exit toward 92nd Ave

0.2 mi

37. Slight right onto the ramp to Sheridan Blvd

138 ft

38. Take the ramp onto Sheridan Blvd

243 ft

Continue on Sheridan Blvd to your destination in Jefferson County

3 min (0.5 mi)

39. Merge onto Sheridan Blvd

0.3 mi

40. Use the left 2 lanes to turn left onto 9300 N

276 ft

41. Turn right

367 ft

42. Turn left

390 ft

43. Turn right

75 ft

25 min (18.0 mi)

Best Buy
9369 Sheridan Boulevard, Westminster, CO 80031

Continue to Sheridan Blvd

2 min (0.2 mi)

44. Head north

112 ft

45. Turn right

404 ft

46. Turn left toward 9400 N

446 ft

47. Continue onto 9400 N

230 ft

Follow Sheridan Blvd and W 104th Ave to Northglenn

10 min (4.6 mi)

48. Turn left onto Sheridan Blvd

0.1 mi

49. Keep left to stay on Sheridan Blvd

1.1 mi

50. Turn right onto W 104th Ave

1.4 mi

51. Keep right to stay on W 104th Ave

Pass by Panda Express (on the right in 0.4 mi)

2.0 mi

Drive to your destination

1 min (410 ft)

52. Turn right

354 ft

53. Turn left

56 ft

14 min (4.9 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 N from W 104th Ave

3 min (0.5 mi)

54. Head west toward Bannock St

249 ft

55. Turn right onto Bannock St

335 ft

56. Turn right onto W 104th Ave

Pass by Applebee's Grill + Bar (on the right)

0.2 mi

57. Use the 2nd from the left lane to turn left to merge onto I-25 N

0.3 mi

Follow I-25 N to CO-119 in Weld County. Take exit 240 from I-25 N

16 min (18.9 mi)

58. Merge onto I-25 N

18.5 mi

59. Take exit 240 for CO-119 W toward Firestone/Longmont

0.3 mi

Follow CO-119 to your destination in Longmont

11 min (6.6 mi)

60. Turn left onto CO-119 (signs for Longmont)

6.5 mi

61. Turn right

138 ft

62. Turn left

69 ft

63. Turn right

233 ft

64. Turn right

62 ft

30 min (26.0 mi)

Best Buy
210 Ken Pratt Blvd Suite 100, Longmont, CO 80501

Get on I-25 S in Weld County from CO-119

12 min (6.9 mi)

65. Head east toward S Martin St

0.2 mi

66. At the traffic circle, take the 1st exit onto S Martin St

312 ft

67. Use the left 2 lanes to turn left onto CO-119

6.1 mi

68. Turn right onto W I-25 Frontage Rd (signs for I-25 S)

0.2 mi

69. Use any lane to merge onto I-25 S via the ramp to Denver

0.4 mi

Follow I-25 S to W 104th Ave in Northglenn. Take exit 221 from I-25 S

16 min (18.6 mi)

70. Merge onto I-25 S

18.4 mi

71. Take exit 221 to merge onto W 104th Ave

0.2 mi

Take Bannock St to your destination

2 min (0.2 mi)

72. Merge onto W 104th Ave

325 ft

73. Turn left onto Bannock St

404 ft

74. Turn left

249 ft

30 min (25.7 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 S

2 min (0.4 mi)

75. Head west toward Bannock St

249 ft

76. Turn right onto Bannock St

335 ft

77. Turn right onto W 104th Ave
Pass by Applebee's Grill + Bar (on the right)

308 ft

78. Turn right to merge onto I-25 S

0.2 mi

Follow I-25 S, I-270 and I-70 E to N Airport Blvd in Aurora. Take exit 285 from I-70 E

17 min (15.8 mi)

79. Merge onto I-25 S

3.4 mi

80. Use the left 2 lanes to take exit 217B for I-270 E toward Airport/Aurora/Limon

0.5 mi

81. Merge onto I-270

6.6 mi

82. Merge onto I-70 E

4.5 mi

83. Take exit 285 for Airport Blvd

0.3 mi

84. Use the left lane to take the Airport Blvd N ramp

0.5 mi

Continue on N Airport Blvd to your destination

4 min (1.8 mi)

85. Merge onto N Airport Blvd

0.6 mi

86. Turn right onto E 40th Ave

0.3 mi

87. Turn right onto Salida St

0.7 mi

88. Turn right onto N Salida Ct/Waco Wy

0.1 mi

89. Turn right

Destination will be on the left

121 ft

24 min (17.9 mi)

Best Buy
3511 N Salida Ct Ste 10, Aurora, CO 80011

Get on I-70 W from Salida St and Tower Rd

4 min (0.9 mi)

90. Head southeast toward Waco Wy

121 ft

91. Turn left toward Waco Wy

331 ft

92. Continue onto Waco Wy

364 ft

93. Turn right onto Salida St

0.3 mi

94. Turn right onto Tower Rd

0.3 mi

95. Use the right lane to take the ramp onto I-70 W

0.2 mi

Continue on I-70 W. Take I-225 S to E Alameda Ave in Arapahoe County. Take exit 8 from I-225 S

8 min (7.1 mi)

96. Merge onto I-70 W

2.1 mi

97. Use the right 2 lanes to take exit 282 for I-225 S toward Colorado Springs/Aurora

1.4 mi

98. Continue onto I-225 S

3.3 mi

99. Use the right 2 lanes to take exit 8 for Alameda Avenue

0.4 mi

Take S Abilene St to your destination

4 min (1.2 mi)

100. Use the middle lane to turn left onto E Alameda Ave

0.1 mi

101. Turn right at the 1st cross street onto S Abilene St

1.1 mi

102. Turn right

371 ft

Docusign Envelope ID: CC674C72-BB57-4751-AB8A-281C0282948F

DATE FILED
October 10, 2024 11:04 PM

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
AFFIDAVIT OF MAHMOUD ABU-SHAWEESH	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits the Affidavit of Mahmoud Abu-Shaweesh:

Affidavit of Mahmoud Abu-Shaweesh

1. My name is Mahmoud Abu-Shaweesh. I am over the age of 18 and competent to make this affidavit based on personal knowledge of the facts of the encounter at issue in this lawsuit, as set forth below.

EXHIBIT P

2. I am currently employed as the General Manager of Best Buy Store Number 447, located at 17364 Southcenter Pkwy, Tukwila, Washington.
3. On November 25, 2022, I was the Assistant Manager of Best Buy Store Number 209, located at 9369 Sheridan Blvd, Westminster, CO 80031.
4. On November 25, 2022, I was working on the sales floor and observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store.
5. I observed the same activity on the store security video.
6. As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do.
7. I exited the store to request that Mr. Montgomery return the product from his pocket.
8. Mr. Montgomery refused to return the product.
9. Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery.

I, Mahmoud Abu-Shaweesh, declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Signed by:
54BDD2E8FBE6408...

Mahmoud Abu-Shaweesh

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED October 11, 2024 3:13 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Motion to/for Submit Video Exhibit for Plaintiff's C-MSJ

The motion/proposed order attached hereto: GRANTED.

Plaintiff may submit evidence believed to be pertinent to the motions for summary judgment.

Issue Date: 10/11/2024

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 SEP 19 P 3:16

JDF 76	**Motion to/for** Submit Video Exhibit For Plaintiff's C-MSJ

1. Court: ☒ District ☐ County
Colorado County: Jefferson
Mailing Address: 100 Jefferson County Pkwy, Golden, CO 80401

2. Parties to the Case:
Plaintiff/Petitioner: WILLIAM MONTGOMERY
&
Defendant/Respondent: BEST BUY STORES, L.P.

This box is for court use only.

3. Filed by:
Name: William Montgomery
Mailing Address: 2443 S University Blvd # 129
City: Denver St: CO Zip: 80210
Phone: (970) 412-5463
Email: zainbergs@gmail.com

4. Case Details:
Number: 2023CV226
Division: 6
Courtroom: 520

5. Other Parties Response *Skip this section in criminal cases.*

I checked to see if the other parties agree with my request. They:

☐ Agree. ☐ Disagree. ☐ Did Not Respond.
☒ Other: "Do not oppose".

6. My Request

I want the Court to:
Allow me to submit my body-worn pen camera video footage of the event (if it can't already accept my link to it).

7. Discussion

The Court should grant my request, because:
The video is obviously a very important piece of evidence that will aid in fairly ruling on Plaintiff's Cross-Motion for Summary Judgment.

Attachment to Order - 2023CV226

8. **Certificate of Service**

I certify that on *(enter date)* September 19, 2024, I gave a copy of this document to the other parties by: *(select at least one)*

- ☐ Colorado Courts E-Filing. *(Only available for lawyers.)*
- ☒ Email or Fax to: lbell@mac-legal.com, sboutsicaris@mac-legal.com
- ☐ Regular Mail, addressed to: *(name, full address)* ☐ Hand Delivery, to: *(name, place)*

1) _____.
2) _____.
3) _____.

9. **Sign & Date**

Print Your Name: William Montgomery
Be sure to complete: Section 3 – Filed By on page 1.

Signature: William Montgomery Date: 2024/09/19

Attachment to Order - 2023CV226

GRANTED BY COURT
10/11/2024

FILED
JEFFERSON COUNTY COURT
2024 SEP 19 P 3:18

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED October 11, 2024 3:11 PM CHRISTOPHER CLAYTON ZENISEK District Court Judge
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
MOTION TO EXCEED PAGE LIMITATION REGARDING PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	

Plaintiff, proceeding *pro se*, hereby moves this Court for an exception to C.R.C.P. Rule 121 § 1-15(1)(a) pertaining to page limitations, so as to permit him **six (6) additional pages** for his RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it does not take a position on the MOTION, but instead, defers to the Court's judgment on whether or not to grant it.

ARGUMENT

1. On July 25, 2024, Defendant filed a MOTION FOR SUMMARY JUDGMENT in this matter. Plaintiff's deadline to file a RESPONSE to this MOTION is September 20, 2024.

2. C.R.C.P. Rule 121 § 1-15(1)(a) limits the number of PAGES that may be offered in RESPONSE to such a MOTION, to 25 pages.

3. Defendant's MOTION includes **an absolute plethora** of legal arguments that it raises – by way of incorporating *all* previous orders entered against Plaintiff in *all* previous cases that have *ever* been filed by him against a wholly different merchant – and to which includes legal arguments surrounding the concepts of: *freedom of movement, unreasonable risk of harm, escape, shopkeeper's privilege, false imprisonment, defamation, assault, and even entrapment.*

4. In response, not only must Plaintiff adequately address all of these matters raised in Defendant's MOTION, he must also present his own supporting facts and legal arguments.

5. Plaintiff has not made any prior requests to exceed the page limit of his RESPONSE, so he does not believe Defendant or this Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** this here motion, so as to permit Plaintiff to exceed the page limitation set forth in C.R.C.P. Rule 121 § 1-15(1)(a) by **six (6) pages** when RESPONDING to Defendant's MSJ.

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **MOTION TO EXCEED PAGE LIMITATION REGARDING PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 14, 2024 3:46 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE OF DEPOSIT	

COMES NOW, Best Buy Stores, L.P. ("Best Buy") by and through its attorneys of record, Montgomery | Amatuzio, hereby notify the parties that **Exhibit Q** to Defendant Best Buy's Response to Plaintiff's Cross Motion for Summary Judgment, previously filed on October 10, 2024, was submitted to the Court via U.S. First Class Mail on a thumb drive on October 14, 2024.

Additionally, Defendant Best Buy emailed a link containing **Exhibit Q** to Pro se Plaintiff on October 14, 2024, to the email address listed in the Certificate of Service below.

Filed October 14, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Defendant Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 14, 2024, a true and correct copy of the foregoing **NOTICE OF DEPOSIT** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 14, 2024 3:46 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6

NOTICE OF SUBSTITUTION OF COUNSEL

1. In accordance with C.R.C.P. 121 § 1-1(2)(a), Stephanie E. Boutsicaris (Reg. No. 51297) of Montgomery | Amatuzio, hereby enters her appearance on behalf of Best Buy, L.P.
2. Glenn D. Germany of Montgomery | Amatuzio, hereby withdraws from this matter as counsel for Defendant.
3. Lori K. Bell of Montgomery | Amatuzio, remains as counsel for Defendant.

Filed on October 14, 2024.

MONTGOMERY | AMATUZIO

s/ Stephanie E. Boutsicaris
Stephanie E. Boutsicaris

s/ Lori K. Bell
Lori K. Bell

Attorneys for Defendant Best Buy, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 14, 2024, a true and correct copy of the **NOTICE OF SUBSTITUTION OF COUNSEL** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 21 PM 4:08
DATE FILED
October 21, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

MOTION FOR EXTENSION OF TIME TO FILE PTF'S REPLY TO DEF'S RESPONSE TO PTF'S CROSS-MSJ

Plaintiff, proceeding *pro se*, respectfully requests that this Court grant him an extension of time to file his REPLY to Defendant's RESPONSE to his CROSS-MSJ in this matter, so as to allow him seven (7) additional days to file it within [thus creating a new filing deadline for it of October 31, 2024]. In support thereof, Plaintiff states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with counsel for Defendant regarding this MOTION. Defendant indicates that it opposes a one week extension through Thursday, October 31, but that it does not oppose "an extension through Monday, October 28."

FACTUAL BACKGROUND

1. On October 10, 2024, Defendant filed a RESPONSE to Plaintiff's CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. As such, the deadline for Plaintiff to file his REPLY to said RESPONSE is currently set for October 24, 2024.

2. Defendant's RESPONSE includes a plethora of new legal arguments, as well as numerous never-before-alleged factual allegations, that require Plaintiff to spend a greater than usual amount of time in order to fairly and adequately address.

3. On October 23, 2024, Plaintiff has a trial in *Montgomery v. Brighton Radiator & Muffler, LLC* that he is currently preparing for.

4. On October 28, 2024, Plaintiff has a REPLY to a Defendant's RESPONSE to his OBJECTION TO THE MAGISTRATE JUDGE'S REPORT & RECOMMENDATIONS due in *Montgomery v. Lore,* that he is also currently preparing.

5. Plaintiff has numerous financial bills and obligations that he is still currently working on affording, that come due mostly toward the end of each month.

6. Plaintiff still suffers from an extremely rare and debilitating medical condition called Abdomino-Phrenic Dyssynergia, which is a challenging gastrointestinal disorder that renders Plaintiff chronically malnourished, dehydrated, and sleep deprived – to the point where he is only able function at about a 33% operating capacity when compared to normal, healthy people. *Specifically, he is forced to spend literally four to six hours per day eating just one meal (all his body can handle), then several more hours thereafter laying down in various positions so as to facilitate the escape of air from his body that no longer expels naturally.* Thus, between his legal, financial, personal, and familial obligations, Plaintiff requires a great deal more time to juggle and keep up with each accordingly.

7. Defendant, a $20 billion dollar company, with the help of a full-scale attorney firm, was granted a one week extension to file its REPLY to Plaintiff's RESPONSE to its MOTION FOR SUMMARY JUDGMENT. Plaintiff is but a single, medically disabled, *pro se* litigant.

8. This is the final document to be entered between both Plaintiff's and Defendant's MOTIONS FOR SUMMARY JUDGMENT, which therefore needs to be carefully and thoroughly drafted in order for the Court to make a fair and potentially final ruling in this particular matter.

9. Plaintiff has not made any prior requests for extensions of time to specifically file his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT, so he does not believe the Defendant or Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** his MOTION FOR EXTENSION OF TIME TO FILE, thereby permitting him seven (7) additional days to file his REPLY to Defendant's RESPONSE to his CROSS-MSJ.

Respectfully submitted on this, the 21st day of October, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the ~~18th~~ 21st day of October, 2024, the foregoing **MOTION FOR EXTENSION OF TIME TO FILE PTF'S REPLY TO DEF'S RESPONSE TO PTF'S CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 28 PM 01:06
DATE FILED
October 28, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

NOTICE OF CONVENTIONALLY SUMBITTED MATERIAL IN PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, proceeding *pro se*, hereby puts this Court on NOTICE that a flash drive containing an Exhibit of his CROSS-MOTION FOR SUMMARY JUDGMENT was conventionally submitted to the Court on October 28, 2024, and to which contains the following video recording:

- Exhibit #1 ~ 2022.11.25 @ 2.19pm ~ Detained By Best Buy Employees (Plaintiff's Bodycam)

Respectfully submitted on this, the 28th day of October, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **NOTICE OF CONVENTIONALLY SUMBITTED MATERIAL IN PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 28 P 12:46
DATE FILED
October 28, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

MOTION TO EXCEED PAGE LIMITATION REGARDING PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ

Plaintiff, proceeding *pro se*, hereby moves this Court for an exception to C.R.C.P. Rule 121 § 1-15(1)(a) pertaining to page limitations, so as to permit him **thirteen (13) additional pages** for his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it opposes the relief sought herein.

ARGUMENT

1. On October 10, 2024, Defendant filed a RESPONSE to Plaintiff's CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. Providing that the Court **GRANTS** his

most recent MOTION FOR EXTENSION OF TIME TO FILE, the deadline for Plaintiff to file his REPLY to said RESPONSE will be either October 28, 2024 or October 31, 2024.

2. C.R.C.P. Rule 121 § 1-15(1)(a) limits the number of PAGES that may be offered in a REPLY to a RESPONSE to a CROSS-MSJ, to 15 pages.

3. Defendant's RESPONSE includes **an absolute plethora** of legal arguments that it raises – by way of incorporating ***all*** previous orders entered against Plaintiff in ***all*** previous cases that have ***ever*** been filed by him against a wholly different merchant – and to which includes legal arguments surrounding the concepts of: *freedom of movement, unreasonable risk of harm, escape, shopkeeper's privilege, false imprisonment, defamation, and assault.*

4. Moreover, Defendant has now submitted a ***never-before-offered*** affidavit of employee Mahmoud Abu-Shaweesh, that it did not include with its initial MSJ, that raises ***even more*** factual based issues that require Plaintiff to address in his REPLY. Specifically, Mahmoud's affidavit has required Plaintiff to spend **eight (8) pages** alone to fairly and adequately address.

5. In his REPLY, not only must Plaintiff adequately address all of the matters raised in Defendant's RESPONSE, he must also present his own supporting facts and legal arguments.

6. Specifically, Defendant's RESPONSE has required Plaintiff to spend **twenty (20) pages** total to fairly and adequately address each of Defendant's RESPONSES To Plaintiff's FACTS in addition to its own ADDITIONAL MATERIAL FACTS. [Thus, Plaintiff has only spent **eight (8) pages** of his REPLY on legal arguments in reply to Defendant's response arguments].

7. This is the final document to be entered between both Plaintiff's and Defendant's MOTIONS FOR SUMMARY JUDGMENT, which therefore needs to be carefully and thoroughly drafted in order for the Court to make **a fair and potentially final ruling** in this particular matter.

8. Plaintiff has not made any prior requests to exceed the page limitation of his REPLY, so he does not believe Defendant or this Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** this here motion, so as to permit him to EXCEED THE PAGE LIMITATION set forth in C.R.C.P. Rule 121 § 1-15(1)(a) by **thirteen (13) additional pages** when REPLYING to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 28th day of October, 2024.

/s/ William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **MOTION TO EXCEED PAGE LIMITATION REGARDING PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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FILED
COMBINED COURT
JEFFERSON COUNTY

2024 OCT 28 P 12:43

DATE FILED
October 28, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, proceeding *pro se*, hereby submits to the Court his REPLY to Defendant's RESPONSE to his CROSS-MSJ, and in support thereof, states as follows:

INTRODUCTION

Defendant has frantically supplied this Court with nothing but **purely conclusory statements, categorically inadmissible hearsay,** and **blatant contradictions** to support its utterly unsubstantiated position that it is somehow not liable for its actions in the matter. However, *as will quickly be seen,* **literally nothing** that Defendant has said or submitted has any merit *whatsoever,* while Plaintiff has provided *more than sufficient* evidence and argument to fairly and reasonably **GRANT** his C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S UNDISPUTED MATERIAL FACTS

To the extent that Plaintiff fails to respond to every allegation in Defendant's

RESPONSE brief, Plaintiff denies any allegations not explicitly admitted herein.

1. In a desperate attempt to refute *Fact #1* of Plaintiff's Undisputed Material Facts, Defendant has now submitted to the Court a series of receipts, purportedly pulled from its records, one of which *(Def's Exhibit N, pages 18-19)* purportedly establishes that Plaintiff "was in the store," "at 2:20pm," and "made a purchase of Chromecast with Google TV." ***However,*** said receipt **DOES NOT ACTUALLY ESTABLISH** that any of said "facts" to which Defendant negligently argues are true. First, a receipt showing that a particular purchase is associated with a particular account *only establishes that **some** person made that purchase, not actually **who** made it.* Therefore, **anybody who Plaintiff provides authorization to use his credit and debit cards on his behalf**, *see Plaintiff's Second Affidavit (herein "PSA") at ¶ 2,* could have *just as easily* made the associated purchase that day, as Plaintiff.[1] Next, Defendant ***never once*** identified what Plaintiff held in his hands [or had in his pockets] that day, either. *See PCMSJ Exhibit #1 at timestamp 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave.").* Therefore, it is still *wholly unknown* if whatever Plaintiff possessed was indeed a "Chromecast with Google TV." Next, Defendant's only purported "evidence" now supplied in this matter – Mahmoud Abu-Shaweesh's affidavit – is **completely bereft** of any mention whatsoever that the employee had observed Plaintiff pay for any particular item at any particular register. Finally, ***and of the utmost critical importance,*** the entirety of Defendant's Exhibit N is **CATEGORICALLY INADMISSIBLE HEARSAY,** as it fails to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612,

1 Best Buy has an electronic transaction system in place whereby if a particular credit or debit card is used to pay for a purchase, and that credit or debit card is already linked to a registered Best Buy account, that purchase is then automatically associated with that particular account [and any receipt, either emailed or printed, is then drafted to reflect that particular association]. As such, the receipt **only** shows the associated Best Buy account holder's name on it, **not** the actual person who swipes the credit or debit card (which therefore could be ***anybody*** who the account holder authorizes to swipe it on their behalf). *See PSA at ¶ 3.*

617 (Colo. App. 2003). *See also C.R.C.P. 56(e), CRE 803(6), and CRE 902(11).* Therefore, Defendant has ***STILL*** failed to establish that Plaintiff "was [even] in the store" that day of November 25, 2022, ***let alone*** that he "made a purchase of Chromecast with Google TV." As such, the Court should find in favor of Plaintiff on *Fact #1* that he had been **strictly** and **only** "standing outside a Best Buy store . . . waiting for his brother" that day, **and literally nothing more.**

2. For the same reasons discussed immediately above, the Court should also find in favor of Plaintiff on *Fact #2* that he had been **strictly** and **only** "standing on the east side of said building for about five minutes before he was approached by several Best Buy employees."

3. Defendant admitted to Plaintiff's *Fact #3*. Thus, there is no genuine issue of fact.

4. Defendant attempts to refute Plaintiff's *Fact #4* by submitting to the Court an affidavit prepared by Mahmoud Abu-Shaweesh. This affidavit, however, **blatantly contradicts** Plaintiff's video evidence in the record – namely his pen camera footage of the event. *See PCMSJ Exhibit #1.* "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris,* 550 U.S. 372, 380 (2007).

First, Mahmoud claims that he "observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store." *Def's Exhibit P at ¶ 4.* However, this claim **blatantly contradicts** *numerous* facts already established by Plaintiff's video. One, Mahmoud states that Plaintiff was "wait[ing] for us to come out and get 'em." *PCMSJ Exhibit #1 at timestamp 8:08.* Here, Mahmoud's use of the term "wait[ing]" indicates that he did not **follow** Plaintiff out of the store after purportedly personally observing him steal some JLab headphones/earbuds "immediately" prior to.[2] This **strains credulity** for an Assistant Manager of a $20 billion dollar multinational company

2 It is actually ***wholly irrelevant*** whether Plaintiff was "waiting on the side of the Best Buy building" for *less than a minute* [as Defendant argues] or *five full minutes* [as Plaintiff argues], as the term "waiting" unambiguously refers to an act that is **mutually exclusive** from the act of "being followed out by somebody."

to do. Such a high-ranking employee would presumably be aware of his own loss prevention policy which customarily requires a merchant [pursuant to shopkeeper's privilege] to maintain **uninterrupted** visual contact of a suspected shoplifter in order to [lawfully] detain them. Moreover, the act of an assistant manager purportedly ***personally*** observing a suspect steal, ***not*** *immediately follow him out of the store*, but then all of a sudden, mere moments later, ***change his mind entirely*** *to then meet up with the suspect right outside the store*, **strains even more credulity.** Two, throughout his entire 12 minute confrontation with Plaintiff, Mahmoud only mentions wanting to recover the contents of Plaintiffs pocket ***three whole times.*** See *PCMSJ Exhibit #1 at timestamps 0:28, 10:22, and 10:48.* Meanwhile, he mentions wanting to recover what Plaintiff held in his hands **a whopping 31 times.** *See PCMSJ Exhibit #1 at timestamps 0:00, 0:02, 0:04, 0:05, 0:10, 0:11, 0:52, 1:01, 1:13, 1:44, 1:48, 2:01, 2:10, 2:16, 2:30, 2:40, 2:45, 2:51, 3:34, 3:51, 4:38, 4:53, 6:00, 8:51, 9:17, 10:11, 10:19, 10:47, 11:31, 11:43, and 12:08.* Thus, it **strains credulity** that an assistant manager would be ***so much more interested*** in recovering merchandise that he admittedly [by way of his own affidavit] ***did not*** observe Plaintiff walk out of the store with, than merchandise that he purportedly ***did*** observe him walk out with.[3] Indeed, Mahmoud even began his conversation with Plaintiff by using the word "it" [a singular term] to describe what he wanted to recover [i.e. what he presumably noticed Plaintiff holding in his hands upon first confronting him], **which meant that he wasn't even interested in the contents of Plaintiff's pocket** until later on in the conversation. *See PCMSJ Exhibit #1 at timestamp 0:05.* Then, when Mahmoud finally ***does*** mention Plaintiff's pocket, he only uses the word "too" to describe its contents, **which meant that such contents weren't even the primary reason for the confrontation** in the first place. *See PCMSJ Exhibit #1 at timestamp 0:28.* **This is just not the typical, believable, *or even plausible* behavior of an assistant manager** who purportedly *personally* observes a shoplifting suspect steal something from his store, *right in front of*

3 Most shockingly here, as the video incontrovertibly shows, is that Mahmoud **didn't even bother to use the word "pocket" for nearly ten consecutive minutes of the encounter.** *See PCMSJ Exhibit #1 from timestamp 0:28 to 10:22.*

him, who then purportedly *places said contraband in their pocket and "immediately" leaves* directly afterward. Three, throughout Plaintiff's entire 12 minute detention, Mahmoud ***never once*** mentions to him that he observed him place something [or things] into his pocket. It **strains credulity** that an assistant manager would not let a shoplifting suspect know right away how surely he got caught, especially when another employee freely offers a similar [utterly unsubstantiated of course] explanation. *See PCMSJ Exhibit #1 at timestamp 4:46, where Shane informs Plaintiff that "I have everything, I got a video, I got it on video, I got you concealing, I have you walking out without paying, so."* Four, Mahmoud, **by way of his very own captured statements, *already admitted*** that he didn't *even remotely* know the identity of *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets]. *See PCMSJ Exhibit #1 at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Considering that Plaintiff's video incontrovertibly shows that he ***never once*** handed anything held in his hands over to Mahmoud, his fellow employees, or the police [let alone emptied his pockets in front of them], Mahmoud never learned identity of Plaintiff's possessions, and therefore, **would have never identified them as "JLab headphones/earbuds."** Moreover, it **strains credulity** that Mahmoud would have identified Plaintiff's possessions as "JLab headphones/earbuds" *from afar,* either, by way of having purportedly observed him "on the store security video" as he claims next in his affidavit. As such, the entirety of ¶ 4 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that he "observed the same activity on the store security video." *Def's Exhibit P at ¶ 5.* First, Plaintiff was told during his detention that Best Buy had ***already*** [purportedly] observed him "on video" shoplifting from the store. *See PCMSJ Exhibit #1 at timestamp 4:46, where Shane informs Plaintiff that "I have everything, I got a video, I got it on video, I got you concealing, I*

have you walking out without paying, so." Yet, Mahmoud claims [in his affidavit] that a) he "observed [Plaintiff] remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," b) he observed Plaintiff, "as [he] was exiting the store, [be] asked by a loss prevention employee to show his receipt, which he declined to do," and c) he "exited the store to request that [Plaintiff] return the product from his pocket." *Def's Exhibit P at ¶¶ 4 through 6.* In other words, if Mahmoud ***really did*** "observe Plaintiff steal something, exit the store, and then [under Defendant's version of the event, directly thereafter] confront him outside about it," **he would have never had time to go review any security video footage of the same** [that again, was *already* claimed to have been purportedly reviewed by the store ***prior to*** the confrontation].[4] This leaves Mahmoud with but one remaining logical possibility: that he had [purportedly] "observed the same activity on the store security video" ***AFTER*** he and his fellow employees ended their confrontation with Plaintiff. But then this scenario begs an even bigger question: *why on earth were the police never contacted?* **EVER.** As Plaintiff showed both in his REPLY to Defendant's MSJ and in his own C-MSJ, "Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store." *Ptf's Response To Def's MSJ at ¶ 44; Ptf's C-MSJ at ¶ 24.* **Defendant doesn't even dispute this fact.**[5] *See Def's Reply To Ptf's Response To Def's MSJ at ¶ 24.* Indeed, Defendant even claims [and Plaintiff doesn't dispute] that "Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols." *Def's Response To Ptf's C-MSJ at ¶ 24.* Therefore, **Defendant certainly had an *active and ongoing* relationship with the police at the time, and would have surely called them** *within the SEVERAL HOURS it had remaining that day,* to **EVENTUALLY** turn over said purported "video footage" of a

4 Indeed, it would have been ***just as preposterous***, under Plaintiff's version of the event, for Mahmoud to have [purportedly] observed Plaintiff steal something, *run to the security office within the five minutes that Plaintiff had been waiting on the side of the building* [to go view him on video], but then *run back outside after viewing the video* [to then personally confront him about it]. It **strains serious credulity** that a merchant would need to go view something on video, *from afar,* **right after** they *already* purportedly *personally* saw it happen *right in front of them.*

5 Interestingly, Defendant contradicts itself by vaguely denying this fact in its *Response To Ptf's C-MSJ at ¶ 24.* However, it then fails in said *Response* to lay any foundation to support said denial, **so such a denial holds no weight.**

shoplifter that it had purportedly ***positively caught red handed.*** Yet *not one single* "call for service" was made that day regarding Plaintiff. **EVER.** One could only presume that such would be a clear violation of Best Buy's loss prevention policy [that an assistant manager, such as Mahmoud, would presumably have knowledge of and be following]. As such, because the statement contradicts the record, *and is utterly illogical in its own right,* the entirety of ¶ 5 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that "As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do." *Def's Exhibit P at ¶ 6.* Here, because this statement refers to *what some other employee supposedly said*, the entirety of this paragraph is **categorically inadmissible hearsay.** "Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination." *Henderson v. Master Klean Janitorial, Inc.,* 70 P.3d 612 (Colo. App. 2003). *See also C.R.C.P. 56(e).* Moreover, such a statement is **blatantly contradictory** in its own right, in that a loss prevention employee, *claimed by Mahmoud himself to have been "posted up" at the store's exit,* **would not have had the capacity to witness Plaintiff purportedly "remove two boxes of JLab headphones/earbuds from the shelf [and] place them in his pocket" for that employee to even know, *in the first place,* whether or not to "ask Plaintiff to show his receipt for them."** *Employees just don't ask random people exiting a store to see receipts for whatever random, unidentified contents may exist inside their random pockets / purses / etc.* Indeed, it **strains credulity** that a "loss prevention" employee ***would even bother asking for a receipt at all at that point,*** if they alternatively ***did*** personally observe a shoplifter steal something *right in front of them.* They would likely just jump right to demanding that the person give the product back. As such, because it is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record, the entirety of ¶ 6 of Mahmoud's affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, to the extent that it can be interpreted that Mahmoud purportedly "followed"

Plaintiff out of the store when making the claim that he "exited the store to request that Mr. Montgomery return the product from his pocket," *Def's Exhibit P at ¶ 7,* such a claim has, again, already been refuted by his own video-captured use of the **mutually exclusive** term "wait[ing]," as discussed earlier. As such, the entirety of ¶ 7 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that "Mr. Montgomery refused to return the product." *Def's Exhibit P at ¶ 8.* However, having ***never once*** reasonably [let alone roughly] establishing that *whatever* Plaintiff possessed that day was actually *stolen merchandise* [let alone *store merchandise*] for which Plaintiff might have otherwise been required to "return," such a statement is **completely bereft of any support, *whatsoever,* by the record.** As such, the entirety of ¶ 8 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Finally, Mahmoud claims that "Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery." *Def's Exhibit P at ¶ 9.* Here, *even this* statement **blatantly contradicts** the record, in which **AN ABSOLUTE PLETHORA** of claims were ***already*** made during the confrontation – both by Mahmoud *and* by his fellow employees – that a) police were *already* contacted *prior* to Plaintiff's detention, and b) Plaintiff *would be actively detained in the mean time* until they arrived [as is typical and customary to have happen when police are called out to an active shoplifting detention]. *See PCMSJ Exhibit #1 at timestamps 0:13 ("The cops will be here dude, in one second. I already said something."), 0:15 ("Yeah, we'll just hang out here till the cops get here."), 1:05 ("It's okay, the cops will be right here, bro."), 1:33 ("I got the cops coming."), 1:44 ("Yeah, we'll just, we'll hang out with you until you give us your shit, or until the cops show up."), 1:48 ("Fuck off, dude. You're not asking questions, bro. You're giving us our shit, and leaving, or the cops are gonna take you."), 2:51 ("You can give it to us now, and get the fuck outta here, the cops are on the way."), 3:17 ("Then you're gonna stay right there until the cops come here and fuck you up."), 4:46 ("Or, when PD gets*

here..."), 5:11 ("You're not moving, dude. You're where you're gonna be until the cops get here."), and 8:51 ("Okay, then you're gonna stand there until the cops show up."). Of course, the police **were never actually contacted,** *in the first place,* prior to Plaintiff's detention, **let alone even later on THAT ENTIRE DAY after Plaintiff was released** [and Defendant doesn't even dispute this]. So *even that* portion of Mahmoud's statement, "that police had been contacted," has no truth to it. *See PCMSJ Exhibit #2.* As such, the entirety of ¶ 9 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Ultimately, *it should be painfully clear at this point,* that Defendant, having gotten caught failing to perform a lawful detention of Plaintiff, thought that it could "coach" some employee into producing some "affidavit" for it that might otherwise "save" it from liability. But such affidavit, *having been loaded up with what looks to be quite literally everything the employee could possibly think of to conjure up justification for its actions,* actually produced ***nothing more than lies*** premised on **categorically inadmissible hearsay** and **blatant contradictions** instead. Thus, the Court should find in favor of Plaintiff on *Fact #4* that "Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022," and that "Said employees had never been 'posted up' at the store's exit, nor had they ever 'followed' Plaintiff 'out' of said store, either."

5. Defendant admitted that "The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud." Thus, there is no genuine issue of fact on that particular claim. However, Defendant attempts to refute Plaintiff's remaining claim – that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" – by pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #5* that he "was never asked to 'show a receipt' by Mahmoud, Shane, or

John Doe" [or by any other Best Buy employee, for that matter, that day].

6. Defendant admitted to Plaintiff's *Fact #6*. Thus, there is no genuine issue of fact.

7. Defendant attempts to refute Plaintiff's *Fact #7* by once again pointing to a series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Moreover, *even if* such receipts *were* admissible, **they would only show that Plaintiff [or whomever he authorizes to use his credit and debit cards] simply enjoys shopping at multiple Best Buy stores,** *especially if one store has more stock of a particular item than another.* Indeed, such receipts would only show the **consistent REASONABLENESS** of all other stores owned by Defendant **TO NOT** unlawfully detain a person upon some purported execution of some purported "modus operandi"! Thus, a reasonable person in Plaintiff's position ***WOULD*** have been genuinely surprised that he was detained by Defendant, *having never been detained before by it despite purportedly making such repeated shopping trips of the same or similar nature.*[6] Nevertheless, because the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay,** it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #7* that [specifically, due to its *exclusive* reliance on ¶ 8 of Plaintiff's Affidavit, **AND NOT** on Defendant's Exhibits N or O *in any way, shape, or form* as discussed in footnote 6] "The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him."

8. Defendant attempts to refute Plaintiff's *Fact #8* by once again pointing to its supplied

6 ***Critical to note here,*** is that Plaintiff **IS NOT** "rel[ying] upon" Defendant's Exhibits N or O "as [the] bas[is] for [his] position." *Johnson v. Mountain Sav. & Loan Ass'n,* 162 Colo. 474, 426 P.2d 962 (1967). Specifically, he **IS NOT** "waiv[ing] any objection to [their] lack of certification." *Id.* **Rather, Plaintiff is merely pointing out the logical contradictions that exist within Defendant's own argument and it attendant submission of inadmissible exhibits.**

affidavit of Mahmoud Abu-Shaweesh, and its series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record, and the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, neither cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #8* that "Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for *whatever* existed in one of his pant pockets, too."

9. Defendant admitted to Plaintiff's *Fact #9*. Thus, there is no genuine issue of fact.

10. Defendant attempts to refute Plaintiff's *Fact #10* by pointing to *Exhibit #1* of Plaintiff's C-MSJ.[7] However, Defendant's denial is but one word long, purely generic in nature, and points to no specific timestamps in the video that otherwise clarify its position. **As such, Defendant's general denial holds no weight.** Thus, the Court should find in favor of Plaintiff on *Fact #10* that "For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so."

11. Defendant admitted to Plaintiff's *Fact #11*. Thus, there is no genuine issue of fact.

12. Defendant admitted to Plaintiff's *Fact #12*. Thus, there is no genuine issue of fact.

13. Defendant admitted to Plaintiff's *Fact #13*. Thus, there is no genuine issue of fact.

14. Defendant admitted to Plaintiff's *Fact #14*. Thus, there is no genuine issue of fact.

15. Defendant admitted to Plaintiff's *Fact #15*. Thus, there is no genuine issue of fact.

16. Defendant admitted to Plaintiff's *Fact #16*. Thus, there is no genuine issue of fact.

17. Defendant admitted to Plaintiff's *Fact #17*. Thus, there is no genuine issue of fact.

18. Defendant admitted to Plaintiff's *Fact #18*. Thus, there is no genuine issue of fact.

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7 Interestingly, Defendant contradicts itself here by **NOT** later refuting Plaintiff's *Undisputed Material Fact #13,* which makes essentially the same claim – that "Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go)."

19. Defendant admitted to Plaintiff's *Fact #19*. Thus, there is no genuine issue of fact.

20. While Defendant claims that it "can neither admit nor deny the allegation regarding the number of people Plaintiff counted," Plaintiff's video footage of the event speaks for itself, in that "at least 192 people" can be counted to have "walked past him [and who would have thus been within earshot of the conversation that took place between he and the three employees]." Thus, the Court should find in favor of Plaintiff on *Fact #20.*

21. Defendant attempts to refute Plaintiff's *Fact #21* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #21* that "At no point in time, on that day of November 25, 2022, had Plaintiff ever once 'concealed' anything in front of [let alone not in front of] anybody, ever, period."

22. Defendant attempts to refute Plaintiff's *Fact #22* by once again[8] pointing to its supplied

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8 Elsewhere in Defendant's RESPONSE, it further addresses Plaintiff's *Fact #22. See Def's Response To Ptf's C-MSJ at page 8, footnote 6* ("Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets."). Here, it appears that Defendant's tortured logic goes as follows: because Plaintiff didn't *deny* that he [at one point] placed something in his pant pockets, he has *admitted* that he *did* [right in front of Defendant]! **Yeah, *of course* Plaintiff placed something in his pant pockets, earlier that day, when he got up and got dressed, as whatever existed in there didn't put itself in there!** Indeed, Plaintiff put lots of things in his pockets when he got up that day: his keys, his wallet, his cell phone, his medication, etc. But just because some random employee notices during some random interaction that some random bulge exists in some random person's pant pocket doesn't now give them *carte blanche* authority to then start ***reasonably*** suspecting that such is now merchandise *not only sold at that store* ***but actually stolen from it as well*.** What a load of crap **that** is! Besides, Plaintiff **DID** deny "that he placed something in his pant pockets." **He literally said so right there in his Undisputed Material Facts.** *See Ptf's C-MSJ at ¶ 21* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever once 'concealed' anything** in front of [let alone not in front of] anybody, ever, period.") *and ¶ 22* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever once placed into, or removed, anything from any pant pocket** in front of ***[LET ALONE NOT IN FRONT OF, as extrapolated from the previous fact]*** anybody, ever, period. Whatever was located in his pant pockets remained there **BEFORE,** throughout, and after his interaction with the Best Buy employees."). That is, such statements were not meant to be interpreted [read: twisted] to read that "Plaintiff didn't put anything in his pockets *when he thought somebody was looking* [but then he ***DID*** put something in his pockets *when he thought nobody was looking!*]." Rather, they were meant to be interpreted to read that "Plaintiff didn't put anything in his pockets, ***EVER, AT ALL,*** *throughout that day, after getting up, while out in public, both in front of* ***AND NOT IN FRONT OF*** *other people, whether he believed they were looking,* ***OR NOT.***") **Geez, does Plaintiff really have to spell this stuff out?** Nowhere in his lawsuit did he ever say something like: *"no one could have seen me place anything in my pant pockets."* That's nothing but a factual fabrication on the part of Defendant. ***SORRY*** *Plaintiff forgot the phrase* ***"let alone not in front of"*** *when drafting Undisputed Material Fact #22 on the subject!*

affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #22* that "At no point in time, on that day of November 25, 2022, had Plaintiff ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in his pant pockets remained there before, throughout, and after his interaction with the Best Buy employees."

23. Defendant attempts to refute Plaintiff's *Fact #23* by claiming that "Plaintiff's allegations are statements of opinion rather than fact." However, Plaintiff has every right to establish facts – by way of producing an affidavit on the subject. Indeed, what Plaintiff claims to be aware or not aware of, is a "fact" like any other, that the Court can [and should] consider. Thus, the Court should find in favor of Plaintiff on *Fact #23* that "At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of 'receipt showing.'"[9]

24. Defendant attempts to deny Plaintiff's *Fact #24,* **but has otherwise already admitted to it** in its *Reply To Ptf's Response To Def's MSJ at ¶ 44.* Thus, the Court should find in favor of Plaintiff on *Fact #24* that "On November 25, 2022, Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store."

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9 Plaintiff actually knows of ***one*** "receipt" policy [if one could even call it that] to which Best Buy has made him aware of. *See PRTDRTPCMSJ Exhibit #1 at page 2, paragraph 5.* **Such a long-standing, environmentally-friendly, "email only" policy allows patrons of Best Buy stores to "request a digital receipt" upon completion of a transaction, *in lieu of having one be printed in the matter.*** However, this would obviously be of no help to Defendant, as under such circumstances [if we were to assume, *arguendo,* that Plaintiff was even a customer that day] it has ***STILL*** failed to provide any evidence, *whatsoever,* that Plaintiff was ever "provided a ***physical*** receipt" [for which he might have otherwise been "required to retain" as an Appellate Panel once impermissibly argued]. In other words, **not even the Appellate Panel could fault Plaintiff for requesting that such a "digital-only receipt" be issued to him,** that the very store at issue LITERALLY ENCOURAGES the issuing of, *that any employees posted up at the store's exit would also undoubtedly know gets regularly issued [and would likewise know inherently lacks the ability to be presented upon leaving].* ONCE AGAIN, though, ***it must be repeated that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.* Specifically, Defendant had no earthly idea, ***whatsoever,*** the nature or identity of *whatever* Plaintiff possessed that day [and whereby he could have *just as easily* possessed "**non-store** merchandise he had erroneously attempted to return to the wrong store"]. *See Ptf's C-MSJ Undisputed Material Fact #8.*

25. Defendant attempts to refute Plaintiff's *Fact #25* by once again pointing to its series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #25* that "Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant."

PTF'S RESPONSE TO DEF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

26. Plaintiff DENIES that this asserted material fact is true. The entirety of Defendant's Exhibit N is **categorically inadmissible hearsay,** as it fails to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). *See also C.R.C.P. 56(e), CRE 803(6), and CRE 902(11).* As such, the Court should **REJECT** Defendant's proffered *Fact #26* when ruling on Plaintiff's C-MSJ.

27. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Here, Defendant seems to think that Plaintiff's YouTube video is some sort of *bona fide* taped confession. Yet, such video **utterly fails** to *even begin to* support ***any*** of the alleged "facts" to which Defendant negligently argues. The video doesn't establish that Defendant saw Plaintiff *enter its store* that day of November 25, 2022, let alone that it saw him *anywhere in its store, shop [or not shop], take anything off a shelf, pay [or not pay], conceal [or not conceal] anything on his person, use [or not use] a plastic bag,* or even *leave its store.* Nor does it show that Defendant *called the police,* or that it even *asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place,* let alone that *whatever he had been holding in his hands or was located in his pockets was even store merchandise for which one might*

have been associated. **The video literally doesn't establish ANYTHING.** It doesn't even mention the name "Best Buy" anywhere in it, ***let alone*** that Best Buy has a receipt checking policy *that in any way resembles* that of Walmart's own receipt checking policy [not that Walmart's receipt checking policy is compulsory in nature, *in the first place,* anyways]. In the end, the YouTube video referenced is nothing more than peanut gallery subjective commentary extracted from a general exchange of legal ideas that took place between Plaintiff and a YouTube attorney, *a year later from the instant case,* **regarding a completely different merchant** than that of Defendant, and to which does not address ***any*** of the facts specific to Plaintiff's case against it. Moreover, Defendant's *ad nauseam* attempt to defame Plaintiff as some "lawsuit scammer" holds no merit, either. Plaintiff, *being literally no different than any other customer who shops in public while simultaneously knowing their rights,* is no more or less of a "secret shopper" than they would be. **Clearly, Plaintiff is not alone with regards to the legitimate concerns he has developed over the years regarding unlawful bootstrapped detentions occurring of unreasonably suspected shoplifters for merely refusing to answer questions upon leaving stores directly after shopping.** *See PRTDMSJ Exhibit #14.* Are each and every one of the shoppers referenced in those news articles all "lawsuit scammers" executing "sting operations" just so that they can "sue for false arrest?" What an emphatic, laughable, **NO.** Rather, like any other merchant, ***Defendant needs to stop scapegoating and victim-shaming those whom it unreasonably falsely imprisons,*** and own up to its transgressions. ONCE AGAIN, though, as mentioned in *Ptf's Response To Def's MSJ,* ***it must be repeated evidently forever that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.* As such, the Court should **REJECT** Defendant's proffered *Fact #27* when ruling on Plaintiff's C-MSJ.

28. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. As discussed above, Plaintiff's purported "modus operandi" **is not a legally**

cognizable argument. It is a statement of opinion, rather than fact, and does not address the elephant left in the room: that Defendant has ***STILL*** failed to provide this Court with **EVEN A SINGLE IOTA** of *actually admissible* evidence to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store. Moreover, it can hardly be considered some *disingenuous* "modus operandi" for a police officer to set out a "bait car" for an unsuspecting car thief – because in the end, that officer is *technically* just parking his car, **just like any other car owner would,** thus rendering ***all*** car owners effective "bait car" owners [who likewise install the means necessary – i.e. video surveillance and gps trackers – to aid in recovery of their vehicle]. **In other words, the whole point of a "sting" operation is to *NOT* act or be different than any other person. Plaintiff's long running "sting" operation is no different: *he acts just like any other patron* who uses whatever registers are available to them and who avoids using plastic bags for environment reasons.** Thus, *EVEN IF [and remember, this is a **BIG** if here, as Defendant has **STILL** failed to establish **ANY** of this]* we were to assume, *arguendo*, that Plaintiff ***was*** in the store that day, ***was*** making some purchase, and ***was*** executing some purported "sting" operation, that no other patrons **ACTING JUST LIKE HIM** have bothered to exercise *their* rights against *100% identical false imprisonments under 100% identical circumstances* doesn't change the fact that **HE** is due justice in the matter, should **HE** get falsely imprisoned for merely "refusing to cooperate" on his way out. "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick,* 501 U.S. 429, 437 (1991). "[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment." *United States v. Wood,* 106 F.3d 942, 946 (10th Cir. 1997).

Next, there are PLENTY of things that "provoke suspicion," as Defendant claims, **but do not actually rise to the level of providing LAWFUL JUSTIFICATION yet to begin *actually detaining* a patron over.** For example, the patron in *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268

N.E.2d 860 (Sup.Ct. 1971) walked out of the store with an untagged ascot around his neck. The existence of such an ascot, *being available for sale at that very store,* was certainly enough to "provoke suspicion" of the store employee who stopped him to investigate into its potentially stolen nature. However, the Court still held that "The absence of any indication that the merchandise was 'unpurchased' justified the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985).[10] The same holds true with regard to Plaintiff's purported "sting" operations, **in which he merely leaves stores after shopping while likewise carrying out items in which there exists the same "absence of any indication that the merchandise is unpurchased."** OF COURSE using whatever registers are available to him[11] and not using plastic bags[12] "provokes suspicion." **However,** such "suspicion" [read: hunch] **does not** provide *enough* suspicion **YET** to begin lawfully detaining a patron over. Moreover, such "provoked suspicion" [that doesn't rise to the level of providing actual lawful justification yet to begin detaining over] is something that the patron in *Coblyn v. Kennedy's Inc.* would have undoubtedly learned about. Does that then mean that said patron, having won his case and therefore gaining said knowledge of what unreasonably triggers detentions-purportedly-premised-on-shopkeeper's-privilege-but-not-actually-so, *can never shop at Kennedy's in the same way ever again?* Hardly so. Put another way, can that patron then be

10 *See also Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996) where the Court held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [the patron] had stolen anything" where the store employee "never saw [the patron] anywhere in the store until they were walking out of the store.").

11 **But,** the reason why *coming from an alternate register* only "provokes" ***A MERE HUNCH*** that is legally insufficient to provide lawful justification to begin detaining a patron over, is because any store employee working at such a store in which such a register is installed *would undoubtedly be aware of its existence.* Thus, they would know that coming from such a register "in no way distinguishes the person to be stopped from other law abiding citizens." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993). Of course, it should be noted here that ***ALL*** Best Buy stores in the nation have historically [and on that day of November 25, 2022] provided multiple registers throughout its premises. Therefore, to call such registers "alternate" or "back" registers *would actually be an* ***intellectually dishonest*** *thing to do.*

12 **But,** the reason why *not using a plastic bag* only "provokes" ***A MERE HUNCH*** that is legally insufficient to provide lawful justification to begin detaining a patron over, is for the same exact reason: it is "innocent behavior that in no way distinguishes the person to be stopped from other law abiding citizens." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993). Moreover, the act of foregoing plastic bag use ***is to be expected*** for patrons that are either purchasing a single item, or purchasing an item that is too large to be placed inside a plastic bag. Thus, any store employee observing such circumstances *would undoubtedly understand that to be the case.*

considered some frivolous "lawsuit scammer" *if he chose to go back and do the same exact thing again [that triggered his first lawsuit] just to sue again should he happen to get unlawfully detained again?* Hardly so. **A false imprisonment is a false imprisonment, no matter how many times that it occurs [and no matter how much intuition a victim has that it may potentially happen, perhaps again, to them].** Thus, it is truly insulting that Defendant [and prior Courts] would attempt to distinguish Plaintiff from the patron in *Coblyn* **just because he has the intuition that he *might* be torted,** *just like the patron in Coblyn would have after having it happen to him.* **Technically, anybody who reads *Coblyn v. Kennedy's Inc.* would develop the same intuition as Plaintiff!** Does that then mean every person who becomes educated on the law now voids their right to shop in the same way as *Coblyn* [and not be falsely imprisoned]? Again, an emphatic, laughable, **NO.**

Finally, on the topic of supposedly "failing to mitigate circumstances," did the patron in *Coblyn* void his right to not be falsely imprisoned by failing, as Defendant states, to "take any reasonable action such as show a receipt and/or otherwise prove that he owns the item"? Again, the answer to that question is an obvious NO. **This is because such actions are not dispositive of whether or not a false imprisonment, *premised outright on a lack of shopkeeper's privilege*, has already occurred in the matter.** ONCE AGAIN, though, ***it must be repeated as many times as Defendant mentions it itself that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.* As such, the Court should **REJECT** Defendant's proffered *Fact #28* when ruling on Plaintiff's C-MSJ.

29. Plaintiff DENIES that this asserted material fact is true. Defendant attempts to support this claim by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. Moreover, such a **bold new claim** that Plaintiff purportedly, *for the first time ever,* actually STOLE from a store **blatantly contradicts** his purported "modus operandi"

[according to Defendant] TO SERIALLY PURCHASE from stores! **So which is it?** *Is it Plaintiff's "modus operandi" to purchase from stores, or to steal from them?* How about neither. How about Plaintiff is just a person, like any other, **and Defendant is willing to now fabricate straight up lies** in order to avoid taking responsibility for unlawfully detaining him. As such, the Court should **REJECT** Defendant's proffered *Fact #29* when ruling on Plaintiff's C-MSJ.

30. Plaintiff ADMITS that the first portion of this asserted material fact – that the three Best Buy employees "stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store merchandise" – is true. Obviously, Plaintiff's unlawful detention is the very subject of this instant lawsuit. However, Plaintiff DENIES that the remaining two portions of this asserted material fact are true. First, Defendant attempts to support the claim – that "Plaintiff [refused to show] a receipt for merchandise upon exiting the store" – by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. Second, Defendant attempts to make the claim – that Plaintiff "did not return the merchandise when asked to do so" – except that here it has, once again, failed to ***ever*** establish that *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets] was, **in fact,** *stolen merchandise* [let alone *store merchandise*] for which Plaintiff might have otherwise been required to "return." As such, the Court should **REJECT** Defendant's proffered *Fact #30* when ruling on Plaintiff's C-MSJ.

31. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Plaintiff [nor any other patron] has **any legal obligation whatsoever** to "prove his innocence" by way of "proving his pockets were empty and/or proving whatever was in his pockets belonged to him." Either Plaintiff ***is not required to*** "prove his innocence" in order to succeed in his false imprisonment claim, *see Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) *and Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), ***would succeed anyways as if he were to have*** "proven his innocence" in his false

imprisonment claim, *see Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) *and J. C. Penney Co. v. Cox,* 246 Miss. 1, 11 (Miss. 1963), or ***is not reasonably expected to forfeit his right to succeed*** in his false imprisonment claim by otherwise being required to "prove his innocence" which could potentially be interpreted as "voluntarily giving consent to a detention," *see Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) *and Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966). As such, the Court should **REJECT** Defendant's proffered *Fact #31* when ruling on Plaintiff's C-MSJ.

32. Plaintiff DENIES that this asserted material fact is true. To date, Defendant has ***STILL*** failed to provide this Court with *any* admissible, **non-hearsay, non-contradictory** evidence that Plaintiff "intentionally created the impression that he had stolen from the store." Moreover, such a statement, as similarly discussed in *Ptf's Response To Def's MSJ at page 28, footnote 10,* suffers from the classic **"conclusory statement"** logical fallacy. That is, what Defendant is *actually* just saying, is that "we detained him, because he got us to detain him." Yet within such a statement there obviously exists no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "created the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."** *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). As such, the Court should **REJECT** Defendant's proffered *Fact #32* when ruling on Plaintiff's C-MSJ.

33. Plaintiff ADMITS that the asserted fact is true – that "no employees of Best Buy ever touched Plaintiff" – but DENIES that it is material to the outcome of his case. This is because "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid.* As such, the Court should **REJECT** Defendant's proffered *Fact #33* when ruling on Plaintiff's C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S C-MSJ ARGUMENT

I. PLAINTIFF HAS PROVEN FALSE IMPRISONMENT AS A MATTER OF LAW

In Defendant's RESPONSE to Plaintiff's C-MSJ, it begins its argument by claiming that "there are myriad undisputed material facts [that] indisputably prove that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident." *Def's Response To Ptf's C-MSJ at page 7.*

First, as just discussed, such a statement – that Plaintiff "intended to provoke the detention in the subject incident" – is a **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Moreover, police "intend to provoke the stealing of bait cars" *all the time,* except that **"merely affording a person an opportunity to commit an offense is not entrapment."** *C.R.S. § 18-1-709.*

Next, Plaintiff's "YouTube video footage of the subject incident" *isn't even video footage of the subject incident,* and as such, doesn't ***even remotely*** establish *any* of the "facts" to which Defendant negligently argues. Likewise, the "vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations" don't establish *any* actual **facts** related to his instant case, either. Indeed, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations **involving stores owned by a wholly different merchant,** where Plaintiff was found to be located inside those stores, was a customer of those stores, had receipts both printed and provided to him upon shopping those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those stores. **NONE of those facts have *even remotely* been fairly and legally established by Defendant in Plaintiff's instant case.** *This Court doesn't even know what Best Buy's "receipt checking policy" is in the matter,* ***if it even has one.*** Moreover, the unsubstantiated legal conclusions made in those cases **BLATANTLY VIOLATED THE LAW.** Those Courts erroneously concluded that *Plaintiff "**concealed** merchandise"* [when he clearly didn't]. That *"**showing** a receipt" is some "**open window**"* [that's clearly not] *which **merely** entails a*

change in direction *that Plaintiff purportedly "**failed** to avail himself of"* [which he clearly didn't]. That *"**showing** a receipt" **after** being detained is an "**escape**"* [when it's only a **"release"**]. That *"**not showing** a receipt" is a **voluntary consent** to a detention* [when **showing** the receipt actually is]. That *simply **refusing** to show a receipt provides enough "shopkeeper's privilege" to begin **detaining** over* [when such is nothing more than **mere bootstrapping**]. That ***keeping** a receipt **"on hand,"** at all times, **before even being detained,** is now **legally mandatory*** [when it's clearly not]. That ***showing** a receipt is, "**at most**, a **slight** inconvenience"* [when the law is already **clearly established** that "any imprisonment, **'no matter how short'**" qualifies as compensable]. That *"**showing** a valid receipt" would not subject a patron to "**physical or mental harm**"* [**of course** it wouldn't]. That ***anticipating detentions** and **starting recordings** ahead of time **voids** false imprisonment claims* [when they clearly don't]. That *it's Walmart "**official** receipt checking policy" **to detain patrons** who **refuse** to show their receipts* [when it's clearly not]. That *being "**asked**" to show a receipt is not a **legally cognizable** false imprisonment claim* [when Plaintiff has never argued such, but rather, has ***always and only*** argued that **the act of physically blocking all available pathways of his through all available exits** is what has always constituted his false imprisonment claims]. The prior Courts even concluded that *"being **taken** to a secluded room, **forcibly moved** within the store, or **arrested**," are all **required elements** of a valid false imprisonment claim* [when they're clearly not]. As such, *it should be painfully obvious at this point,* that **LITERALLY ZERO** of Plaintiff's prior cases were **fairly and reasonably** decided by **fair and impartial** Courts that were **fairly and genuinely** apprised of **both the facts and the law** in each particular matter.

Next, Defendant claims that Plaintiff "took no reasonable action such as showing his receipts from the store that he undeniably possessed." However, Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that a) Plaintiff ***was even a customer of it*** that day, b) he ***was even asked for a receipt*** upon leaving, c) an actual, tangible receipt ***was printed*** **AND NOT EMAILED,** for which he might have otherwise been "required to retain" in order to

show upon leaving, and d) he, **and not just someone else with authorization to use his credit or debit card,** actually ***made the purchase*** and ***received the printed receipt*** for which the purchase would have been associated. However, *as can quickly be seen,* **NONE** of these **absolutely critical facts** have ***even remotely*** been fairly and legally established by Defendant in this case.

Next, Defendant claims that Plaintiff was required "to prov[e] his pockets were empty and/or prov[e] anything that may have been in his pockets belonged to him in order to shorten or end the detention." However, this claim has already been sufficiently addressed by Plaintiff earlier. *See ¶ 31, above.* Moreover, *listing off literally all possible actions that are purportedly required for a patron to perform in order to end [read:* ***undo****, as Defendant and prior Courts argue] their detention* **effectively renders all detentions of patrons literally uncompensable,** [and the bar to which merchants are required to have "shopkeeper's privilege" under *obviously cannot be set at the floor*]. In other words, if there is *ALWAYS* something that *ALL* detainees can do, "in order to shorten or end their detentions," can Defendant ***please*** describe **a single situation** in which a merchant ***WOULD*** be liable for unlawfully detaining a patron? Naturally, merchants don't get *carte blanche* authority to **indiscriminately** detain whomever they wish. "The protection of merchants from shoplifters would not under any circumstances be justification for the usurpation of the rights and freedoms of the individual citizens of this state and country. The evils of shoplifting are probably great in this country at this time. Taking care of the interests of the merchants would not justify giving them complete power and authority to infringe upon the rights of their customers and allow the merchants, without regard to the feelings of the customers, to require them to submit to certain humiliations and disgrace of being indiscriminately accused of stealing or to be subjected to search upon the mere whim of the merchant or his employees." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 11 (Miss. 1963).

Finally, Defendant concludes its argument by "threadbare reciting" **unsubstantiated, unsupported-by-law,** and **utterly irrational** interpretations of two "elements" that a Plaintiff is purportedly required to address in order to succeed in a valid false imprisonment claim. However,

each and every one of Defendant's arguments has been *more than sufficiently* addressed **[and refuted]** by Plaintiff throughout the course of his briefing. Moreover, Defendant has **failed completely** to *even begin to* sufficiently address **[let alone refute]** *a single one* of Plaintiff's Undisputed Material Facts in the matter. Rather, it has supplied nothing more than **categorically inadmissible hearsay** and **blatant contradictions** instead. As such, the Court should **REJECT** Defendant's wholly baseless arguments, and **GRANT** Plaintiff's C-MSJ. "Where there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law, summary judgment is warranted." *American Water Dev. v. City of Alamosa,* 874 P.2d 352, 360 (Colo. 1994).

II. DEFENDANT LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

In its next argument section, Defendant claims that "Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store." *Def's Response To Ptf's C-MSJ at page 8.* However, as previously discussed, such a statement is a **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Again, such a statement provides no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "intended to create the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. Seriously, what exactly did Plaintiff ***DO*** to supply Defendant with "shopkeeper privilege" in this matter? Defendant can't just show up to Court one day and say, "Well, we detained him, so clearly he did ***something*** to get detained by us!" In other words, **simply pointing to some purported "modus operandi" does not relieve a merchant from the burden they have to satisfactorily develop "shopkeeper's privilege" for their detentions.** Moreover, as previously discussed, it can hardly be considered some "modus operandi" for the *countless other* patrons referenced in *PRTDMSJ Exhibit #14* to have had upon *their* shopping experiences. **Why is Plaintiff being treated any different?** Indeed, many of the shoppers referenced in those news articles started recordings of their anticipated detentions ahead of time. Does that show "disingenuous, false-

imprisonment-claim-voiding, **premeditated intent** to be detained," *or does it simply show* ***intuition*** *that* ***anybody*** *can* ***easily gain*** *for an* ***increasingly problematic*** *issue? See also Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010). Indeed, *numerous* ***bar-licensed*** *attorneys* even spoke up in those news articles against the growing legal crisis. *Are they all horribly mistaken too?* **Hardly, inconceivably, so.** ONCE AGAIN, though, ***it must be repeated yet again that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

Next, Defendant claims that "Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen." However, as previously discussed, the entirety of ¶¶ 4 through 9 of Mahmoud's affidavit contains **categorically inadmissible hearsay** and/or **blatantly contradicts** the record. *See ¶ 4, above.* As such, absolutely none of it can be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Defendant claims that "Plaintiff admits that he was detained less than ten (10) minutes." However, in order to succeed in a false imprisonment claim, a Plaintiff must only show that he was detained "for a period of time, **no matter how short.**" *See Colorado Civil Jury Instruction 21:1(2).* Obviously, Defendant does not dispute the fact that Plaintiff was detained for ten minutes, so this argument is moot. Nevertheless, **even a ten minute detention is "unreasonable"** when chock-full of unwarranted, disproportionate, egregious threats of violence [as will be discussed next].

Finally, Defendant claims that "Plaintiff also does not allege any physical violence or that he was even touched during the detention." Obviously, as previously discussed, "Physical force is not required to complete a false imprisonment." *Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935). So that issue is put to rest there. However, what Defendant is likely getting at, is that because "shopkeeper's privilege inherently provides a defense even when there are threats of physical force," [and] "Best Buy . . . only used [purportedly] reasonable threats of force in the event

that Plaintiff attempted to escape," *Def's Reply To Ptf's Response To Def's MSJ at pages 10-11,* Defendant's detention of Plaintiff was carried out "in a [purportedly] reasonable manner." The problem with such a position is this: threats [implicit *or* explicit] made to "jump" somebody **CLEARLY AND INDISPUTABLY EXCEED** the "force necessary to prevent escape or to prevent loss of property." *Cruz v. Johnson,* 823 A.2d 1157, 1160 (R.I. 2003). **"Jumping" a person entails physically, *often brutally* attacking them, without regard for life or limb.** No merchant would *ever* resort to using such crude and violent tactics just to "prevent escape or . . . loss of property." Rather, *[and only if the situation called for it],* a merchant might say something like, "if necessary, we'll use physical force to prevent you from escaping!" It would *never* make ***actual, unrestricted, disproportionate, egregious*** threats to "jump" the person. Most importantly here, is that **Plaintiff didn't even exhibit signs calling for the use [let alone threatened use] of physical force in the first place, during the encounter.** He even *told* the employees that he was not interested in being violent with them. *See PCMSJ Exhibit #1 at timestamps 0:57 ("I'm not gonna touch you, man..."), and 2:06 ("Well I'm not touching you.").* Thus, **even the making of such physical threats** [let alone threats to "jump"] was completely unnecessary for the employees to make during their confrontation with Plaintiff. As such, the Court should **REJECT** Defendant's wholly baseless arguments that it had "shopkeeper's privilege" to lawfully detain Plaintiff that day, including that it purportedly detained him "in a reasonable manner," and **GRANT** Plaintiff's C-MSJ.

III. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

In its next argument section, Defendant claims that "Plaintiff created an intentional sting whereby he would cause employees of shop owners such as Best Buy to think he stole and cause them to detain him." *Def's Response To Ptf's C-MSJ at page 8.* However, as previously discussed, such a statement, once again, is a **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). *Same goes for the next statement,* that "On the day of the subject incident, he then executed his sting once again,

successfully causing a Best Buy employee to believe he stole." *And the next statement,* that "Plaintiff intended that the Best Buy employees think he stole from the store." *And the next statement,* that "he wants others to believe he is a thief." **SERIOUSLY,** when is Defendant going to actually DESCRIBE, ***with real, tangible, meaningful, non-contradictory, non-hearsay, non-conclusory words,*** precisely **HOW** Plaintiff "caused employees of shop owners such as Best Buy to think he stole," "caused a Best Buy employee to believe he stole," "intended that the Best Buy employees think he stole," and "wants others to believe he is a thief." *Plaintiff is still waiting for this.* Meanwhile, Defendant **doesn't even dispute** that it made *numerous* implicit **and** explicit accusations of theft *all throughout Plaintiff's detention,* but whereby because it lacked shopkeeper's privilege for its actions, it made such accusations **"with knowledge that they were false, or with reckless disregard for whether they were true or false."** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not defame Plaintiff, *per se,* as a thief, and **GRANT** Plaintiff's C-MSJ.

IV. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

In its final argument section, Defendant claims that "Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to 'jump' him they merely did not correct him when he used the word 'jump.'" *Def's Response To Ptf's C-MSJ at page 10.* However, **nowhere in the law does it state that "implicit" threats do not qualify as having the same capacity to be as damaging to the listener as "explicit" threats might.** *At the very least, this sort of issue would be left for the jury to decide, as it could be interpreted to be a dispute over what constitutes a fact in the matter.* Next, Defendant claims that "the subject incident was a sting [Plaintiff] was carrying out." However, as previously discussed, such a statement is *yet another* **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Finally, Defendant claims that "if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the

detention and he did not." However, as previously discussed, not only has Defendant **utterly failed to establish** that Plaintiff ***was even a customer of it*** that day, for which he might have otherwise had "measures [available to him] to end the detention," such measures ***aren't even legal obligations of patrons in the first place.*** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not assault Plaintiff, and **GRANT** Plaintiff's C-MSJ.

CONCLUSION

Plaintiff has satisfied *each and every* element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has ***STILL*** failed to provide this Court with *literally any* tangible, admissible, **non-contradictory, non-hearsay, non-conclusory** facts to *even begin to* support its **naked and unfounded** affirmative defense of "shopkeeper's privilege" to have otherwise lawfully detained him with that day.

Moreover, regarding the whole idea that "receipt showing" is some sort of "escape path" patrons must supposedly not "fail to avail themselves of," this Court should be mindful that: "Courts may not impute their own meaning to otherwise clear statutory language, nor assume a legislative intent that would vary the words used by the General Assembly." *People v. Gholston,* 26 P.3d 1, 7 (Colo. App. 2001). Then again, it ***STILL*** has yet to be shown that Plaintiff's case *has anything to do with receipts*.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

Respectfully submitted on this, the 28th day of October, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Case No. **2023CV226**
PRTDRTPCMSJ Exhibit #1.01

5 Ways to Shop Sustainably at Best Buy

By Best Buy November 22, 2017



As you're browsing for the latest tech this holiday season, you can feel good about your purchases while helping to protect the environment. Here are five tips for shopping sustainably at Best Buy.

1. Look for ENERGY STAR®

At Best Buy, we're committed to providing our customers with a wide assortment of sustainable products, including ENERGY STAR electronics and appliances. These products are certified to use less energy than standard models. That helps you save money on your utility bill and protect the environment. Look for the ENERGY STAR logo on the sign next to products in stores or filter by ENERGY STAR on BestBuy.com. Also be sure to check out rebates from your local utilities on ENERGY STAR-certified products.

2. Buy paper gift cards

As you're browsing the gift card selection at Best Buy, check out the "Go Green" card. It's made of paper and can be recycled. By using paper, we help reduce the amount of plastic that's thrown out. That's a win for you and a win for Earth.

Case No. **2023CV226**
PRTDRTPCMSJ Exhibit #1.02

3. Recycle unused electronics

Bring in your devices that have been sitting in the closet for months and dispose of them responsibly through Best Buy's recycling program. Some of your electronics might qualify for our trade-in program, where you can exchange them for a Best Buy gift card (don't forget to Go Green!). Use our Trade-In estimator to learn what your old devices might be worth or see current promotions to learn how you can save on new tech by recycling.

4. Shop online

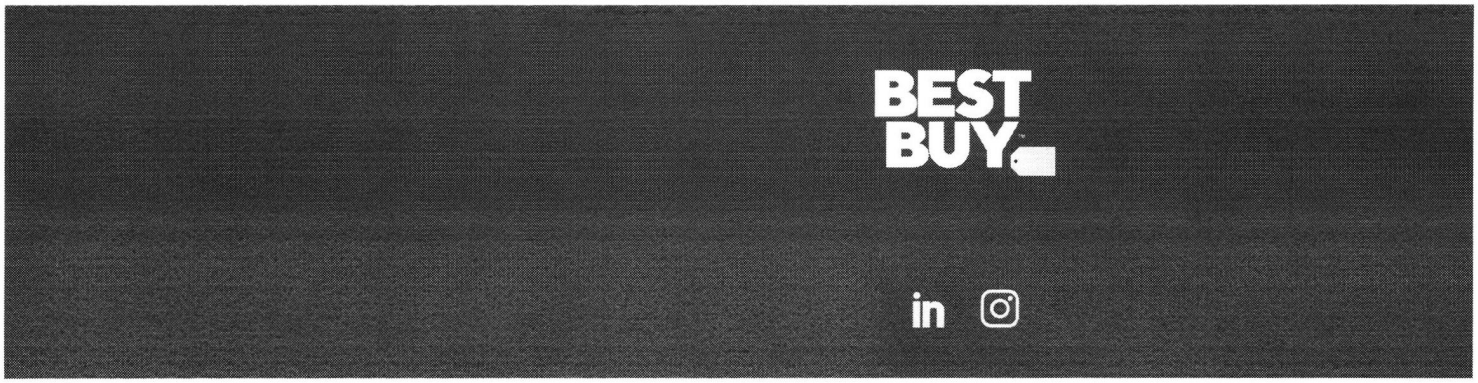
Shopping on BestBuy.com will help you save time and gas money, and cut vehicle emissions. So snuggle in at home and buy that laptop you've had your eye on without weaving through rush-hour traffic to a store. And don't forget, Best Buy offers free shipping on everything from now until Christmas Day. There's no minimum purchase amount and no membership fee. Learn more about our holiday shipping here.

5. Request a digital receipt

When you shop at Best Buy, you now have the option to have your receipt emailed to you instead of being printed on paper. You'll feel good about it, and so will the trees you saved.

For more Best Buy for Good news, follow @BestBuyCSR on Twitter.

t



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FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 28 P 12:45
DATE FILED
October 28, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S SECOND AFFIDAVIT	

COMES NOW that William Montgomery, proceeding *pro se*, respectfully submits to the Court the following Affidavit:

1. My name is WILLIAM MONTGOMERY. I am a United States citizen, and a permanent resident of Denver, CO. I am over the age of 21 years, and am of sound mind. I am the Plaintiff in this action, and I have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify competently to these particular facts and matters. I submit this Affidavit in support of my Reply to Defendant's Response to my Cross-Motion for Summary Judgment.

2. My credit and debit card agreements allow me to give others full authorization to use my credit and debit cards – including my First Tech FCU credit card ending in 0527 – on my behalf, in order to make purchases for me, both at "brick and mortar" stores, and online.

3. For at least five years now, I have observed that Best Buy automatically associates my Best Buy account with whatever credit or debit cards I choose to link to it, in that whenever a linked credit or debit card of mine is swiped at one of their registers – either by me or by anybody else whom I authorize to conduct business on my behalf – Best Buy reflects the associated sale in their system [and any receipts, either emailed or printed, also reflect that particular association].

4. For at least twenty years now, I have observed that Best Buy provides multiple checkout registers throughout its stores, including the store located at 9369 Sheridan Blvd, Westminster, CO, 80031, whereby customers can purchase at those registers items gathered from anywhere in the store. From my recollection, I have observed there to be registers located in the computer, television, home entertainment, cell phone, and home appliance sections of the stores.

5. About five years ago I opted to have all Best Buy receipts emailed to me upon completion of making a purchase at any and all of their stores. When somebody else whom I have authorized to use a credit or debit card of mine that is linked to my Best Buy account makes a purchase on my behalf, I receive the same email in my inbox as if I had made the purchase myself.

FURTHER AFFIANT SAYETH NAUGHT.

I, WILLIAM MONTGOMERY, do hereby declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed on this, the 28th day of October, 2024.

/s/ William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **PLAINTIFF'S SECOND AFFIDAVIT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

/s/ William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED October 28, 2024 10:44 AM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Motion for extension of time to file ptfs reply to defs response to ptfs cross msj

The motion/proposed order attached hereto: GRANTED.

The extension is granted to October 31.

Extension of case deadlines does not constitute good cause for continuance of trial. The parties must be prepared to try the case as scheduled.

Issue Date: 10/28/2024

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

FILED
COMBINED COURT
JEFFERSON COUNTY

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	2024 OCT 21 P 4:00
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
MOTION FOR EXTENSION OF TIME TO FILE PTF'S REPLY TO DEF'S RESPONSE TO PTF'S CROSS-MSJ	

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, respectfully requests that this Court grant him an extension of time to file his REPLY to Defendant's RESPONSE to his CROSS-MSJ in this matter, so as to allow him seven (7) additional days to file it within [thus creating a new filing deadline for it of October 31, 2024]. In support thereof, Plaintiff states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with counsel for Defendant regarding this MOTION. Defendant indicates that it opposes a one week extension through Thursday, October 31, but that it does not oppose "an extension through Monday, October 28."

FACTUAL BACKGROUND

1. On October 10, 2024, Defendant filed a RESPONSE to Plaintiff's CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. As such, the deadline for Plaintiff to file his REPLY to said RESPONSE is currently set for October 24, 2024.

2. Defendant's RESPONSE includes a plethora of new legal arguments, as well as numerous never-before-alleged factual allegations, that require Plaintiff to spend a greater than usual amount of time in order to fairly and adequately address.

3. On October 23, 2024, Plaintiff has a trial in *Montgomery v. Brighton Radiator & Muffler, LLC* that he is currently preparing for.

4. On October 28, 2024, Plaintiff has a REPLY to a Defendant's RESPONSE to his OBJECTION TO THE MAGISTRATE JUDGE'S REPORT & RECOMMENDATIONS due in *Montgomery v. Lore,* that he is also currently preparing.

5. Plaintiff has numerous financial bills and obligations that he is still currently working on affording, that come due mostly toward the end of each month.

6. Plaintiff still suffers from an extremely rare and debilitating medical condition called Abdomino-Phrenic Dyssynergia, which is a challenging gastrointestinal disorder that renders Plaintiff chronically malnourished, dehydrated, and sleep deprived – to the point where he is only able function at about a 33% operating capacity when compared to normal, healthy people. *Specifically, he is forced to spend literally four to six hours per day eating just one meal (all his body can handle), then several more hours thereafter laying down in various positions so as to facilitate the escape of air from his body that no longer expels naturally.* Thus, between his legal, financial, personal, and familial obligations, Plaintiff requires a great deal more time to juggle and keep up with each accordingly.

Attachment to Order - 2023CV226

7. Defendant, a $20 billion dollar company, with the help of a full-scale attorney firm, was granted a one week extension to file its REPLY to Plaintiff's RESPONSE to its MOTION FOR SUMMARY JUDGMENT. Plaintiff is but a single, medically disabled, *pro se* litigant.

8. This is the final document to be entered between both Plaintiff's and Defendant's MOTIONS FOR SUMMARY JUDGMENT, which therefore needs to be carefully and thoroughly drafted in order for the Court to make a fair and potentially final ruling in this particular matter.

9. Plaintiff has not made any prior requests for extensions of time to specifically file his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT, so he does not believe the Defendant or Court would be prejudiced if one were granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** his MOTION FOR EXTENSION OF TIME TO FILE, thereby permitting him seven (7) additional days to file his REPLY to Defendant's RESPONSE to his CROSS-MSJ.

Respectfully submitted on this, the 21st day of October, 2024.

William Montgomery

William Montgomery

Attachment to Order - 2023CV226

CERTIFICATE OF SERVICE

I hereby certify that on this, the ~~18th~~ 21st day of October, 2024, the foregoing **MOTION FOR EXTENSION OF TIME TO FILE PTF'S REPLY TO DEF'S RESPONSE TO PTF'S CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Attachment to Order - 2023CV226

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 29, 2024 11:40 AM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO EXCEED PAGE LIMITATION	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response in Opposition to Plaintiff's Motion to Exceed Page Limitation, as follows:

1. Plaintiff has previously requested leave to exceed page limitations for briefings when he filed his opposition to Defendant's motion for summary judgment, and Defendant did not oppose.

2. Plaintiff did not use his page count wisely when Defendant permitted an excess page count, and Plaintiff used the excess pages to assert incoherent and often impertinent arguments.
3. Plaintiff likewise did not make good economical use of his page count with his Reply Brief for his cross motion for summary judgment.
4. Despite his ample experience in litigating false imprisonment claims and the shopkeeper's doctrine, Plaintiff is making it a pattern – not the exception – to flout court deadlines, page limitations, and procedures.
5. Furthermore, Best Buy cannot say that Plaintiff's conferral on this Motion was conducted in good faith under C.R.C.P. 121 § 1-15, as Plaintiff resorted to *ad hominem* attacks on undersigned counsel during conferral. **Ex. A.**
6. Plaintiff's lengthy reply brief is based in part on attempts to mislead the Court and/or evade his discovery and disclosure obligations that will likely be the subject of forthcoming motions under Rule 12(f) and Rule 37.

Wherefore, for the forgoing reasons, Best Buy respectfully requests that this Court deny Plaintiff's request to exceed the page count for his Reply Brief.

Filed on October 29, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2024, a true and correct copy of the foregoing **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO EXCEED PAGE LIMITATION** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

From: zoinbergs@gmail.com
To: Stephanie E. Boutsicaris
Cc: Lori K. Bell; Abigail Spohn
Subject: Re: Montgomery v. Best Buy ~ MTEPL In Reply To Response To C-MSJ
Date: Monday, October 28, 2024 10:00:49 AM

DATE FILED
October 29, 2024 11:40 AM

Yeah, except that your employee's nine sentence affidavit is 1000000000000% frivolous, and really did require eight literal pages to rebut (you'll see soon enough). Counting our chickens before they hatch again, are we?

Regarding your response to my facts and your new additional facts, that really did take 12 more pages, too.

And what about my legal arguments? Do they deserve no attention, either? No approval for them without reading them yet either?

Would you like to sample my reply to confirm your opposition?

Nevermind, whatever, I don't care what you think. I'm just conferring as per Court requirements. Honestly, you've been nothing but a petty, immature, juvenile, law violating, felony attempting to influence, supremely intellectually dishonest sleasebag of an attorney firm right from the start. I really don't expect much from you guys these days.

I will note your position, and file my documents accordingly.

Thanks,

William

On Mon, Oct 28, 2024, 9:12 AM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:

> When you previously exceeded the page count for a brief, the excess pages were not used wisely. I see no reason that eight pages should be required to rebut a nine-sentence affidavit. We oppose.
>
> Thank you,
>
> **Stephanie E Boutsicaris**
> Attorney
> Direct: 303.592.6684
> Email: sboutsicaris@mac-legal.com
>
> **Montgomery | Amatuzio**
>
> 4100 E. Mississippi Ave, 16th Floor
> Denver, Colorado 80246

EXHIBIT A

Main: 303.592.6600
Fax: 303.592.6666
http://www.mac-legal.com

Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.

From: zoinbergs@gmail.com <zoinbergs@gmail.com>
Sent: Monday, October 28, 2024 5:28 AM
To: Lori K. Bell <lbell@mac-legal.com>; Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com>
Cc: Abigail Spohn <Aspohn@mac-legal.com>
Subject: Re: Montgomery v. Best Buy ~ MTEPL In Reply To Response To C-MSJ

Greetings,

Okay, I have finished composing my REPLY to your RESPONSE to my C-MSJ. However, it took a total of **28 pages** to complete.

- A total of **20 pages** were required to fairly and adequately REPLY to your RESPONSE to my FACTS plus your own ADDITIONAL FACTS
    - **8 pages** alone of that **20 pages** were required to fairly and adequately address Mahmoud's *never-before-offered* affidavit.
- **8 pages** were required for me to provide legal argument in REPLY to your legal argument RESPONSE.

As such, I am seeking to have granted a MOTION TO EXCEED PAGE LIMITATION by **thirteen (13) additional pages.** Do you oppose?

I am also trying to file this as soon as possible, before I go to bed on my opposite schedule.

So if you could kindly respond to this email **as soon as humanly possible**, it'd be much appreciated.

EXHIBIT A

Thanks,

William

On Fri, Oct 25, 2024 at 3:54 PM <zoinbergs@gmail.com> wrote:

> Greetings,
>
> I'm not done preparing it yet, but my Reply to your Response to my C-MSJ is getting pretty long. Im at 19 pages, having just completed all the factual responses and replies, meaning I'm at the argument section now. Unfortunately, having to fairly and adequately reply to your never-before-offered affidavit took over 12 pages alone. Ultimately, no reasonable person could expect a person in my position to spend less than at least 25 pages on this thing.
>
> As such, I am seeking to file a motion to exceed page limitation by (at least) 10 pages. I'll know the exact page amount by Sunday I'm hoping. I just wanted to get your input now in case you are unreachable over the weekend (alternatively, please let me know if you WOULD be reachable on Sunday so that I can request a more accurate extension page amount then, if I end up with more, or less, than 10 additional pages).
>
> In the mean time, in case I can't get ahold of you this weekend, would you oppose a 10 page extension request?
>
> Thanks,
>
> William

EXHIBIT A

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED October 29, 2024 4:09 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Motion to exceed page limitation regarding ptfs reply to defs response to ptfs cross msj

The motion/proposed order attached hereto: GRANTED IN PART.

It appears Plaintiff does not have the desire to put in enough work to make the document shorter.

Plaintiff may exceed the page limit by five pages.

Issue Date: 10/29/2024



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 28 P 12:46

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
MOTION TO EXCEED PAGE LIMITATION REGARDING PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ	

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, hereby moves this Court for an exception to C.R.C.P. Rule 121 § 1-15(1)(a) pertaining to page limitations, so as to permit him **thirteen (13) additional pages** for his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it opposes the relief sought herein.

ARGUMENT

1. On October 10, 2024, Defendant filed a RESPONSE to Plaintiff's CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. Providing that the Court **GRANTS** his

most recent MOTION FOR EXTENSION OF TIME TO FILE, the deadline for Plaintiff to file his REPLY to said RESPONSE will be either October 28, 2024 or October 31, 2024.

2. C.R.C.P. Rule 121 § 1-15(1)(a) limits the number of PAGES that may be offered in a REPLY to a RESPONSE to a CROSS-MSJ, to 15 pages.

3. Defendant's RESPONSE includes **an absolute plethora** of legal arguments that it raises – by way of incorporating ***all*** previous orders entered against Plaintiff in ***all*** previous cases that have ***ever*** been filed by him against a wholly different merchant – and to which includes legal arguments surrounding the concepts of: *freedom of movement, unreasonable risk of harm, escape, shopkeeper's privilege, false imprisonment, defamation, and assault.*

4. Moreover, Defendant has now submitted a ***never-before-offered*** affidavit of employee Mahmoud Abu-Shaweesh, that it did not include with its initial MSJ, that raises ***even more*** factual based issues that require Plaintiff to address in his REPLY. Specifically, Mahmoud's affidavit has required Plaintiff to spend **eight (8) pages** alone to fairly and adequately address.

5. In his REPLY, not only must Plaintiff adequately address all of the matters raised in Defendant's RESPONSE, he must also present his own supporting facts and legal arguments.

6. Specifically, Defendant's RESPONSE has required Plaintiff to spend **twenty (20) pages** total to fairly and adequately address each of Defendant's RESPONSES To Plaintiff's FACTS in addition to its own ADDITIONAL MATERIAL FACTS. [Thus, Plaintiff has only spent **eight (8) pages** of his REPLY on legal arguments in reply to Defendant's response arguments].

7. This is the final document to be entered between both Plaintiff's and Defendant's MOTIONS FOR SUMMARY JUDGMENT, which therefore needs to be carefully and thoroughly drafted in order for the Court to make **a fair and potentially final ruling** in this particular matter.

8. Plaintiff has not made any prior requests to exceed the page limitation of his REPLY, so he does not believe Defendant or this Court would be prejudiced if one were granted.

Attachment to Order - 2023CV226

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **GRANT** this here motion, so as to permit him to EXCEED THE PAGE LIMITATION set forth in C.R.C.P. Rule 121 § 1-15(1)(a) by **thirteen (13) additional pages** when REPLYING to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 28th day of October, 2024.

William Montgomery
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Denver, CO 80210
(970) 412-5463
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **MOTION TO EXCEED PAGE LIMITATION REGARDING PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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William Montgomery

Attachment to Order - 2023CV226

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 OCT 31 PM 3:50
DATE FILED
October 31, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

PLAINTIFF'S *AMENDED* REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff, proceeding *pro se*, hereby submits to the Court his AMENDED REPLY to Defendant's RESPONSE to his CROSS-MSJ, and in support thereof, states as follows:

INTRODUCTION

Defendant has frantically supplied this Court with nothing but **purely conclusory statements, categorically inadmissible hearsay,** and **blatant contradictions** to support its utterly unsubstantiated position that it is somehow not liable for its actions in the matter. However, *as will quickly be seen,* **literally nothing** that Defendant has said or submitted has any merit *whatsoever,* while Plaintiff has provided *more than sufficient* evidence and argument to fairly and reasonably **GRANT** his C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S UNDISPUTED MATERIAL FACTS

To the extent that Plaintiff fails to respond to every allegation in Defendant's

RESPONSE brief, Plaintiff denies any allegations not explicitly admitted herein.

1. In a desperate attempt to refute *Fact #1* of Plaintiff's Undisputed Material Facts, Defendant has now submitted to the Court a series of receipts, purportedly pulled from its records, one of which *(Def's Exhibit N, pages 18-19)* purportedly establishes that Plaintiff "was in the store," "at 2:20pm," and "made a purchase of Chromecast with Google TV." ***However,*** said receipt **DOES NOT ACTUALLY ESTABLISH** that any of said "facts" to which Defendant negligently argues are true. First, a receipt showing that a particular purchase is associated with a particular account *only establishes that **some** person made that purchase, not actually **who** made it.* Therefore, **anybody who Plaintiff provides authorization to use his credit and debit cards on his behalf,** *see Plaintiff's Second Affidavit (herein "PSA") at ¶ 2,* could have *just as easily* made the associated purchase that day, as Plaintiff.[1] Next, Defendant ***never once*** identified what Plaintiff held in his hands [or had in his pockets] that day, either. *See PCMSJ Exhibit #1 at timestamp 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave.").* Therefore, it is still ***wholly unknown*** if whatever Plaintiff possessed was indeed a "Chromecast with Google TV." Next, Defendant's only purported "evidence" now supplied in this matter – Mahmoud Abu-Shaweesh's affidavit – is **completely bereft** of any mention whatsoever that the employee had observed Plaintiff pay for any particular item [i.e. a "Chromecast with Google TV"] at any particular register. Finally, ***and of the utmost critical importance,*** the entirety of Defendant's Exhibit N is **CATEGORICALLY INADMISSIBLE HEARSAY,** as it fails to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). *See also C.R.C.P. 56(e),*

1 Best Buy has an electronic transaction system in place whereby if a particular credit or debit card is used to pay for a purchase, and that credit or debit card is already linked to a registered Best Buy account, that purchase is then automatically associated with that particular account [and any receipt, either emailed or printed, is then drafted to reflect that particular association]. As such, the receipt **only** shows the associated Best Buy account holder's name on it, **not** the actual person who swipes the credit or debit card (which therefore could be ***anybody*** who the account holder authorizes to swipe it on their behalf). *See PSA at ¶ 3.*

CRE 803(6), and CRE 902(11). Therefore, Defendant has ***STILL*** failed to establish that Plaintiff "was [even] in the store" that day of November 25, 2022, ***let alone*** that he "made a purchase of Chromecast with Google TV." As such, the Court should find in favor of Plaintiff on *Fact #1*.

2. For the same reasons as above, the Court should find in favor of Plaintiff on *Fact #2.*

3. Defendant admitted to Plaintiff's *Fact #3*. Thus, there is no genuine issue of fact.

4. Defendant attempts to refute Plaintiff's *Fact #4* by submitting to the Court an affidavit prepared by Mahmoud Abu-Shaweesh. This affidavit, however, **blatantly contradicts** Plaintiff's video evidence in the record – namely his pen camera footage of the event. *See PCMSJ Exhibit #1.* "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris,* 550 U.S. 372, 380 (2007).

First, Mahmoud claims that he "observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store." *Def's Exhibit P at ¶ 4.* However, this claim **blatantly contradicts** *numerous* facts already established by Plaintiff's video. One, Mahmoud states that Plaintiff was "wait[ing] for us to come out and get 'em." *PCMSJ Exhibit #1 at timestamp 8:08.* Here, Mahmoud's use of the term "wait[ing]" indicates that he did not **follow** Plaintiff out of the store after purportedly personally observing him steal some JLab headphones/earbuds "immediately" prior to.[2] This **strains credulity** for an Assistant Manager of a $20 billion dollar multinational company to do. Such a high-ranking employee would presumably be aware of his own loss prevention policy which customarily requires a merchant [pursuant to shopkeeper's privilege] to maintain **uninterrupted** visual contact of a suspected shoplifter in order to [lawfully] detain them. Moreover, the act of an assistant manager purportedly ***personally*** observing a suspect steal, ***not*** *immediately follow him out of the*

2 It is actually ***wholly irrelevant*** whether Plaintiff was "waiting on the side of the Best Buy building" for *less than a minute* [as Defendant argues] or *five full minutes* [as Plaintiff argues], as the term "waiting" unambiguously refers to an act that is **mutually exclusive** from the act of "being followed out by somebody."

store, but then all of a sudden, mere moments later, ***change his mind entirely*** *to then meet up with the suspect right outside the store*, **strains even more credulity.** Two, throughout his entire 12 minute confrontation with Plaintiff, Mahmoud only mentions wanting to recover the contents of Plaintiffs pocket ***three whole times.*** See *PCMSJ Exhibit #1 at timestamps 0:28, 10:22, and 10:48.* Meanwhile, he mentions wanting to recover what Plaintiff held in his hands **a whopping 31 times.** *See PCMSJ Exhibit #1 at timestamps 0:00, 0:02, 0:04, 0:05, 0:10, 0:11, 0:52, 1:01, 1:13, 1:44, 1:48, 2:01, 2:10, 2:16, 2:30, 2:40, 2:45, 2:51, 3:34, 3:51, 4:38, 4:53, 6:00, 8:51, 9:17, 10:11, 10:19, 10:47, 11:31, 11:43, and 12:08.* Thus, it **strains credulity** that an assistant manager would be ***so much more interested*** in recovering merchandise that he admittedly [by way of his own affidavit] ***did not*** observe Plaintiff walk out of the store with, than merchandise that he purportedly ***did*** observe him walk out with.[3] Indeed, Mahmoud even began his conversation with Plaintiff by using the word "it" [a singular term] to describe what he wanted to recover [i.e. what he presumably noticed Plaintiff holding in his hands upon first confronting him], **which meant that he wasn't even interested in the contents of Plaintiff's pocket** until later on in the conversation. *See PCMSJ Exhibit #1 at timestamp 0:05.* Then, when Mahmoud finally ***does*** mention Plaintiff's pocket, he only uses the word "too" to describe its contents, **which meant that such contents weren't even the primary reason for the confrontation** in the first place. *See PCMSJ Exhibit #1 at timestamp 0:28.* **This is just not the typical, believable, *or even plausible* behavior of an assistant manager** who purportedly *personally* observes a shoplifting suspect steal something from its store. Three, throughout Plaintiff's entire 12 minute detention, Mahmoud ***never once*** mentions to him that he observed him place something [or things] into his pocket. It **strains credulity** that an assistant manager would not let a shoplifting suspect know right away how surely he got caught, especially when another employee freely offers a similar [utterly unsubstantiated of course] explanation. *See PCMSJ Exhibit #1 at timestamp 4:46.*

3 Most shockingly here, as the video incontrovertibly shows, is that Mahmoud **didn't even bother to use the word "pocket" for nearly ten consecutive minutes of the encounter.** *See PCMSJ Exhibit #1 from timestamp 0:28 to 10:22.*

Four, Mahmoud, **by way of his very own captured statements**, ***already admitted*** that he didn't *even remotely* know the identity of *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets]. *See PCMSJ Exhibit #1 at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Considering that Plaintiff's video incontrovertibly shows that he ***never once*** handed anything held in his hands over to Mahmoud, his fellow employees, or the police [let alone emptied his pockets in front of them], Mahmoud never learned identity of Plaintiff's possessions, and therefore, **would have never identified them as "JLab headphones/earbuds."** Moreover, it **strains credulity** that Mahmoud would have identified Plaintiff's possessions as "JLab headphones/earbuds" *from afar,* either, by way of having purportedly observed him "on the store security video" as he claims next in his affidavit. As such, the entirety of ¶ 4 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that he "observed the same activity on the store security video." *Def's Exhibit P at ¶ 5.* First, Plaintiff was told during his detention that Best Buy had ***already*** [purportedly] observed him "on video" shoplifting from the store. *See PCMSJ Exhibit #1 at timestamp 4:46.* Yet, Mahmoud claims [in his affidavit] that a) he "observed [Plaintiff] remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," b) he observed Plaintiff, "as [he] was exiting the store, [be] asked by a loss prevention employee to show his receipt, which he declined to do," and c) he "exited the store to request that [Plaintiff] return the product from his pocket." *Def's Exhibit P at ¶¶ 4 through 6.* In other words, if Mahmoud ***really did*** "observe Plaintiff steal something, exit the store, and then [under Defendant's version of the event, directly thereafter] confront him outside about it," **he would have never had time to go review any security video footage of the same** [that again, was *already*

claimed to have been purportedly reviewed by the store ***prior to*** the confrontation].[4] This leaves Mahmoud with but one remaining logical possibility: that he had [purportedly] "observed the same activity on the store security video" ***AFTER*** he and his fellow employees ended their confrontation with Plaintiff. But then this scenario begs an even bigger question: *why on earth were the police never contacted?* **EVER.** As Plaintiff showed both in his REPLY to Defendant's MSJ and in his own C-MSJ, "Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store." *Ptf's Response To Def's MSJ at ¶ 44; Ptf's C-MSJ at ¶ 24.* **Defendant doesn't even dispute this fact.**[5] *See Def's Reply To Ptf's Response To Def's MSJ at ¶ 24.* Indeed, Defendant even claims [and Plaintiff doesn't dispute] that "Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols." *Def's Response To Ptf's C-MSJ at ¶ 24.* Therefore, **Defendant certainly had an *active and ongoing* relationship with the police at the time, and would have surely called them** *within the SEVERAL HOURS it had remaining that day*, to **EVENTUALLY** turn over said purported "video footage" of a shoplifter that it had purportedly ***positively caught red handed.*** Yet *not one single* "call for service" was made that day regarding Plaintiff. **EVER.** One could only presume that such would be a clear violation of Best Buy's loss prevention policy [that an assistant manager, such as Mahmoud, would presumably have knowledge of and be following]. As such, because the statement contradicts the record, *and is utterly illogical in its own right,* the entirety of ¶ 5 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that "As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do." *Def's Exhibit P at ¶ 6.*

4 Indeed, it would have been ***just as preposterous***, under Plaintiff's version of the event, for Mahmoud to have [purportedly] observed Plaintiff steal something, *run to the security office within the five minutes that Plaintiff had been waiting on the side of the building* [to go view him on video], but then *run back outside after viewing the video* [to then personally confront him about it]. It **strains serious credulity** that a merchant would need to go view something on video, *from afar*, **right after** they *already* purportedly *personally* saw it happen *right in front of them* [nor would they likely have sufficient enough time to perform the research necessary *to even locate* the suspect within the video system].

5 Interestingly, Defendant contradicts itself by vaguely denying this fact in its *Response To Ptf's C-MSJ at ¶ 24.* However, it then fails in said *Response* to lay any foundation to support said denial, **so such a denial holds no weight.**

Here, because this statement refers to *what some other employee supposedly said*, the entirety of this paragraph is **categorically inadmissible hearsay.** "Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination." *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003). *See also C.R.C.P. 56(e).* Moreover, such a statement is **blatantly contradictory** in its own right, in that a loss prevention employee, *claimed by Mahmoud himself to have been "posted up" at the store's exit,* **would not have had the capacity to witness Plaintiff purportedly "remove two boxes of JLab headphones/earbuds from the shelf [and] place them in his pocket" for that employee to even know, *in the first place*, whether or not to "ask Plaintiff to show his receipt for them."** *Employees just don't ask random people exiting a store to see receipts for whatever random, unidentified contents may exist inside their random pockets / purses / etc.* Indeed, it **strains credulity** that a "loss prevention" employee ***would even bother asking for a receipt at all at that point,*** if they alternatively ***did*** personally observe a shoplifter steal something *right in front of them.* They would likely just jump right to demanding that the person give the product back. As such, because it is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record, the entirety of ¶ 6 of Mahmoud's affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Finally, Mahmoud claims that "Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery." *Def's Exhibit P at ¶ 9.* Here, *even this* statement **blatantly contradicts** the record, in which **AN ABSOLUTE PLETHORA** of claims were ***already*** made during the confrontation – both by Mahmoud *and* by his fellow employees – that a) police were ***already*** contacted ***prior*** to Plaintiff's detention, and b) Plaintiff ***would be actively detained in the mean time*** until they arrived [as is typical and customary to have happen when police are called out to an active shoplifting detention]. *See PCMSJ Exhibit #1 at timestamps 0:13, 0:15, 1:05, 1:33, 1:44, 1:48, 2:51, 3:17, 4:46, 5:11, and 8:51.* Of course, the police **were never actually contacted,** *in the first place,* prior to Plaintiff's detention,

let alone even later on THAT ENTIRE DAY after Plaintiff was released [and Defendant doesn't even dispute this]. So *even that* portion of Mahmoud's statement, "that police had been contacted," has no truth to it. *See PCMSJ Exhibit #2.* As such, the entirety of ¶ 9 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Ultimately, it appears that Defendant, having **gotten caught** failing to perform a lawful detention of Plaintiff, thought that it could "coach" some employee into producing some "affidavit" for it that might otherwise "save" it from liability. But such affidavit, *having been loaded up with what looks to be quite literally everything the employee could possibly think of to conjure up justification for its actions,* actually produced ***nothing more than lies*** premised on **categorically inadmissible hearsay** and **blatant contradictions** instead. Thus, the Court should find in favor of Plaintiff on *Fact #4.*

5. Defendant admitted that "The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud." Thus, there is no genuine issue of fact on that particular claim. However, Defendant attempts to refute Plaintiff's remaining claim – that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" – by pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #5* that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" [or by any other Best Buy employee, for that matter, that day].

6. Defendant admitted to Plaintiff's *Fact #6.* Thus, there is no genuine issue of fact.

7. Defendant attempts to refute Plaintiff's *Fact #7* by once again pointing to a series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #7.*

8. Defendant attempts to refute Plaintiff's *Fact #8* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh, and its series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record, and the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, neither cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #8*.

9. Defendant admitted to Plaintiff's *Fact #9*. Thus, there is no genuine issue of fact.

10. Defendant attempts to refute Plaintiff's *Fact #10* by pointing to *Exhibit #1* of Plaintiff's C-MSJ.[6] However, Defendant's denial is but one word long, purely generic in nature, and points to no specific timestamps in the video that otherwise clarify its position. **As such, Defendant's general denial holds no weight.** Thus, the Court should find in favor of Plaintiff on *Fact #10*.

11-19. Defendant admitted to Plaintiff's *Facts #11 through #19*. Thus, there is no genuine issue of fact regarding any of these particular facts.

20. While Defendant claims that it "can neither admit nor deny the allegation regarding the number of people Plaintiff counted," Plaintiff's video footage of the event speaks for itself. Thus, the Court should find in favor of Plaintiff on *Fact #20.*

21. Defendant attempts to refute Plaintiff's *Fact #21* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #21*.

22. Defendant attempts to refute Plaintiff's *Fact #22* by once again[7] pointing to its supplied

6 Interestingly, Defendant contradicts itself here by **NOT** later refuting Plaintiff's *Undisputed Material Fact #13,* which makes essentially the same claim – that "Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go)."

7 Elsewhere in Defendant's RESPONSE, it further addresses Plaintiff's *Fact #22. See Def's Response To Ptf's C-MSJ at page 8, footnote 6* ("Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets."). However, Plaintiff **DID** deny "that he placed something in his pant pockets." **He literally said so right there in his Undisputed Material Facts.** *See Ptf's C-MSJ at ¶ 21* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever**

affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #22*.

23. Defendant attempts to refute Plaintiff's *Fact #23* by claiming that "Plaintiff's allegations are statements of opinion rather than fact." However, Plaintiff has every right to establish facts – by way of producing an affidavit on the subject. Indeed, what Plaintiff claims to be aware or not aware of, is a "fact" like any other, that the Court can [and should] consider. Thus, the Court should find in favor of Plaintiff on *Fact #23*.[8]

24. Defendant attempts to deny Plaintiff's *Fact #24,* **but already admitted to it** in its *Reply To Ptf's Response To Def's MSJ at ¶ 44.* Thus, the Court should find in favor of Plaintiff on *Fact #24*.

25. Defendant attempts to refute Plaintiff's *Fact #25* by once again pointing to its series of receipts that it purportedly pulled from its records. However, as previously discussed,

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once 'concealed' anything in front of [let alone not in front of] anybody, ever, period.") *and ¶ 22* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever once placed into, or removed, anything** from any pant pocket in front of ***[LET ALONE NOT IN FRONT OF, as extrapolated from the previous fact]*** anybody, ever, period. Whatever was located in his pant pockets remained there **BEFORE,** throughout, and after his interaction with the Best Buy employees."). That is, such statements were not meant to be interpreted [read: twisted] to read that "Plaintiff didn't put anything in his pockets *when he thought somebody was looking* [but then he ***DID*** put something in his pockets *when he thought nobody was looking!*]." Rather, they were meant to be interpreted to read that "Plaintiff didn't put anything in his pockets, ***EVER, AT ALL,*** *throughout that day, after getting up, while out in public, both in front of* ***AND NOT IN FRONT OF*** *other people, whether he believed they were looking,* ***OR NOT.***") **Geez, does Plaintiff really have to spell this stuff out?** Nowhere in his lawsuit did he ever say something like: *"no one could have seen me place anything in my pant pockets."* That's nothing but a factual fabrication on the part of Defendant. ***SOOORRRRY*** *Plaintiff forgot to mention the phrase* ***"let alone not in front of"*** *he mentioned in Fact #21, when he drafted Fact #22 on the subject!*

8 Plaintiff actually knows of ***one*** "receipt" policy [if one could even call it that] to which Best Buy has made him aware of. *See PRTDRTPCMSJ Exhibit #1 at page 2, paragraph 5.* **Such a long-standing, environmentally-friendly, "email only" policy allows patrons of Best Buy stores to "request a digital receipt" upon completion of a transaction, *in lieu of having one be printed in the matter.*** However, this would obviously be of no help to Defendant, as under such circumstances [if we were to assume, *arguendo,* that Plaintiff was even a customer that day] it has ***STILL*** failed to provide any evidence, *whatsoever,* that Plaintiff was ever "provided a ***physical*** receipt" [for which he might have otherwise been "required to retain" as an Appellate Panel once impermissibly argued]. In other words, **not even the Appellate Panel could fault Plaintiff for requesting that such a "digital-only receipt" be issued to him,** that the very store at issue LITERALLY ENCOURAGES the issuing of, *that any employees posted up at the store's exit would also undoubtedly know gets regularly issued [and would likewise know inherently lacks the ability to be presented upon leaving].* ONCE AGAIN, though, ***it must be repeated that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.* Specifically, Defendant had no earthly idea, ***whatsoever,*** the nature or identity of *whatever* Plaintiff possessed that day [and whereby he could have *just as easily* possessed "**non-store** merchandise he had erroneously attempted to return to the wrong store"]. *See Ptf's C-MSJ Undisputed Material Fact #8.*

the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #25*.

PTF'S RESPONSE TO DEF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

26. Plaintiff DENIES that this asserted material fact is true. As previously discussed, the entirety of Defendant's Exhibit N is **categorically inadmissible hearsay.** As such, the Court should **REJECT** Defendant's proffered *Fact #26* when ruling on Plaintiff's C-MSJ.

27. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Here, Defendant seems to think that Plaintiff's YouTube video is some sort of *bona fide* taped confession. Yet, such video **utterly fails** to *even begin to* support ***any*** of the alleged "facts" to which Defendant negligently argues. Moreover, Defendant's *ad nauseam* attempt to defame Plaintiff as some "lawsuit scammer" holds no merit, either.[9] Plaintiff, *being literally no different than any other customer who shops in public while simultaneously knowing their rights,* is no more or less of a "secret shopper" than they could potentially be. **Clearly, Plaintiff is not alone with regards to the legitimate concerns he has developed over the years regarding unlawful bootstrapped detentions occurring of unreasonably suspected shoplifters for merely refusing to answer questions upon leaving stores directly after shopping.** *See PRTDMSJ Exhibit #14*. Are each and every one of the "receipt refusers" referenced in those news articles all "lawsuit scammers" executing "sting operations" just so that they can "sue for false arrest?" What an emphatic, laughable, **NO.**[10] Rather, like any other merchant, ***Defendant needs to stop scapegoating and victim-shaming those whom it unreasonably falsely imprisons,*** and own up to its transgressions. As such, the Court should

9 Funny how elsewhere in this case Defendant will cry out that Plaintiff has lodged *ad hominem* attacks against *it, **right after*** it has hypocritically lodged **one giant *ad hominem* attack against Plaintiff** [that he's a lawsuit scammer].

10 ONCE AGAIN, though, as mentioned in *Ptf's Response To Def's MSJ, **it must be repeated evidently forever that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

REJECT Defendant's proffered *Fact #27* when ruling on Plaintiff's C-MSJ.

28. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. As just discussed, Plaintiff's purported "modus operandi" **is not a legally cognizable argument.** It is a statement of opinion, rather than fact, and does not address that Defendant has ***STILL*** failed to provide this Court with **ANY** *actually admissible* evidence to legally justify its detention of Plaintiff for purportedly shoplifting from its store. Moreover, it can hardly be considered some *disingenuous* "modus operandi" for a police officer to set out a "bait car" for an unsuspecting car thief – because in the end, that officer is *technically* just parking his car, **just like any other car owner would,** thus rendering ***all*** car owners effective "bait car" owners.[11]

Next, there are PLENTY of things that "provoke suspicion," as Defendant claims, **but do not actually rise to the level of providing LAWFUL JUSTIFICATION yet to begin *actually detaining* a patron over.** For example, the patron in *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) walked out of the store with an untagged ascot around his neck. The existence of such an ascot, *being available for sale at that very store,* was certainly enough to "provoke suspicion" of the store employee who stopped him to investigate into its potentially stolen nature. However, the Court still held that "The absence of any indication that the merchandise was 'unpurchased' justified the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985).[12] The same holds true with regard to Plaintiff's purported "sting" operations, **in which he merely leaves**

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11 In other words, the whole point of a "sting" operation **is to *NOT* act or be different than any other person.** Therefore, Plaintiff's long running "sting" operation [if one could even call it that] **of being identical to every other shopper who uses whatever registers are available to them and who don't use plastic bags for environmental reasons** *is not a legally cognizable argument.* The only thing Plaintiff might do different is "refuse to cooperate" on his way out of stores, ***which is not a concrete enough justification yet to begin lawfully detaining a patron over.*** "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick,* 501 U.S. 429, 437 (1991). "[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment." *United States v. Wood,* 106 F.3d 942, 946 (10th Cir. 1997).

12 *See also Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996) where the Court held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [the patron] had stolen anything" where the store employee "never saw [the patron] anywhere in the store until they were walking out of the store.").

stores after shopping while likewise carrying out items in which there exists the same "absence of any indication that the merchandise is unpurchased." OF COURSE using whatever registers are available to him and not using plastic bags "provokes suspicion." **However,** such "suspicion" [read: hunches] **does not** provide *enough* suspicion **YET** to begin lawfully detaining a patron over.[13] Moreover, such "provoked suspicion" is something that the patron in *Coblyn v. Kennedy's Inc.* would have undoubtedly learned about. Does that then mean that said patron, having won his case and therefore gaining said knowledge of what unreasonably triggers detentions-purportedly-premised-on-shopkeeper's-privilege-but-not-actually-so, *can never shop at Kennedy's in the same way ever again?* **Hardly so.** Seriously, if Coblyn chose to go back and do the exact same thing again [that triggered his first lawsuit] *would he not be allowed to sue again should he happen to get unlawfully detained again?* Again, hardly so. **A false imprisonment is a false imprisonment, no matter how many times that it occurs [and no matter how much intuition a victim has that it may potentially happen, perhaps again, to them].** Thus, it is truly insulting that Defendant [and prior Courts] would attempt to distinguish Plaintiff from the patron in *Coblyn* **just because he has the intuition that he *might* be torted,** *just like the patron in Coblyn would have after having it happen to him.*[14]

Finally, on the topic of supposedly "failing to mitigate circumstances," the patron in *Coblyn* obviously didn't void his right to not be falsely imprisoned by failing, as Defendant states, to "take any reasonable action such as show a receipt and/or otherwise prove that he owns the item." **This is because such actions are not dispositive of whether or not a false imprisonment, *premised outright on a lack of shopkeeper's privilege*, has already occurred in the matter.** As such, the Court should **REJECT** Defendant's proffered *Fact #28* when ruling on Plaintiff's C-MSJ.

13 This is because *using alternate registers* and/or *not using a plastic bag* "in no way distinguishes the person to be stopped from other law abiding citizens." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993). Moreover, employees working at stores in which such "alternate registers" are installed *would undoubtedly be aware of their existence,* thus rendering said "provoked suspicion" **a self-fulfilling prophecy.** Same goes with lack of plastic bag use, which employees *would also undoubtedly be aware of happens* for customers who purchase single and/or large items.

14 **Technically, anybody who reads *Coblyn v. Kennedy's Inc.* would develop the same intuition as Plaintiff!** Does that then mean every person who becomes educated on the law now voids their right to not be falsely imprisoned should they choose to shop in the same way as *Coblyn* did in his particular case? Again, an emphatic, laughable, **NO.**

29. Plaintiff DENIES that this asserted material fact is true. Defendant attempts to support this claim by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record.[15] As such, the Court should **REJECT** Defendant's proffered *Fact #29* when ruling on Plaintiff's C-MSJ.

30. Plaintiff ADMITS the fact that three Best Buy employees "stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store merchandise" is true. Obviously, Plaintiff's unlawful detention is the very subject of his lawsuit. However, Plaintiff DENIES the remaining two portions of Defendant's *Fact #30* as true. First, Defendant attempts to support the claim – that "Plaintiff [refused to show] a receipt for merchandise upon exiting the store" – by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. Second, Defendant attempts to make the claim – that Plaintiff "did not return the merchandise when asked to do so" – except that here it has, once again, failed to ***ever*** establish that *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets] was, **in fact,** *stolen merchandise* [let alone *store merchandise*] for which Plaintiff might have otherwise been required to "return." As such, the Court should **REJECT** the remaining two portions of Defendant's proffered *Fact #30* when ruling on Plaintiff's C-MSJ.

31. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Plaintiff [nor any other patron] has **any legal obligation whatsoever** to "prove his innocence" [in order to succeed in his false imprisonment claim] by way of "proving his pockets were empty and/or proving whatever was in his pockets belonged to him."[16] As such,

15 Moreover, such a **bold new claim** that Plaintiff purportedly, *for the first time ever,* actually STOLE from a store **blatantly contradicts** his purported "modus operandi" [according to Defendant] TO SERIALLY PURCHASE from stores! **So which is it?** *Is it Plaintiff's "modus operandi" to purchase from stores, or to steal from them?*

16 Either Plaintiff ***is not required to*** "prove his innocence" ***in the first place*** in order to succeed in his false imprisonment claim, *see Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) *and Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), ***would succeed anyways as if he were to have*** "proven his innocence" in his false imprisonment claim, *see Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) *and J. C. Penney Co. v. Cox,* 246 Miss. 1, 11 (Miss. 1963), or ***is not reasonably expected to forfeit his right to succeed***

the Court should **REJECT** Defendant's proffered *Fact #31* when ruling on Plaintiff's C-MSJ.

32. Plaintiff DENIES that this asserted material fact is true. To date, Defendant has ***STILL*** failed to provide this Court with *any* admissible, **non-hearsay, non-contradictory** evidence that Plaintiff "intentionally created the impression that he had stolen from the store." Moreover, such a statement suffers from the classic **"conclusory statement"** logical fallacy. That is, what Defendant is *actually* just saying, is that "we detained him, because he got us to detain him." Yet within such a statement there obviously exists no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "created the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). As such, the Court should **REJECT** Defendant's proffered *Fact #32* when ruling on Plaintiff's C-MSJ.

33. Plaintiff ADMITS that the asserted fact is true, but DENIES that it is material to the outcome of his case. This is because "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). As such, the Court should **REJECT** Defendant's proffered *Fact #33* when ruling on Plaintiff's C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S C-MSJ ARGUMENT

I. PLAINTIFF HAS PROVEN FALSE IMPRISONMENT AS A MATTER OF LAW

In Defendant's RESPONSE to Plaintiff's C-MSJ, it begins its argument by claiming that "there are myriad undisputed material facts [that] indisputably prove that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident." *Def's Response To Ptf's C-MSJ at page 7.*

First, as just discussed, such a statement – that Plaintiff "intended to provoke the detention in

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in his false imprisonment claim by otherwise being required to "prove his innocence" ***which could potentially be interpreted as*** "voluntarily giving consent to a detention," *see Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) *and Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966).

the subject incident" – is a **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Moreover, police "intend to provoke the stealing of bait cars" *all the time,* except that **"merely affording a person an opportunity to commit an offense is not entrapment."** *C.R.S. § 18-1-709.*

Next, Plaintiff's "YouTube video footage of the subject incident" *isn't even video footage of the subject incident,* and as such, doesn't ***even remotely*** establish *any* of the "facts" to which Defendant negligently argues. Likewise, the "vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations" don't establish *any* actual **facts** related to his instant case, either.[17] Moreover, the legal conclusions made in those cases **BLATANTLY VIOLATED THE LAW.**[18]

Next, Defendant claims that Plaintiff "took no reasonable action such as showing his receipts from the store that he undeniably possessed." However, Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that a) Plaintiff ***was even a customer of it*** that day, b) he ***was even asked for a receipt*** upon leaving, c) an actual, tangible receipt ***was printed AND NOT EMAILED,*** for which he might have otherwise been "required to retain" in order to

17 Indeed, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, where Plaintiff was found to be located inside those stores, was a customer of those stores, had receipts both printed and provided to him upon shopping those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those stores. However, **NONE** of those facts have ***even remotely*** been fairly and legally established by Defendant in Plaintiff's instant case.

18 Specifically, those Courts erroneously concluded that *Plaintiff "**concealed** merchandise"* [when he clearly didn't]. That *"**showing** a receipt" is some "**open window**"* [that's clearly not] *which **merely** entails a **change in direction** that Plaintiff purportedly "**failed** to avail himself of"* [which he clearly didn't]. That *"**showing** a receipt" **after** being detained is an "**escape**"* [when it's only a **"release"**]. That *"**not showing** a receipt" is a **voluntary consent** to a detention* [when **showing** the receipt actually is]. That *simply **refusing** to show a receipt provides enough "shopkeeper's privilege" to begin **detaining** over* [when such is nothing more than **mere bootstrapping**]. That ***keeping** a receipt **"on hand,"** at all times, **before even being detained,** is now **legally mandatory*** [when it's clearly not]. That ***showing** a receipt is, "**at most,** a **slight** inconvenience"* [when the law is already **clearly established** that "any imprisonment, **'no matter how short'**" qualifies as compensable]. That *"**showing** a valid receipt" would not subject a patron to "**physical or mental harm**"* [**of course** it wouldn't]. That ***anticipating detentions** and **starting recordings** ahead of time **voids** false imprisonment claims* [when they clearly don't]. That *it's Walmart's "**official** receipt checking policy" **to detain patrons** who **refuse** to show their receipts* [when it's clearly not]. That *being "**asked**" to show a receipt is not a **legally cognizable** false imprisonment claim* [when Plaintiff has never argued such, but rather, has ***always and only*** argued that **the act of physically blocking all available pathways of his through all available exits** is what has always constituted his false imprisonment claims]. The prior Courts even concluded that *"being **taken** to a secluded room, **forcibly moved** within the store, or **arrested,**" are all **required elements** of a valid false imprisonment claim* [when they're clearly not]. As such, *it should be painfully obvious at this point,* that **LITERALLY ZERO** of Plaintiff's prior cases were **fairly and reasonably** decided by **fair and impartial** Courts that were **fairly and genuinely** apprised of **both the facts and the law** in each particular matter.

show upon leaving, and d) he, **and not just someone else with authorization to use his credit or debit card,** actually ***made the purchase*** and ***received the printed receipt*** for which the purchase would have been associated. However, *as can quickly be seen,* **NONE** of these **absolutely critical facts** have ***even remotely*** been fairly and legally established by Defendant in this case.

Next, Defendant claims that Plaintiff was required "to prov[e] his pockets were empty and/or prov[e] anything that may have been in his pockets belonged to him in order to shorten or end the detention." However, this claim has already been addressed by Plaintiff earlier.[19] *See ¶ 31, above.*

Finally, Defendant concludes its argument by "threadbare reciting" **unsubstantiated, unsupported-by-law,** and **utterly irrational** interpretations of two "elements" that a Plaintiff is purportedly required to address in order to succeed in a valid false imprisonment claim. However, *each and every one* of Defendant's arguments has been *more than sufficiently* addressed **[and refuted]** by Plaintiff throughout the course of his briefing. Moreover, Defendant has **failed completely** to *even begin to* sufficiently address **[let alone refute]** *a single one* of Plaintiff's Undisputed Material Facts in the matter. Rather, it has supplied nothing more than **categorically inadmissible hearsay** and **blatant contradictions** instead. As such, the Court should **REJECT** Defendant's wholly baseless arguments, and **GRANT** Plaintiff's C-MSJ.

II. DEFENDANT LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

In its next argument section, Defendant claims that "Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store." *Def's Response To Ptf's C-MSJ at page 8.* However, as previously discussed, such a statement is a **purely conclusory statement** legally incapable of supporting its position. Again, such a statement provides no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "intended to create

19 Moreover, *listing off literally all possible actions that are purportedly required for a patron to perform in order to end [read: **undo**, as Defendant and prior Courts argue] their detention* **effectively renders all detentions of patrons literally uncompensable,** [and the bar to which merchants are required to have "shopkeeper's privilege" under *obviously cannot be set at the floor*]. In other words, if there is *ALWAYS* something that *ALL* detainees can do, "in order to shorten or end their detentions," can Defendant ***please*** describe **a single situation** in which a merchant ***WOULD*** be liable for unlawfully detaining a patron? Merchants don't simply get *carte blanche* authority to **indiscriminately** detain whomever they wish!

the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. Seriously, what exactly did Plaintiff ***DO*** to supply Defendant with "shopkeeper privilege" in this matter? Defendant can't just show up to Court one day and say, "Well, we detained him, so clearly he did ***something*** to get detained by us!" In other words, **simply pointing to some purported "modus operandi" does not relieve a merchant from the burden they have to satisfactorily develop "shopkeeper's privilege" for their detentions.** Moreover, as previously discussed, it can hardly be considered some "modus operandi" for the *countless other* patrons referenced in *PRTDMSJ Exhibit #14* to have had upon *their* shopping experiences.[20] **Why is Plaintiff being treated any different?**

Next, Defendant claims that "Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen." However, as previously discussed, the entirety of ¶¶ 4 through 6, and 9 of Mahmoud's affidavit contains **categorically inadmissible hearsay** and/or **blatantly contradicts** the record. *See ¶ 4, above.* As such, absolutely none of it can be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Defendant claims that "Plaintiff admits that he was detained less than ten (10) minutes." However, in order to succeed in a false imprisonment claim, a Plaintiff must only show that he was detained "for a period of time, **no matter how short.**" *See Colorado Civil Jury Instruction 21:1(2).*

Finally, Defendant claims that "Plaintiff also does not allege any physical violence or that he was even touched during the detention." Obviously, as previously discussed, "Physical force is not required to complete a false imprisonment." *Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935). So that issue is put to rest there. However, what Defendant is likely getting at, is that because "shopkeeper's privilege inherently provides a defense even when there are threats of physical

20 Indeed, many of the shoppers referenced in those news articles started recordings of their anticipated detentions ahead of time. Does that show "disingenuous, false-imprisonment-claim-voiding, **premeditated intent** to be detained," *or does it simply show **intuition** that **anybody** can **easily gain** for an **increasingly problematic** issue? See also Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010). Indeed, *numerous **bar-licensed** attorneys* even spoke up in those news articles against the growing legal crisis. *Are they all horribly mistaken, too?* **Hardly, inconceivably, so.** ONCE AGAIN, though, ***it must be repeated yet again that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.*

force," [and] "Best Buy . . . only used [purportedly] reasonable threats of force in the event that Plaintiff attempted to escape," *Def's Reply To Ptf's Response To Def's MSJ at pages 10-11,* Defendant's detention of Plaintiff was carried out "in a [purportedly] reasonable manner." The problem with such a position is this: threats [implicit *or* explicit] made to "jump" somebody **CLEARLY AND INDISPUTABLY EXCEED** the "force necessary to prevent escape or to prevent loss of property." *Cruz v. Johnson,* 823 A.2d 1157, 1160 (R.I. 2003). **"Jumping" a person entails physically, *often brutally* attacking them, without regard for life or limb.** No merchant would *ever* resort to using such crude and violent tactics just to "prevent escape or . . . loss of property." Rather, *[and only if the situation called for it],* a merchant might say something like, "if necessary, we'll use physical force to prevent you from escaping!" It would *never* make ***actual, unrestricted, disproportionate, egregious*** threats to "jump" the person.[21] As such, the Court should **REJECT** Defendant's wholly baseless arguments that it had "shopkeeper's privilege" to lawfully detain Plaintiff that day, including that it purportedly detained him "in a reasonable manner," and **GRANT** Plaintiff's C-MSJ.

III. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

In its next argument section, Defendant spews *even more* **purely conclusory statements** that don't legally support its position. **SERIOUSLY,** when is Defendant going to actually DESCRIBE, ***with real, tangible, meaningful, non-contradictory, non-hearsay, non-conclusory words,*** precisely **HOW** Plaintiff "caused employees of shop owners such as Best Buy to think he stole," "caused a Best Buy employee to believe he stole," "intended that the Best Buy employees think he stole," and "wants others to believe he is a thief." *Plaintiff is still waiting for this.* Meanwhile, Defendant **DOESN'T EVEN DISPUTE** that it made *numerous* implicit **and** explicit accusations of theft *all throughout Plaintiff's detention,* but whereby because it lacked shopkeeper's privilege for its actions,

21 Notably here, is that **Plaintiff didn't even exhibit signs calling for the use [let alone threatened use] of physical force during the encounter.** He even *told* the employees that he was not interested in being violent with them. *See PCMSJ Exhibit #1 at timestamps 0:57 ("I'm not gonna touch you, man..."), and 2:06 ("Well I'm not touching you.").* Thus, ***even the making of such physical threats*** [let alone implicit or explicit threats to "jump"] was completely unnecessary for the employees to make during their confrontation with Plaintiff.

it made such accusations **"with knowledge that they were false, or with reckless disregard for whether they were true or false."** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not defame Plaintiff, *per se,* as a thief, and **GRANT** Plaintiff's C-MSJ.

IV. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

In its final argument section, Defendant claims that "Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to 'jump' him they merely did not correct him when he used the word 'jump.'" *Def's Response To Ptf's C-MSJ at page 10.* However, **nowhere in the law does it state that "implicit" threats do not qualify as having the same capacity to be as damaging to the listener as "explicit" threats might.** *At the very least, this sort of issue would be left for the jury to decide, as it could be interpreted to be a dispute over what constitutes a "fact" in the matter.* Next, Defendant claims that because "the subject incident was a sting [Plaintiff] was carrying out," it is somehow not liable for its actions. However, as previously discussed, such a statement is *yet another* **purely conclusory statement** that holds no value in law. Finally, Defendant claims that "if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not." However, as previously discussed, not only has Defendant **utterly failed to establish** that Plaintiff ***was even a customer of it*** that day, for which he might have otherwise had "measures [available to him] to end the detention," such measures ***aren't even legal obligations of patrons in the first place.*** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not assault Plaintiff, and **GRANT** Plaintiff's C-MSJ.

CONCLUSION

Plaintiff has satisfied *each and every* element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has ***STILL*** failed to provide this Court with *literally any* tangible, admissible, **non-contradictory, non-hearsay, non-conclusory** facts to *even begin to* support its **naked and unfounded** affirmative

defense of "shopkeeper's privilege" to have otherwise lawfully detained him with that day.

Moreover, regarding the whole idea that "receipt showing" is some sort of "escape path" patrons must supposedly not "fail to avail themselves of," this Court should be mindful that "Courts may not impute their own meaning to otherwise clear statutory language, nor assume a legislative intent that would vary the words used by the General Assembly." *People v. Gholston,* 26 P.3d 1, 7 (Colo. App. 2001). Then again, it ***STILL*** has yet to be shown that Plaintiff's case *has anything to do with receipts*.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

Respectfully submitted on this, the 31st day of October, 2024.

William Montgomery

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of October, 2024, the foregoing **PLAINTIFF'S *AMENDED* REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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FILED
COMBINED COURT
JEFFERSON COUNTY
2024 Oct 31 PM 3:50
DATE FILED
October 31, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
<u>UNOPPOSED</u> MOTION TO STRIKE AND REPLACE PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ	

Plaintiff, proceeding *pro se*, hereby moves this Court to **STRIKE** his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT [filed by him on October 28, 2024], and **REPLACE** it with his *AMENDED* REPLY [filed by him on October 31, 2024], and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it does not oppose the relief sought herein.

FACTUL BACKGROUND

1. On October 28, 2024, Plaintiff filed a REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. Alongside his REPLY,

Plaintiff filed a MOTION TO EXCEED PAGE COUNT of the REPLY by **thirteen (13) additional pages,** which Defendant opposed the granting of.

2. On October 29, 2024, the Court **GRANTED IN PART** Plaintiff's MOTION TO EXCEED PAGE COUNT, thus providing him **five (5) additional pages** to file his REPLY with.

3. In the Court's October 29th ORDER, it did not specify ***when*** or ***how*** such an *AMENDED,* **twenty (20) page** maximum[1] REPLY would be filed.

4. Plaintiff presumes that his recently granted MOTION FOR EXTENSION OF TIME to file his REPLY simply applies to his *AMENDED* REPLY as well. Thus, Plaintiff presumes that the final deadline for him to file his *AMENDED* REPLY is still October 31, 2024.

5. Plaintiff is not exactly sure how the Court prefers to go about **REPLACING** his REPLY with his *AMENDED* REPLY, hence this here MOTION TO STRIKE AND REPLACE.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully moves this Court to **STRIKE** his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT [filed by him on October 28, 2024], and **REPLACE** it with his *AMENDED* REPLY [filed by him on October 31, 2024].

Respectfully submitted on this, the 31st day of October, 2024.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
(970) 412-5463
zoinbergs@gmail.com

1 At first glance, Plaintiff's *AMENDED* REPLY appears to be **twenty-one (21) pages** in length. However, according to C.R.C.P. Rule 121 § 1-15(1)(a), neither the "case caption" nor the "signature block" count toward page limits. Thus, when factoring said two exceptions in, Plaintiff's *AMENDED* REPLY is exactly **twenty (20) pages** in length.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of October, 2024, the foregoing **MOTION TO STRIKE AND REPLACE PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

GRANTED BY COURT
11/01/2024

FILED
2024 OCT 31 P 3:50

DATE FILED
November 01, 2024 11:07 AM

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
UNOPPOSED MOTION TO STRIKE AND REPLACE PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ	

Plaintiff, proceeding *pro se*, hereby moves this Court to **STRIKE** his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT [filed by him on October 28, 2024], and **REPLACE** it with his *AMENDED* REPLY [filed by him on October 31, 2024], and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant states that it does not oppose the relief sought herein.

FACTUL BACKGROUND

1. On October 28, 2024, Plaintiff filed a REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter. Alongside his REPLY,

Plaintiff filed a MOTION TO EXCEED PAGE COUNT of the REPLY by **thirteen (13) additional pages,** which Defendant opposed the granting of.

2. On October 29, 2024, the Court **GRANTED IN PART** Plaintiff's MOTION TO EXCEED PAGE COUNT, thus providing him **five (5) additional pages** to file his REPLY with.

3. In the Court's October 29th ORDER, it did not specify ***when*** or ***how*** such an *AMENDED,* **twenty (20) page** maximum[1] REPLY would be filed.

4. Plaintiff presumes that his recently granted MOTION FOR EXTENSION OF TIME to file his REPLY simply applies to his *AMENDED* REPLY as well. Thus, Plaintiff presumes that the final deadline for him to file his *AMENDED* REPLY is still October 31, 2024.

5. Plaintiff is not exactly sure how the Court prefers to go about **REPLACING** his REPLY with his *AMENDED* REPLY, hence this here MOTION TO STRIKE AND REPLACE.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully moves this Court to **STRIKE** his REPLY to Defendant's RESPONSE to his CROSS-MOTION FOR SUMMARY JUDGMENT [filed by him on October 28, 2024], and **REPLACE** it with his *AMENDED* REPLY [filed by him on October 31, 2024].

Respectfully submitted on this, the 31st day of October, 2024.

William Montgomery
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1 At first glance, Plaintiff's *AMENDED* REPLY appears to be **twenty-one (21) pages** in length. However, according to C.R.C.P. Rule 121 § 1-15(1)(a), neither the "case caption" nor the "signature block" count toward page limits. Thus, when factoring said two exceptions in, Plaintiff's *AMENDED* REPLY is exactly **twenty (20) pages** in length.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of October, 2024, the foregoing **MOTION TO STRIKE AND REPLACE PTF'S REPLY TO DEF'S REPSONSE TO PTF'S CROSS-MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
	DATE FILED November 19, 2024 2:12 PM
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY, L.P.**	▲ COURT USE ONLY ▲ Case Number: **23CV00226** Division: 06 Courtroom: 520

ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiff's (William Montgomery) and Defendant's (Best Buy) respective Motions for Summary Judgment. The Court, having considered the motions as well as response and reply briefs from all parties and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his Complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a Motion for Summary Judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims under, among other things, Shopkeeper's Privilege. Defendant also submitted to the Court a video made by Plaintiff wherein Plaintiff explains how he gets "free lawsuits" by going into stores and conducting a "sting operation" where he conducts himself in a manner that could be reasonably construed as suspicious and sues store employees for confronting him upon believing he is stealing.[1] Indeed, Defendant cites several nearly identical cases Plaintiff

[1] See Defendant's Exhibit Q at 04:20, explaining how Plaintiff uses registers in the back of the store, does not use bags, and refuses to show employees his receipt; Exhibit Q at 05:05, "That's the crux of my whole sting operation!"; Exhibit Q at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting—where I'm not going to say I have a receipt or not, I'm not even going to say I was a customer or not . . . all I've got to show is that I was surrounded . . . I'm done doing the merchants' homework for them in lawsuits."; Exhibit Q at 20:00, "That's why I don't show my receipt, for a free lawsuit. Because if somebody's going to hand out free lawsuits at the door, I'm game!"

has filed against other stores around Colorado.[2]

Plaintiff filed a Cross Motion for Summary Judgment on September 19, 2024, also seeking summary judgment on all of Plaintiff's claims. In support of his motion, Plaintiff submitted body-worn camera footage of the detainment. Both parties subsequently filed response and reply briefs.

II. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits [submitted] . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c); Miller v. Van Newkirk, 628 P.2d 143, 145 (Colo. App. 1980). A material fact is simply a fact that will affect the outcome of the case. Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 239 (Colo. 1984).

The party moving for summary judgment bears the initial burden of presenting the basis for a motion for summary judgment and identifying those portions of the record which demonstrate the absence of any genuine issues of material fact or any triable issues of fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). Once this initial burden has been met, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. Id. at 713. The nonmoving party must set forth specific facts through affidavits or other means to show that there is a genuine issue for trial and may not rest upon the mere allegations or denials in the pleadings or simple argument. Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991). If the nonmoving party cannot muster sufficient evidence to establish that there is a triable issue of material fact, the moving party is entitled to summary judgment as a matter of law. Keenan, 731 P.2d at 713.

Summary judgment should be granted only when there is a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. KN Energy, Inc. v. Great W. Sugar Co., 698 P.2d 769, 776 (Colo. 1985). In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. Vigil v. Franklin, 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004).

III. ANALYSIS

[2] See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

a. Defendant's Motion for Summary Judgment

Defendant Best Buy filed a Motion for Summary Judgment on July 25, 2024. In its Motion, Defendant seeks this Court dismiss all of Plaintiff's claims and grant Defendant an award of attorney's fees and costs.

i. False Imprisonment

For a plaintiff to prevail on a false imprisonment claim, he must prove that: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." Goodboe v. Gabriella, 663 P.2d 1051, 1055-56 (Colo. App. 1983). However, "[I]t is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt a.

Here, Plaintiff alleges he was falsely imprisoned by three Best Buy employees when they "surrounded [him] on all sides with [his] back against a wall and wouldn't let [him] leave or go anywhere for 12 minutes." (Complaint at p. 1.) Defendant argues that Best Buy cannot be held liable for false imprisonment because (in addition to Shopkeeper's Privilege, discussed below) Plaintiff had the tools of escape and unreasonably refused to use them.

There is no genuine issue of material fact for this claim. Defendant admits its employees detained Plaintiff briefly outside of the Best Buy after suspecting him of stealing store merchandise. Defendant has provided proof that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase. (Defendant's Exhibit N.) Plaintiff does not deny having a receipt at the time of the incident. During Plaintiff's detainment outside of Best Buy, Defendant's employees can repeatedly be heard telling Plaintiff that he can leave as soon as he gives back the stolen goods.[3] (Plaintiff's Exhibit 1.) Not once during the detainment does Plaintiff deny stealing or show proof of purchase. (See Plaintiff's Exhibit 1, showing body-camera footage of the entirety of the detainment.)

The Court agrees with Defendant that showing proof of purchase would have freed Plaintiff from the false imprisonment, and that showing proof of purchase is a slight inconvenience that it was unreasonable of Plaintiff not to utilize. Thus, the Court concludes that Defendant did not

[3] See Plaintiff's Exhibit 1 at 00:05, "Can you just give it back to us now and you can leave?"; Exhibit 1 at 00:22, "You can just give us our product back and you can go on your own way"; Exhibit 1 at 01:26, "Give me the product back and I'll leave you alone, you can go on your own way"; Exhibit 1 at 01:35, "If you want to leave without any issues then just give me my product"; Exhibit 1 at 03:29, "You can make it easy dude, just give me my stuff and you can go."

"confine" Plaintiff and thus cannot be held liable for false imprisonment. As such, Plaintiff's claim for false imprisonment is dismissed on summary judgment.

ii. Defamation Per Se

For a plaintiff to prevail on a claim of defamation, he must prove that there was: "(1) A defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication." Williams v. Dist. Court, 866 P.2d 908, 911 n.4 (Colo. 1993). Statements that are actionable irrespective of special damages are defamatory per se. See Restatement (Second) of Torts § 570. "Historically, a statement constituted defamation per se if it imputed a criminal offense; a venereal or loathsome disease; improper conduct of a lawful trade, business, profession, or office; or unchastity of a woman." Keohane v. Wilkerson, 859 P.2d 291, 301 (Colo. App. 1993).

"One who publishes a false and defamatory communication concerning a private person . . . is subject to liability, if, but only if, he (a) knows that the statement is false and that it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them." Restatement (Second) of Torts § 580B. "Insofar as the truth or falsity of the defamatory statement is concerned, the question of negligence [is] . . . whether [the defendant] had reasonable grounds for believing that the communication was true." Id. cmt g.

Here, Plaintiff alleges he was defamed by Best Buy employees when they "falsely, loudly, rudely, and publicly accused [him] of stealing in front of many others." (Complaint at p. 1.) Because theft is a criminal offense, this qualifies as defamation per se. Defendant argues (again, in addition to Shopkeeper's Privilege, discussed below) that the employees were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy.

There is no genuine issue of material fact relevant to this claim. There is body camera footage from the detainment showing Defendant accusing Plaintiff, in public, of stealing merchandise from the store. (See Plaintiff's Exhibit 1.) Defendant does not deny this.

However, to be liable for defamation, Defendant must have acted with actual knowledge of the statement's falsity, reckless disregard for the truth or falsity of the statement, or negligence. Defendant has submitted proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store. (Defendant's Exhibit P.) Plaintiff provides no evidence of his actions in the store to counter this. Rather, Plaintiff's YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his "sting operation." (See Defendant's Exhibit Q.)

"Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury." Montgomery v. Walmart Stores, 21CA0359 (Colo. App. 2022) (not published pursuant to C.A.R. 35(e)). "However, in the 'clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them,' the issue may be resolved as a matter of law." Id.

Here, the case is clear, the facts are undisputed, and reasonable minds can draw but one inference: Defendant did not act with fault amounting to at least negligence in accusing Plaintiff of stealing. Rather, Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit. As such, the Court concludes Defendant cannot be held liable for defamation and Plaintiff's claim for defamation is dismissed on summary judgment.

iii. Assault

For a plaintiff to prevail on an assault claim, he must prove: (1) The defendant acted "intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact," and (2) "the other is thereby put in such imminent apprehension." Restatement (Second) of Torts § 21. "Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault." Restatement (Second) of Torts § 31 cmt a.

Here, Plaintiff alleges Best Buy's employees assaulted him when they "threatened to 'jump' [him] around the corner and off camera." (Complaint at p. 1.) Defendant argues that its employees never threatened Plaintiff, and if anything said may be construed as a threat, no employee took any other step to show hostility toward Plaintiff.

Because the parties have submitted body-camera footage of the detainment, there is no genuine issue of material fact for this claim. The body-camera footage shows that Defendant's employees never touched Plaintiff. As for "threats," at one point one employee said, "We'll take this off camera—walk away"[4] and throughout the encounter the employees did not correct Plaintiff when Plaintiff said he was worried about being jumped.[5] (Plaintiff's Exhibit 1.) The footage also shows that the employees spent the detainment standing around Plaintiff at a respectable distance, making no threatening movements, and repeatedly saying that they would leave Plaintiff alone as soon as he gave back what he had stolen from their store. (See Plaintiff's Exhibit 1.)

The Court agrees with Defendant that, even if the employees' words could be construed as a threat, there was no additional act apparently intended to carry the threat into execution. As such,

[4] Plaintiff's Exhibit 1 at 09:27.
[5] Plaintiff's Exhibit 1 at 09:48, "I don't feel safe leaving now," "You shouldn't"; Exhibit 1 at 10:17, "I don't feel like getting jumped off camera," "Then give me my stuff, dude"; Exhibit 1 at 10:44, "I don't feel safe leaving now," "Then give me my shit"; Exhibit 1 at 11:28, "Like I'm just going to trust him that he's not going to jump me," "You shouldn't trust him that he's not. You should give me my stuff."

the mere words were not enough to put Plaintiff in apprehension of imminent bodily contact, and so do not make Defendant liable for an assault. Therefore, Plaintiff's claim for assault is dismissed on summary judgment.

iv. Shopkeeper's Privilege

Under C.R.S. § 18-4-407, colloquially known as "Shopkeeper's Privilege," a merchant or any of its employees, "acting in good faith and upon probable cause based upon reasonable grounds therefor," may detain and question any person that "conceals upon his person or otherwise carries away any unpurchased goods . . . held or owned by any store," in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. "Such questioning of a person by a merchant, merchant's employee, or a peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention." Id. Whether a defendant acted in good faith is a question of fact, meaning summary judgment should be granted "only if, assuming the truth of the plaintiff's evidence, and drawing every favorable inference of fact therefrom, reasonable persons could reach only one conclusion, that being these defendants acted in good faith." Goodboe v. Gabriella, 663 P.2d 1051, 1055 (Colo. App. 1983).

Defendant has submitted a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment. (Defendant's Exhibit N.)[6]

Plaintiff, in his response, denies having been in Best Buy, denies having the store's merchandise on him, and denies concealing anything. However, Plaintiff "may not rest upon the mere allegations or denials in the pleadings" and must set forth specific facts through affidavits or other means. Burman, 821 P.2d at 917. In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees. (Plaintiff's Affidavit of the Event.) This is not inconsistent with Defendant's affidavit, which argued that Defendant's employee saw Plaintiff in the store, watched store security video after Plaintiff exited, and then confronted Plaintiff outside. (Defendant's Exhibit P.) Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.

Even assuming the truth of Plaintiff's evidence and drawing every favorable inference of fact therefrom, reasonable persons could reach only the conclusion that Defendant acted in good faith. Under the circumstances presented by Plaintiff, a reasonable person would believe he may

[6] Plaintiff argues that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any "genuine" issue of fact, not whether there is any conceivable issue of fact.

have been shoplifting. Indeed, Plaintiff designed his conduct to inspire this belief. (See Defendant's Exhibit Q.)

As for probable cause based upon reasonable grounds, Defendant has supplied an affidavit stating that its employee saw Plaintiff "remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," which was then confirmed on store security video. Plaintiff also refused to show his receipt upon being asked. Again, Plaintiff has provided no evidence as to his actions inside the Best Buy store and "may not rest upon the mere allegations or denials in the pleadings." Id. As such, the Court agrees that Defendant had probable cause to believe Plaintiff was shoplifting.

Because Defendant is a merchant; Defendant's employees acted in good faith and upon probable cause in detaining Plaintiff; and Defendant's employees detained Plaintiff in a reasonable manner, Defendant is protected under C.R.S. § 18-4-407 from slander and false imprisonment. As such, even if Plaintiff were able to make a prima facie case of false imprisonment and defamation (which the Court has held above he does not), Defendant would fall within the statue's protections.

b. Plaintiff's Motion for Summary Judgment

Plaintiff William Montgomery filed his Cross Motion for Summary Judgment on September 19, 2024. Plaintiff requests that the Court enter summary judgment as to all of Plaintiff's claims. Plaintiff and Defendant make the same arguments in Plaintiff's pleadings as they had made in Defendant's pleadings.

For the reasons laid out above, the Court denies Plaintiff's request for summary judgment as to all of Plaintiff's claims.

IV. ORDERS

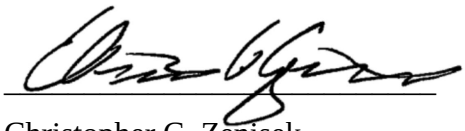
For the reasons stated above, the Motion for Summary Judgment for Defendant is **GRANTED, and Plaintiff's claims are dismissed with prejudice**. The Motion for Summary Judgment for Plaintiff is **DENIED.**

1. Defendant's request for summary judgment on Plaintiff's false imprisonment claim is GRANTED, and the claim is dismissed.
2. Defendant's request for summary judgment on Plaintiff's defamation per se claim is GRANTED, and the claim is dismissed.
3. Defendant's request for summary judgment on Plaintiff's assault claim is GRANTED, and the claim is dismissed.
4. Plaintiff's request for summary judgment on Plaintiff's false imprisonment claim is DENIED.
5. Plaintiff's request for summary judgment on Plaintiff's defamation per se claim is DENIED.

6. Plaintiff's request for summary judgment on Plaintiff's assault claim is DENIED.
7. Costs are awarded to Defendant.
8. Any motion for attorney's fees, if desired, shall be filed pursuant to C.R.C.P. 121 § 1-22.

Done in Golden, Colorado, this 19th day of November 2024.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 03, 2024 5:21 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY STORES, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT'S BILL OF COSTS	

After conferring with pro se Plaintiff, Defendant Best Buy Stores, L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits the following Amended Bill of Costs under C.R.C.P. 54(d), C.R.S. §§ 13-16-104 and 13-16-122, as follows:

I. Certificate of Conferral

Undersigned Counsel made a good faith attempt to confer via email with Plaintiff about the costs requested herein. Plaintiff did provide his position before Bill of Costs was filed.

II. Introduction

On November 21, 2023, Plaintiff filed this action alleging claims of False Imprisonment, Defamation per se, and Assault stemming from an encounter involving Plaintiff while he was

conducting a sting at Best Buy.

On November 19, 2024, the Court Granted Defendant's Motion for Summary Judgment and dismissed all of Plaintiff's claims with prejudice. The Court Denied Plaintiff's Motion for Summary Judgment. The Court further Ordered that Costs are awarded to Defendant and that any motion for attorney's fees shall be filed pursuant to C.R.C.P. 121 § 1-22.

Because Defendant has prevailed, it is entitled to recover costs against the Plaintiff. C.R.C.P. 54(d); C.R.S. § 13-16-104. The award of costs to a prevailing party pursuant § 13-16-104 is mandatory. *Parker v. USAA*, 216 P.3d 7, 14 (Colo. App. 2007) *aff'd and remanded*, 200 P.3d 350 (Colo. 2009). C.R.S. 13-16-122 identifies costs that may be recovered by a prevailing party, but the list is not exhaustive, and other items may be allowed when they are reasonable and necessary to the development of the case. *Cherry Creek Sch. Dist. v. Voelker*, 859 P.2d 805, 813 (Colo. 1993). The trial court has broad discretion in determining whether to award costs and what amount to award. *Valentine v. Mountain States Mut. Cas. Co.*, 252 P3d 1182, 1187 (Colo. App. 2011).

As the prevailing party, Defendant may recover from Plaintiff any costs incurred that were reasonably necessary to this litigation. Invoices, bills, and in-house ledgers for costs incurred on behalf of Defendant by Montgomery Amatuzio are attached hereto as further outlined below. Affidavits by Montgomery Amatuzio stating that the costs were reasonably necessary to the development of this case are attached as Exhibit 1 and 2, respectively (previously filed).

A. Court Costs, Electronic Filing, Electronic Services Fees through CCES

See Exhibit 5 (previously filed) for the description, dates, and amount of each individual cost totaling **$680.74**. Authority for recovery of these costs is provided by C.R.S. § 13-16-122(1)(a).

DATE	COURT FEES	AMOUNT
24.02.08	Answer – Certified Mail	$6.51
24.02.08	Answer with Jury Demand	$435.00
24.02.27	Notice to Set Case Management Conference	$12.00
24.03.07	Notice of Case Management Conference	$12.00
24.04.01	Proposed Case Management Order	$12.00
24.04.22	Notice of Firm Name Change	$12.00
24.04.24	Initial Disclosures	$12.80
24.05.15	Defendant's Motion to Continue Jury Trial	$12.00
24.06.21	Defendant's First Set of Written Discovery	$12.84
24.10.03	First Supplemental Disclosures	$12.00
24.10.03	Motion of Extension of Time to File Reply Brief to MSJ	$24.00
24.10.10	Defendant's Response to Plaintiff's Cross-MSJ	$29.79
24.10.14	Notice of Substitution of Counsel	$24.85
24.10.21	Notice of Deposition of Plaintiff	$12.81
24.10.29	Defendant's Response to Plaintiff's Motion to Exceed Page Count	$12.00
24.10.31	Second Supplemental Disclosures	$12.00
24.11.05	Defendant's Third DRQs to Plaintiff	$13.29
24.11.14	Third Supplemental Disclosures	$12.85

B. Court Reporter Fees for All or Any Part of a Transcript Necessarily Obtained for Use in This Case

See Exhibit 6 (previously filed) for the description, dates, and amount of each individual cost totaling **$1,340.25**. Authority for recovery of these costs is provided by § 13-16-122(1)(d). "A court may award the reasonable costs incurred for the transcript of a discovery deposition where 'the taking of the deposition and its general content were reasonably necessary for the development

of the case in light of facts known to counsel at the time it was taken.'" *Valentine*, 252 P.3d at 1187 (quoting *Voelker*, 859 P.2d at 813).

DATE	DEPOSITION/DEPOSITION TRANSCRIPTS	AMOUNT
24.11.18	Pike Reporting Invoice for Court Reporter and Transcript Fees	$1,340.25

C. Background Research and Investigation Fees Incurred

See Exhibit 7 (previously filed) for the description, dates, and amount of each individual cost totaling **$74.00**. Authority for recovery of these costs is provided by § 13-16-122(1)(d). "A court may award the reasonable costs that were reasonably necessary for the development of the case in light of facts known to counsel at the time it the investigation was conducted.

DATE	SOURCE/INFORMATION	AMOUNT
12/19/2023	CBI/Criminal Background	$4.00
12/27/2023	Retrieving Filings/Montgomery v The Orchard Town Center - Case No. 2019cv0152	$15.00
12/27/2023	Retrieving Filings/People of the State of Colorado v William Montgomery - Case No. 2018cv048	$15.00
12/27/2023	Retrieving Filings/Case No. 93C09426	$15.00
12/27/2023	Retrieving Filings/Montgomery v Denver University - Case No. 2019CV000068	$15.00
10/21/2024	Retrieving Filings/ Montgomery v Lore - Case No. 1: 21-cv-02553-PAB-MEH	$10.00
	Montgomery v Universal Protection Services – Case No. 2020cv0262	
	Montgomery v Wal-Mart Stores Inc – Case No. 2020cv000076	
	Montgomery v Walmart - Case No. 2020cv0184	
	Montgomery v Walmart – Case No. 2020cv209	
	Montgomery v Walmart – Case No. 2021cv001	
	Montgomery v Walmart – Case No. 2021cv000068	
	Montgomery v Walmart – Case No. 2021cv0235	
	Montgomery v Walmart Inc. – Case No. 2020cv000067	
	Montgomery v Walmart Inc. – Case No. 2020cv000148	
	Montgomery v Walmart Inc. – Case No. 2021cv0088	
	Montgomery v Walmart – Case No. 2020cv0217	
	People v Montgomery – Case No. 2018CR001706	

Due to the complexity of this case, Defendant reasonably, necessarily and actually incurred is entitled to an award of reasonable cost in the amount of **$2,094.99**. All costs have been paid in full by Montgomery | Amatuzio. Defendant reserves the right to supplement this Bill of Costs with additional costs, if any, in prosecuting this Bill of Costs, any post-trial briefing, or in participating in any appeal of this matter.

Defendant respectfully requests the Court to enter an award of costs in his favor in the total amount of **$2,094.99**, which reflects the costs reasonably incurred by Defendant in prosecuting this action to date.

Respectfully submitted December 3, 2024.

MONTGOMERY | AMATUZIO

s/ Stephanie E. Boutsicaris
Lori K. Bell
Stephanie E. Boutsicaris
Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on December 3, 2024, a true and correct copy of the foregoing **DEFENDANT'S BILL OF COSTS** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

Abigail Spohn
Abigail Spohn, Paralegal

FILED
COMBINED COURT
JEFFERSON COUNTY
DATE FILED
December 03, 2024

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

"A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice." *C.R.C.P. Rule 121 § 1-15 (11).* Today, Plaintiff seeks to correct manifest errors this Court made in *both* fact **and** law.

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. PLAINTIFF WAS NOT GIVEN FAIR NOTICE IN ORDER TO PRESENT [MORE SPECIFIC] EVIDENCE ON BOTH THE "SHOPKEEPER'S PRIVILEGE" AND "RECEIPT POSSESSION" ISSUES DEFENDANT RAISED FOR THE VERY FIRST TIME IN ITS MSJ REPLY BRIEF

On July 25, 2024, Defendant filed a MOTION FOR SUMMARY JUDGEMENT in this matter. In the MOTION, Defendant: 1) **DID NOT** submit to the Court any affidavit of Mahmoud Abu-Shaweesh, 2) **DID NOT** submit to the Court any business records (i.e. receipts) purportedly of the incident at issue [let alone accompany with such business records any affidavit of their "custodian or other qualified person" necessary, *by law,* to "certify the record"], 3) **ONLY** submitted to the Court a generalized YouTube video of Plaintiff that failed to address [let alone refute] the specific facts of his specific instant case at issue, and 4) **ONLY** submitted to the Court a bunch of wholly generalized, utterly unsubstantiated, purely conclusory legal argument that Plaintiff is simply a "lawsuit scammer" ***purportedly undeserving of due process*** in his, again, specific instant case at issue.[1]

With the aforementioned facts being irrefutably true, this Court, *through either recklessness, indifference, incompetence, malice, or some combination of the four,* officially **LIED** when it said that "Defendant has supplied ***[WITH ITS INITIAL MSJ]*** an affidavit stating that its employee saw Plaintiff 'remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store,'" *Order Granting Def's MSJ at page 7,* **LIED** when it said that "Defendant has submitted ***[WITH ITS INITIAL MSJ]*** a Best

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1 Defendant made claims that "Plaintiff intentionally concealed merchandise," *Def's MSJ at page 8,* "Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items," *Def's MSJ at page 10,* and "Plaintiff took Best Buy inventory and refused to show proof of purchase," *Def's MSJ at page 11.* However, **ABSOLUTELY NONE** of these **CONCLUSORY STATEMENTS** were made with **ANY SUPPORTING DOCUMENTATION,** *WHATSOEVER,* to *even begin to* create AN ACTUAL ISSUE of material fact in the matter. **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."** *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Indeed, Defendant *even admitted* that it didn't ***actually*** have any real, tangible evidence to support **ANY** of the baseless claims that it had been making, by way of its very own **explicit** use of the words **"if"** and **"presumed"** in the [only honest] statement it made in its MSJ: "***If*** in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is ***presumed*** Plaintiff had such proof..." *Def's MSJ at page 7.*

Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial[2] burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment," *Order Granting Def's MSJ at page 6,* **LIED** when it said that "Defendant has submitted proof ***[WITH ITS INITIAL MSJ]*** that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store," *Order Granting Def's MSJ at page 4,* and **LIED** when it said that "Defendant has provided proof ***[WITH ITS INITIAL MSJ]*** that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase," *Order Granting Def's MSJ at page 3.* **LITERALLY EVERY SINGLE HOLDING THE COURT MADE REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT BRIEFING WAS A 100% STRAIGHT UP LIE! ABSOLUTELY NO AFFIDAVITS, OR BUSINESS RECORDS, OF ANY KIND, WERE EVER SUBMITTED TO THE COURT, BY DEFENDANT, WITH ITS ***I-N-I-T-I-A-L*** MOTION FOR SUMMARY JUDGMENT, FOR A DISPOSITIVE RULING TO BE FAIRLY MADE IN THE MATTER,** as will be discussed in detail later.

Next, on September 19, 2024, Plaintiff filed his RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. In the RESPONSE, Plaintiff: 1) **DID** submit to the Court an affidavit substantiating that he had "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* 2) **DID** submit to the Court an affidavit substantiating that "all three Best Buy employees had physically 'corralled' [him] against the building's wall, leaving [him] with no place to go," *Plaintiff's Affidavit at ¶ 12,* 3) **DID** submit to the Court an affidavit substantiating that

2 This word – **"initial"** – is the **most damning** of the Court's **LIES.** Clearly, Defendant ***DID NOT*** satisfy its **"initial burden as the movant,"** because it ***DID NOT*** supply *any* affidavits, *whatsoever,* **WITH ITS MSJ,** in the first place!

"on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* 4) **DID** submit to the Court an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25,* 5) **DID** submit to the Court evidence, via news articles, showing "how rampant unlawful 'receipt checkpoints' are becoming in today's society," thereby establishing that he is NOT a "lawsuit scammer" **for simply exercising the same cognizable rights that others have been exercising** to simply not answer questions and not consent to searches upon leaving non-membership stores held open to the general public, *PRTDMSJ Exhibit #14,* 6) **DID** submit to the Court evidence, via police records, that Defendant **LIED** in Plaintiff's bodycam footage that it had called the police that day [when it clearly didn't], *PRTDMSJ Exhibit #15,* 7) **DID** submit to the Court evidence, via his bodycam footage, that Defendant "had [no] earthly idea, whatsoever, the nature or identity of *whatever* Plaintiff had been holding in his hands [that day of November 25, 2022]. The same goes for whatever existed in one of his pant pockets, too," *Def's Exhibit M,* 8) **DID** submit to the Court valid legal argument that Defendant **100% FAILED** to satisfy **ITS** affirmative-defense burden to show that it had "shopkeeper's privilege" for its actions in the matter [by not providing the Court with ANY evidence, *whatsoever,* that Plaintiff stole from it that day], and finally 9) **DID** submit to the Court valid legal argument that Defendant had also **100% FAILED** to satisfy **ITS** burden to show that Plaintiff ***was even a customer of it in the first place*** [upon which he might have potentially received a receipt that he might have otherwise been required to show]. What Plaintiff **DID NOT** do in his RESPONSE, however, was "deny having been in the store that day," or "deny having the store's merchandise on him." Critically, Plaintiff simply **NEITHER CONFIRMED NOR DENIED** such things, as such confirmations and/or denials [in either direction] were wholly unnecessary for him to make, **because of how Defendant did not**

SATISFACTORILY [read: even begin to] raise such ACTUAL issues of ACTUAL fact in its **I-N-I-T-I-A-L MSJ, *in the first place,* BY WAY OF AFFIDAVIT OR THE LIKE, for him to then be required, *in turn,* to ACTUALLY respond to and refute.** In other words, because Defendant didn't create any genuine DISPUTES of fact **IN ITS MSJ OPENING BRIEF** on those two particular issues, Plaintiff wasn't required to RESPOND with any confirmations OR denials regarding them [because they obviously didn't exist *to even respond to in the first place*].

With the aforementioned facts being irrefutably true, this Court, once again, *through recklessness, indifference, incompetence, malice, or some combination of the four,* officially **LIED** when it said that "Plaintiff, in his response, denies having been in Best Buy, [and] denies having the store's merchandise on him," *Order Granting Def's MSJ at page 6,* and **LIED** when it said that "In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees," *Order Granting Def's MSJ at page 6.*[3] Again, Plaintiff's RESPONSE and its attendant affidavit are simply bereft of any confirmations **OR** denials, altogether, that he was a customer of the store, since his **SOLE** job *in responding* to Defendant's MSJ was to **ONLY** refute **ACTUAL** issues of fact ACTUALLY, FAIRLY, GENUINELY, AND SUCCESSFULLY raised by it in its initial MOTION, **and to which Defendant clearly failed to do.** Consequently, all Plaintiff was required to do *in response* to such an unsubstantiated MSJ, was simply

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3 The Court also **LIED** when it said that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident." Specifically, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25.* While not **explicitly** mentioning so, it strains credulity that any of these facts would NOT be referencing Plaintiff's actions **INSIDE** the store at issue. Moreover, the absence of such **"explicitness"** is not fatal, as this Court itself has pointed out that "In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **must** infer that said three facts substantiated by Plaintiff applied to him being **INSIDE** the store.

point out that Defendant failed to supply the Court with ACTUAL affidavits to support its initial MOTION, *and not just conclusory legal argument,* **and to which Plaintiff did so without issue.**

Finally, on October 10, 2024, Defendant filed its REPLY to Plaintiff's RESPONSE to its MOTION FOR SUMMARY JUDGMENT. In the REPLY, Defendant, **FOR THE FIRST TIME EVER IN ITS BRIEFING**, 1) submitted a ***never-before-seen*** affidavit by Mahmoud Abu-Shaweesh, and 2) submitted ***never-before-seen*** business records (i.e. receipts) purportedly of the incident at issue. The supplied affidavit was Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [with supposedly admissible evidence] that it "detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets." *Def's Reply at page 11.* The supplied business records (i.e. receipts) were Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [again, with supposedly admissible evidence] that "Plaintiff had been inside the Best Buy making a purchase" [for which he might have had a receipt for and might have otherwise been required to show upon leaving]. *Def's Reply at page 5.* **HOWEVER, NEITHER OF THESE TWO FRESH ARGUMENTS WERE MADE IN DEFENDANT'S INITIAL MSJ, NOR EVIDENCE SUPPLIED THEN TO SUPPORT THEM WITH.**

Now, the reason why Plaintiff has outlined the chronological background and nature of Defendant's MOTION FOR SUMMARY JUDGMENT (and its attendant briefing) is because **IT IS OF ABSOLUTE CRITICAL IMPORTANCE** that this Court understand [because it evidently does not, based on its most recently ruling] that the Colorado Rules Of Civil Procedure **PROHIBIT** nonmovants from filing REPLIES TO REPLIES (I.E. "SURREPLIES"). *See C.R.C.P. Rule 1-15(1)(a)* (holding that briefs are limited to motions, responses, and replies). *See also C.R.C.P. Rule 56(c)* (holding that affidavits can only be served "within the time allowed for the **responsive** brief," i.e. that they are NOT allowed to be filed within the time allowed for the **reply** brief – *which is what Defendant impermissibly did in this instant case*). In other words, Plaintiff is **PROCEDURALLY DISALLOWED** from *even having the opportunity* to properly

defend himself against Defendant's aforementioned *fresh,* ***REPLY-ONLY*** arguments made in this particular matter. Therefore, without any actual SURREPLY in the record to support its holdings, this Court has, once again, officially **LIED** when it said that "Plaintiff provides no evidence ***[IN HIS RESPONSE]*** of his actions in the store to counter[4] this," *Order Granting Def's MSJ at page 4,* **LIED** when it said that "In Plaintiff's ***[RESPONSE]*** affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees," *Order Granting Def's MSJ at page 6,* and **LIED** when it said that "Plaintiff ***[IN HIS RESPONSE]*** has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident," *Order Granting Def's MSJ at page 6.* **Now,** even though Plaintiff **DID** make multiple statements and **DID** submit multiple proofs, generally, regarding "his actions inside the Best Buy immediately preceding the incident" *see footnote 3, above,* **to the extent that such statements and proofs are not specific enough [as this Court appears to argue] to overcome the NEW arguments made by Defendant STRICTLY in its REPLY brief, PLAINTIFF ABSOLUTELY CANNOT BE FAULTED FOR NOT BEING SPECIFIC ENOUGH.** Therefore, since Plaintiff was not given **FAIR NOTICE** to be more specific with his arguments and evidence, [and since SURREPLIES are **not** allowed in Colorado Law], this Court's granting of Defendant's MSJ **was manifestly unfair to him.** In layman's terms, this Court should not have granted Defendant's MSJ using such **DELAYED** argument and evidence **THAT PLAINTIFF WAS INDISPUTABLY DENIED THE DUE PROCESS TO PROPERLY RESPOND TO.** "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). Specifically, in *Wallman,* the Court held that in Defendant's "**reply** brief before the trial

4 This word – **"counter"** – is the **most damning** of the Court's **LIES. OF COURSE** Plaintiff didn't "counter," in his RESPONSE to Defendant's initial MSJ, the **NEW** arguments Defendant raised **FOR THE VERY FIRST TIME** in its **REPLY, BECAUSE THEY WERE NEVER MADE BEFORE THEN! Talk about a due process violation here!**

court, Kelley **argued for the first time** that plaintiff could not prove that the JBH she allegedly purchased from him caused her illness." *Id at 332.* The Court then **explicitly** held that "**because plaintiff was not given notice that she needed to present evidence** on the causation issue in defendants' initial summary judgment motions and briefs, **we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions.**" *Id.* THE SAME HOLDS **100% IDENTICALLY TRUE** TODAY IN PLAINTIFF'S INSTANT CASE. Because Plaintiff "was not given notice that he needed to present evidence" [or in this case, more specific evidence] ON **BOTH** NEW, FRESH, **REPLY-ONLY** RAISED ISSUES of "shopkeeper's privilege" and "receipt possession," this Court "incorrectly relied upon the lack of such evidence in granting [Defendant's] motion." *Id.* Case in point: the official **LIE** this Court made when it said that "Plaintiff argues ***[IN HIS RESPONSE]*** that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any 'genuine' issue of fact, not whether there is any conceivable issue of fact." *Order Granting Def's MSJ at page 6, footnote 6.* Such argument – "that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise" – was **NOT** an argument EVEN MADE in Defendant's MSJ briefing, **IT WAS MADE IN PLAINTIFF'S CROSS-MSJ BRIEFING,** [and it was only made at the end of it, in his final REPLY, at the earliest opportunity he was given to first address the argument, and to which he would not have even been able to fully address either, by way of, say, supplying an affidavit on the subject of his brother, since he isn't allowed to submit affidavits with replies any more than Defendant is allowed to do so!].[5] *See C.R.C.P. Rule 56(c)* (holding that affidavits can only be served "within the time allowed for the

5 Ultimately, this only means that **denial** of *his* CROSS-MSJ might be proper, not the **granting** of *Defendant's* MSJ! "When a [Plaintiff's] motion for summary judgment is overruled, their admission of facts under their legal theory terminates, and it is error for a trial court to give any consideration thereto in connection with its determination of [Defendant's] motion. This leaves [Defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial. *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952).

responsive brief"). So, **OF COURSE** Plaintiff "failed to refute" the "genuine issue of fact" this Court claims Defendant purportedly "created" regarding "who made the associated purchase." No genuine issue of fact was fairly created, *in time*, **in the first place, IN DEFENDANT'S INITIAL MOTION FOR SUMMARY JUDGMENT,** for Plaintiff TO HAVE EVEN BEEN GIVEN fair notice and opportunity to address and refute with evidence of his own![6] Indeed, it appears that this Court [disingenuously, recklessly, maliciously?] morphed Defendant's original, *evidence-belated* REPLY to Plaintiff's RESPONSE to its MSJ, ***into the new MSJ itself,*** to then [disingenuously, recklessly, maliciously?] morph Plaintiff's original RESPONSE to Defendant's MSJ ***into some new, retroactively-created RESPONSE,*** within which he purportedly "failed to address and refute" ***the new, retroactively-applied issues*** purportedly brought up by Defendant ***in its new, retroactively-created super MSJ!***[7] *Nice try Court! You *almost* got away with it.*[8]

In the end, Defendant simply submitted argument and evidence *too late into its briefing,*[9] **but that's not Plaintiff's fault.** Had Defendant provided Plaintiff with FAIR NOTICE, Plaintiff would have supplied this Court with [more specific than before] evidence that he **DID NOT** conceal anything

6 Indeed, the day Defendant and Plaintiff became aware that Defendant's MSJ had been granted, Plaintiff's brother was scheduled to undergo deposition on this exact issue – that he *did* make the purchase for which the receipt was associated. But because this Court **impermissibly,** *prematurely* ruled on Defendant's MSJ, it failed to allow this evidence to fairly come forward. "Where the record has not been adequately developed on a material factual issue, summary judgment is not proper." *Moore v. 1600 Downing St., Ltd.,* 668 P.2d 16 (Colo. App. 1983).

7 The Court then [disingenuously, recklessly, maliciously?] morphed Plaintiff's REPLY to Defendant's RESPONSE to *his* CROSS-MSJ into some sort of **SURREPLY** to Defendant's REPLY to his RESPONSE to *Defendant's* MSJ!

8 **Seriously,** this Court needs to be quoted again on this issue, one more time, to show **JUST HOW BAD** the dirty, timestamp-fudging, due process denial act is that it committed in this particular matter. *See Order Granting Def's MSJ at page 6* ("Defendant has submitted ***[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]*** a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant ***[NO IT DIDN'T!]*** of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment."), *Order Granting Def's MSJ at page 6* ("Plaintiff, in his response ***[NO HE DIDN'T!],*** denies having been in Best Buy, denies having the store's merchandise on him ***[NO HE DIDN'T!],*** and denies concealing anything."), *Order Granting Def's MSJ at page 4* ("Defendant has submitted ***[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]*** proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store."), *Order Granting Def's MSJ at page 4* ("Plaintiff provides no evidence ***[NO HE DIDN'T, INTENTIONALLY THAT IS!]*** of his actions in the store to counter this ***[OF COURSE HE DIDN'T "PROVIDE ANY EVIDENCE OF HIS ACTIONS IN THE STORE TO COUNTER THIS," BECAUSE HE WASN'T PUT ON NOTICE, IN THE FIRST PLACE, OF WHAT HE WOULD HAVE EVEN NEEDED TO COUNTER, SINCE DEFENDANT LITERALLY DENIED HIM THAT DUE PROCESS!]***).

9 The tactic of impermissibly submitting evidence in REPLY briefs is a well known occurrence called **SANDBAGGING.**

specifically while inside the store, and that his brother **DID** *specifically* make the associated purchase.[10][11] As such, because Defendant **DID NOT** provide Plaintiff with said FAIR NOTICE to supply said evidence, **REVERSAL** of the GRANTING of Defendant's MSJ is indisputably warranted.

II. THE COURT IMPERMISSIBLY HELD WITH CONCLUSORY STATEMENTS THAT PLAINTIFF IS SIMPLY A "LAWSUIT SCAMMER" UNDESERVING OF DUE PROCESS TO HAVE HIS CASE ADJUDICATED ON ITS MERITS

In the Court's ORDER granting Defendant's MSJ, it held that "Plaintiff's YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his 'sting operation.'" *Order Granting Def's MSJ at page 4.* Elsewhere in its ORDER, it further held that "Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit," *Order Granting Def's MSJ at page 5,* and that "Plaintiff designed his conduct to inspire this belief." *Order Granting Def's MSJ at page 6.*

The first problem with these tendentious holdings, IS THAT THEY ARE ALL 100% UNSUBSTANTIATED, **PURELY CONCLUSORY STATEMENTS,** DEVOID OF **ANY SPECIFIC** FACTS OR EVIDENCE **IN THE ***P-R-E-S-E-N-T*** RECORD** TO *EVEN BEGIN TO* SUPPORT THEIR PURPORTED TRUTHFULNESS WITH. **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."** *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). **Seriously,** Plaintiff's YouTube video *doesn't even mention* the words "Best Buy" in it, ONCE, let alone address ANY of the facts necessary to **legally and fairly** decide Plaintiff's instant case with.

10 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **WAS NOT** asked to show a receipt by any other employee [and **DID NOT** refuse to show a receipt to any other employee] on his way out of the store, contrary to what Mahmoud Abu-Shaweesh claims to have occurred in his belated, *REPLY-ONLY* affidavit.

11 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **DID NOT** even have a receipt on him, in the first place, for which he might have otherwise been required to show, because of how he **DID NOT** have store merchandise in his hands, let alone in his pockets [but rather held in his hands merchandise that he had erroneously attempted to return to the wrong store, and had in his pockets boxed medication used to treat his acid reflux condition with]. [This footnote is meant to address the **LIE** this Court put forth when it impermissibly argued that "Plaintiff does not deny having a receipt at the time of the incident." *Order Granting Def's MSJ at page 3.* Such lack of denial, again, was made without Plaintiff being given FAIR NOTICE of what he needed to address and refute].

Next, **the holdings violate Plaintiff's State and Federal 14th Amendment Rights to DUE PROCESS,** in which he has a Constitutional Right to have EACH INDIVIDUAL CASE OF HIS TRIED EACH ON AN INDIVIDUAL BASIS, i.e. completely on **EACH** of their **OWN** merits, and to not be *summarily* and *tendentiously* dismissed by some kangaroo court upon it simply spouting to the world that "we don't need to reach the merits of the instant case *today* because we hold that Plaintiff is *forevermore* a trifling lawsuit scammer!" **Seriously, whatever happened to trying a case on its merits?** Does this Court **REALLY** think that "once a lawsuit scammer, always a lawsuit scammer" is **ACTUALLY** a cognizable legal argument? **Because it's not.** About the **ONLY** thing this Court can do regarding Plaintiff's "purportedly disingenuous motives," **is to present that issue to the Jury.** "Summary judgment is usually inappropriate in cases dealing with potentially unconstitutional motivations. Because evidence concerning motive is almost always subject to a variety of conflicting interpretations, a full trial on the merits is normally the only way to separate permissible motivations from those that merely mask unconstitutional actions." *Ridgeway v. Kiowa Sch. Dist. C-2,* 794 P. 2d 1020 (Colo. App. 1989). *See also Wolther v. Schaarschmidt,* 738 P.2d 25 (Colo. App. 1986) ("Generally, the issue of a party's intent is a question of fact, and is not an appropriate issue for summary disposition.").

Next, **the holdings impermissibly shift the burden of proof back onto Plaintiff** to somehow argue that he is *not* a "lawsuit scammer," **when the burden really still lies with the Defendant** [and will **FOREVER** lie with the Defendant] regarding its AFFIRMATIVE defense of "shopkeeper's privilege" in a false imprisonment claim. "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940). **Seriously,** such monumentally vague statements that Plaintiff "acts in a manner," "creates misunderstandings," and "designs his conduct" come ***nowhere near*** the level of specificity necessary

to satisfy ***any*** actual affirmative defense of "shopkeeper's privilege" in a matter. Such statements are so astoundingly vague that they could LITERALLY be invoked by *any* merchant, on *any* occasion, looking to hastily avoid liability for their actions. Therefore, such **conclusory** "hot words" are nothing more than **lazy** attempts to **skirt** having to *actually* address the issue, *which is not even that difficult of an issue to address, by the way.* **That is, Plaintiff's "sting operation" is by no means some complicated, elaborate "ruse."** He simply refuses to answer questions and/or refuses to consent to searches while on his way out of stores after shopping. **THAT'S IT!** Why can't Defendants and Courts simply address that issue, on its face? Why dance around vaguely chanting "lawsuit scammer, lawsuit scammer!"? Oh yeah, that's right, because they'd lose the argument, because merely "refusing to cooperate" isn't *actually* particularized behavior, because it's really just bootstrapping, **because merchants [and police] "lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention,** because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter" with them. *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717.

Next, regarding Plaintiff's purported "sting operation," **Best Buy stores don't even have "back registers"** [they have registers littered all throughout their stores], **they began phasing out plastic bags way back in July of 2022** [PMFR Exhibit #1], **and Plaintiff didn't even refuse to show his receipt on his way out** [nor was he even asked to show one, let alone did he have one on him in the first place for which he might have otherwise been required to show due to him not even being a customer of the establishment that day in the first place.]. Of course, **NONE of these facts were even remotely developed by the Court [let alone a Jury]** ***in the first place,*** for which it would have otherwise been able to rule on, **one way or the other.** So by that alone we KNOW this Court is 100% FULL OF CRAP regarding its purportedly dispositive holdings that "Plaintiff is simply a lawsuit scammer." **Seriously.** Where's the scam? Where's the sting? Plaintiff BEGS this

Court to point to **A SINGLE FACT** fairly and indisputably[12] developed in the record that would *even begin to* substantiate the "elements" of his purported "sting operation."[13] Indeed, "[A] trial court's order must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision." *In re Van Inwegen,* 757 P.2d 1118 (Colo. App. 1988). *See also Mowry v. Jackson,* 140 Colo. 197, 343 P.2d 833 (1959) ("[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision."). **Yet this Court has made no such EXPLICIT findings that the Appellate Court can even review. All it has done is conclusorily establish that "Plaintiff is simply a lawsuit scammer," without even so much as describing how.** *What a monumental waste of time this will be for the Appellate Court if this Lower Court doesn't reverse this case immediately!* Moreover, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, with different receipt checking policies, where Plaintiff was an actual customer of those stores, had receipts both printed AND provided to him [i.e. not just emailed] upon shopping at those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those particular stores. However, **NONE** of those facts have ***even remotely*** been fairly and legally established by Defendant [or the Court] in Plaintiff's instant case. **It is truly baffling that this Court evidently does not understand how important it is that** "A

12 Remember, for purposes of ruling on Defendant's MSJ, the Court is **not allowed** to point to Mahmoud's affidavit, nor the affidavit-less business records (i.e. receipts), both *belatedly* submitted by Defendant *only* in its REPLY brief.

13 Technically, Plaintiff doesn't even know if "using back registers" and/or "not using plastic bags" are the actual reasons for why he is potentially detained. As such, they're not even a part of his long running "sting operation." Meaning, Plaintiff certainly has *hypotheses* that such are reasons for why he is being *asked* to show a receipt, **but he has never filed lawsuits for merely being *asked* to show a receipt, he's only ever filed lawsuits for being detained AFTER NOT SHOWING ONE.** And to this date, no Defendant has EVER come forward on the record to explain precisely *why* they've detained him. Courts [like this one evidently] have always prematurely dismissed his cases without ever adjudicating them on the merits. As such, the only real, actual "element" to Plaintiff's long running "sting operation" **is to simply refuse to show his receipt [like any other patron has the right to do] and see what happens.** THAT'S IT. Of course, not even *that* "element" is part of Plaintiff's instant case, so there's **NO** "sting operation" going on *at all* now!

conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

Next, *while not even being necessary to provide, since Plaintiff is not required to refute conclusory statements made without supporting documentation or testimony,* Plaintiff nevertheless provided this Court with ***more than enough*** evidence to conclusively show [if not, **AT THE VERY LEAST,** send to the Jury to decide] that he is not a "lawsuit scammer" ***for simply refusing to answer questions and/or refusing to consent to searches while on his way out of stores.*** Such conclusive evidence includes, but is not limited to: a) **dozens of news articles on the exact subject** [PRTDMSJ Exhibit #14], b) **decades-old law reviews on the exact subject** [Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009))], c) **actual police activity of the same exact behavior as Plaintiff** [Cop Records Himself Detained At Walmart Receipt Check, The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010)], d) **identical or nearly identical case law on the subject** [*Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971), *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996), *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000), *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963), *Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994), *Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951)], and e) **Supreme Court and Federal Court case law on the subject explicitly holding that "refusals to cooperate and/or consent to searches" absolutely cannot be used to "bootstrap" detentions with** [*Florida v. Bostick,* 501 U.S. 429, 111 S. Ct. 2382 (1991), *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998), *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993)]. If, after familiarizing oneself with ALL THAT, one still ***miraculously*** considers Plaintiff to be a "lawsuit scammer," **all hope is lost for that person,** *and they should probably not be practicing law in this Country.*

Last, but certainly not least, **is the statistics fraud.** If this Court is ***so confident*** that Plaintiff "acts in a manner that could **reasonably** be construed as suspicious," then surely *every other*

merchant would be acting in the same way as Defendant has, by also *reasonably* detaining him for "scamming" them too, no? And because it's *so darn easy* to "entrap" all these innocent, *reasonably* acting merchants for simply *doing their jobs* and *following the law*, Plaintiff, being the greedy, money-grubbing "lawsuit scammer" that he is, would then have surely gone around and collected a bunch more fake lawsuits by now, no? **Right?** EXCEPT THAT HE HASN'T. BECAUSE HE'S NOT A LAWSUIT SCAMMER. BECAUSE IT'S NOT EASY TO CATCH FALSE IMPRISONERS. BECAUSE THERE AREN'T THAT MANY OUT THERE. BECAUSE MOST MERCHANTS ARE SMART, KNOW THE LAW, AND DON'T DETAIN PEOPLE FOR MERELY REFUSING TO COOPERATE. INDEED, THE LAST TIME PLAINTIFF CAUGHT A MERCHANT VIOLATING HIS RIGHTS BEFORE THE INSTANT CASE AT BAR **WAS LITERALLY OVER FOUR YEARS AGO.** So just give it up. Your stats aren't adding up. True lawsuit scammers would be INUNDATING your Courthouse with dozens, ***if not hundreds*** of fake lawsuits by now, if it is truly as easy as you say it is to "entrap" *reasonable* acting people. **As such, Plaintiff deserves to stop being eternally, retaliatorally, conclusorily defamed as a trifling "lawsuit scammer," AND HAVE HIS INSTANT CASE ADJUDICATED ON ITS MERITS.**

CONCLUSION

"Trial courts should not grant motions or deny a trial where there is the slightest doubt. Trial courts should exercise great care in granting motions for summary judgment, and should not deny a litigant a trial where there is the slightest doubt as to the facts." *Smith v. Mills,* 123 Colo. 11, 225 P.2d 483 (1950). "Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate." *Abrahamsen v. Mountain States Tel. & Tel. Co.,* 177 Colo. 422, 494 P.2d 1287 (1972). "Where the record has not been adequately developed on a material factual issue, summary judgment is not proper." *Moore v. 1600 Downing St., Ltd.,* 668 P.2d 16 (Colo. App. 1983). "In passing upon a motion for summary judgment, it is no part of the court's function to decide issues

of fact but solely to determine whether there is an issue of fact to be tried." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). "Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment." *Primock v. Hamilton,* 168 Colo. 524, 452 P.2d 375 (1969). **OF UPMOST IMPORTANCE:** "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). **AND FINALLY:** "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its most recent ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 3rd day of December, 2024.

William Montgomery

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 3rd day of December, 2024, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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Best Buy moving away from single-use plastic bags

By Ale Valeriano July 19, 2022



Starting this month, Best Buy will begin working with customers to create a more sustainable future together, one bag at a time.

Beginning July 19, customers shopping in-store will have the option to purchase a plastic bag for 10 cents or are encouraged to bring their own bags for purchases to help reduce plastic waste headed to landfills.

"As we continue to work toward our goal to be a more sustainable company, we are focused on reducing our waste and finding new ways to work with our customers to make a positive impact on the planet," said Tim Dunn, Best Buy's head of environmental sustainability. "This is just another example of the many sustainable choices we offer our customers."

Here's what you need to know:

- Starting July 19, we will begin charging 10 cents for each single-use plastic bag provided with store purchases.
- A portion of the fee goes toward supporting teens through programs like the Best Buy Teen Tech Center®
- Over the next few years, we will continue to work toward solutions to reduce plastic bag usage in our stores including offering more sustainable options for customers, such as paper bags.

From smart thermostats to offering 100 percent recyclable paper gift cards, Best Buy makes it easy to shop and live more sustainably. Since 2009, we have achieved major milestones in our sustainability programs and have reduced our carbon emissions by 62%. Through initiatives that include recycling more than 2 billion pounds of electronics and appliances to offering a wide variety of ENERGY STAR® certified products to help customers reduce their carbon emissions, we proudly continue our journey to building a more sustainable future.

Learn more about our sustainability program here.

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 24, 2024 12:59 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Response in Opposition to Plaintiff's Motion to Reconsider as follows:

I. Legal Standard for Motions to Reconsider

"Once a court issues a final decision, that decision becomes the law of the case and cannot be relitigated." *Vashone-Caruso v. Suthers*, 29 P.3d 339, 342 (Colo. App. 2001). Accordingly, motions for reconsideration are disfavored under Colorado law and are only appropriate in

exceptional circumstances. C.R.C.P. 121 § 1-15(11). A movant's disagreement with the Court's analysis provides no basis for reconsideration. Instead, the movant must show "a manifest error of fact or law that clearly mandates a different result or other circumstances resulting in manifest injustice." *Id*.

For this reason, a "motion for reconsideration is not a license for [a party] to get a second bite at the apple' . . . and file a retread of the old brief disguised as a motion for reconsideration." *Shields v. Shelter*, 120 F.R.D. 123, 126 (D. Colo. 1988). Nor does the process exist "at the disposal of parties who want to rehash older arguments." *Foster v. Mountain Coal Co*., L.L.C., 61 F. Supp.3d 993, 998 (D. Colo. 2014). Because reconsideration seeks correction of a "clearly" erroneous order – and is not an opportunity to refine movant's theories after having viewed the order – a movant may not present new arguments or evidence not included in briefing. "Colorado courts addressing this rule have consistently concluded that a district court does not abuse its discretion by failing to consider new arguments and evidence submitted in motions to reconsider." *Fox v. Alfini*, 432 P.3d 593, 603 (Colo. 2018); *Hice v. Lott*, 223 P.3d 139, 149 (Colo. App. 2009) (following entry of summary judgment, trial court not required to consider evidence provided for the first time in a motion for reconsideration); *Ogunwo v. Am. Nat'l Ins. Co*., 936 P.2d 606, 611 (Colo. App. 1997) (trial court need not entertain new theories on a motion to reconsider following the grant of summary judgment).

This is particularly true for motions for reconsideration following entry of summary judgment because "evidence submitted after the grant of summary judgment cannot properly be considered by the district court." *E.g., Pzerkurat v. Torres*, 488 P.3d 125, 134 (Colo. App. 2016).

II. The Reply exhibits properly rebutted Plaintiff's Response.

Plaintiff appears to take issue with two exhibits that were submitted in Best Buy's Reply Brief, namely the affidavit of Mahmoud Abu-Shaweesh and the receipts of Plaintiff's Best Buy purchases on the date of the incident. Both exhibits were properly offered in response to allegations by Plaintiff in his Response Brief. To wit, Defendant was responding to Plaintiff's allegations concerning his behavior immediately preceding the start of the video. *See, e.g.,* Plaintiff's Resp. at ¶¶ 22-23, 25. Thus, Best Buy's inclusion of these exhibits in Reply was proper. *See Tarpill v. Entelechy LLC*, No. 19CV30279, 2021 WL 4349996, at *2 (Boulder County Dist. Ct. Jan. 27, 2021) (denying motion to strike where information contained in reply brief responded to arguments raised in response brief); *City of Thornton v. Bd. of Cnty. Comm'rs,* No. 2019CV30339, 2019 WL 3228258, at *4 n.6 (Larimer County Dist. Ct. July 16, 2019) ("The Court may consider points raised for the first time in a reply brief when those points are made in response to arguments raised by a response brief."). To the extent that Plaintiff took issue with Best Buy's inclusion of such exhibits, Plaintiff could have availed himself to a motion to strike these exhibits or requested a sur-reply brief, but Plaintiff failed to do so.

III. Plaintiff failed to adequately respond rebut the exhibits in his own Reply.

Plaintiff argues that he was deprived of an opportunity to respond to these exhibits. However, the exhibits at issue were also submitted in the briefings for Plaintiff's Cross-Motion for Summary Judgment. Plaintiff had the opportunity to respond to and rebut the exhibits in Plaintiff's Reply submitted in the Cross Motion for Summary Judgment. The Court ruled upon both summary judgment motions simultaneously and considered all evidence and arguments submitted with both briefings before ruling in Defendant's favor.

Plaintiff had a *higher* burden in proving his cross-motion for summary judgment than the burden he had in opposing Defendant's motion for summary judgment. Thus, he was incentivized to provide stronger evidence in his cross-motion for summary judgment briefing, and yet, he still failed to present evidence sufficient to survive Defendant's motion for summary judgment. As such, Plaintiff cannot reasonably claim that he was unable to respond to these exhibits or that such alleged inability would have resulted in a different ruling. Therefore, Plaintiff has failed to prove that the present situation "clearly mandates a different result." *See,* C.R.C.P. 121 § 1-15(11).

IV. Best Buy met its initial burden on summary judgment.

The Court did not need to consider **Exhibits N, O** and **P** of the motions for summary judgment in order to find in Best Buy's favor. In the video of the incident, submitted as **Exhibit M** in Defendant's Motion for Summary Judgment**,** Best Buy employees repeatedly request that Plaintiff return the product in his possession, and Plaintiff remains silent. He does not deny that he has product in his possession nor did he make any effort to show the Best Buy employees that they were mistaken in believing Plaintiff had stolen product – perhaps by revealing whatever object was in his pockets. Plaintiff's conduct would be sufficient to invoke the shopkeepers' privilege and would likewise constitute a "refus[al] to utilize a means of escape." *See,* Restatement (Second) of Torts § 36 cmt a. Thus, Best Buy met its initial burden for summary judgment.

WHEREFORE, for the forgoing reasons, Defendant Best Buy respectfully requests that this Court deny Plaintiff's Motion for Reconsideration.

Filed **December 24, 2025.**

MONTGOMERY | AMATUZIO

By: *s/ Stephanie Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 24, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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s/ Stephanie Boutsicaris

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 31, 2024 2:54 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
BEST BUY'S MOTION FOR ATTORNEYS' FEES	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Attorneys' Fees, pursuant to C.R.S. § 13-17-102 and C.R.C.P. 11(a). As grounds, Best Buy states as follows:

CERTIFICATE PURSUANT TO C.R.C.P. 121 § 1-15

Undersigned Counsel conferred with Plaintiff concerning this motion. Plaintiff is opposed to the relief requested herein.

LEGAL STANDARD AND AUTHORITY

Under C.R.C.P. 11(a), a party's signature on pleadings certifies that the party conducted a reasonably inquiry into the fact and law relating to the pleading and that, based on this investigation, the signer reasonably believes the pleading is well grounded in fact. *See Maul v. Shaw*, 843 P.2d 139 (Colo. App. 1992). Furthermore, a party's signature certifies that the pleading was not filed for the purpose of causing delay, harassment, or an increase in the cost of litigation. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc.,* 70 P.3d 629 (Colo. App. 2003). Rule 11 focuses primarily on conduct prior to a pleading being filed. *See Switzer v. Giron,* 852 P.2d 1320 (Colo. App. 1993). If a pleading is signed in violation of Rule 11, the court, upon motion or upon its own initiative, shall impose an appropriate, which may include an order to pay the other party's reasonable attorney's fees. C.R.C.P. 11(a).

C.R.S. § 13-17-102(4) states in relevant part that a court "shall assess attorney fees" if a party brings or defends an action, or any part thereof, "that lacked substantial justification…." As applied here, the lack of substantial justification is defined as "substantially groundless" (the other grounds of substantially frivolous or vexatious are not applicable to these facts).

Rule 11(a) as applied in this case focuses mostly on the requirement for investigation and a "good faith argument" prior to signing and filing a pleading, while C.R.S. § 13-17-102(4) only requires an action, claim or defense found to be, in hindsight, "substantially groundless." These inquiries do not require a finding of subjective bad faith but merely the disregard of either the investigation responsibilities in litigation or the actual facts supporting the asserted claims and defenses. *E.g., In re Trupp*, 92 P.3d 923, 930 (Colo. 2004). However, "[i]f an action is brought or

continued vexatiously or in bad faith, the basis for an award of fees would be even stronger." *W. United Realty, Inc. v. Isaacs,* 679 P.2d 1063, 1069 (Colo. 1984).

Sanctions, including an award of reasonable attorneys' fees, pursuant to C.R.C.P. 11 or pursuant to C.R.S. § 13-17-102 is a decision committed to the discretion of the trial court, whose ruling will not be disturbed on appeal absent an abuse of discretion. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc*., 70 P.3d 629, 633 (Colo. App. 2003).

MOTION

I. Plaintiff had knowledge that his claims would not prevail.

After having numerous previous lawsuits thrown out based upon the same or similar facts and legal arguments, Plaintiff continues to assert the same failed arguments. **Ex. A-K**;[1] *see also,* Best Buy's Motion for Summary Judgment. Because of the outcome of these previous lawsuits, Plaintiff had actual knowledge that this lawsuit would likewise fail, and yet, proceeded with this vexatious litigation.

Apparently, no previous litigant has requested attorney's fees from Plaintiff, and thus, Plaintiff believes his actions are vindicated. **Ex. Q,** Plaintiff's Deposition, 90:1-18. Plaintiff also testified that an award of attorney's fees would potentially deter future lawsuits, provides that such an order was well-reasoned. *Id.* at 90:19-92:14. Because Plaintiff has already voiced his intent to proceed with more lawsuits against Best Buy, a strong sanction of attorney's fees is necessary here to deter future groundless, frivolous, and/or vexatious lawsuits. **Ex. Q**, 92:15-20.

II. Plaintiff's filing of this lawsuit was in bad faith.

[1] To avoid duplicitous submissions, Best Buy will be utilizing the same exhibits and labels for such exhibits as its Motion for Summary Judgment briefings.

Plaintiff's conduct on the date of the subject incident demonstrates that he was deliberately trying to engage Best Buy in a situation that would result in a lawsuit. To achieve this goal, Plaintiff drove more than a hundred miles over the course of about eight hours to make numerous purchases at various Best Buy locations on one of the busiest retail shopping days of the year, Black Friday. **Ex. N-O; Ex. Q**, 107:13-109:11. Many of these purchases were duplicitous, purchasing the same items over and over again in order to "audit" Best Buy and to see if Best Buy would detain Plaintiff. **Ex. Q,** Plaintiff's Deposition, 85:4; *see also,* **Ex. Q,** 110:13-111:25. In fact, Plaintiff repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. Q,** 35:23-37:5; 45:16-46:9.

This conduct trying to stir up lawsuits was accompanied by Plaintiff's display of animosity toward Best Buy during the pendency of this litigation. **Ex. Q,** 87:5-10; **Ex. R,** Plaintiff's Emails to Best Buy. Plaintiff went as far to say that everyone else involved in the suit should "go find the nearest bridge and jump off of it." *Id.* While Plaintiff's animosity toward Best Buy is not required to grant an award of attorney's fees, this animosity and bad faith reinforce the need and the justification for an award of attorney's fees. *Isaacs,* 679 P.2d at 1069.

III. Plaintiff maintained this lawsuit in bad faith.

Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule 26(a)(1) disclosure requirements and deliberately providing evasive discovery responses. In his YouTube video that was posted prior to the filing of this lawsuit, Plaintiff plainly stated his intention of not cooperating with discovery:

> "I thought showing my receipt or telling the Court that I had it after the fact was an easy way to, like, prove my innocence and therefore prove their guilt. I'm not going to be so nice next time. I've already got cases where I have it all set up a perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going

> to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man. Screw that, man!"

Exhibit L, 17:15-17:55.

In keeping with his word, Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures, even though Plaintiff is now claiming in his Motion for Reconsideration that his brother was present at Best Buy during the alleged incident and made a purchase close in time to the alleged false imprisonment. *See,* Motion for Reconsideration, p. 8-10, *compare with* **Ex. S,** Plaintiff's Rule 26(a)(1) Initial Disclosures (omitting Plaintiff's brother). This failure to identify Plaintiff's brother in disclosures was not an accident or oversight. Plaintiff's discovery responses demonstrate that Plaintiff was determined to provide as little information as possible in this lawsuit by responding to most discovery requests with "I do not recall." **Ex. T,** Plaintiff's Response to Def's First Set of Discovery Requests. In fact, Plaintiff claims to not be able to recall whether or not he made a purchase at the subject Best Buy, and then – suddenly – in his Motion for Reconsideration, Plaintiff can remember the occasion and vehemently denies making the purchase. *See,* Plaintiff's Motion for Reconsideration, p. 9-10.

Prior to filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure. Thereafter, his actions spoke even louder than his words, as his conduct demonstrated no intention to cooperate in good faith by feigning a lack of memory of the incident in sworn responses to written discovery. **Ex. T**. As such, the Court is required under both Rule 11 and C.R.S. § 13-17-102(4) to impose appropriate sanctions, and the Court should impose reasonable attorney's fees.

Wherefore, for the forgoing reasons, Best Buy respectfully requests that this Court grant this Motion and award reasonable attorney's fees to Best Buy.

Filed on December 31, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2024, a true and correct copy of the foregoing **BEST BUY'S MOTION FOR ATTORNEYS' FEES** was prepared for service to the following in the manner indicated below:

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s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DATE FILED
December 31, 2024 2:54 PM

CASE NO. 2023CV00226

WILLIAM MONTGOMERY

V.

BEST BUY, L.P.

DEPOSITION OF:

WILLIAM MONTGOMERY

DATE:

November 05, 2024

PIKE REPORTING COMPANY
YOUR PATH THROUGH LITIGATION

(855) 693-3767 | (720) 738-1300
schedule@yournextdepo.com

www.pikereporting.com

Buyer Behavior. You know, it -- it's a great --

Q. You want to say that slowly so the court reporter can get it?

A. Yeah. Sorry. Yeah. Big-Box Bullies Bust Buyer -- benign Buyer Behavior. This isn't even -- this isn't even new stuff. You know, there's even news articles out there of cops that have caught onto this and they, you know, recording themselves on their way out, politely declining to show receipt, and be detained for 30 minutes in that case, you know.

So finally, ironically thanks to you guys, for using the word entrapment, finally. That's been the -- the secret word that no one's wanted to explain here. That's what all my previous lawsuits have been. You know, everyone has been alluding to, that I entrapped these people by doing a certain thing. But finally, I -- you know, since you guys used the word entrapment, that gave me a chance to go do a bunch of research on that subject. And I found out that, yes, entrapment is not meant to mean that somebody who has -- or somebody who merely affords another person the opportunity to commit a crime is not entrapment.

And so, you know, I'm -- I'm just like a bait car, which I've -- you've seen my arguments there. You know, people just park their cars, whether they're cops

or not, outside. And if they get stolen, it's not a defense to a grand larceny of like, hey man, this wasn't a real car. You know, that was a bait car, cop came forward and said that was bait car. And it's like, no, no, sorry, you -- you're getting convicted of grand larceny, you know.

But yeah, that's the equivalent. I see people -- Walmart coming forward and pointing the finger at me, like, see, see, he's a lawsuit scammer. And it's like, that's not actually a defense. That -- that doesn't replace your need to, you know, collect shopkeeper's privilege, like I said.

Q. So just to be clear, you would analogize your actions to a bait car in a police sting?

A. Yes and no, because I don't like that people even abuse that concept that, you know, I'm going out of my way, like a cop might, to set up a bait car or a sting. But the whole point of a sting operation is to be not different than anybody else. It's just like another car on the road, like anybody else. Obviously, if the person knew was a bait car, they wouldn't steal it. And so, you know, I'm just like any other person who parks their car on the road. And these days with, you know, GPS trackers and stuff, I have one in my car for, you know, when I deliver, you know, any car --

every car -- every car is a bait car on the road. So, can -- can you really say that people are going out of their way to try and, you know, entrap people into stealing their cars? No, they're just parking their car on the -- on the road.

Q. Did you have a GPS tracker on your car around the time of the incident, that's the subject of this lawsuit?

A. I don't -- I think so. Yeah. I -- I -- I recall. I mean -- I -- I mean, I started delivering for DoorDash and Uber Eats in 2021. And so, you know, I -- I try and keep it charged up. You know, it's a battery-operated one. But it's through a company called TrackmateGPS. I don't know how long they keep records for. But -- but yeah, I mean, everyone should have a GPS tracker in their car, personally.

Q. So, you're -- you're not sure if the -- the GPS data from the date of the incident is still -- still available?

A. Yeah -- no, no. They -- they -- they only keep records for, like, three months or something like that.

Q. Okay. And you didn't do anything to try -- try to preserve your data from that day?

A. I mean, honestly, I -- I didn't think that

lemming, and they basically choose to assuage the perceived evil, as one case says it, and they just show the receipt because they think that's what helps keep prices down. And it's just an emotional argument, you know. And -- but this is a court of law over here.

And so, I go shopping and I leave. That's my sting? Like, come on people. Are -- are you -- pardon my French, but are you fucking kidding me? You know. And because I don't show -- because I refuse to cooperate with consensual requests -- they're all consensual, because like I said, the alternative is that it's compulsory, and it's not, this isn't a -- this isn't a Sam's Club or Costco, you know, therefore it's -- it's consensual, I'm allowed to decline, and have it not be used against me.

And -- and cops have ruled, you know, on this in my favor. Or, you know, they've done the same sting as me. Attorneys have chimed in on this. It's -- it's -- it's just so funny that I just -- it's almost entertaining. But it's still -- at the end of the day, truly disturbs me, like, makes me want to leave this country, that people would -- would twist my own intuition against me. Like -- like, it's a bad thing. Like, I -- not that I care. But like, you know, people should commend me for trying to uphold this balance

between due process and crime control.

You know, it's like -- it's almost like somebody who is getting after a cop, like his boss, for setting up a wildly successful bait car, that happens to be in a really bad neighborhood. And he's like inundated with these cases now. And -- and his boss is like, come on, man, dude, like, this is ridiculous. And -- and it's like, dude, the guy should be commended. He's catching crime.

If there weren't people out there, willing to steal a car, he'd be out of a job. And if there weren't people out there willing to bootstrap, merely refusing to show a receipt, or answer questions, or be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this. Sorry.

Q. Do you have any other stores that --

A. Long answer to a short question.

Q. I'm sorry. Do you have any other stores that you feel like have a big problem with this?

A. That's a good question. I've seen other stores do it, yeah. Like Micro Center stopped me once. Mostly electronic stores because of the high value items. But, you know, I've seen some department stores.

Are they intellectually dishonest? Are they, you know, shopping for regular reasons? No. They're - - they're technically being paid to purposely shop, but it's just an audit. It's a secret shopping. It's -- you know, technically certain stores pay customers themselves to shop at those stores. I should -- I should ask Best Buy corporate for a sponsorship to be one of their secret shoppers. They might even pay me to do what I'm doing.

Seriously, you know, to frame me as some lawsuit scammer right next to everybody else who -- everybody's a secret shopper technically. You know, I should say this. This is really, really, really important. But knowing ahead of time that you might be torted does not make you lose your rights if you decide to go shopping anyways. That's like victim shaming basically. There was a very important quote I found from a case law that said -- oh, whatever. Horribly misquoting it, but something to the effect of knowing ahead of time that something might happen and not preventing it from happening is not entrapment.

So yeah, it really comes down to at the end of the day what is entrapment and what is not. And if what am I -- what I am doing is truly speaking entrapment, then that's a whole other story. But so far, every single news article I've ever come across, every single

causes my detention. So quite honestly, I have two words for all this shit, and it's called victim shaming. It's -- it's scapegoating, and it's really intellectually dishonest.

And, you know, at the end of the day, I would say to any attorney, any judge, anybody who wants to try that shit on to just go find the nearest bridge and jump off of it because you're just an absolutely useless person in society. You provide no value, and you hurt society. Victim shaming is a really bad thing. It -- it affects people in all sorts of cases. You know, false rape accusations are the worst. You know, it's -- I can't believe that I am this profoundly victim shamed for catching onto some intuition, which is not that hard to wrap your mind around. Like I said, some cop has been recording as, you know, an article about him recording himself.

Happened. Can you blame me? I'm just trying to be a -- a good -- good citizen. Anyways,, loaded answer to a short question. Feel free to refine your statements, or your questions, and we'll hone in on whatever you want to ask. But I know what you're getting at, and you're going to try everything you possibly can in your brain to frame me as some lawsuit scammer, that's practically, you know, jumping or

Sorry, I'm just -- I take deep offense, as anybody should, to being illegitimately defamed as a lawsuit scammer, and -- and so far, by the way, now that I have a history of suing, do you see -- have you looked at my record? You know, hopefully, you have enough to see that there is no lawsuits by Walmart against me, you know, for -- you know, they have the capacity after I lose my lawsuit, to turn around and sue me for being a frivolous lawsuit, or technically, there is that due process in there. No one's bothered. No cops have ever sued me. No -- no -- no Walmarts have ever sued me. I've never been sued for frivolously suing somebody.

So you know, I'm just going to keep shopping, like any other normal person. And then if something ever happens to me, I'm just going to go to court and, you know, go over my elements. And my elements are very simple. Somebody surrounded me, and they detained me, and they lacked lawful justification for their actions.

Q. If -- if you had been found -- if there had been a court finding that one of your previous lawsuits was frivolous, and you had to, say, pay attorney's fees, or something to that effect, would that have deterred you in the future lawsuits, or -- or not?

A. It depends on how intellectually honest the ruling was. You know, if there was actually some

backing to it, you know, if somebody could -- could truly, you know, articulate that what I do as a shopper is -- is actually, you know, like I said, brake-checking somebody to -- to that extent, then yeah. I -- yeah, I'd probably stop doing what I'm doing. But I'm just -- I'm just shopping, and -- and that I think that's what everyone sees in the end. And, you know, quite honestly, though, you know, hopefully you've read in -- in my reply to your Response to my Cross Motion for Summary Judgment, there was a footnote that explained all the prior case rulings. Not a single case has been able to rule correctly on any of it.

In the first place, they have done nothing but make up facts, like I concealed stuff, when I've never concealed anything. I'm not a concealer because I know that would create genuine shopkeeper's privilege. You know, I -- I'm thinking of all the laws, things, but they -- they -- they -- they misdefined what, you know, release is, versus escape, and, you know, this obligation to prevent detentions. And at one point in time, I think one of my cases was tossed because I wasn't moved to elsewhere in the store, and it's like, dude, are you serious guys? Do you not read the law out there? It says, I don't have to be moved. I just have to be detained.

So truthfully speaking, at the end of the day, every single one of my cases was tossed illegitimately. I refuse to accept or concede that the -- that the judges ruled fairly. They made up a bunch of shit. All -- every single case had nothing but intellectually dishonest fabrications of fact and misapplications of law. And I've been able to articulate it, now. Every single time I get better and better.

Every time somebody wrongs me, it forces me to go find more case law out there. And so far I've been right. I -- no -- no one has been able to refute me in an actually truly intellectually honest way. So where do what am I supposed to do? I'm just going to keep shopping like anybody else?

Q. Do you have any other claims against any store, whether it's Best Buy, Walmart, any other store that you haven't put before the Court yet?

A. Oh, yes. There are, I think, two more Best Buy lawsuits from last year, that I'm getting ready to file.

Q. And have you put them on notice of that?

A. Oh, I'm still deciding whether or not I'm going to do it, depending on, you know, how I feel about the case, and so forth. No, I have not put them on notice. Do I -- do I have to? Is there some legal

Q. Okay.

A. I mean, I don't have a perfect memory. So you know, I was answering the way I was answering, out of an abundance of caution, and also, I didn't really remember as much, when they were first asked. So the more I reviewed my video of the footage of the incident, you know, and talked to my brother, you know, kind of remembered a little bit more about that particular day, you know, which is what a deposition would do. You know, like, today, right now, I've -- I've got no qualms about answering certain questions, if -- if I -- if I can remember them, as well as I can.

Q. So did your brother go with you to every single Best Buy location that was in that 29-page list of receipts?

A. Yes. Yeah. For the most part, I -- I -- not for the most part. Yes. I -- I can completely vouch that my brother was with me the entire day, that day.

Q. Was he likewise, you know, making a lot of purchases that he intended to return?

A. I -- I have no idea. I can't speak for him.

Q. So --

A. Like I said, though, I never admitted to intending on returning anything. I only decided to return a bunch of stuff, once I was a little off-put

that Best Buy treating me a certain way. So I -- I don't like your wording there.

Q. Sure. So -- and that's why you proceeded to make purchases on the 26th, the 27th and 28th? Dozens of purchases at Best Buy's locations on the 26th, 27th and 28th of November, 2022?

A. Yeah. There were still all sorts of sales going on at the time. And I had -- you know, I hadn't thought about my feelings yet of how I was -- you know, how I felt about this particular situation here.

Q. Those deals were just too good to turn down, even if it went against your deeply held convictions.

A. Yeah. I, kind of, know what you're doing and I -- I don't buy it, you know. No pun intended. Even if I did intend on returning them, where is that against the law? Where is that against Best Buy's receipt or return policy?

Q. And you're saying that as purely a hypothetical, correct?

A. Yeah. I mean, I don't know. Like, who fucking cares? I bought a bunch of stuff, and whether or not I wanted to return it at any given point in time is 100 percent irrelevant to any -- any claim, or defense, or anything like that.

Even if I absolutely, 100 percent had zero

intention of keeping anything I bought, and if I bought all of it with the sole purpose of trying to catch you guys, which I just know you're frothing at the mouth for some admission on that, it still wouldn't change a single goddamn thing.

I have every single right to go buy stuff, to secret shop people, to know my rights, to catch bigots, and to sue them for falsely imprisoning me. So none of it is relevant. So I'm going to answer every single one of your questions with that slight tinge of, who fucking cares?

Q. Okay. So do you think that I have the right to ask you, at this deposition, what your purpose for being at Best Buy was on that day?

A. Sure. You can ask. Absolutely.

Q. Do you think it's your right to withhold your true purpose for being at Best Buy?

A. You know what's very interesting about that? My brother and I have discussed this in great length over the last couple of years. And what we've finally discovered is a good way to put it, which is this; people intellectually dishonestly think that there is some sort of true dichotomy that exists out there, when it's really a false dichotomy, that people are allowed to have -- or that people are not allowed to have

multiple intentions.

So, i.e., I'm either disingenuously only buying things at that store to provoke suspicions, or I'm just some innocent customer that just wants to buy stuff. No. You -- you -- I'm allowed to be both. I'm allowed to buy a bunch of stuff and keep it if I wanted to keep it, buy it with the intention of possibly seeing if there's, you know, someone that's going to detain me over them while also just enjoying my -- my day.

You know, I'm allowed to go and buy stuff, you know, and have dual intentions. It's -- it's so weird that people would put me in this category of, like, one or the other, you know? Like, the way you asked that. I could do both. I could literally want to buy a bunch of stuff, want to get deals. A lot of times in the past I've bought stuff to resell. I've bought stuff heavily on sale during Black Fridays so that I could turn around and resell them, you know?

That's three intentions now, you know? And if -- if when I'm shopping, I just so happen to realize that those situations may also create false, unreasonable provocations that I might be detained, then so be it. I'm allowed to do that, too. Like, I can't stand when people are, like, we caught you as a lawsuit scammer because you weren't intending to buy any of

those items that day.

Yeah. Of course I was intending on buying all those items that day. Like, I'm allowed to do whatever I want with my money. It's my money, and it was a sale, and I'm allowed to buy stuff, and, you know -- like, a lot of times just keep whatever I want to keep, or not keep whatever I want to keep.

Like, sorry -- these ideas of -- of, you know, false dichotomy is just silly. I'm allowed to have both intentions. I'm allowed to go shopping with the intention of seeing if somebody might be stupid enough to falsely imprison me, and I'm also allowed to go shopping and see great deals, and change my mind after the fact, if I find out that that's just not a good enough deal. Like, I -- I -- I just don't see where you're going to be able to extrapolate a goddamn bonafide confession out of me.

Oh, I am a lawsuit scammer. Oh, see, you got it. You got it on taped confession. Go show that to the jury now. Like, come on. I don't even know -- no offense, but I don't think that your career as an attorney is off to a great start. Usually, attorneys are very -- very -- supposed to be very intellectually honest. They have this thing called The Bar Association Rules of Professional Conduct, and I've already caught

From: zoinbergs@gmail.com
To: Stephanie E. Boutsicaris
Cc: Lori K. Bell; Abigail Spohn
Subject: Re: Montgomery v. Best Buy ~ MTEPL In Reply To Response To C-MSJ
Date: Monday, October 28, 2024 10:00:49 AM

DATE FILED
December 30, 2024 12:40 PM
FILING ID: 6A8B6AEC8C75D
CASE NUMBER: 2023CV226

Yeah, except that your employee's nine sentence affidavit is 1000000000000% frivolous, and really did require eight literal pages to rebut (you'll see soon enough). Counting our chickens before they hatch again, are we?

Regarding your response to my facts and your new additional facts, that really did take 12 more pages, too.

And what about my legal arguments? Do they deserve no attention, either? No approval for them without reading them yet either?

Would you like to sample my reply to confirm your opposition?

Nevermind, whatever, I don't care what you think. I'm just conferring as per Court requirements. Honestly, you've been nothing but a petty, immature, juvenile, law violating, felony attempting to influence, supremely intellectually dishonest sleasebag of an attorney firm right from the start. I really don't expect much from you guys these days.

I will note your position, and file my documents accordingly.

Thanks,

William

On Mon, Oct 28, 2024, 9:12 AM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:

> When you previously exceeded the page count for a brief, the excess pages were not used wisely. I see no reason that eight pages should be required to rebut a nine-sentence affidavit. We oppose.
>
> Thank you,
>
> **Stephanie E Boutsicaris**
> Attorney
> Direct: 303.592.6684
> Email: sboutsicaris@mac-legal.com
>
> **Montgomery | Amatuzio**
>
> 4100 E. Mississippi Ave, 16th Floor
> Denver, Colorado 80246

Main: 303.592.6600
Fax: 303.592.6666
http://www.mac-legal.com

Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.

From: zoinbergs@gmail.com <zoinbergs@gmail.com>
Sent: Monday, October 28, 2024 5:28 AM
To: Lori K. Bell <lbell@mac-legal.com>; Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com>
Cc: Abigail Spohn <Aspohn@mac-legal.com>
Subject: Re: Montgomery v. Best Buy ~ MTEPL In Reply To Response To C-MSJ

Greetings,

Okay, I have finished composing my REPLY to your RESPONSE to my C-MSJ. However, it took a total of **28 pages** to complete.

- A total of **20 pages** were required to fairly and adequately REPLY to your RESPONSE to my FACTS plus your own ADDITIONAL FACTS
    - **8 pages** alone of that **20 pages** were required to fairly and adequately address Mahmoud's *never-before-offered* affidavit.
- **8 pages** were required for me to provide legal argument in REPLY to your legal argument RESPONSE.

As such, I am seeking to have granted a MOTION TO EXCEED PAGE LIMITATION by **thirteen (13) additional pages.** Do you oppose?

I am also trying to file this as soon as possible, before I go to bed on my opposite schedule.

So if you could kindly respond to this email **as soon as humanly possible**, it'd be much appreciated.

Thanks,

William

On Fri, Oct 25, 2024 at 3:54 PM <zoinbergs@gmail.com> wrote:

> Greetings,
>
> I'm not done preparing it yet, but my Reply to your Response to my C-MSJ is getting pretty long. Im at 19 pages, having just completed all the factual responses and replies, meaning I'm at the argument section now. Unfortunately, having to fairly and adequately reply to your never-before-offered affidavit took over 12 pages alone. Ultimately, no reasonable person could expect a person in my position to spend less than at least 25 pages on this thing.
>
> As such, I am seeking to file a motion to exceed page limitation by (at least) 10 pages. I'll know the exact page amount by Sunday I'm hoping. I just wanted to get your input now in case you are unreachable over the weekend (alternatively, please let me know if you WOULD be reachable on Sunday so that I can request a more accurate extension page amount then, if I end up with more, or less, than 10 additional pages).
>
> In the mean time, in case I can't get ahold of you this weekend, would you oppose a 10 page extension request?
>
> Thanks,
>
> William

Samantha Trujillo

From: zoinbergs@gmail.com
Sent: Wednesday, December 4, 2024 4:15 PM
To: Stephanie E. Boutsicaris
Cc: Abigail Spohn; Lori K. Bell
Subject: Re: Montgomery v. Best Buy - Motion for Attorney's Fees

Here's a thought... maybe you shouldn't count your chickens before they hatch, by waiting for the Court to rule on my Motion For Reconsideration before filing your motion for attorney fees. Better yet, I double dog dare you to submit a [meaningful, honest, valid] response to my MFR. I'd love to see what you have to say on the subject...

On Wed, Dec 4, 2024 at 4:02 PM <zoinbergs@gmail.com> wrote:

> I don't have your frivolous motion in my hands yet to show them, because you literally just told me about your intent to file one 33 minutes ago. Don't you know what due process is? *Oh yeah, that's right, based on your recent sandbagging, you don't.*
>
> PS- Of absolute critical importance in my case against you is that if a Jury did decide to not believe me that my brother made the associated purchase that day (again, a dispute of fact evidently not good enough to present to it in the first place!), you would have still failed to prove that I was GIVEN a PHYSICAL receipt, for which I might have otherwise been required to show. In other words, because YOU offer to EMAIL receipts to your customers, which has been going on since 2017, this presents a new theory in law never before argued in my previous cases with Walmart (where I was given a physical receipt that I either didn't show, or was evidently not allowed to throw away prior to leaving the store). Having a receipt EMAILED to me, ENCOURAGED to happen by the very store I shop from, is 1000000% inapposite to all my previous lawsuits involving Walmart. Therefore, "No attorney, licensed legal paraprofessional, or party shall be assessed attorney fees or licensed legal paraprofessional fees for any claim or defense that the court determines was asserted by the attorney, licensed legal paraprofessional, or party **in a good faith attempt to establish a new theory of law in Colorado.**" Colo. Rev. Stat. § 13-17-102 (7). But hey, if you still wanna go ahead and file that frivolous motion for attorney fees, be my guest! I'm sure I'll have no trouble finding an attorney that would be happy to collect, dare I say, "free money" being handed out to them!
>
> On Wed, Dec 4, 2024 at 3:52 PM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:
>
> > Are you able to provide the name of the attorney? I would be happy to confer further with him or her.

Stephanie E Boutsicaris
Attorney
Direct: 303.592.6684
Email: sboutsicaris@mac-legal.com

Montgomery | Amatuzio

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http://www.mac-legal.com

Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.

From: zoinbergs@gmail.com <zoinbergs@gmail.com>
Sent: Wednesday, December 4, 2024 3:49 PM
To: Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com>
Cc: Abigail Spohn <Aspohn@mac-legal.com>; Lori K. Bell <lbell@mac-legal.com>
Subject: Re: Montgomery v. Best Buy - Motion for Attorney's Fees

I should note, because you "lack substantial justification" to file **your** frivolous motion for attorney fees, you are hereby advised that I plan to file my own motion for attorney fees (from an attorney I have no doubt will be glad to represent me on this issue) incurred as a result of **me** having to defend against **your** frivolousness.

GOOOOOOOOOOOOOOOD LUUUUUUUUUUUUUUUCK!

On Wed, Dec 4, 2024 at 3:42 PM <zoinbergs@gmail.com> wrote:

> OPPOSED.
>
> Not only did you racketeer with the Court to sandbag me with evidence and argument YOU failed to timely introduce with your initial MSJ, you produced nothing but conclusory statements in your MSJ, unsupported by affidavit, that I'm some generalized "lawsuit scammer" that evidently doesn't deserve due process. You produced NO admissible evidence that on **NOVEMBER 25, 2022 SPECIFICALLY** I was a customer of your store, that I stole from your store, that I engaged in some "scam / sting / call it whatever you want" operation at your store, or that I even received a printed receipt from you store for which I might have otherwise been required to show. You got a court to literally help you get away with *not even having to* address that a) my brother made the associated purchase that day, and b) I erroneously attempted to return an item not even sold at that store, which are two facts NEVER

BEFORE ARGUED in any single one of my previous cases to even link those cases to the current one to fairly infer that I'm just some trifling "lawsuit scammer."

Evidently, it appears that you [and now the Court] don't believe that the possibility *even exists* (!?) that you could falsely imprison one of your customers. YOU'RE NOT GOD hunny. What monumental cognitive dissonance you REALLY ACTUALLY suffer from. Fucking scum of the universe you are. And that's not an "ad hominem" attack, because it's the cold hard truth. You know deep down inside [or do you?] that every single case that goes through a Courthouse deserves to be adjudicated on its merits. **Why not mine?** Did I "cry wolf" one too many times? Is that really how the legal system works now? I HIGHLY DOUBT YOUR MOTION FOR ATTORNEY FEES WILL TRULY HOLD UP. But whatever, like you're gonna listen to me. I'm just some greedy, money-grubbing lawsuit scammer with dollar bills in my eyes, right? And you're the infallible, untouchable, perfect, righteous corporation...

Seriously, do this world a favor, go find the nearest bridge, and JUMP OFF OF IT.

On Wed, Dec 4, 2024 at 3:19 PM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:

> Mr. Montgomery,
>
> Best Buy intends to file a Motion for Attorney's Fees pursuant to Rule 11 and CRS § 13-17-102. Please let me know your position.
>
> Thank you,
>
> **Stephanie E Boutsicaris**
> Attorney
> Direct: 303.592.6684
> Email: sboutsicaris@mac-legal.com
>
> **Montgomery | Amatuzio**
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> 4100 E. Mississippi Ave, 16th Floor
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From: zoinbergs@gmail.com <zoinbergs@gmail.com>
Sent: Tuesday, December 3, 2024 11:56 PM
To: Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com>
Cc: Abigail Spohn <Aspohn@mac-legal.com>; Lori K. Bell <lbell@mac-legal.com>
Subject: Re: Montgomery v. Best Buy

Opposed.

On Tue, Dec 3, 2024 at 4:11 PM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:

> Mr. Montgomery,
>
> We will be filing this by the end of the day. Please let us know your position.
>
> Thank you,

Stephanie E Boutsicaris
Attorney
Direct: 303.592.6684
Email: sboutsicaris@mac-legal.com

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From: Stephanie E. Boutsicaris
Sent: Monday, December 2, 2024 5:04 PM
To: zoinbergs@gmail.com
Cc: Lori K. Bell <lbell@mac-legal.com>; Abigail Spohn <Aspohn@mac-legal.com>
Subject: RE: Montgomery v. Best Buy

Mr. Montgomery,

Please see the attached Bill of Costs that Best Buy intends to file. Let me know your position and any objections on this bill of costs.

Thank you,

Stephanie E Boutsicaris
Attorney
Direct: 303.592.6684
Email: sboutsicaris@mac-legal.com

Montgomery | Amatuzio

4100 E. Mississippi Ave, 16th Floor
Denver, Colorado 80246
Main: 303.592.6600
Fax: 303.592.6666
http://www.mac-legal.com

Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.

From: Stephanie E. Boutsicaris
Sent: Wednesday, November 27, 2024 12:25 PM
To: zoinbergs@gmail.com
Cc: Lori K. Bell <lbell@mac-legal.com>; Abigail Spohn <Aspohn@mac-legal.com>
Subject: RE: Montgomery v. Best Buy

Mr. Montgomery,

Please find the attached Notice on behalf of Best Buy.

Stephanie E Boutsicaris
Attorney
Direct: 303.592.6684
Email: sboutsicaris@mac-legal.com

Montgomery | Amatuzio

4100 E. Mississippi Ave, 16th Floor
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From: zoinbergs@gmail.com <zoinbergs@gmail.com>
Sent: Tuesday, November 19, 2024 4:15 PM
To: Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com>

Cc: Lori K. Bell <lbell@mac-legal.com>; Abigail Spohn <Aspohn@mac-legal.com>
Subject: Re: Montgomery v. Best Buy ~ Order on MSJ

Greetings,

Thank you for exposing yet another crony judge who doesn't know how facts or law work.

Please be advised that I intend to enter an Appeal in this matter.

Good luck!

William

On Tue, Nov 19, 2024, 3:07 PM Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> wrote:

> Mr. Montgomery,
>
> The Court's order is attached. Please be advised that we attend to enter a Bill of Costs.
>
> Have a good day,
>
> **Stephanie E Boutsicaris**
> Attorney
> Direct: 303.592.6684
> Email: sboutsicaris@mac-legal.com
>
> **Montgomery | Amatuzio**
>
> 4100 E. Mississippi Ave, 16th Floor
> Denver, Colorado 80246
> Main: 303.592.6600
> Fax: 303.592.6666
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>
> *Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.*

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED December 31, 2024 2:54 PM
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **23CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RULE 26(A)(1) INITIAL DISCLOSURES	

Plaintiff, proceeding *pro se*, hereby submits his Rule 26(a)(1) Initial Disclosures, as follows:

A. INDIVIDUALS AND/OR BUSINESSES LIKELY TO HAVE DISCOVERABLE INFORMATION

1. William Montgomery, Plaintiff.

2. Mahmoud [Last Name Unknown], Employee Of Defendant.
Full name of employee to be identified through discovery.

3. Shane [Last Name Unknown], Employee Of Defendant.
Full name of employee to be identified through discovery.

4. John Doe [Entire Name Unknown], Employee Of Defendant.
Entire name of employee to be identified through discovery.

5. Best Buy Store (located at 9369 Sheridan Blvd, Westminster, CO 80031).
Best Buy typically keeps personnel records, video footage, etc. of business that it conducts onsite. It may have knowledge relating to Plaintiff's claims and damages.

6. Any and all persons identifiable in the records and other documents included in Plaintiff's or Defendant's disclosures.

EXHIBIT S

7. Any and all persons identified by Defendant's Rule 26(a)(1) Initial Disclosures.

8. Any and all persons discovered during the course of discovery.

B. DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS

1. Video footage of the event, as captured via Plaintiff's bodycam.

2. Best Buy's store personnel records, logs, etc. of the afternoon at issue.

3. Best Buy's video footage of the afternoon at issue.

C. CATEGORIES OF DAMAGES

1. Compensatory damages – to be determined at trial and supplemented as discovery proceeds and experts are retained – for:

   (a) Loss of liberty;

   (b) Loss of reputation;

   (c) Pain and suffering;

   (d) Emotional distress, humiliation and personal indignity, ongoing emotional distress, embarrassment, fear, anxiety, and anguish;

2. Punitive sanctions against the individual employees and/or their employer; and

3. As otherwise articulated in the Complaint and Jury Demand, including costs, interest, and attorney fees.

D. INSURANCE

Not applicable.

E. CERTIFICATION

I hereby certify, that to the best of my knowledge, information and belief, formed after reasonable inquiry, the above disclosures are complete and correct as of the date set forth below.

Respectfully submitted on this, the 12th day of April, 2024.

s/ William Montgomery
William Montgomery

EXHIBIT S

CERTIFICATE OF SERVICE

I hereby certify that on this, the 12th day of April, 2024, a true and correct copy of the foregoing **PLAINTIFF'S RULE 26(A)(1) INITIAL DISCLOSURES** was sent to the following people, via email:

Glenn D. Germany
Lori K. Bell
Montgomery Amatuzio Chase Bell Jones LLP
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
ggermany@mac-legal.com
lbell@mac-legal.com

Attorneys for Defendant

s/ William Montgomery
William Montgomery

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED December 31, 2024 2:54 PM
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **23CV226** Division: **6**
PLAINTIFF'S RESPONSE TO DEF'S FIRST SET OF DISCOVERY REQUESTS	

Plaintiff, proceeding *pro se*, hereby RESPONDS to Defendant's First Set of Written Discovery Requests, as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Did you purchase any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO ("the Best Buy Store") on November 25, 2022?

ANSWER NO. 1: I do not recall whether or not I purchased any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO on November 25, 2022.

INTERROGATORY NO. 2: Did you have a receipt on your person showing what you purchased from the Best Buy Store when exiting the Best Buy Store on November 25, 2022?

ANSWER NO. 2: I do not recall whether or not I had a receipt on my person, as I do not recall whether or not I had purchased any item from the Best Buy Store on November 25, 2022.

EXHIBIT T

INTERROGATORY NO. 3: Did Best Buy employees request to see a receipt when exiting the Best Buy Store on November 25, 2022?

ANSWER NO. 3: Best Buy employees did not request to see a receipt from me on November 25, 2022, however this is not an admission that I had been "exiting" the Best Buy Store on November 25, 2022 when I was approached by the Defendant. Rather, I do not recall whether I had been exiting or entering the Store at the time that I was confronted.

INTERROGATORY NO. 4: When did you [begin] recording your visit to the Best Buy Store on November 25, 2022?

ANSWER NO. 4: I began recording my visit to the Best Buy Store at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

REQUEST FOR PRODUCTION

REQUEST NO. 1: Please produce any documents that support the contention that you purchased items from the Best Buy Store on November 25, 2022, to include, but not limited to, receipts, bank statements, or credit card statements.

ANSWER NO. 1: I am unable to produce any documents that support the contention that I purchased items from the Best Buy Store on November, 25, 2022, as I do not recall whether or not I purchased any item from the Store, that day, in the first place.

REQUEST NO. 2: Please produce the entire video of your visit to the Best Buy Store on November 25, 2022, from when you started the recording to the end of the recording.

ANSWER NO. 2: I already produced the entire video of my visit to the Best Buy Store on November 25, 2022, from when I started the recording to the end of the recording.

EXHIBIT T

REQUEST FOR ADMISSION

REQUEST NO. 1: Please admit you refused to show your receipt to employees of the Best Buy Store on November 25, 2022.

ANSWER NO. 1: I am unable to admit that I refused to show any receipt(s) to employees of the Best Buy Store on November 25, 2022, as they never requested to see any from me in the first place.

REQUEST NO. 2: Please admit that you had a receipt with you when leaving the Best Buy Store on November 25, 2022.

ANSWER NO. 2: I am unable to admit that I had any receipt(s) with me on November 25, 2022. Additionally, I am unable to admit that I had been "leaving" the Best Buy Store on November 25, 2022 when I was approached by the Defendant, as I do not recall whether I had been leaving or entering the Store at the time that I was confronted.

REQUEST NO. 3: Please admit that you began recording your visit to the Best Buy Store on November 25, 2022 before you entered the Best Buy Store.

ANSWER NO. 3: I am unable to admit that I began recording my visit to the Best Buy Store on November 25, 2022 before I entered the Store, as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

REQUEST NO. 4: Please admit that you edited the video in your initial C.R.C.P. 26 disclosures so the time you spent in the store was deleted from the video.

ANSWER NO. 4: I am unable to admit that I edited the video in my initial C.R.C.P. 26 disclosures so the time I spent in the store was deleted from the video, as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

EXHIBIT T

CERTIFICATION

I, William Montgomery, do hereby declare, under penalty of perjury under the laws of the State of Colorado, that the foregoing answers are true and correct to the best of my knowledge.

Respectfully served on this, the 25th day of July, 2024.

s/ William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 25th day of July, 2024, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEF'S FIRST SET OF DISCOVERY REQUESTS** was sent to the following people, via email:

Glenn D. Germany
Lori K. Bell
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
ggermany@mac-legal.com
lbell@mac-legal.com

Attorneys for Defendant

s/ William Montgomery
William Montgomery

EXHIBIT T

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 31, 2024 2:54 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6
ORDER REGARDING DEFENDANT BEST BUY'S MOTION FOR ATTORNEYS' FEES	

THIS COURT, having reviewed **BEST BUY'S MOTION FOR ATTORNEYS' FEES** and having found good cause, hereby GRANTS this Motion. Plaintiff is hereby ordered to pay reasonable attorney's fees for Best Buy's defense of this lawsuit. Best Buy shall submit the computation of its attorney's fees within 21 days of this Order.

So ordered on_____.

_____
Presiding Judge,
District Court for Jefferson County

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 31, 2024 3:17 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
NOTICE OF CLERICAL ERROR	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Notice of Clerical Error. Pursuant to C.R.C.P. 60(a), Best Buy gives notice to the Court and Plaintiff that Defendant's Response in Opposition to Plaintiff's Motion to Reconsider (filed December 24, 2024) contained a minor clerical error in a citation to legal authority on page 3. "*Tarpill v. Entelechy LLC*, No. 19CV30279" should have been cited as "*Tarpill v. Entelechy LLC*, No. 20CV30279." On December 30, 2024, Best Buy served a courtesy copy of the *Tarpill* order upon Plaintiff vie e-mail. This order is also attached to this Notice as **Exhibit A**.

Filed on December 31, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2024, a true and correct copy of the foregoing **NOTICE OF CLERICAL ERROR** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO 1777 Sixth Street, Boulder, CO 80306 (303) 441-3726	DATE FILED January 27, 2021 12:24 PM CASE NUMBER: 2020CV30279
Plaintiff: Matthew Tarpill v. **Defendant: Entelechy LLC, Blake Heren, Janaki Jane, and Christopher Sloane**	**▲COURT USE ONLY▲**
Attorney for Plaintiff: Dale Funk *Attorney for Defendants Entelechy LLC & Blake Heren*: Peter Doherty *Attorney for Defendants Janaki Jane & Christopher Sloan:* Matthew Baukol	Case Number: **19CV30279** Division: **5** Courtroom: **H**
ORDER REGARDING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE	

This matter comes before the Court on Defendants Entelechy LLC and Blake Heren's Motion for Summary Judgment filed on November 25, 2020, Defendants Christopher Sloan and Janaki Jane's Joinder in that Motion for Summary Judgment filed December 7, 2020, and Plaintiff's Motion to Strike Defendants' Reply Brief in Support of their Motion for Summary Judgment.

I. BACKGROUND

Plaintiff Matthew Tarpill was injured after falling from scaffolding on a construction site. On March 24, 2020, Plaintiff filed a complaint alleging that the site operator Blake Heren and his company Entelechy LLC, and landowners Janaki Jane and Christopher Sloane, were negligent, causing his injuries.

On November 25, 2020, Defendants Entelechy and Heren filed a Motion for Summary Judgment. They argue that plaintiff's negligence claims are barred under the Colorado Workers' Compensation Act (CWCA) because, at the time of the injury, Plaintiff was a statutory employee, despite an informal working relationship. Plaintiff responds that he was not an employee because he merely observing to learn a new construction technique and was not paid (and was never going to be paid).

On December 7, 2020, Defendants Sloane and Jane filed a Motion to Join Entelechy and Heren's Motion for Summary Judgment. They argue that Plaintiff's negligence claims against them are

EXHIBIT A

also barred by the CWCA because it provides immunity from suit to owners of real property who contract out work so long as the contractor is properly insured under the Act. Plaintiff responds that because Sloane and Jane cannot show an employee/employer relationship between him and Entelechy, the CWCA does not provide immunity.

II. LEGAL STANDARD

A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. C.R.C.P. 56(c). Summary judgment permits courts to save the time and expense of going to trial when, as a matter of law, one party could not prevail. *Ginter v. Palmer and Co.*, 585 P.2d 583, 584 (Colo. 1978). However, summary judgment is a drastic remedy that denies litigants their right to trial, so is not warranted except on a clear showing that there is no genuine issue as to any material fact. *Id.*

The party moving for summary judgment has the burden of establishing that no genuine issue of material fact exists and must inform the court of the basis for the motion and identify the portions of the record that the moving party believes demonstrate the absence of a genuine issue of material fact. *Urban v. Beloit Corp.*, 711 P.2d 685, 687 (Colo. 1985); *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). This is true even if the non-moving party would bear the burden of proving the alleged facts at trial. *Urban*, 711 P.2d at 687. However, where the non-moving party would bear the burden of persuasion at trial, the moving party may satisfy its initial burden by showing the court that there is an absence of evidence in the record to support the non-moving party's case. *Continental Air Lines*, 731 P.2d at 712; *Griswold v. Nat'l Fed'n of Indep. Bus.*, 449 P.3d 373, 378 (Colo. 2019). In determining whether summary judgment is proper, the nonmoving party must receive the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts. *Manusco v. United Bank of Pueblo*, 818 P.2d 732 (Colo. 1991).

Once the moving party meets this initial burden, the burden shifts to the non-moving party to establish that there is a triable issue of fact. *Continental Air Lines*, 731 P.2d at 713. The nonmoving party may not rest on mere allegations or demands, rather they must provide specific facts demonstrating a genuine issue for trial. *Department of Revenue v. Agilent Technologies, Inc.*, 441 P.3d 1012, 1016 (Colo. 2016). If the non-moving party cannot muster sufficient evidence to show that there is a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment. *Id.*

III. ANALYSIS & RULING

The Court first considers Plaintiff's motion to strike, then considers the motions for summary judgment.

1. Plaintiff's Motion to Strike

Plaintiff contends Defendants Entelechy's and Heren's reply brief should be stricken because it raises new material, without allowing Plaintiff an opportunity to respond. Plaintiff then addresses the arguments essentially in the way of a surreply. Defendants Entelechy and Heren filed a response. They dispute that new information was presented, arguing that their reply brief addressed arguments asserted by Plaintiff in his Response. Defendants Entelechy and Heren, however, assert that because trial is not scheduled to commence until December 2021, they do not object to a limited surreply from Plaintiff to address any arguments that he considers new. Plaintiff did not file a separate surreply.

The Court finds that Plaintiff's Reply brief does not raise additional material that Plaintiff was unable to respond to. Plaintiff contends that Defendants Entelechy and Heren (1) raise new facts about the Workers' Compensation Commission file, (2) raise new facts about Plaintiff's involvement at the work site, and (3) cite additional authority in support of its argument that Plaintiff is a statutory employee. Generally, the Court finds that the information contained in Defendants Entelechy's and Heren's Reply brief responds to arguments in Plaintiff's Response brief. More specifically, with respect to Plaintiff's first two arguments, the Court finds that the facts Plaintiff takes issue with are contained in exhibits attached to Defendants' original Motion. Plaintiff had an opportunity to respond to those facts in its Response. With respect to Plaintiff's third argument, the Court finds that a party is not limited to the cases cited in its motion when drafting a reply – that is, a party is not precluded from citing to additional case law in a reply brief.

Lastly, the Court finds Plaintiff's Motion to Strike responds to each piece of "additional material" and, given Defendants' position, considers it a surreply.

For those reasons, the Court denies Plaintiff's Motion to Strike.

2. Defendants Entelechy LLC's and Blake Heren's Motion for Summary Judgment

Defendants Entelechy and Heren argue that Plaintiff's claims are barred by the Colorado Workers' Compensation Act (CWCA). They contend that undisputed facts show that Plaintiff was a statutory employee and therefore the CWCA provides the exclusive remedy. Plaintiff argues that the CWCA does not apply to his claim because the Workers' Compensation Committee found his injury was not work related; and because he is not a statutory employee since he was not providing services to the Defendants, there was no contract or agreement between the parties for work, and he was not (and was never going to be) paid.

The primary purpose of the CWCA is to provide a remedy for job-related injuries without regard to fault. *Finlay v. Storage Technology Corp.*, 764 P.2d 62, 63 (Colo. 1988). The statutory scheme grants an injured employee compensation from the employer without regard to negligence, and in return, the responsible employer is granted immunity from common-law negligence liability. *Id.* (citing *Buzard v. Super Walls, Inc.*, 681 P.2d 520, 522 (Colo. 1984)).

Importantly, to be afforded that immunity, an employer must be a statutory employer as contemplated by the statute. *Id.*; C.R.S. §8-41-102. Under the CWCA, "[a]lthough a given company might not be a claimant's employer as understood in the ordinary nomenclature of the common law, it nevertheless might be a statutory employer for workers' compensation coverage and immunity purposes." *O'Quinn v. Walt Disney Prod.*, 493 P.2d 344, 346 (Colo. 1972). The CWCA provides that an employee is

> Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer

C.R.S. § 8-40-202(1)(b). And,

> Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service.

C.R.S. § 8-40-202(2)(a).

The Court recognizes that the definition of a statutory employee is broader than the category of persons typically considered employees. The Court finds that the facts clearly demonstrate that Plaintiff was at the work site, up on the wood boards, assisting in pouring concrete, using tools provided by Defendants as part of the cement-molding process. However, the Court finds that Defendants Entelechy and Heren failed to show either (1) Plaintiff performed services for pay, or (2) there was an express or implied contract of hire, as required by § 8-40-202. As a result, the Court finds that Defendants Entelechy and Heren failed to meet their burden of showing that they are entitled to summary judgment because they have not shown that Plaintiff meets the definition of a statutory employee.

Defendants Entelechy and Heren have not shown that Plaintiff performed services for pay, as required by § 8-40-202(2)(a). Defendant Heren's deposition testimony, contained in Exhibit A, confirmed he did not pay Plaintiff for his time.

Defendants Entelechy and Heren have not shown that there was an express or implied contract of hire, as required by § 8-40-202(1)(b). The term "contract" signifies an agreement between parties. *Black's Law Dictionary* (11th Ed. 2019) (defines contract as "An agreement between two or

more parties creating obligations that are enforceable or otherwise recognizable at law.") And, "[a] contract for hire may be formed even though not every formality attending commercial contractual arrangements is observed as long as the fundamental elements of contract formation are present." *Rocky Mountain Dairy Products v. Pease*, 422 P.2d 630, 632 (Colo. 1966); *Denver Truck Exchange v. Perryman*, 307 P.2d 805, 810 (Colo. 1957). Defendant Heren's texts to Plaintiff, contained in Exhibit C, indicate that he was willing to pay Plaintiff for work, however, Plaintiff's deposition testimony, contained in Exhibit B, indicates that he wanted to learn about the particular construction technique and did not expect compensation. Those facts do not demonstrate an agreement between the parties.

Defendants cite to *Aspen Highlands v. Apostolou* to support their argument that the scope of an implied hire is very broad. In that case, a ski instructor who provided lessons in exchange for a ski pass, agreed to work on the ski patrol in exchange for free ski passes for his girlfriend. *Aspen Highlands Ski Corp., v. Apostolou*, 866 P.2d 1384, 1386 (Colo. 1994). The Colorado Supreme Court found that the CWCA provided plaintiff's exclusive remedy. *Id.* at 1387. The court found that a contract for hire existed because:

> Apostolou negotiated with his employer and agreed to work only in exchange for the benefit of daily passes for his girlfriend. He worked under Highlands' direction, with the expectation of compensation in the form of the daily passes. The ALJ determined that "[i]n essence, [Apostolou] obligated himself to perform ski patrol services for [Highlands] and in return, [Highlands] obligated itself to provide free daily ski passes to [Apostolou] or his designee." Under those circumstances, we conclude that Apostolou worked under a contract of hire and fell within the basic definition of "employee" for the purposes of the Act. *Id.*

Here, however, the facts before the Court do not show any negotiation or agreement to perform services in exchange for compensation. On the facts before the Court, whether the parties were engaged in an express or implied contract for hire is an outstanding question of material fact. Because of that, the Court cannot find that Defendants Entelechy and Heren are entitled to summary judgment.

For the forgoing reasons, the Court denies Defendant Entelechy's and Heren's Motion for Summary Judgment.

3. Defendants Christopher Sloan's and Janaki Jane's Motion to Join in Summary Judgment

Defendants Sloan and Jane also argue that they are employers under the CWCA and therefore immune from suit.

Under the CWCA, "every person, company, or corporation owning real property or improvements thereon and contracting out any work done on and to said property to any

contractor, subcontractor, or person who hires or uses employees in the doing of such work shall be deemed to be an employer under the terms of the act." C.R.S. § 8-41-102. Interpreting that provision, a Colorado Court of Appeals division found that a landowner is immune from suit by injured employees of a contractor, so long as a hired contractor carries proper workers' compensation insurance. *Wagner v. Coors Energy Co.*, 685 P.2d 1380, 1382 (Colo. App. 1984).

The Court finds that Defendants Sloan and Jane failed to meet their burden of showing that they are entitled to summary judgment because they have not shown that Plaintiff was an employee of their hired contractor (Defendant Entelechy). Defendants Sloan and Jane rely on the facts contained in Defendants Heren's and Entelechy's Summary Judgement Motion to establish that Plaintiff was a statutory employee, but as noted above those facts fail to show an employee relationship as defined in the CWCA.

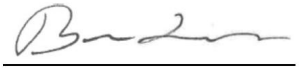
For that reason, the Court denies Defendants Sloan's and Jane's Motion for Summary Judgment.

IV. CONCLUSION

The Court hereby DENIES Defendant Entelechy's and Heren's Motion for Summary Judgment. The Court also DENIES Defendant Sloan's and Jane's Motion for Summary Judgment.

Date: January 27, 2021

BY THE COURT



Bruce Langer
District Court Judge

EXHIBIT A

FILED
COMBINED COURT
JEFFERSON COUNTY
DATE FILED
December 31, 2024
2024 DEC 31 P 1:36

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff, proceeding *pro se*, hereby submits to the Court his REPLY to Defendant's RESPONSE to his MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

ARGUMENT

I. DEFENDANT FAILED TO INCLUDE EVIDENCE AND ARGUMENTS IN ITS INITIAL MSJ FOR PLAINTIFF TO PROPERLY RESPOND TO, AND EVIDENCE IN ONE MOTION CANNOT BE USED IN ANOTHER

In Defendant's RESPONSE to Plaintiff's MOTION FOR RECONSIDERATION, it begins by claiming that "Both exhibits were properly offered in response to allegations by Plaintiff in his Response Brief. To wit, Defendant was responding to Plaintiff's allegations concerning his behavior immediately preceding the start of the video." *Def's Resp. To Ptf's MFR at page 3.* First, this argument **doesn't *ACTUALLY* address** what Plaintiff argued in his MFR [which is based on what the Court argued in its ORDER]. Specifically, the Court **erroneously** and **impermissibly** held that

"Defendant has submitted [a Best Buy receipt and an employee affidavit] satisfying its **"INITIAL"** burden as the movant . . . [but whereby] Plaintiff, in his **"RESPONSE"** . . . has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident." *Order Granting Def's MSJ at pages 6 and 7.* Obviously, as has already been satisfactorily argued by Plaintiff in the Opening Brief of his MOTION FOR RECONSIDERATION, Defendant **DID NOT** submit any such argument or evidence, *whatsoever,* with its *****I-N-I-T-I-A-L***** Motion For Summary Judgment, **NOR DID** Plaintiff "fail" to "respond" to such **NON-EXISTENT,** *non-initially-provided* arguments or evidence, either. As such, and because Defendant has failed to *actually* address this *specific* **time-stamp-fudging, due-process-violation** argument put forth by Plaintiff in his MFR, it has hereby ***confessed*** the argument as true and valid [and whereby this Court should grant Plaintiff's MFR as a result]. Second, ***and perhaps more importantly,*** is that such an argument – that "Defendant was responding to Plaintiff's allegations concerning his behavior immediately preceding the start of the video" – is actually an argument **FOR** Plaintiff, rather than AGAINST him! This is because it literally contains within it ***the very confession*** that Plaintiff **DID INDEED** make specific enough allegations in his Response Brief "concerning his behavior immediately preceding the start of the video." BUT WAIT, isn't that **the exact opposite** argument that the Court made in its ORDER – that Plaintiff purportedly "***has provided no evidence*** as to his actions inside the Best Buy store" immediately preceding the start of the video? *Order Granting Def's MSJ at pages 7.* WHY, IT IS! **So, Defendant and Court, which is it?** Did Plaintiff "provide no evidence" in his RESPONSE to Defendant's MSJ [the Court's argument], or did he "provide evidence" [Defendant's argument]??? Ultimately, **it doesn't matter either way,** because both positions favor Plaintiff. Either Plaintiff **DID NOT** provide [specific enough] argument and evidence negating "shopkeeper's privilege" and "receipt possession" in his RESPONSE to Defendant's initial MSJ, but whereby he cannot be faulted for not doing so because of how Defendant **DID NOT** put him on FAIR NOTICE to be able counter such NON-EXISTENT arguments or evidence NOT initially put

forth by it, OR he **DID** provide [specific enough] argument and evidence negating "shopkeeper's privilege" and "receipt possession" in his RESPONSE to Defendant's initial MSJ, but whereby Defendant's REPLY "rebuttal" introducing the receipts and affidavit **is really just a moot point, as such does nothing more than merely confirm that a "genuine dispute of material fact"** ***does indeed*** **exist, that Plaintiff** ***already*** **legitimately created in his RESPONSE brief,** WHICH STILL TRIGGERS DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE OF HOW SUCH GENUINE DISPUTES OF FACT ARE ALWAYS SENT TO THE JURY FOR DELIBERATION. "In passing upon a motion for summary judgment, it is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). "Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment." *Primock v. Hamilton,* 168 Colo. 524, 452 P.2d 375 (1969).

Next, Defendant attempts to support its argument by pointing to *Tarpill v. Entelechy LLC,* No. 19CV30279, 2021 WL 4349996, at *2 (Boulder County Dist. Ct. Jan. 27, 2021) and *City of Thornton v. Bd. of Cnty. Comm'rs,* No. 2019CV30339, 2019 WL 3228258, at *4 n.6 (Larimer County Dist. Ct. July 16, 2019). However, both cases are utterly inapposite. Indeed, the Court in *Tarpill* even held "specifically, with respect to Plaintiff's first two arguments, the Court finds that the facts Plaintiff takes issue with **are contained in exhibits attached to Defendants' original Motion.** Plaintiff had an opportunity to respond to those facts in its Response." *Id.* Obviously, the same is **NOT EVEN REMOTELY TRUE** today with regard to Plaintiff's instant case, where "the facts Plaintiff takes issue with" **WERE NOT** "contained in exhibits attached to Defendant's original motion," and whereby he **DID NOT** "have an opportunity to respond to those facts in its Response." Seriously, did Defendant ***even read*** the whopping six page *Tarpill* order, or did it only have time to quote mine it? Anyways, same goes for *City of Thornton v. Bd. of Cnty. Comm'rs.* In *City of Thornton,* the Court likewise allowed "points raised for the first time in a reply brief," but again, **only when** they "are made in

response to arguments raised by a response brief." *Id.* **So we're back to square one,** where Plaintiff either **WAS NOT** specific enough in his RESPONSE brief regarding "shopkeeper's privilege" and "receipt possession" **such that he cannot be ruled against by this Court for not doing so** because of how Defendant failed to supply any receipts or affidavits in its OPENING brief for him to even counter, or Plaintiff **WAS** specific enough in his RESPONSE brief regarding "shopkeeper's privilege" and "receipt possession" such that Defendant **WAS** allowed to supply said receipts and affidavits in its REPLY brief **but to which doing so does literally nothing more than merely confirm that a genuine dispute of fact *does indeed* exist, that Plaintiff *already* legitimately created in his RESPONSE brief,** WHICH, AGAIN, STILL TRIGGERS DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. Indeed, *City Of Thornton* cites to *Sch. Dist. No. 1, City & Cty. of Denver v. Cornish,* 58 P.3d 1091, 1095 (Colo. App. 2002), which in turn cites to *People v. Czemerynski,* 786 P.2d 1100 (Colo. 1990), which, ***whaddayaknow,*** holds that "issues not raised in an appellant's opening brief will not be considered when raised for the first time in the reply brief."

Next, Defendant claims that "Plaintiff could have availed himself to a motion to strike these exhibits or requested a sur-reply brief, but Plaintiff failed to do so." *Def's Resp. To Ptf's MFR at page 3.* **Honestly, this is got to be the most laughable, preposterous argument proffered by Defendant to date.** As if Plaintiff "waived his rights" to have excluded from the record material impermissibly introduced into it for the first time by way of a REPLY brief just because he didn't file his own MOTION TO STRIKE or SURREPLY brief! Newsflash, it is the Defendant who already "waived its rights" to make such arguments and present such evidence, ***in the first place,*** **BY NOT INCLUDING SUCH IN ITS INITIAL MSJ OPENING BRIEF.** Never before has the Court required a MOTION TO STRIKE or a SURREPLY brief to be filed in order for such belated arguments and evidence to be held impermissible and thus be waived. *See Bslni, Inc. v. Russ T. Diamonds, Inc.,* 293 P.3d 598, 2012 COA 214 (Colo. App. 2012); *Jenkins v. Haymore,* 208 P.3d 265, 269 (Colo.App.2007); *People v. Czemerynski,* 786 P.2d 1100, 1107 (Colo.1990); *etc.* Indeed, even

the Colorado Rules Of Civil Procedure itself explicitly states that "**upon the court's own initiative AT ANY TIME,** the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper." *C.R.C.P. Rule 12(f).* As such, and because no prior cases have ***ever*** required a MOTION TO STRIKE or a SURREPLY be filed to attain such a result, this Court has an ethical obligation to strike, **on its own initiative,** any and all wholly impermissible "shopkeeper's privilege" and "receipt possession" arguments and evidence offered by Defendant *for the first time* in its MOTION FOR SUMMARY JUDGMENT **REPLY** brief only.

Next, Defendant claims that "[because] the exhibits at issue were also submitted in the briefings for Plaintiff's Cross-Motion for Summary Judgment[,] Plaintiff had the opportunity to respond to and rebut the exhibits in Plaintiff's Reply submitted in the Cross Motion for Summary Judgment." *Def's Resp. To Ptf's MFR at page 3.* The problem here is that Defendant's MSJ and Plaintiff's CROSS-MSJ **are not two halves of the same coin.** They are two completely separate documents, each requiring their own independent arguments and evidence to support them. "When a [Plaintiff's] motion for summary judgment is overruled, their admission of facts under their legal theory terminates, **and it is error for a trial court to give any consideration thereto in connection with its determination of [Defendant's] motion.** This leaves [Defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). In other words, just because ***PLAINTIFF'S*** CROSS-MSJ was overruled in this matter [by way of Defendant introducing evidence in its RESPONSE to the CROSS-MSJ so as to create a "genuine dispute of material fact" in the matter) **DOESN'T MEAN DEFENDANT NOW GETS TO AUTOMAGICALLY HAVE *ITS* MSJ GRANTED!** *It's* "motion for summary judgment [is still] completely unsupported by anything except such as it had itself placed in the record." *Id.* And of course, in the instant case, Defendant's ***I-N-I-T-I-A-L*** MSJ "placed in the record" **absolutely nothing** to *even begin to* legally support it, thus rendering the

motion **DENIED** in its entirety. Also, on this note, Plaintiff's CROSS-MSJ REPLY **isn't even an appropriate vehicle to use** as some SURREPLY to Defendant's MSJ REPLY, because it would be a *completely futile endeavor* to "rebut" any evidence provided by Defendant in its RESPONSE to the CROSS-MSJ [as Defendant otherwise claims Plaintiff must do], because at that point, Defendant has already created its own "genuine dispute of material fact" in its RESPONSE, upon which there is absolutely nothing Plaintiff could even do to "refute" such, as that would in effect be making, ***whaddayaknow,*** A FACTUAL DETERMINATION THAT IS SQUARELY UP TO THE JURY TO DECIDE. *Seriously, it should not be this difficult for a Court and attorneys to understand this stuff.* **FIRST,** Defendant filed an evidence-less, conclusory-statement-only MSJ, and Plaintiff either responded ***WITHOUT*** sufficiently particular evidence of his own [but whereby the MSJ gets denied anyways for being independently based on evidence-less, conclusory statements only], **OR** he responded ***WITH*** sufficiently particular evidence of his own [but whereby the MSJ still gets denied because of how such evidence created a "genuine dispute of material fact" in the matter]. **THEN,** Plaintiff filed his own CROSS-MSJ, upon which Defendant responded ***WITH*** evidence of its own[1] [which causes the CROSS-MSJ to get denied as well because of how such evidence also created a "genuine dispute of material fact" in the matter]. THAT'S IT. **Both** motions were filed. **Both** motions are [supposed to be] denied. **Again, the law is not such that if one party happens to have *their* motion denied, the other party now automagically gets to have *theirs* granted!**

Next, Defendant claims that "The Court ruled upon both summary judgment motions simultaneously and considered all evidence and arguments submitted with both briefings before ruling in Defendant's favor." *Def's Resp. To Ptf's MFR at page 3.* The problem here is that both summary judgment motions **were obviously not *filed* "simultaneously."** They were filed

1 Well, not really. Plaintiff still reserves the right to challenge, via appeal if necessary, that Mahmoud's affidavit "blatantly contradicts" the record [and as such, is **impermissible**]. Same goes for the affidavit-less business records (i.e. receipts) that were also **impermissibly** entered into the record. Disregarding both pieces of "evidence," as this Court should have done, rendered Plaintiff's CROSS-MSJ unrefuted, upon which it really should have been **GRANTED** in this matter.

separately, and more importantly, ***independently*** from each other. Again, the Court is not allowed to consider "evidence and arguments" submitted with *one* briefing, during the ruling of *another* briefing. *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). Indeed, Defendant's following statement – that Plaintiff was purportedly "incentivized to provide stronger evidence in his cross-motion for summary judgment briefing, and yet, he still failed to present evidence sufficient to survive Defendant's motion for summary judgment," – underscores ***just how fried*** it is making this situation out to be. What is Defendant ***even doing*** trying to use evidence supplied [or not supplied] in a CROSS-MSJ, in another party's MSJ? *The Defendant itself even admits that the standards (i.e. burden levels) of each briefing are different from each other.* Indeed, Plaintiff ***agrees*** with Defendant that he "has a *higher* burden in proving his cross-motion for summary judgment."[2] **THAT MEANS HE HAS A LOWER BURDEN IN DISPROVING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT!** And that is exactly what he did. Defendant supplied evidence-less, conclusory-only argument in its MSJ, and Plaintiff 100% refuted such by simply pointing that out. Indeed, because Defendant didn't supply **ANY** evidence, *whatsoever,* with its initial MSJ, Plaintiff's burden to disprove its arguments was literally at the floor! ***Plaintiff didn't have to do ANYTHING AT ALL in order for Def's MSJ to be fairly denied in this matter,*** as the Court has consistently held that "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

II. DEFENDANT IS NOT ALLOWED TO BOOTSTRAP DETENTIONS, NOR IS IT ALLOWED TO HAVE CARTE BLANCHE AUTHORITY TO DETAIN ALL CITIZENS WHO DON'T COOPERATE WITH IT

In Defendant's RESPONSE to Plaintiff's MOTION FOR RECONSIDERATION, it also claims that "The Court did not need to consider Exhibits N, O and P of the motions for summary

2 This likewise means that *Defendant* also has an equally "high" burden when proving *its* MSJ. That is, Defendant was required to provide "stronger" evidence IN ITS **INITIAL** MSJ [in order to have *it* granted] than it was required to provide in Plaintiff's CROSS-MSJ [in order to have *it* denied]. Yet Defendant failed to provide such evidence IN ITS **INITIAL** MSJ. Why did Defendant fail to **INITIALLY** provide such evidence? Go ask Defendant. That's not Plaintiff's problem.

judgment in order to find in Best Buy's favor [because] [i]n the video of the incident, submitted as Exhibit M in Defendant's Motion for Summary Judgment, Best Buy employees repeatedly request that Plaintiff return the product in his possession, and Plaintiff remains silent. He does not deny that he has product in his possession nor did he make any effort to show the Best Buy employees that they were mistaken in believing Plaintiff had stolen product – perhaps by revealing whatever object was in his pockets." *Def's Resp. To Ptf's MFR at page 3.* The problem here is that this is LITERALLY, **word-for-word** what Courts have **unanimously** held as **utterly impermissible "bootstrapping."** "Moreover, it is clear that law enforcement officers may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police." *Brief of the United States as Amicus Curiae Supporting Petitioner at 25,* Florida v. Bostick, No. 89-1717 (). "Any other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). "The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary." *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993). "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick,* 501 U.S. 429, 437 (1991). "[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment." *United States v. Wood,* 106 F.3d 942, 946 (10th Cir. 1997). **Seriously, does Defendant *truly* not comprehend what "bootstrapping" is?** Does it *really* believe that merchants

can simply walk up to complete strangers, **collect absolutely ZERO inculpatory evidence prior to doing so,** and expect to justify their actions if their detainees simply "don't do" what they ask of them!? **Sorry, but no matter how you slice it, LACK OF EXCULPATORY DOES NOT EQUAL (AND WILL NEVER EQUAL) INCULPATORY!** In other words, because "shopkeeper's privilege" is the same exact legal standard as "probable cause" *(see Colorado Revised Statutes § 18-4-407)*, and "probable cause" is rooted **STRICTLY** in ***individualized*** and ***particularized*** suspicions, a merchant can **NEVER, by law and by logic**, achieve lawful justification to detain a person by simply pointing to their mere "refusal to cooperate" with them. **This is *especially* true because of how they (the merchants) are the ones who control who they ask.** Indeed, to argue the opposite would be to allow all merchants to ***SYSTEMATICALLY*** detain **literally all people** whom they ask to cooperate (which would mean *everybody!*), **thus effectively subjecting literally 100% of the population to "compulsory" detentions** [that is, through either voluntary consent, or forced detention otherwise]. THAT'S ILLEGAL, and not what the Legislature would have envisioned *in the least* when drafting the law of the land as it stands. "It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish **fixed checkpoints**, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts **or be subject to arrest** everytime they go shopping? **The potential for abuse is apparent.**" *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

Finally, on this note, **listing off literally ALL possible actions** that are purportedly required for a person to perform in order to end [read: **undo**, as Defendant and prior Courts argue] their detention **effectively renders ALL detentions of people literally NON-EXISTENT,** and the bar to which merchants are required to have "shopkeeper's privilege" under *obviously cannot be set at the floor.* In other words, if there is ***ALWAYS*** something that ***ALL*** detainees can do, "in order to shorten

or end their detention," then there exists **NOT A SINGLE SITUATION** in which a merchant ***WOULD*** be liable for unlawfully detaining a person. *Which, of course, begs the question: why does "shopkeeper's privilege" even exist then? Why does the false imprisonment tort even exist?* ***WHY DOES COURT EVEN EXIST? Seriously!?!?!?!?*** First, it was argued that Plaintiff must "show his receipt." Then, it was argued that he must "not throw away his receipt." Now, it is being argued that he must "not remain silent," must "deny he has product," must "empty his pockets." Seriously, is there *anything* left for him TO NOT DO upon leaving a store [customer or not]? **Defendant has now included it all.** Yet doing such, *if it isn't obvious already,* has LITERALLY created a "bright line" rule where there literally exists **EVIDENTLY NOTHING** that a person **CANNOT** do to "end their own detention" – which, *if one hasn't comprehended this already, perhaps they never will,* SETS THE BAR AT THE ACTUAL FLOOR, literally giving ALL merchants ***CARTE BLANCHE*** authority to **indiscriminately** detain ALL people (YEAH, THAT MEANS EVERYBODY!) they so wish. All they gotta do now is walk up to complete strangers, perform no investigations beforehand, ask them whatever the heck they want, get them to do whatever the heck they want, and detain them if they don't follow every command made. YEAH, RIGHT! Such is obviously, emphatically, indisputably not the law. **Because it's called shopkeeper's PRIVILEGE, not shopkeeper's RIGHT.** And despite Defendant's incessant efforts to argue otherwise – a privilege, by definition, **CAN BE LOST.** ***Most importantly,*** is that if such *was* a right, then literally all people in this country "would in effect have no way of declining to participate in a 'consensual' encounter" with them. ***Such is not the law!***

CONCLUSION

"Where the record has not been adequately developed on a material factual issue, summary judgment is not proper." *Moore v. 1600 Downing St., Ltd.,* 668 P.2d 16 (Colo. App. 1983). "In passing upon a motion for summary judgment, it is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). "Any issue of fact must be

determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment." *Primock v. Hamilton,* 168 Colo. 524, 452 P.2d 375 (1969). "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its most recent ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 31st day of December, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of December, 2024, a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED January 06, 2025 2:05 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Plaintiff's Motion for Reconsideration

The motion/proposed order attached hereto: DENIED.

For purposes of analysis, the Court sets aside Plaintiff's pejoratives toward the Court and considers the merits of his motion.

Plaintiff raises many of the same arguments he raised in summary judgment briefing. In resolving the conflated summary judgment motions, the Court considered all briefs and exhibits presented in connection with Defendant's motion and also Plaintiff's cross-motion. Plaintiff's reply was filed after the exhibits about which he complains, giving him opportunity to respond to them. Of note, he also presented an additional affidavit, after Defendant's reply, which the Court also considered. (See 10/28/24 "Plaintiff's second affidavit").

Regardless, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is thus denied.

Issue Date: 1/6/2025



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

FILED
COMBINED COURT
JEFFERSON COUNTY
2024 DEC -3 P 3:13

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

PLAINTIFF'S MOTION FOR RECONSIDERATION

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, hereby submits to the Court his MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

"A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice." *C.R.C.P. Rule 121 § 1-15 (11).* Today, Plaintiff seeks to correct manifest errors this Court made in *both* fact **and** law.

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. PLAINTIFF WAS NOT GIVEN FAIR NOTICE IN ORDER TO PRESENT [MORE SPECIFIC] EVIDENCE ON BOTH THE "SHOPKEEPER'S PRIVILEGE" AND "RECEIPT POSSESSION" ISSUES DEFENDANT RAISED FOR THE VERY FIRST TIME IN ITS MSJ REPLY BRIEF

On July 25, 2024, Defendant filed a MOTION FOR SUMMARY JUDGEMENT in this matter. In the MOTION, Defendant: 1) **DID NOT** submit to the Court any affidavit of Mahmoud Abu-Shaweesh, 2) **DID NOT** submit to the Court any business records (i.e. receipts) purportedly of the incident at issue [let alone accompany with such business records any affidavit of their "custodian or other qualified person" necessary, *by law,* to "certify the record"], 3) **ONLY** submitted to the Court a generalized YouTube video of Plaintiff that failed to address [let alone refute] the specific facts of his specific instant case at issue, and 4) **ONLY** submitted to the Court a bunch of wholly generalized, utterly unsubstantiated, purely conclusory legal argument that Plaintiff is simply a "lawsuit scammer" ***purportedly undeserving of due process*** in his, again, specific instant case at issue.[1]

With the aforementioned facts being irrefutably true, this Court, *through either recklessness, indifference, incompetence, malice, or some combination of the four,* officially **LIED** when it said that "Defendant has supplied ***[WITH ITS INITIAL MSJ]*** an affidavit stating that its employee saw Plaintiff 'remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store,'" *Order Granting Def's MSJ at page 7,* **LIED** when it said that "Defendant has submitted ***[WITH ITS INITIAL MSJ]*** a Best

1 Defendant made claims that "Plaintiff intentionally concealed merchandise," *Def's MSJ at page 8,* "Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items," *Def's MSJ at page 10,* and "Plaintiff took Best Buy inventory and refused to show proof of purchase," *Def's MSJ at page 11.* However, **ABSOLUTELY NONE** of these **CONCLUSORY STATEMENTS** were made with **ANY SUPPORTING DOCUMENTATION,** *WHATSOEVER,* to *even begin to* create AN ACTUAL ISSUE of material fact in the matter. **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."** *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Indeed, Defendant *even admitted* that it didn't ***actually*** have any real, tangible evidence to support **ANY** of the baseless claims that it had been making, by way of its very own **explicit** use of the words **"if"** and **"presumed"** in the [only honest] statement it made in its MSJ: "***If*** in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is ***presumed*** Plaintiff had such proof..." *Def's MSJ at page 7.*

Attachment to Order - 2023CV26

Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial[2] burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment," *Order Granting Def's MSJ at page 6,* **LIED** when it said that "Defendant has submitted proof ***[WITH ITS INITIAL MSJ]*** that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store," *Order Granting Def's MSJ at page 4,* and **LIED** when it said that "Defendant has provided proof ***[WITH ITS INITIAL MSJ]*** that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase," *Order Granting Def's MSJ at page 3.* **LITERALLY EVERY SINGLE HOLDING THE COURT MADE REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT BRIEFING WAS A 100% STRAIGHT UP LIE! ABSOLUTELY NO AFFIDAVITS, OR BUSINESS RECORDS, OF ANY KIND, WERE EVER SUBMITTED TO THE COURT, BY DEFENDANT, WITH ITS ***I-N-I-T-I-A-L*** MOTION FOR SUMMARY JUDGMENT, FOR A DISPOSITIVE RULING TO BE FAIRLY MADE IN THE MATTER,** as will be discussed in detail later.

Next, on September 19, 2024, Plaintiff filed his RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. In the RESPONSE, Plaintiff: 1) **DID** submit to the Court an affidavit substantiating that he had "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* 2) **DID** submit to the Court an affidavit substantiating that "all three Best Buy employees had physically 'corralled' [him] against the building's wall, leaving [him] with no place to go," *Plaintiff's Affidavit at ¶ 12,* 3) **DID** submit to the Court an affidavit substantiating that

2 This word – **"initial"** – is the **most damning** of the Court's **LIES.** Clearly, Defendant ***DID NOT*** satisfy its **"initial burden as the movant,"** because it ***DID NOT*** supply *any* affidavits, *whatsoever,* **WITH ITS MSJ,** in the first place!

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"on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* 4) **DID** submit to the Court an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25,* 5) **DID** submit to the Court evidence, via news articles, showing "how rampant unlawful 'receipt checkpoints' are becoming in today's society," thereby establishing that he is NOT a "lawsuit scammer" **for simply exercising the same cognizable rights that others have been exercising** to simply not answer questions and not consent to searches upon leaving non-membership stores held open to the general public, *PRTDMSJ Exhibit #14,* 6) **DID** submit to the Court evidence, via police records, that Defendant **LIED** in Plaintiff's bodycam footage that it had called the police that day [when it clearly didn't], *PRTDMSJ Exhibit #15,* 7) **DID** submit to the Court evidence, via his bodycam footage, that Defendant "had [no] earthly idea, whatsoever, the nature or identity of *whatever* Plaintiff had been holding in his hands [that day of November 25, 2022]. The same goes for whatever existed in one of his pant pockets, too," *Def's Exhibit M,* 8) **DID** submit to the Court valid legal argument that Defendant **100% FAILED** to satisfy **ITS** affirmative-defense burden to show that it had "shopkeeper's privilege" for its actions in the matter [by not providing the Court with ANY evidence, *whatsoever,* that Plaintiff stole from it that day], and finally 9) **DID** submit to the Court valid legal argument that Defendant had also **100% FAILED** to satisfy **ITS** burden to show that Plaintiff ***was even a customer of it in the first place*** [upon which he might have potentially received a receipt that he might have otherwise been required to show]. What Plaintiff **DID NOT** do in his RESPONSE, however, was "deny having been in the store that day," or "deny having the store's merchandise on him." Critically, Plaintiff simply **NEITHER CONFIRMED NOR DENIED** such things, as such confirmations and/or denials [in either direction] were wholly unnecessary for him to make, **because of how Defendant did not**

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SATISFACTORILY [read: even begin to] raise such ACTUAL issues of ACTUAL fact in its **I-N-I-T-I-A-L MSJ, *in the first place,* BY WAY OF AFFIDAVIT OR THE LIKE, for him to then be required, *in turn,* to ACTUALLY respond to and refute.** In other words, because Defendant didn't create any genuine DISPUTES of fact **IN ITS MSJ OPENING BRIEF** on those two particular issues, Plaintiff wasn't required to RESPOND with any confirmations OR denials regarding them [because they obviously didn't exist *to even respond to in the first place*].

With the aforementioned facts being irrefutably true, this Court, once again, *through recklessness, indifference, incompetence, malice, or some combination of the four,* officially **LIED** when it said that "Plaintiff, in his response, denies having been in Best Buy, [and] denies having the store's merchandise on him," *Order Granting Def's MSJ at page 6,* and **LIED** when it said that "In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees," *Order Granting Def's MSJ at page 6.*[3] Again, Plaintiff's RESPONSE and its attendant affidavit are simply bereft of any confirmations **OR** denials, altogether, that he was a customer of the store, since his **SOLE** job *in responding* to Defendant's MSJ was to **ONLY** refute **ACTUAL** issues of fact ACTUALLY, FAIRLY, GENUINELY, AND SUCCESSFULLY raised by it in its initial MOTION, **and to which Defendant clearly failed to do.** Consequently, all Plaintiff was required to do *in response* to such an unsubstantiated MSJ, was simply

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3 The Court also **LIED** when it said that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident." Specifically, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25.* While not **explicitly** mentioning so, it strains credulity that any of these facts would NOT be referencing Plaintiff's actions **INSIDE** the store at issue. Moreover, the absence of such **"explicitness"** is not fatal, as this Court itself has pointed out that "In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **must** infer that said three facts substantiated by Plaintiff applied to him being **INSIDE** the store.

point out that Defendant failed to supply the Court with ACTUAL affidavits to support its initial MOTION, *and not just conclusory legal argument,* **and to which Plaintiff did so without issue.**

Finally, on October 10, 2024, Defendant filed its REPLY to Plaintiff's RESPONSE to its MOTION FOR SUMMARY JUDGMENT. In the REPLY, Defendant, **FOR THE FIRST TIME EVER IN ITS BRIEFING**, 1) submitted a ***never-before-seen*** affidavit by Mahmoud Abu-Shaweesh, and 2) submitted ***never-before-seen*** business records (i.e. receipts) purportedly of the incident at issue. The supplied affidavit was Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [with supposedly admissible evidence] that it "detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets." *Def's Reply at page 11.* The supplied business records (i.e. receipts) were Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [again, with supposedly admissible evidence] that "Plaintiff had been inside the Best Buy making a purchase" [for which he might have had a receipt for and might have otherwise been required to show upon leaving]. *Def's Reply at page 5.* **HOWEVER, NEITHER OF THESE TWO FRESH ARGUMENTS WERE MADE IN DEFENDANT'S INITIAL MSJ, NOR EVIDENCE SUPPLIED THEN TO SUPPORT THEM WITH.**

Now, the reason why Plaintiff has outlined the chronological background and nature of Defendant's MOTION FOR SUMMARY JUDGMENT (and its attendant briefing) is because **IT IS OF ABSOLUTE CRITICAL IMPORTANCE** that this Court understand [because it evidently does not, based on its most recently ruling] that the Colorado Rules Of Civil Procedure **PROHIBIT** nonmovants from filing REPLIES TO REPLIES (I.E. "SURREPLIES"). *See C.R.C.P. Rule 1-15(1)(a)* (holding that briefs are limited to motions, responses, and replies). *See also C.R.C.P. Rule 56(c)* (holding that affidavits can only be served "within the time allowed for the **responsive** brief," i.e. that they are NOT allowed to be filed within the time allowed for the **reply** brief – *which is what Defendant impermissibly did in this instant case*). In other words, Plaintiff is **PROCEDURALLY DISALLOWED** from *even having the opportunity* to properly

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defend himself against Defendant's aforementioned *fresh,* ***REPLY-ONLY*** arguments made in this particular matter. Therefore, without any actual SURREPLY in the record to support its holdings, this Court has, once again, officially **LIED** when it said that "Plaintiff provides no evidence ***[IN HIS RESPONSE]*** of his actions in the store to counter[4] this," *Order Granting Def's MSJ at page 4,* **LIED** when it said that "In Plaintiff's ***[RESPONSE]*** affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees," *Order Granting Def's MSJ at page 6,* and **LIED** when it said that "Plaintiff ***[IN HIS RESPONSE]*** has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident," *Order Granting Def's MSJ at page 6.* **Now,** even though Plaintiff **DID** make multiple statements and **DID** submit multiple proofs, generally, regarding "his actions inside the Best Buy immediately preceding the incident" *see footnote 3, above,* **to the extent that such statements and proofs are not specific enough [as this Court appears to argue] to overcome the NEW arguments made by Defendant STRICTLY in its REPLY brief, PLAINTIFF ABSOLUTELY CANNOT BE FAULTED FOR NOT BEING SPECIFIC ENOUGH.** Therefore, since Plaintiff was not given **FAIR NOTICE** to be more specific with his arguments and evidence, [and since SURREPLIES are **not** allowed in Colorado Law], this Court's granting of Defendant's MSJ **was manifestly unfair to him.** In layman's terms, this Court should not have granted Defendant's MSJ using such **DELAYED** argument and evidence **THAT PLAINTIFF WAS INDISPUTABLY DENIED THE DUE PROCESS TO PROPERLY RESPOND TO.** "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). Specifically, in *Wallman,* the Court held that in Defendant's "**reply** brief before the trial

4 This word – **"counter"** – is the **most damning** of the Court's **LIES. OF COURSE** Plaintiff didn't "counter," in his RESPONSE to Defendant's initial MSJ, the **NEW** arguments Defendant raised **FOR THE VERY FIRST TIME** in its **REPLY, BECAUSE THEY WERE NEVER MADE BEFORE THEN! Talk about a due process violation here!**

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court, Kelley **argued for the first time** that plaintiff could not prove that the JBH she allegedly purchased from him caused her illness." *Id at 332.* The Court then **explicitly** held that "**because plaintiff was not given notice that she needed to present evidence** on the causation issue in defendants' initial summary judgment motions and briefs, **we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions.**" *Id.* THE SAME HOLDS **100% IDENTICALLY TRUE** TODAY IN PLAINTIFF'S INSTANT CASE. Because Plaintiff "was not given notice that he needed to present evidence" [or in this case, more specific evidence] ON **BOTH** NEW, FRESH, **REPLY-ONLY** RAISED ISSUES of "shopkeeper's privilege" and "receipt possession," this Court "incorrectly relied upon the lack of such evidence in granting [Defendant's] motion." *Id.* Case in point: the official **LIE** this Court made when it said that "Plaintiff argues ***[IN HIS RESPONSE]*** that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any 'genuine' issue of fact, not whether there is any conceivable issue of fact." *Order Granting Def's MSJ at page 6, footnote 6.* Such argument – "that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise" – was **NOT** an argument EVEN MADE in Defendant's MSJ briefing, **IT WAS MADE IN PLAINTIFF'S CROSS-MSJ BRIEFING,** [and it was only made at the end of it, in his final REPLY, at the earliest opportunity he was given to first address the argument, and to which he would not have even been able to fully address either, by way of, say, supplying an affidavit on the subject of his brother, since he isn't allowed to submit affidavits with replies any more than Defendant is allowed to do so!].[5] *See C.R.C.P. Rule 56(c)* (holding that affidavits can only be served "within the time allowed for the

5 Ultimately, this only means that **denial** of *his* CROSS-MSJ might be proper, not the **granting** of *Defendant's* MSJ! "When a [Plaintiff's] motion for summary judgment is overruled, their admission of facts under their legal theory terminates, and it is error for a trial court to give any consideration thereto in connection with its determination of [Defendant's] motion. This leaves [Defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial. *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952).

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responsive brief"). So, **OF COURSE** Plaintiff "failed to refute" the "genuine issue of fact" this Court claims Defendant purportedly "created" regarding "who made the associated purchase." No genuine issue of fact was fairly created, *in time*, **in the first place, IN DEFENDANT'S INITIAL MOTION FOR SUMMARY JUDGMENT,** for Plaintiff TO HAVE EVEN BEEN GIVEN fair notice and opportunity to address and refute with evidence of his own![6] Indeed, it appears that this Court [disingenuously, recklessly, maliciously?] morphed Defendant's original, *evidence-belated* REPLY to Plaintiff's RESPONSE to its MSJ, ***into the new MSJ itself,*** to then [disingenuously, recklessly, maliciously?] morph Plaintiff's original RESPONSE to Defendant's MSJ ***into some new, retroactively-created RESPONSE,*** within which he purportedly "failed to address and refute" ***the new, retroactively-applied issues*** purportedly brought up by Defendant ***in its new, retroactively-created super MSJ!***[7] *Nice try Court! You *almost* got away with it.*[8]

In the end, Defendant simply submitted argument and evidence *too late into its briefing,*[9] **but that's not Plaintiff's fault.** Had Defendant provided Plaintiff with FAIR NOTICE, Plaintiff would have supplied this Court with [more specific than before] evidence that he **DID NOT** conceal anything

6 Indeed, the day Defendant and Plaintiff became aware that Defendant's MSJ had been granted, Plaintiff's brother was scheduled to undergo deposition on this exact issue – that he *did* make the purchase for which the receipt was associated. But because this Court **impermissibly,** *prematurely* ruled on Defendant's MSJ, it failed to allow this evidence to fairly come forward. "Where the record has not been adequately developed on a material factual issue, summary judgment is not proper." *Moore v. 1600 Downing St., Ltd.,* 668 P.2d 16 (Colo. App. 1983).

7 The Court then [disingenuously, recklessly, maliciously?] morphed Plaintiff's REPLY to Defendant's RESPONSE to *his* CROSS-MSJ into some sort of **SURREPLY** to Defendant's REPLY to his RESPONSE to *Defendant's* MSJ!

8 **Seriously,** this Court needs to be quoted again on this issue, one more time, to show **JUST HOW BAD** the dirty, timestamp-fudging, due process denial act is that it committed in this particular matter. *See Order Granting Def's MSJ at page 6* ("Defendant has submitted ***[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]*** a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant ***[NO IT DIDN'T!]*** of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment."), *Order Granting Def's MSJ at page 6* ("Plaintiff, in his response ***[NO HE DIDN'T!],*** denies having been in Best Buy, denies having the store's merchandise on him ***[NO HE DIDN'T!],*** and denies concealing anything."), *Order Granting Def's MSJ at page 4* ("Defendant has submitted ***[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]*** proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store."), *Order Granting Def's MSJ at page 4* ("Plaintiff provides no evidence ***[NO HE DIDN'T, INTENTIONALLY THAT IS!]*** of his actions in the store to counter this ***[OF COURSE HE DIDN'T "PROVIDE ANY EVIDENCE OF HIS ACTIONS IN THE STORE TO COUNTER THIS," BECAUSE HE WASN'T PUT ON NOTICE, IN THE FIRST PLACE, OF WHAT HE WOULD HAVE EVEN NEEDED TO COUNTER, SINCE DEFENDANT LITERALLY DENIED HIM THAT DUE PROCESS!]***).

9 The tactic of impermissibly submitting evidence in REPLY briefs is a well known occurrence called **SANDBAGGING.**

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specifically while inside the store, and that his brother **DID** *specifically* make the associated purchase.[10][11] As such, because Defendant **DID NOT** provide Plaintiff with said FAIR NOTICE to supply said evidence, **REVERSAL** of the GRANTING of Defendant's MSJ is indisputably warranted.

II. THE COURT IMPERMISSIBLY HELD WITH CONCLUSORY STATEMENTS THAT PLAINTIFF IS SIMPLY A "LAWSUIT SCAMMER" UNDESERVING OF DUE PROCESS TO HAVE HIS CASE ADJUDICATED ON ITS MERITS

In the Court's ORDER granting Defendant's MSJ, it held that "Plaintiff's YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his 'sting operation.'" *Order Granting Def's MSJ at page 4.* Elsewhere in its ORDER, it further held that "Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit," *Order Granting Def's MSJ at page 5,* and that "Plaintiff designed his conduct to inspire this belief." *Order Granting Def's MSJ at page 6.*

The first problem with these tendentious holdings, IS THAT THEY ARE ALL 100% UNSUBSTANTIATED, **PURELY CONCLUSORY STATEMENTS,** DEVOID OF **ANY SPECIFIC** FACTS OR EVIDENCE **IN THE ***P-R-E-S-E-N-T*** RECORD** TO *EVEN BEGIN TO* SUPPORT THEIR PURPORTED TRUTHFULNESS WITH. **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."** *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). **Seriously,** Plaintiff's YouTube video *doesn't even mention* the words "Best Buy" in it, ONCE, let alone address ANY of the facts necessary to **legally and fairly** decide Plaintiff's instant case with.

10 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **WAS NOT** asked to show a receipt by any other employee [and **DID NOT** refuse to show a receipt to any other employee] on his way out of the store, contrary to what Mahmoud Abu-Shaweesh claims to have occurred in his belated, *REPLY-ONLY* affidavit.

11 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **DID NOT** even have a receipt on him, in the first place, for which he might have otherwise been required to show, because of how he **DID NOT** have store merchandise in his hands, let alone in his pockets [but rather held in his hands merchandise that he had erroneously attempted to return to the wrong store, and had in his pockets boxed medication used to treat his acid reflux condition with]. [This footnote is meant to address the **LIE** this Court put forth when it impermissibly argued that "Plaintiff does not deny having a receipt at the time of the incident." *Order Granting Def's MSJ at page 3.* Such lack of denial, again, was made without Plaintiff being given FAIR NOTICE of what he needed to address and refute].

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Next, **the holdings violate Plaintiff's State and Federal 14th Amendment Rights to DUE PROCESS,** in which he has a Constitutional Right to have EACH INDIVIDUAL CASE OF HIS TRIED EACH ON AN INDIVIDUAL BASIS, i.e. completely on **EACH** of their **OWN** merits, and to not be *summarily* and *tendentiously* dismissed by some kangaroo court upon it simply spouting to the world that "we don't need to reach the merits of the instant case *today* because we hold that Plaintiff is *forevermore* a trifling lawsuit scammer!" **Seriously, whatever happened to trying a case on its merits?** Does this Court **REALLY** think that "once a lawsuit scammer, always a lawsuit scammer" is **ACTUALLY** a cognizable legal argument? **Because it's not.** About the **ONLY** thing this Court can do regarding Plaintiff's "purportedly disingenuous motives," **is to present that issue to the Jury.** "Summary judgment is usually inappropriate in cases dealing with potentially unconstitutional motivations. Because evidence concerning motive is almost always subject to a variety of conflicting interpretations, a full trial on the merits is normally the only way to separate permissible motivations from those that merely mask unconstitutional actions." *Ridgeway v. Kiowa Sch. Dist. C-2,* 794 P. 2d 1020 (Colo. App. 1989). *See also Wolther v. Schaarschmidt,* 738 P.2d 25 (Colo. App. 1986) ("Generally, the issue of a party's intent is a question of fact, and is not an appropriate issue for summary disposition.").

Next, **the holdings impermissibly shift the burden of proof back onto Plaintiff** to somehow argue that he is *not* a "lawsuit scammer," **when the burden really still lies with the Defendant** [and will **FOREVER** lie with the Defendant] regarding its AFFIRMATIVE defense of "shopkeeper's privilege" in a false imprisonment claim. "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940). **Seriously,** such monumentally vague statements that Plaintiff "acts in a manner," "creates misunderstandings," and "designs his conduct" come ***nowhere near*** the level of specificity necessary

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to satisfy ***any*** actual affirmative defense of "shopkeeper's privilege" in a matter. Such statements are so astoundingly vague that they could LITERALLY be invoked by *any* merchant, on *any* occasion, looking to hastily avoid liability for their actions. Therefore, such **conclusory** "hot words" are nothing more than **lazy** attempts to **skirt** having to *actually* address the issue, *which is not even that difficult of an issue to address, by the way.* **That is, Plaintiff's "sting operation" is by no means some complicated, elaborate "ruse."** He simply refuses to answer questions and/or refuses to consent to searches while on his way out of stores after shopping. **THAT'S IT!** Why can't Defendants and Courts simply address that issue, on its face? Why dance around vaguely chanting "lawsuit scammer, lawsuit scammer!"? Oh yeah, that's right, because they'd lose the argument, because merely "refusing to cooperate" isn't *actually* particularized behavior, because it's really just bootstrapping, **because merchants [and police] "lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention,** because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter" with them. *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick,* No. 89-1717.

Next, regarding Plaintiff's purported "sting operation," **Best Buy stores don't even have "back registers"** [they have registers littered all throughout their stores], **they began phasing out plastic bags way back in July of 2022** [PMFR Exhibit #1], **and Plaintiff didn't even refuse to show his receipt on his way out** [nor was he even asked to show one, let alone did he have one on him in the first place for which he might have otherwise been required to show due to him not even being a customer of the establishment that day in the first place.]. Of course, **NONE of these facts were even remotely developed by the Court [let alone a Jury]** ***in the first place,*** for which it would have otherwise been able to rule on, **one way or the other.** So by that alone we KNOW this Court is 100% FULL OF CRAP regarding its purportedly dispositive holdings that "Plaintiff is simply a lawsuit scammer." **Seriously.** Where's the scam? Where's the sting? Plaintiff BEGS this

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Court to point to **A SINGLE FACT** fairly and indisputably[12] developed in the record that would *even begin to* substantiate the "elements" of his purported "sting operation."[13] Indeed, "[A] trial court's order must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision." *In re Van Inwegen,* 757 P.2d 1118 (Colo. App. 1988). *See also Mowry v. Jackson,* 140 Colo. 197, 343 P.2d 833 (1959) ("[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision."). **Yet this Court has made no such EXPLICIT findings that the Appellate Court can even review. All it has done is conclusorily establish that "Plaintiff is simply a lawsuit scammer," without even so much as describing how.** *What a monumental waste of time this will be for the Appellate Court if this Lower Court doesn't reverse this case immediately!* Moreover, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, with different receipt checking policies, where Plaintiff was an actual customer of those stores, had receipts both printed AND provided to him [i.e. not just emailed] upon shopping at those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those particular stores. However, **NONE** of those facts have ***even remotely*** been fairly and legally established by Defendant [or the Court] in Plaintiff's instant case. **It is truly baffling that this Court evidently does not understand how important it is that** "A

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12 Remember, for purposes of ruling on Defendant's MSJ, the Court is **not allowed** to point to Mahmoud's affidavit, nor the affidavit-less business records (i.e. receipts), both *belatedly* submitted by Defendant *only* in its REPLY brief.

13 Technically, Plaintiff doesn't even know if "using back registers" and/or "not using plastic bags" are the actual reasons for why he is potentially detained. As such, they're not even a part of his long running "sting operation." Meaning, Plaintiff certainly has *hypotheses* that such are reasons for why he is being *asked* to show a receipt, **but he has never filed lawsuits for merely being *asked* to show a receipt, he's only ever filed lawsuits for being detained AFTER NOT SHOWING ONE.** And to this date, no Defendant has EVER come forward on the record to explain precisely *why* they've detained him. Courts [like this one evidently] have always prematurely dismissed his cases without ever adjudicating them on the merits. As such, the only real, actual "element" to Plaintiff's long running "sting operation" **is to simply refuse to show his receipt [like any other patron has the right to do] and see what happens.** THAT'S IT. Of course, not even *that* "element" is part of Plaintiff's instant case, so there's **NO** "sting operation" going on *at all* now!

conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

Next, *while not even being necessary to provide, since Plaintiff is not required to refute conclusory statements made without supporting documentation or testimony,* Plaintiff nevertheless provided this Court with ***more than enough*** evidence to conclusively show [if not, **AT THE VERY LEAST,** send to the Jury to decide] that he is not a "lawsuit scammer" ***for simply refusing to answer questions and/or refusing to consent to searches while on his way out of stores.*** Such conclusive evidence includes, but is not limited to: a) **dozens of news articles on the exact subject** [PRTDMSJ Exhibit #14], b) **decades-old law reviews on the exact subject** [Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009))], c) **actual police activity of the same exact behavior as Plaintiff** [Cop Records Himself Detained At Walmart Receipt Check, The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010)], d) **identical or nearly identical case law on the subject** [*Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971), *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996), *Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000), *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963), *Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994), *Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951)], and e) **Supreme Court and Federal Court case law on the subject explicitly holding that "refusals to cooperate and/or consent to searches" absolutely cannot be used to "bootstrap" detentions with** [*Florida v. Bostick,* 501 U.S. 429, 111 S. Ct. 2382 (1991), *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998), *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993)]. If, after familiarizing oneself with ALL THAT, one still ***miraculously*** considers Plaintiff to be a "lawsuit scammer," **all hope is lost for that person,** *and they should probably not be practicing law in this Country.*

Last, but certainly not least, **is the statistics fraud.** If this Court is ***so confident*** that Plaintiff "acts in a manner that could **reasonably** be construed as suspicious," then surely *every other*

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merchant would be acting in the same way as Defendant has, by also *reasonably* detaining him for "scamming" them too, no? And because it's *so darn easy* to "entrap" all these innocent, *reasonably* acting merchants for simply *doing their jobs* and *following the law*, Plaintiff, being the greedy, money-grubbing "lawsuit scammer" that he is, would then have surely gone around and collected a bunch more fake lawsuits by now, no? **Right?** EXCEPT THAT HE HASN'T. BECAUSE HE'S NOT A LAWSUIT SCAMMER. BECAUSE IT'S NOT EASY TO CATCH FALSE IMPRISONERS. BECAUSE THERE AREN'T THAT MANY OUT THERE. BECAUSE MOST MERCHANTS ARE SMART, KNOW THE LAW, AND DON'T DETAIN PEOPLE FOR MERELY REFUSING TO COOPERATE. INDEED, THE LAST TIME PLAINTIFF CAUGHT A MERCHANT VIOLATING HIS RIGHTS BEFORE THE INSTANT CASE AT BAR **WAS LITERALLY OVER FOUR YEARS AGO.** So just give it up. Your stats aren't adding up. True lawsuit scammers would be INUNDATING your Courthouse with dozens, ***if not hundreds*** of fake lawsuits by now, if it is truly as easy as you say it is to "entrap" *reasonable* acting people. **As such, Plaintiff deserves to stop being eternally, retaliatorally, conclusorily defamed as a trifling "lawsuit scammer," AND HAVE HIS INSTANT CASE ADJUDICATED ON ITS MERITS.**

CONCLUSION

"Trial courts should not grant motions or deny a trial where there is the slightest doubt. Trial courts should exercise great care in granting motions for summary judgment, and should not deny a litigant a trial where there is the slightest doubt as to the facts." *Smith v. Mills,* 123 Colo. 11, 225 P.2d 483 (1950). "Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate." *Abrahamsen v. Mountain States Tel. & Tel. Co.,* 177 Colo. 422, 494 P.2d 1287 (1972). "Where the record has not been adequately developed on a material factual issue, summary judgment is not proper." *Moore v. 1600 Downing St., Ltd.,* 668 P.2d 16 (Colo. App. 1983). "In passing upon a motion for summary judgment, it is no part of the court's function to decide issues

Attachment to Order - 2023CV226

of fact but solely to determine whether there is an issue of fact to be tried." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). "Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment." *Primock v. Hamilton,* 168 Colo. 524, 452 P.2d 375 (1969). **OF UPMOST IMPORTANCE:** "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). **AND FINALLY:** "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its most recent ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 3rd day of December, 2024.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
H: (970) 412-5463
C: (970) 232-0369
zoinbergs@gmail.com

Attachment to Order - 2023CV226

CERTIFICATE OF SERVICE

I hereby certify that on this, the 3rd day of December, 2024, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** was sent to the following people, via email:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Attachment to Order - 2023CV226

Best Buy moving away from single-use plastic bags

By Ale Valeriano July 19, 2022



Attachment - 2023CV226

Starting this month, Best Buy will begin working with customers to create a more sustainable future together, one bag at a time.

Beginning July 19, customers shopping in-store will have the option to purchase a plastic bag for 10 cents or are encouraged to bring their own bags for purchases to help reduce plastic waste headed to landfills.

"As we continue to work toward our goal to be a more sustainable company, we are focused on reducing our waste and finding new ways to work with our customers to make a positive impact on the planet," said Tim Dunn, Best Buy's head of environmental sustainability. "This is just another example of the many sustainable choices we offer our customers."

Here's what you need to know:

- Starting July 19, we will begin charging 10 cents for each single-use plastic bag provided with store purchases.
- A portion of the fee goes toward supporting teens through programs like the Best Buy Teen Tech Center®
- Over the next few years, we will continue to work toward solutions to reduce plastic bag usage in our stores including offering more sustainable options for customers, such as paper bags.

From smart thermostats to offering 100 percent recyclable paper gift cards, Best Buy makes it easy to shop and live more sustainably. Since 2009, we have achieved major milestones in our sustainability programs and have reduced our carbon emissions by 62%. Through initiatives that include recycling more than 2 billion pounds of electronics and appliances to offering a wide variety of ENERGY STAR® certified products to help customers reduce their carbon emissions, we proudly continue our journey to building a more sustainable future.

Learn more about our sustainability program here.

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	DATE FILED January 07, 2025 11:02 AM ▲ COURT USE ONLY ▲ Case Number: **23CV226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S BILL OF COSTS

THIS MATTER comes before the Court on Defendant Best Buy Stores' Bill of Costs. Plaintiff William Montgomery did not file a response. The Court, having reviewed the pleadings and applicable law, rules as follows:

I. BACKGROUND

Plaintiff filed this case on November 21, 2023, alleging claims of false imprisonment, defamation per se, and assault following an encounter at Defendant's store. On November 19, 2024, the Court granted Defendant's Motion for Summary Judgment and dismissed all of Plaintiff's claims with prejudice. The Court denied Plaintiff's Cross-Motion for Summary Judgment.

Defendant filed this Bill of Costs on December 3, 2024, requesting $2,094.99 in costs. Plaintiff did not file a response.

II. LEGAL STANDARD

C.R.C.P. 54(d) provides that "reasonable costs shall be allowed as of course to the prevailing party considering any relevant factors which may include the needs and complexity of the case and the amount in controversy." Pursuant to C.R.C.P. 121, § 1-22, "the Bill of Costs shall itemize and provide a total of costs being claimed. Taxing and determination of costs shall be in accordance with C.R.C.P. § 54(d) . . . ."

A prevailing party under C.R.C.P. 54(d) is one who succeeded on a significant component of the litigation and who was apportioned some of the benefits sought through the litigation. Bainbridge, Inc. v. Douglas County Bd. of Com'rs, 55 P.3d 271, 274 (Colo. App. 2002). "For determining prevailing party entitle[ment] to costs, the number of claims upon which [a] party prevails or amount awarded for those claims is not determinative." Archer v. Farmer Bros. Co., 90 P.3d 228, 230 (Colo. 2004). "When a case involves claims, some of which are successful and some of which are not, it is left to the sole discretion of the trial court to determine which party, if any, is the prevailing party and whether costs should be awarded." Id. "[I]n any action wherein

plaintiff … [has] a verdict passed against him, then the defendant shall have judgment to recover his costs against the plaintiff[.]" C.R.S. § 13-16-105.

For a Court to award a party costs, each cost item must be found by the Court to be "an integral part of the preparation for trial" and "a necessity for the proper preparation for trial and for the orderly and efficient presentation of evidence and cross-examination of witnesses." Cherry Creek School District No. 5 v. Voelker, 859 P.2d 805, 814 (Colo. 1993). A party seeking costs "need only provide the court with sufficient information and supporting documentation to allow a judge to make a reasoned decision for each cost item presented." City of Aurora ex rel. Utility Enterprise v. Colorado State Engineer, 105 P.3d 595, 627 (Colo. 2005). "Awarding of costs is within the sound discretion of the trial court." Didamo v. Tyrol Sport Arms Co., 680 P.2d 1328, 1330 (Colo. App. 1984).

III. ANALYSIS

Defendant is the prevailing party in this action. As the prevailing party, Defendant requests to recover from Plaintiff costs incurred in filing fees, court reporter fees, and research fees.

A. Court Costs, Electronic Filing, Electronic Services Fees through CCES

Defendant requests $680.74 in court costs.

C.R.S. § 13-16-122 identifies costs that may be recovered by a prevailing party. This list includes "[a]ny docket fee [required] to be paid to the clerk of court." Colo. Rev. Stat. § 13-16-122(1)(a).

Here, Defendant requests reimbursement for costs paid in filing notices, responses, answers, and the like with the Court. These cost items are integral and necessary to the case and Defendant has provided sufficient information to prove these costs. Accordingly, these costs will be awarded in full.

B. Court Reporter Fees

Defendant requests $1,340.25 for court reporter fees and the transcript of a discovery deposition.

C.R.S. § 13-16-122(1)(d) allows the prevailing party to recover costs for "[a]ny fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case." "A court may award the reasonable costs incurred for the transcript of a discovery deposition where 'the taking of the deposition and its general content were reasonably necessary for the development of the case in light of facts known to counsel at the time it was taken.'" Valentine v. Mountain States Mut. Cas. Co, 252 P.3d 1182, 1187 (Colo. App. 2011) (quoting Voelker, 859 P.2d at 813).

Here, Defendant took a deposition of Plaintiff and purchased the transcript. The Court

concludes taking a deposition of the plaintiff during the discovery phase of litigation is reasonably necessary for the development of the case, and is especially reasonable where, as here, Plaintiff sought more than $100,000.00 in damages. C.R.S. § 13-16-122 allows for the recovery of this cost and Plaintiff has not objected. Accordingly, this cost will be awarded in full.

C. Background Research and Investigation Fees

Defendant requests $74.00 for background research and investigation fees.

C.R.S. § 13-16-122 provides a list of costs that may be recovered by a prevailing party, but it is illustrative, not exhaustive. Voelker, 859 P.2d at 813. Other cost items may be recoverable so long as they are found by the court to be "reasonably necessary for the development of the case in light of the facts known to counsel at the time . . . ." Id.

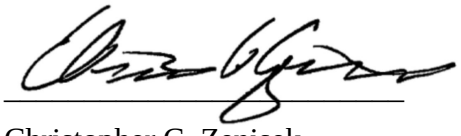
Here, Defendant seeks to recover for a criminal background check and retrieving seventeen past court cases that Plaintiff was a party to. Defendant's theory in its summary judgment motion relied in part on demonstrating Plaintiff's modus operandi of running a similar scheme in stores around Colorado. Researching Plaintiff's criminal and litigious history, then, was reasonably necessary for the development of Defendant's theory of the case. As such, this cost will be awarded in full.

IV. CONCLUSION

For the reasons discussed above, Plaintiff is awarded costs in the following amounts: (1) $680.74 in court costs, electronic filing, and electronic service fees; (2) $1,340.25 in court reporter fees; and (3) $74.00 in research fees. **Total costs awarded to Plaintiff are $2,094.99.**

Done in Golden, Colorado this 7th day of January, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED January 08, 2025 9:16 AM
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **23CV226** Division: 06 Courtroom: 520

AMENDED ORDER RE: DEFENDANT'S BILL OF COSTS

THIS MATTER comes before the Court on Defendant Best Buy Stores' Bill of Costs. Plaintiff William Montgomery did not file a response. The Court, having reviewed the pleadings and applicable law, rules as follows:

I. BACKGROUND

Plaintiff filed this case on November 21, 2023, alleging claims of false imprisonment, defamation per se, and assault following an encounter at Defendant's store. On November 19, 2024, the Court granted Defendant's Motion for Summary Judgment and dismissed all of Plaintiff's claims with prejudice. The Court denied Plaintiff's Cross-Motion for Summary Judgment.

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plaintiff … [has] a verdict passed against him, then the defendant shall have judgment to recover his costs against the plaintiff[.]" C.R.S. § 13-16-105.

For a Court to award a party costs, each cost item must be found by the Court to be "an integral part of the preparation for trial" and "a necessity for the proper preparation for trial and for the orderly and efficient presentation of evidence and cross-examination of witnesses." Cherry Creek School District No. 5 v. Voelker, 859 P.2d 805, 814 (Colo. 1993). A party seeking costs "need only provide the court with sufficient information and supporting documentation to allow a judge to make a reasoned decision for each cost item presented." City of Aurora ex rel. Utility Enterprise v. Colorado State Engineer, 105 P.3d 595, 627 (Colo. 2005). "Awarding of costs is within the sound discretion of the trial court." Didamo v. Tyrol Sport Arms Co., 680 P.2d 1328, 1330 (Colo. App. 1984).

III. ANALYSIS

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Here, Defendant requests reimbursement for costs paid in filing notices, responses, answers, and the like with the Court. These cost items are integral and necessary to the case and Defendant has provided sufficient information to prove these costs. Accordingly, these costs will be awarded in full.

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C.R.S. § 13-16-122(1)(d) allows the prevailing party to recover costs for "[a]ny fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case." "A court may award the reasonable costs incurred for the transcript of a discovery deposition where 'the taking of the deposition and its general content were reasonably necessary for the development of the case in light of facts known to counsel at the time it was taken.'" Valentine v. Mountain States Mut. Cas. Co, 252 P.3d 1182, 1187 (Colo. App. 2011) (quoting Voelker, 859 P.2d at 813).

Here, Defendant took a deposition of Plaintiff and purchased the transcript. The Court

concludes taking a deposition of the plaintiff during the discovery phase of litigation is reasonably necessary for the development of the case, and is especially reasonable where, as here, Plaintiff sought more than $100,000.00 in damages. C.R.S. § 13-16-122 allows for the recovery of this cost and Plaintiff has not objected. Accordingly, this cost will be awarded in full.

C. Background Research and Investigation Fees

Defendant requests $74.00 for background research and investigation fees.

C.R.S. § 13-16-122 provides a list of costs that may be recovered by a prevailing party, but it is illustrative, not exhaustive. Voelker, 859 P.2d at 813. Other cost items may be recoverable so long as they are found by the court to be "reasonably necessary for the development of the case in light of the facts known to counsel at the time . . . ." Id.

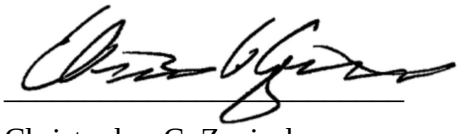
Here, Defendant seeks to recover for a criminal background check and retrieving seventeen past court cases that Plaintiff was a party to. Defendant's theory in its summary judgment motion relied in part on demonstrating Plaintiff's modus operandi of running a similar scheme in stores around Colorado. Researching Plaintiff's criminal and litigious history, then, was reasonably necessary for the development of Defendant's theory of the case. As such, this cost will be awarded in full.

IV. CONCLUSION

For the reasons discussed above, Defendant is awarded costs in the following amounts: (1) $680.74 in court costs, electronic filing, and electronic service fees; (2) $1,340.25 in court reporter fees; and (3) $74.00 in research fees. **Total costs awarded to Defendant are $2,094.99.**

Done in Golden, Colorado this 7th day of January, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED January 21, 2025 FILED IN THE COMBINED COURT JAN 2 1 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ATTORNEY FEES	

Plaintiff, proceeding *pro se*, hereby submits to the Court his RESPONSE to Defendant's MOTION FOR ATTORNEY FEES, and in support thereof, states as follows:

ARGUMENT

I. PLAINTIFF DID NOT HAVE SUFFICIENT, MEANINGFUL KNOWLEDGE THAT HIS CLAIMS AGAINST DEFENDANT WOULD NOT PREVAIL

In Defendant's Motion For Attorney Fees, it begins its **deluge of intellectually dishonest arguments** by claiming that "After having numerous previous lawsuits thrown out based upon the same or similar facts and legal arguments, Plaintiff continues to assert the same failed arguments." *Def's Mtn For Atty Fees at page 3.* However, as will be discussed next, ***each and every one*** of Plaintiff's previous cases [filed against Walmart] were unquestionably and irrefutably **NOT** "based upon the same or similar facts and legal arguments" that he has now

presented, ***for the very first time,*** in his instant case against Defendant [Best Buy]. Therefore, it is nothing short of a **LIE** that Plaintiff "continues to assert the same failed arguments."

a. The <u>FACTS</u> in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **<u>he was a customer of the stores that detained him</u>. The same is not even remotely true today,** where Plaintiff ***wasn't even a customer of Best Buy,*** but rather "a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store." *See Ptf's Resp To Def's MSJ at page 22.* Next, in all of Plaintiff's previous cases against Walmart, **<u>he utilized back registers and/or did not use plastic bags</u>.**[1] However, once again, **the same is not even remotely true today,** where "back registers" ***don't even exist inside Best Buy*** [i.e. they have universal registers littered all throughout their stores], the major retail chain phased out "plastic bag use" ***in July of 2022, six months BEFORE Plaintiff was even detained*** in the instant case, and again, ***Plaintiff wasn't even a customer that day to EVEN USE*** "back registers" and/or "not use plastic bags."[2] Next, in all of Plaintiff's previous cases against Walmart, **<u>he "knew" about the store's receipt checking policies</u>.**[3] However, once again, **the same is not even remotely true today,** where Plaintiff ***still has no earthy idea if Best Buy EVEN HAS a receipt checking policy on its books, in the first place,*** let alone a compulsory one. *See Ptf's Affidavit Of The Event at ¶ 26.* The only "receipt policy" of Best Buy that Plaintiff is aware of, ***is one in which the major retain chain EMAILS RECEIPTS to its patrons,*** in lieu of giving them a paper one. *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* Of course, such a policy **only supports** Plaintiff's instant case, rather than hurt it. Next, in all of Plaintiff's previous cases against Walmart, **<u>store employees made explicit requests to see his receipt</u>.** However, once again, **the same is not even remotely true today,** where no such explicit requests ***were ever made to Plaintiff,*** whatsoever,

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1 Not that either would supply a merchant with "shopkeeper's privilege" *anyways,* as argued elsewhere by Plaintiff.

2 Indeed, this Court **FAILED** to allow the veracity of these facts ***to even be developed, <u>in either direction</u>, in the first place,*** before it tendentiously, summarily, and **impermissibly** dismissed Plaintiff's instant case in its entirety.

3 Not that such would invalidate a patron's valid false imprisonment claim *anyways,* as also argued by Plaintiff.

by any store employees that day. Finally, in all of Plaintiff's previous cases, **Plaintiff anticipated his potential detentions,** and so, began recordings ahead of time.[4] However, once again, **the same is not even remotely true today,** where Plaintiff did not begin recording his interaction with Defendant ***until after the surprise confrontation occurred.***[5] As such, ***absolutely none*** of Plaintiff's previous cases against Walmart can be fairly and reasonably compared to his instant case against Best Buy.

b. Prior Courts also got several facts WRONG in Plaintiff's previous cases

It is also worth noting that prior Courts got several facts patently WRONG in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart, Inc.*, Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235), a District Court Judge *miraculously* **[but impermissibly]** held that Plaintiff "concealed" merchandise on his way out of each store.[6] **OF COURSE,** Plaintiff has obviously **NEVER, NOT ONCE** "concealed" *anything*, from *anybody*, on *any* shopping occasion, ***ever, period, in the history of his existence,*** for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter![7] *See Ptf's Affidavit Of The Event at ¶ 24* ("At no point in time, on that day of November 25, 2022, had I ever once 'concealed' anything in front of [let alone not in front of] anybody, ever, period.") *and ¶ 25* ("At no point in time, on that day of November 25, 2022, had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees."). Then, in *Montgomery v. Walmart Inc.*, Adams County

4 Not that doing such would invalidate a patron's valid false imprisonment claim *anyways*, as also argued by Plaintiff.

5 *See Def's MSJ Exhibit J at page 10,* where the Court **[impermissibly]** held that "Given Montgomery's repetitive interactions with Walmart, *coupled with his recorded contemplation of his anticipated detention,* the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision.").

6 *See Def's MSJ Exhibits C / D / E / H, Order at page 25,* where the Court **[impermissibly]** held that "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was *concealing* property of the store, which he knew would lead to being detained and asked for his receipts." BTW, the Court also got the sequence wrong, as Plaintiff was FIRST asked to show his receipts, THEN detained. **Not the other way around.** Indeed, it was the very refusal to show the receipts **that was the sole cause of** his detentions [i.e. "bootstrapping"].

7 Not to mention ***that it's an actual crime*** to steal merchandise from a store, **and Plaintiff isn't that freaking stupid.**

District Court Case No. 2021CV68 (Consolidated: 2021CV88), an Appellate Panel *miraculously* **[but impermissibly]** held that it was even Walmart's official receipt checking policy to "confine" patrons "if they chose not to produce [a receipt]." *See Def's MSJ Exhibit J at page 10.* **OF COURSE,** it has always been [and still is] Walmart's **OFFICIAL** receipt checking policy to only ***ASK*** patrons to see their receipts, ***NEVER*** to actually ***detain*** them if they choose to refuse to show one.[8] As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

c. The LEGAL ARGUMENTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that he was a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store.*** *See Ptf's Resp To Def's MSJ at page 22.* This is a **new** and **novel** legal argument that Plaintiff has now presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the store he visited has a policy in which receipts are emailed to patrons instead of printed out and given to them.*** *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* This is also a **new** and **novel** legal argument that Plaintiff has now presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that being *fully stopped* to show one's receipt is not the same as merely *changing directions* toward an *always open* window.*** *See Ptf's Resp To Def's MSJ at page 19, footnote 8.* This is a "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law."

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8 *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000) ("If a customer refused to have his or her bag checked, **the policy allowed the person to pass**."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.").

See C.R.C.P. Rule 11(a). Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merely affording a person an opportunity to commit an offense is not entrapment (i.e. entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed).*** *See Ptf's Resp To Def's MSJ at pages 15, footnote 4, and 27.* This is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merchants don't simply get *carte blanche* authority to indiscriminately detain whomever they wish (i.e. a merchant listing off literally all possible actions that are purportedly required for a patron to perform in order to end their detention effectively renders all detentions of patrons literally uncompensable, and the bar to which merchants are required to have "shopkeeper's privilege" under obviously cannot be set at the floor).*** *See Ptf's Reply In Support Of His C-MSJ at page 17, footnote 19.* Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Finally, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the Defendant has offered nothing more than *purely conclusory statements* to support its shopkeeper's privilege position (and that "conclusory statements made without supporting documentation or testimony are insufficient to create an issue of material fact").*** *See Ptf's Resp To Def's MSJ at page 28, footnote 10. See also Ptf's Reply In Support Of His C-MSJ at pages 15 through 20.* Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* As such, an award of attorney fees against Plaintiff for attempting in good faith to establish or reverse all these theories of law in Colorado **would be an inappropriate and gross miscarriage of justice.**

d. Prior Courts also made several BAD legal arguments in Plaintiff's previous cases

It is also worth noting that prior Courts made several patently AWEFUL legal arguments in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart Inc.*, Jefferson County District Court Case No. 2020CV76, an Appellate Panel *miraculously* **[but impermissibly]** held that Plaintiff's false imprisonment claim failed because he purportedly only sued over being "asked" to show proof of purchase.[9] **HOWEVER,** Plaintiff has ***ALWAYS AND ONLY*** ever argued **that the act of physically blocking all available pathways of his through all available exits** is what has ***specifically*** constituted his false imprisonment claims. Thus, the Court's tendentious holding was a profoundly inaccurate ruling in the matter. Then, in the same case, the Appellate Panel also *miraculously* **[but impermissibly]** held that "being taken to a secluded room," "being forcibly moved within the store," and/or "being arrested," are all purportedly required elements of a valid false imprisonment claim.[10] **HOWEVER,** such is clearly not the law, as the Court has long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid. See also McDonald v. Lakewood Country Club,* 170 Colo. 355, 461 P.2d 437 (1969). As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

e. Numerous LEGAL ARGUMENTS have never even been addressed by the Court

In all of Plaintiff's previous cases against Walmart, **Plaintiff made numerous legal arguments THAT THE COURT LITERALLY FLAT OUT NEVER ADDRESSED** [and still, to this day, has yet to even begin to address]. Specifically, Plaintiff has made relevant legal arguments surrounding his claims that **a)** a very real and constitutionally significant difference exists between

9 *See Def's MSJ Exhibit I at page 8,* where the Court **[impermissibly]** held that "No reasonable juror could conclude that being *asked* to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."

10 *See Def's MSJ Exhibit I at page 8*, where the Court **[impermissibly]** held that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," his false imprisonment claim had failed.

the definition of "escape" and the definition of "release" (and that the term "escape" applies to pre-confinement situations only and **not** to post-confinement ones once they have occurred), **b)** the phrases "physical barriers" and "unreasonable risk of harm" have been misinterpreted and abused by the Court in such a way that doing so "defeats the legislature's obvious intent" of the use of such phrases (and to which, in turn, renders such interpretations manifestly "absurd"), **c)** *merchants* are the ones who ultimately have the "last clear chance" to avoid or prevent false imprisonments from occurring, *not patrons*, **d)** showing a receipt and not showing a receipt cannot *both* be considered consent (and whereby "showing a receipt" has ***already*** been held by Courts to constitute "voluntarily consenting" to the detention), **e)** a receipt itself is never the "key," but rather the merchant's **own**, personal, ***independent*** act of satisfactorily cross-checking the receipt against the merchandise is the actual "key" (i.e. it is unreasonable to believe that a merchant would ***not*** continue to detain a patron, ***OUTRIGHT***, in the mean time, until ***after*** it completes its ***own*** independent verification of the purchases at hand, ***even after*** the patron hands over the receipt), **f)** if "showing a receipt" is a viable "escape" path, such literally renders the detention to have **paradoxically** never existed in the first place (i.e. it eliminates any capacity to justify the now **non**-detention with affirmative defenses like "shopkeeper's privilege" which are only available in false *imprisonment* claims), **g)** showing a receipt is not merely some "slight inconvenience," but rather the law is already clearly established that any imprisonment, **"no matter how short,"** already qualifies as compensable, **h)** private investigators don't have the right to lawfully detain unidentified citizens until they simply tell them their name / security guards don't have the right to lawfully detain unidentified neighborhood residents until they simply show them their ID, **i)** a mother of seven cannot reasonably be expected to wait 10+ minutes to have *her* entire cart of purchases verified, yet somehow Plaintiff purportedly does not have that same right against false imprisonments just because he can only afford to buy one or two items at a time, **j)** lack of plastic bag use **does not** reasonably indicate that merchandise is "unpurchased," **k)** coming from a "back register" **is not any more suspicious than** coming from a

"front register" (because of how merchants know *full-well* that they personally installed *both* registers at *both* locations for the ***express*** convenience of their customers), **l)** merchants, **<u>just like police</u>,** are not allowed to **"bootstrap"** mere refusals to cooperate (i.e. refusals to answer questions and/or refusals to consent to searches) into *the very justification* to detain patrons that they otherwise don't have the lawful right to detain, and finally, *but just as importantly,* **m)** that it is **statistics fraud** to not acknowledge that many other people are mindless lemmings who "assuage the perceived evil" by way of voluntarily showing *their* receipts (thus making Plaintiff's behavior look deliberate, <u>when it's really not</u>), as well as that Plaintiff has gone shopping ***thousands of times, at hundreds of merchants,*** nearly all without issue (thus showing that Defendant is the real exception, <u>not Plaintiff</u>). **Every single one** of these legal arguments has been thoroughly prepared by Plaintiff, *in at least two dozen of his briefings by now,* **giving the Court <u>MORE THAN ENOUGH</u> time to prepare reasonable holdings against.** Yet NO such holdings have EVER been made that EVEN REMOTELY address ANY of these CRITICALLY IMPORTANT arguments, **thus making Plaintiff [and any reasonable person in his position] legitimately question the validity of all such holdings.** As such, one cannot reasonably blame Plaintiff for continuing to do what any other person would do under the circumstances: ***keep shopping, or keep leaving stores without shopping, while refusing wholly non-compulsory requests to answer questions and/or be searched by complete and total strangers, then rightfully sue anybody who violates his constitutional right to not be falsely imprisoned absent a clear and reasonable showing of shopkeeper's privilege in the matter.***

f. Plaintiff's future cases against Defendant have no bearing on his current one

Finally, Defendant claims that "Because Plaintiff has already voiced his intent to proceed with more lawsuits against Best Buy, a strong sanction of attorney's fees is necessary here to deter future groundless, frivolous, and/or vexatious lawsuits." *Def's Mtn For Atty Fees at page 3.* The problem here is that ***Defendant has no earthly idea what kinds of cases Plaintiff has yet to bring against it,*** and therefore, has no earthly idea whether or not they are "groundless, frivolous, and/or

vexatious." As such, a sanction of attorney fees based on *the mere prospect* that future lawsuits warrant them **is a clear violation of due process** [not to mention being totally preposterous].

II. PLAINTIFF DID NOT FILE A FRIVOLOUS LAWSUIT IN BAD FAITH

a. Plaintiff simply shops, and nothing more, at many different stores

Defendant claims that "Plaintiff's conduct on the date of the subject incident demonstrates that he was deliberately trying to engage Best Buy in a situation that would result in a lawsuit. To achieve this goal, Plaintiff drove more than a hundred miles over the course of about eight hours to make numerous purchases at various Best Buy locations on one of the busiest retail shopping days of the year, Black Friday." *Def's Mtn For Atty Fees at page 4.* ***OH MAN,*** there are so many things wrong with this statement, Plaintiff [almost] doesn't know where to begin. First, as far as Plaintiff can tell [please correct him if he's wrong!] it's not against the law to "drive more than a hundred miles" to "make numerous [even 'duplicitous'] purchases" at *wherever the heck* he wants to go shopping in life. Seriously, is Defendant *really* arguing this? Is Plaintiff *missing* something here? Does Defendant *actually* not understand how monumentally BAD of an argument this is? [More on this topic later.] Second, completely absent from such a [loaded] statement is any mention whatsoever *to any and all of the* ***other*** *stores* that Plaintiff may have visited and/or made purchases at that day. Therefore, without knowing how many total stores Plaintiff shopped at on Black Friday [let alone any other day], one cannot reasonably conclude that he was "**deliberately** trying to engage Best Buy" [only]. *Defendant sure loves to make it all about them, don't they!* Indeed, this goes **right back** to Plaintiff's argument regarding **statistics fraud.** Does Defendant ***really, actually believe*** that Plaintiff only "targets" / "provokes" / "insert all other conclusory, meaningless hot words here" just ***its*** stores? That's a little bit of a narcissistic position to take there. Especially when Plaintiff, ***for literally the last decade now,*** has merely "refused to cooperate" (i.e. refused to answer questions and/or refused to consent to searches) at probably over 300 stores on probably over 1,000 shopping experiences at this point. Yet you don't see *any other* lawsuits brought by

him, against *any other* merchants,[11] do you? ***Hmm, I wonder why.*** Maybe because Best Buy [and Walmart] are the only two "Big Box Bullies" in town willing to [read: brazen enough to, overzealous enough to, and stupid enough to] "Bust Benign Buyer Behavior" of patrons who merely leave its stores after shopping at them. In layman's terms: it's getting old [and Plaintiff is getting tired of hearing] that he is supposedly "deliberately" "trying to stir up" "lawsuits" when he goes shopping, **when all he does in the end is what countless other customers do when they go shopping:** decline to participate in [what are by law supposed to be, but evidently not anymore] wholly non-compulsory encounters with complete and total strangers, **and whereby the true cause of his lawsuits <u>are the few and far between overzealous merchants like Best Buy</u> who happen to overstep their legal boundaries on a very select few number of occasions.**

b. Defendant's evidence that Plaintiff acted "deliberately" literally contradicts itself

Next, on this topic, is quite easily the most downright LAUGHABLE part of Defendant's argument. Evidently Defendant doesn't understand that presenting evidence that Plaintiff "made numerous purchases at various Best Buy locations" all throughout the state, **<u>BUT WHEREBY HE *DIDN'T* GET DETAINED AND *DIDN'T* SUE OVER ANY DETENTIONS THAT *DIDN'T* OCCUR AT ANY SINGLE ONE OF THESE *OTHER* STORE LOCATIONS</u>,** is LITERALLY evidence that IT was the exception this whole time, and not the norm! Indeed, quoting this very Court, if Plaintiff *truly does* "act in a manner that could reasonably be construed as suspicious," *truly does* "intentionally create misunderstandings for purposes of his later lawsuits," and *truly does* "design his conduct to inspire this belief," **THEN WHY ON EARTH DOES HE NOT HAVE A BUNCH MORE FRIVOLOUS LAWSUITS COLLECTED BY NOW THAT WOULD BE A DIRECT RESULT OF HIS OSTENSIBLY PROVOCATIVE BEHAVIOR UNDERTAKEN AT ALL THESE OTHER BEST BUY LOCATIONS!?!?** Oh yeah, that's right. Because **each and every one** of these *other* Best Buy stores acted *reasonably* in **<u>NOT</u>** detaining him, **while Defendant in the**

11 Except Walmart, of course.

instant case obviously couldn't live up to the same. Indeed, to argue otherwise, would be to LITERALLY say that ***dozens and dozens*** of employees, staffed ***at over a dozen*** Best Buy locations, scattered ***all across*** the front range, **WERE *<u>ALL</u>* WILDLY INCOMPETENT, INTERNAL POLICY VIOLATING, SHOPKEEPER'S PRIVILEGE IGNORANT EMPLOYEES WHO *<u>ALL</u>* LET A BONA FIDE THIEF WALK STRAIGHT OUT OF THEIR STORES, RED HANDED, WITH MERCHANDISE NOT PAID FOR, ON THE BIGGEST SHOPPING DAY OF THE YEAR!?!?!?** Plaintiff has never laughed so hard in his life!!!!! Of course, merely refusing to answer questions and/or refusing to consent to searches is still not much of an "audit" anyways. Indeed, Defendant's subsequent claim that "Plaintiff repeatedly analogizes his conduct to a police bait car trying to catch people committing auto theft," is yet another downright laughable argument. Did Defendant not hear Plaintiff when he mentioned that "the whole point of a sting operation is to be ***not*** different than anybody else," *Ptf's Dep at page 36, line 18,* "people just park their cars, whether they're cops or not," *Ptf's Dep at page 35, line 25,* "[he's] just like any other person who parks their car on the road," *Ptf's Dep at page 36, line 22,* and that, therefore "every car is a bait car on the road," *Ptf's Dep at page 36, line 1?* **Thus, the argument that a "bait car" is in any way, shape, or form, "deliberate" [entrapment] is <u>absolutely downright laughable</u>.** All Plaintiff does is "go shopping and leave." *Ptf's Dep at page 45, line 6.* **<u>THAT'S IT</u>.** When are merchants [and the Court] going to **give it up** that Plaintiff doesn't actually ***DOOOO*** anything that any other customer doesn't *DOOOO* when going shopping. "Everybody's a secret shopper technically." *Ptf's Dep at page 85, line 11.* Sadly, most other patrons simply don't know their rights to decline to participate in **non-compulsory** encounters with complete and total strangers after shopping [and indeed, most are alternatively mindless lemmings who would rather "assuage the perceived evil" by way of voluntarily consenting to any detentions in favor of ostensibly lower prices]. **In the end though,** it's just not Plaintiff who is "provoking" his lawsuits, **<u>its a few overzealous merchants who are</u>.** "And if there weren't people out there willing to bootstrap merely refusing to show a receipt, or answer questions, or

be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this." *Ptf's Dep at page 46, lines 11-16.* As such, it's time to stop *victim-shaming* and *scapegoating* patrons ***for what merchants actually do.***

c. Defendant is the one who is truly "displaying animosity" in this case

Finally, Defendant claims that Plaintiff's "conduct trying to stir up lawsuits was accompanied by [his] display of animosity toward Best Buy during the pendency of this litigation." *Def's Mtn For Atty Fees at page 4.* **Of critical importance here,** however, is that Plaintiff did not start on the foot of "displaying animosity." He only became upset **AFTER** Defendant started breaking rules, lying to the Court, not acknowledging facts, twisting legal arguments, defaming Plaintiff as a lawsuit scammer, impermissibly submitting affidavit-less business records, etc. etc. etc. etc. etc. **So who's really the disingenuous, "bad faith" actor here?** Even now, Defendant *continues* to omit critical information and lie to the Court [as will be discussed next]. Thus, any reasonable person in Plaintiff's position would be understandably upset, **if not downright infuriated** that ***bar-licensed*** attorneys are evidently willing to *straight up racketeer* to get out of committing actual crimes against them. Yet nobody bats an eye, because they're attorneys. Because they represent a billion dollar company. Because that's evidently ***business as usual*** to act that way in tossing all morals and ethics completely to the side.

III. PLAINTIFFF DID NOT MAINTAIN HIS LAWSUIT IN BAD FAITH

Defendant claims that "Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule26(a)(1) disclosure requirements and deliberately providing evasive discovery responses." *Def's Mtn For Atty Fees at page 4.* It then continues to claim that "Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures." *Id.* **However, no such "deliberate" behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff did not initially include his brother in his Rule 26(a)(1) disclosures, this was an oversight on his part, as he reasonably did not consider him to be "likely to have discoverable information relevant to the claims and defenses of a party." This is because, while Plaintiff's brother did enter the Westminster Best Buy store on

November 25, 2022 with him, he did not browse the store with him, make purchases with him, or leave with him, nor did he (upon Plaintiff speaking with him later that day) observe Plaintiff's detention by the store employees. To Plaintiff, his brother had [and still has] nothing relevant to provide to the case. Nevertheless, Plaintiff **did** provide Defendant with his First Supplemental Rule 26(a)(1) Disclosures, that cured the aforementioned deficiency, but to which Defendant [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #1 ~ Plaintiff's Rule 26(a)(1) First Supplemental Disclosures.*

Defendant also claims that "Plaintiff's discovery responses demonstrate that Plaintiff was determined to provide as little information as possible in this lawsuit by responding to most discovery requests with "I do not recall." *Def's Mtn For Atty Fees at page 4.* **However, once again, no such "deliberate" behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff initially responded to most initial discovery requests with "I do not recall," this was done out of an abundance of caution, as it was difficult for Plaintiff to recall with a very high level of specificity what exactly occurred that day, and he didn't want to say anything that he didn't remember for sure was true. Plaintiff had visited many different stores that Black Friday, and his interaction with Defendant occurred over two years prior to the making of the discovery requests at issue. However, after Plaintiff spent a fair amount of time working backwards to remember the event, as well as discussing the details of that day with his brother, Plaintiff **did** respond to Defendant's Deficient Discovery Allegations, that cured the aforementioned deficiencies, but to which Defendant once again [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #2 ~ Plaintiff's Response To Def's Deficient Discovery Allegations.*

Ultimately, Plaintiff complied with the aforementioned discovery procedures, Defendant was not required to seek assistance from the Court to compel his compliance, and Defendant never bothered to even request sanctions relating to said deficiencies until now, several months later after they were already cured. "Generally, sanctions under C.R.C.P. 37 'should be applied in a manner that

effectuates proportionality between the sanction imposed and the culpability of the disobedient party.'" *Pinkstaff v. Black Decker,* 211 P.3d 698, 702 (Colo. 2009) (quoting *Kwik Way Stores, Inc. v. Caldwell,* 745 P.2d 672, 677 (Colo. 1987)). "If Rule 37 sanctions are warranted in a case, 'the trial judge must craft an appropriate sanction by considering the complete range of sanctions and weighing the sanction in light of the full record in the case.'" *Id* (quoting *Nagy v. Dist. Court,* 762 P.2d 158, 161 (Colo. 1988). "When discovery abuses are alleged, courts should carefully examine whether there is any basis for the allegation and, if sanctions are warranted, **impose the least severe sanction** that will ensure there is full compliance with a court's discovery orders **and is commensurate with the prejudice caused** to the opposing party." *Id.* Here today, in Plaintiff's instant case, Plaintiff is unaware of any prejudice caused by his initial discovery deficiencies, nor has Defendant bothered to voice any. As such, any sanction given to Plaintiff should be commensurate with the [little to no] prejudice caused, and an award of attorney fees ***for his whole case, from beginning to end,*** would undoubtedly not be "commensurate" with the few non-dispositive discovery delays that were cured shortly thereafter.

IV. THE COURT VIOLATED NUMEROUS RULES AND LAWS, AND SHOULD NOT HAVE DISMISSED PLAINTIFF'S LAWSUIT IN THE FIRST PLACE

First, the Court **impermissibly** accepted and adopted *purely conclusory statements* made by Defendant during its briefing that Plaintiff is some undeserving-of-due-process "lawsuit scammer" in direct violation of *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).[12]

Next, the Court **impermissibly** held that Plaintiff explicitly "denies having been in Best Buy."[13]

Next, the Court likewise **impermissibly** held that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident."[14]

12 In *Suncor,* the Court held that when ruling on a Motion For Summary Judgment, **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."**

13 Rather, all Plaintiff did was present proper legal argument that *Defendant* failed to show that he was ever inside the store. *Merely presenting legal argument of the opposite of something* ***is not actually*** *an active denial of it.*

14 Rather, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had]

Next, the Court **impermissibly** accepted a blatantly contradictory affidavit of Mahmoud Abu-Shaweesh in direct violation of *Scott v. Harris,* 550 U.S. 372, 380 (2007).[15]

Next, the Court **impermissibly** accepted affidavit-less business records (i.e. receipts) in direct violation of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003).[16] Plaintiff has YET to see this Court *even remotely begin to* address this **absolutely critical** argument.

Finally, the Court **impermissibly** allowed Defendant to inject reply-only arguments into its MSJ briefing in direct violation of *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).[17] The Court even tried to cure this well-pointed-out violation by claiming [in its *Order Denying Plaintiff's Motion For Reconsideration*] that Plaintiff purportedly had an "opportunity" to respond to the belated exhibits. This argument is faulty for several reasons. First, in *Wallman,* the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond. **However, absolutely nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does it explain that REPLY briefs provide such "notice" of such "need."** Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are**

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[n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25.* Moreover, this Court itself has already pointed out that "In assessing a summary judgment motion, **a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence,** and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin.* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **was required by law** to **INFER** that said facts presented by Plaintiff specifically applied to him being **INSIDE** the store.

15 In *Scott,* the Court held that "When opposing parties tell two different stories, one of which is blatantly contradicted by the record [which in this case, is Plaintiff's pen camera video of the event], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."

16 In *Henderson,* the Court held that "business records" are only admissible when "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record."

17 In *Wallman,* the Court held that "because plaintiff was not given notice that she needed to present evidence on the causation issue in defendants' initial summary judgment motions and briefs, we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions."

severely limited by page number and file-by date. Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant [that it should have presented in its **initial** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ. Finally, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact," because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** *See Morlan v. Durland Co.,* 127 Colo. 5, 13 (Colo. 1952) ("Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties."). In other words, a party's **offense** argued in their *own* motion cannot be used as their **defense** argued *in the other party's* motion.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR ATTORNEY FEES. Respectfully submitted on this, the 21st day of January, 2025.

William Montgomery
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ATTORNEY FEES** was sent to the following people, via email:

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Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED January 21, 2025 FILED IN THE COMBINED COURT JAN 2 1 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his SECOND MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

Plaintiff recently filed a MOTION FOR RECONSIDERATION in this matter. In the MOTION, Plaintiff argued that numerous errors of both **FACT** *and* **LAW** were made. In the Court's most recent ORDER denying the MOTION FOR RECONSIDERATION, it **failed** to address **LITERALLY ANY** errors of FACT *or* LAW pointed out by Plaintiff.[1] Instead, to circumvent having to cure the well-pointed-out errors, the Court introduced a *brand new* holding encompassing a *brand new* theory of law. As such, Plaintiff has a right to challenge the *brand new* legal theory, and to which in turn, tolls the statute of limitations for filing a NOTICE OF APPEAL in this action.

1 As such, the Court has **confessed** that all such errors of FACT *and* LAW pointed out by Plaintiff **were indeed curable.**

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. THE COURT IMPERMISSIBLY CONSIDERED PLAINTIFF'S C-MSJ *REPLY* AS SOME SORT OF *SURREPLY* TO DEFENDANT'S MSJ REPLY

In the Court's ORDER denying Plaintiff's MOTION FOR RECONSIDERATION, it held that that because "Plaintiff's reply was filed after the exhibits about which he complains," he purportedly had an "opportunity" to "respond" to them. This was not the complaint Plaintiff made in his MOTION, however,[2] **and this is *still* not how the law works in Colorado.**

First, in *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999), the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond to the fresh, reply-only arguments and evidence, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond it [and the Court held that she was not]. **This is because nowhere in the Colorado Rules Of Civil Procedure *or* Colorado Case Law does any rule or law explain to litigants that REPLY briefs are meant to provide such "notice" of such "need."** As such, Plaintiff could not, and did not fairly and reasonably "know" that he "needed" to use his MSJ's ***reply*** as some ***surreply*** to Defendant's MSJ reply.

Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To A *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the *initial* motions to which they are tied, **they are**

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2 The **specific** argument Plaintiff made in his MOTION FOR RECONSIDERATION was that the Court made verifiable errors of **FACT** that **a)** Defendant supposedly submitted ***[WITH ITS INITIAL MSJ]*** a store employee's affidavit and some affidavit-less business records, thereby purportedly "satisfying its ***initial*** burden as the movant" in the matter [when no such evidence was *actually* filed with Defendant's ***initial*** MSJ], and **b)** that Plaintiff supposedly, ***[IN RESPONSE TO DEFENDANT'S INITIAL MSJ]***, "provided no evidence of his actions in the store to ***counter*** this" [when Plaintiff was never put on *actual* notice of the **NEED** to **counter** such *non-existent* evidence]. Side note: Plaintiff actually ***DID*** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively **INFERRED** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

severely limited by page number and file-by date. Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant in this matter [that it should have presented in its ***initial*** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ.

Third, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact" that is manifestly impossible to overcome, because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** In other words, a party's **offense** argued *in support of their own* motion cannot be used as their **defense** argued *in opposition of the other party's* motion. "Where both parties to a legal action file motions for summary judgment, is the court restricted against denying both motions and requiring the production of additional evidence, or is it obligated under the rules to grant one or the other of the motions and enter judgment accordingly? The answer is no. If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits. **Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties.** The fact that each side in moving for summary judgment in his or its favor, respectively, assert 'that there is no genuine issue as to any material fact' **does not necessarily make it so, and does not bar the court from determining otherwise.** 'It does not follow that, merely because each side moves for a summary judgment, there is no issue of material fact. For, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, **he may be able and should always be allowed to show that,** if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists.'" *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952) (quoting *Walling v. Richmond Screw Anchor Co.*, 154 F.2d 780, 784 (1946)).

"This legal presumption of admission of fact, however, is not general **but extends only to consideration of the defendants' pending motion.** It may not be applied in connection with plaintiff's similar motion. 'The fact that both parties make motions for summary judgment, and each contends in support of his respective motion that no genuine issue of fact exists, does not require the Court to rule that no fact issue of fact exists. Each, in support of his own motion, may be willing to concede certain contentions of his opponent, **which concession, however, is only for the purpose of the pending motion. If the motion is overruled, the concession is no longer effective.** Appellants' concession that no genuine issue existed was made in support of its own motion for summary judgment. **We do not think that the concession continues over into the Court's separate consideration** of appellee's motion for summary judgment in his behalf after appellants' motion was overruled.'" *Id.* (quoting *Begnaud v. White,* 170 F.2d 323, 327 (1948)). "It is manifest **that when defendants' motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of plaintiff's motion.** This leaves plaintiff's motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Id.*

In layman's terms, Plaintiff made a "concession" under his own "legal theory" that "no genuine issue existed" [and that his MSJ should be granted]. He presented legal argument that Defendant's affidavit of Mahmoud Abu-Shaweesh was **inadmissible** because it "blatantly contradicted the record," *Scott v. Harris,* 550 U.S. 372, 380 (2007), and that the business records (i.e. receipts) it submitted were likewise **inadmissible** because they failed to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). In other words, Plaintiff was arguing **offensively,** whereby his REPLY brief was appropriately tailored to

support his MSJ – by way of arguing, via *Scott* and *Henderson,* **that no dispute of fact existed in the case.** His reply brief *was not the place, nor the time,* to **defend** against Defendant's belated, reply-only evidence that it had introduced in ***its*** MSJ. Indeed, to hold otherwise would be to require Plaintiff to create a dispute of fact in his own MSJ, which is not his obligation in his own MSJ [his obligation in his own MSJ is to only **defend** against *Defendant's* attempts to create a dispute of fact]. As such, Plaintiff, **if unable to have his own Cross-MSJ granted,** "may be able ***and should always be allowed to show*** that, if [defendant's] legal theory be adopted, a genuine dispute as to a material fact exists." *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952). Plaintiff is allowed to argue "alternative and inconsistent defenses." *M. Snower Co. v. United States,* 140 F.2d 367, 370 (7th Cir. 1944). He is allowed to argue in his Cross-MSJ that no genuine dispute of fact exists, while also arguing in Defendant's MSJ that a genuine dispute of fact exists. And because Defendant **failed** to provide Plaintiff with sufficient **"notice"** of his **"need"** to defend against such not-submitted-with-its-**initial**-MSJ-briefing evidence, **Defendant's MSJ should have been denied.** "It is manifest that when [plaintiff's] motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of [defendant's] motion. This leaves [defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952).

CONCLUSION

"An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).

"If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might

or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits." *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his SECOND MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 21st day of January, 2025.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
H: (970) 412-5463
C: (970) 232-0369
zoinbergs@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
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F: (303) 592-6666
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sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED January 22, 2025 FILED IN THE COMBINED COURT JAN 2 2 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RULE 26(A)(1) FIRST SUPPLEMENTAL DISCLOSURES	

Plaintiff, proceeding *pro se*, hereby submits his Rule 26(a)(1) First Supplemental Disclosures, as follows:

A. INDIVIDUALS AND/OR BUSINESSES LIKELY TO HAVE DISCOVERABLE INFORMATION

1. **William Montgomery,** Plaintiff.
   2443 S University Blvd # 129
   Denver, CO 80210
   H: (970) 412-5463
   C: (970) 232-0369
   zoinbergs@gmail.com

   William is the Plaintiff in this matter, and naturally has discoverable information relating to his claims and damages that occurred as a result of the incident.

2. **David Montgomery,** Plaintiff's brother.
   2443 S University Blvd # 129
   Denver, CO 80210
   H: (970) 239-1580
   C: (970) 889-5805
   dmonty137@gmail.com

While David entered the Best Buy store on November 25, 2022 with Plaintiff, he did not browse the store with him, make purchases with him, or leave with him, nor did he [upon Plaintiff speaking with him later that day] observe Plaintiff's detention by Defendant. This is why Plaintiff did not consider him to be "likely to have discoverable information relevant to the claims and defenses of a party." Nevertheless, Defendant wants to know who he is, and Plaintiff certainly has no objection to providing such information, so here ya go.

3. **Mahmoud Abu-Shaweesh,** Employee Of Defendant.

   Mahmoud was working as a Best Buy employee on the date of the incident and was present during the incident. Consequently, he may have discoverable information about Plaintiff's actions before, during, and after the incident.

4. **Shane Rusch,** Employee Of Defendant.

   Rusch was working as a Best Buy employee on the date of the incident and was present during the incident. Consequently, he may have discoverable information about Plaintiff's actions before, during, and after the incident.

5. **James Robinson**, Employee Of Defendant.

   James was working as a Best Buy employee on the date of the incident and was present during the incident. Consequently, he may have discoverable information about Plaintiff's actions before, during, and after the incident.

6. **Best Buy Store,** located at 9369 Sheridan Blvd, Westminster, CO, 80031.

   Best Buy typically keeps personnel records, video footage, etc. of business that it conducts onsite. It may have knowledge relating to Plaintiff's claims and damages.

7. Any and all persons identifiable in the records and other documents included in Plaintiff's or Defendant's disclosures.

8. Any and all persons identified by Defendant's Rule 26(a)(1) Disclosures.

9. Any and all persons discovered during the course of discovery.

B. DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS

1. Video footage of the event, as captured via Plaintiff's bodycam.

2. Best Buy's store personnel records, logs, etc. of the afternoon at issue.

3. Best Buy's video footage of the afternoon at issue.

4. Purchase and return confirmations, as available via Plaintiff's Best Buy account.

C. CATEGORIES OF DAMAGES

1. Compensatory damages – to be determined at trial and supplemented as discovery proceeds and experts are retained – for:

   (a) Loss of liberty;

   (b) Loss of reputation;

   (c) Pain and suffering;

   (d) Emotional distress, humiliation and personal indignity, ongoing emotional distress, embarrassment, fear, anxiety, and anguish;

2. Punitive sanctions against the individual employees and/or their employer; and

3. As otherwise articulated in the Complaint and Jury Demand, including costs, interest, and attorney fees.

D. INSURANCE

Not applicable.

E. CERTIFICATION

I hereby certify, that to the best of my knowledge, information and belief, formed after reasonable inquiry, the above disclosures are complete and correct as of the date set forth below.

Respectfully submitted on this, the 1st day of November, 2024.

s/ William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 1st day of November, 2024, a true and correct copy of the foregoing **PLAINTIFF'S RULE 26(A)(1) FIRST SUPPLEMENTAL DISCLOSURES** was sent to the following people, via email:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
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Denver, CO 80246
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lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

s/ William Montgomery
William Montgomery

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	FILED IN THE COMBINED COURT JAN 2 2 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE TO DEF'S DEFICIENT DISCOVERY ALLEGATIONS	

Plaintiff, proceeding *pro se*, hereby RESPONDS to Defendant's Deficient Discovery Allegations, as follows:

AMENDED **INTERROGATORIES**

INTERROGATORY NO. 1: Did you purchase any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO ("the Best Buy Store") on November 25, 2022?

ANSWER NO. 1: I **DENY** that I purchased any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO on November 25, 2022.[1]

1 While I stated in my *Second Affidavit* that "when somebody else whom I have authorized to use a credit or debit card of mine that is linked to my Best Buy account makes a purchase on my behalf, I receive the same email in my inbox as if I had made the purchase myself," I should have clarified that *I don't necessarily* ***always*** *receive such emails on behalf of my authorized users* [especially if they opt to receive printed-only receipts at the store checkout, for instance].

AMENDED **REQUEST FOR ADMISSION**

REQUEST NO. 1: Please admit you refused to show your receipt to employees of the Best Buy Store on November 25, 2022.

ANSWER NO. 1: I **DENY** that I refused to show a receipt to employees of the Best Buy Store on November 25, 2022. First, this is a loaded question, as "refusing" to show some receipt *implies that I was "asked" to show one in the first place,* which I **DENY** occurred that day. In the same vein, refusing to show "your" receipt *implies that "I had one on me in the first place" [for which I would have had the capacity to refuse to show],* which I likewise **DENY** occurred that day.

REQUEST NO. 2: Please admit that you had a receipt with you when leaving the Best Buy Store on November 25, 2022.

ANSWER NO. 2: As just mentioned, I **DENY** that I had a receipt with me, *in the first place,* when leaving the Best Buy Store on November 25, 2022.

REQUEST NO. 3: Please admit that you began recording your visit to the Best Buy Store on November 25, 2022 before you entered the Best Buy Store.

ANSWER NO. 3: I **DENY** that I began recording my visit to the Best Buy Store on November 25, 2022 before I entered the Store, *as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.*

REQUEST NO. 4: Please admit that you edited the video in your initial C.R.C.P. 26 disclosures so the time you spent in the store was deleted from the video.

ANSWER NO. 4: I **DENY** that I edited the video in my initial C.R.C.P. 26 disclosures so the time I spent in the store was deleted from the video, *as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.*

CERTIFICATION

I, William Montgomery, do hereby declare, under penalty of perjury under the laws of the State of Colorado, that the foregoing answers are true and correct to the best of my knowledge.

Respectfully served on this, the 1st day of November, 2024.

s/ William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 1st day of November, 2024, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S DEFICIENT DISCOVERY ALLEGATIONS** was sent to the following people, via email:

Lori K. Bell
Stephanie E. Boutsicaris
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Attorneys for Defendant

s/ William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Pkwy Golden, CO 80401	DATE FILED January 28, 2025 8:03 PM
WILLIAM MONTGOMERY Plaintiff, v. **BEST BUY STORES, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV226 Division: 6
DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, submits its Reply in Support of Its Motion for Attorneys' Fees as follows:

Notice of Clerical Error

It appears that there was a clerical error that led to Plaintiff's Response getting filed in the same entry as Plaintiff's Second Motion for Reconsideration (filed January 21, 2025). Plaintiff's Response begins on page 7 of the filing. To the extent that the Court wishes to correct this error pursuant to C.R.C.P. 60 and treat Plaintiff's Response as if it was filed on January 21, 2025, Defendant will not object.

Motion

I. Plaintiff had constructive or actual knowledge his claims would fail.

Plaintiff argues that he did not have knowledge that the present lawsuit would fail because the present claim differs from his previous lawsuits and previous claims of false imprisonment. However, Plaintiff fails to *meaningfully* differentiate between the present claim and his prior claims of false imprisonment and defamation. For instance, Plaintiff points to the fact that he was allegedly not a paying customer at Best Buy in the present case but he was allegedly a customer in previous cases. This fact would have had no bearing on the Court's analysis. The shopkeeper's privilege and the elements for false imprisonment are the same regardless if the claimant is a paying customer. The facts that allegedly differentiate the present claim from the previous claims are insignificant and irrelevant.

Furthermore, Plaintiff argues that "Prior Courts also got several facts WRONG in Plaintiff's previous cases." This section in Plaintiff's Response, in and of itself, is a prime example of Plaintiff rehashing the same failed legal argument. Because his claims failed previously and he continues to argue that the multiple prior court judgments were wrong, Plaintiff has constructive knowledge that he is asserting claims and arguments that will once again fail.

II. Plaintiff's Response is a thinly veiled request for reconsideration of the Court's orders.

Keeping in line with Plaintiff's pattern of rehashing previously failed arguments, Plaintiff uses his Response to try to re-litigate the motions for summary judgment and his *first* motion for reconsideration, including when he asserts, "Numerous LEGAL ARGUMENTS have never even been addressed by the court." Plaintiff's repeated attempts to get a first, second, and third bite at

the apple should not be permitted or tolerated. In fact, Plaintiff has filed a *second* motion for reconsideration seeking to overturn the Court's order on summary judgment. These repetitive motions and requests for reconsideration "unnecessarily expand[ ] the proceeding by [ ] improper conduct" and thus warrant an award of attorney's fees. C.R.S. § 13-17-102 (4).

III. Plaintiff has filed three additional lawsuits against Best Buy.

Plaintiff states that "Defendant has no earthly idea what kinds of cases Plaintiff has yet to bring against it." However, Best Buy was recently served with three additional lawsuits by Plaintiff, apparently alleging claims of false imprisonment: Case No. 2024CV000132 (Adams County District Court), Case No. 2024CV000241 (Jefferson County District Court), and Case No. 2024CV000242 (Jefferson County District Court). Plaintiff's actions and bad faith litigation will continue until he is sufficiently deterred, which is why attorney's fees are necessary here, pursuant to C.R.C.P. 11 and C.R.S. § 13-17-102.

IV. Plaintiff maintained his lawsuit in bad faith.

Plaintiff claims that his discovery conduct was excusable and that his "I do not recall" responses to written discovery were in good faith. However, the explanation for his discovery conduct is not credible, particularly given the comments in his YouTube video stating that he was not going to even tell the store whether he was a customer or not. **Exhibit L**, 17:15-17:55. Plaintiff's lack of cooperation with discovery was pre-meditated and intentional.

In his Response, Plaintiff attempts to conduct a C.R.C.P. 37 analysis for his discovery behavior, but Defendant did not request C.R.C.P. 37 sanctions. Defendant sought sanctions under C.R.C.P. 11 and C.R.S. § 13-17-102. In particular, C.R.S. § 13-17-102 (4) would be applicable here: "The court shall assess attorney fees if . . . it finds . . . that the action, or any part thereof,

was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure." (Emphasis added). Discovery conduct can be sanctionable under C.R.S. § 13-17-102, and no C.R.C.P. 37 analysis is needed or requested at this time.

WHEREFORE, for the forgoing reasons, Defendant Best Buy respectfully requests that this court enter an award of attorney's fees against Plaintiff.

Filed January 28, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/ Stephanie Boutsicaris

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED February 07, 2025 4:11 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6

BEST BUY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response in Opposition to Plaintiff's Second Motion for Reconsideration. Best Buy respectfully requests that this Court deny Plaintiff's Second Motion for Reconsideration. As grounds, Best Buy states as follows:

1. A motion to reconsider must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. C.R.C.P. 121 § 1-15 (11).
2. Plaintiff did not meet his burden in proving a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.
3. Plaintiff uses this Second Motion for Reconsideration to re-hash arguments that previously failed; he is impermissibly trying to get a second bite at the apple.
4. A party moving to reconsider must show more than a disagreement with the court's decision. *Id.*
5. Plaintiff's Second Motion for Reconsideration fails to show more than mere disagreement with the Court's decision.
6. A motion to reconsider must be submitted within 14 days from the date of the Court's order. *Id.*
7. Plaintiff submitted his motion fifteen days after the Court's order; thus, his Second Motion for Reconsideration is untimely and should be denied on that basis alone.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court deny Plaintiff's Second Motion for Reconsideration.

Filed on February 7, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on February 7, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED February 14, 2025
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	FILED IN THE COMBINED COURT FEB 14 2025 JEFFERSON COUNTY COLORADO ▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PTF'S REPLY TO DEF'S RESPONSE TO PTF'S SECOND MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his REPLY to Defendant's RESPONSE to his SECOND MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

ARGUMENT

In Defendant's RESPONSE, it claims that "Plaintiff did not meet his burden in proving a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice." *Def's Response at ¶ 2.* However, merely reciting the Colorado Rules Of Civil Procedure is not a meaningful legal argument. **It is not substantive, and offers no guidance to the Court on exactly *how* it should apply the Rule to Plaintiff's instant case.** Nevertheless, to the extent that Defendant's argument could be inferred, it still fails to pass legal muster. Specifically, Plaintiff's argument that his Cross-MSJ's *reply* brief has been **impermissibly** used as some sort of

surreply brief to Defendant's MSJ *reply* brief **is about as much of a "manifest error of fact or law" that can possibly exit.** Indeed, **entire cases** have already explicitly described, *in extraordinary detail,* precisely ***how*** such an error "results in manifest injustice." *See Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952). *Morlan* isn't just some old case Plaintiff picked out of the ethers. It's explicitly mentioned **TWELVE TIMES** in the Annotations of C.R.C.P. Rule 56. As such, it is *critically important* Colorado case law that applies with as much force today as it did 73 years ago.

Next, Defendant claims that "Plaintiff uses this Second Motion for Reconsideration to re-hash arguments that previously failed; he is impermissibly trying to get a second bite at the apple." *Def's Response at ¶ 3.* **Again, Defendant is sorely mistaken.** Specifically, Plaintiff made the argument in his *First Motion For Reconsideration* that the Court made verifiable errors of **FACT** in its *Order Granting Defendant's MSJ* that **a)** Defendant supposedly submitted ***[WITH ITS INITIAL MSJ]*** a store employee's affidavit and some affidavit-less business records, thereby purportedly "satisfying its ***initial*** burden as the movant" in the matter [when no such evidence was *actually* filed with Defendant's ***initial*** MSJ], and **b)** that Plaintiff supposedly, ***[IN RESPONSE TO DEFENDANT'S INITIAL MSJ],*** "provided no evidence of his actions in the store to ***counter*** this" [when Plaintiff was never put on *actual* notice of the **NEED** to **counter** such *non-existent* evidence].[1] However, in the Court's *Order Denying Plaintiff's Motion For Reconsideration,* **IT 100% FAILED TO ADDRESS** these well-pleaded errors of **FACT,** and instead, simply introduced a *brand new* legal holding encompassing a *brand new* theory of law [that because Plaintiff's Cross-MSJ *reply* brief was filed "after" Defendant's MSJ *reply-only* exhibits were filed, he purportedly had an "opportunity" to "respond" to them]. **Thus, Plaintiff never even got a *first* "bite of the apple" regarding the addressing of these verified factual deficiencies – the Court never gave him one.** Then, while Plaintiff *did* reference *Wallman v. Kelley,* 976 P.2d 330, 332

1 Side note: Plaintiff actually ***DID*** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively **INFERRED** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

(Colo. App. 1999) in his *First MFR*, and even referenced *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952) in his *Reply In Support Of His MFR*, both cases and their attendant legal holdings were again, **100% NOT EVEN REMOTELY ADDRESSED** by the Court. **So what is a reasonable person in Plaintiff's position supposed to do?** Without "findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision," *In re Van Inwegen,* 757 P.2d 1118 (Colo. App. 1988), **it was *more than* reasonable, and indeed, *absolutely necessary* for Plaintiff to seek reversal from the Court [in a Second MFR].** *See also Mowry v. Jackson,* 140 Colo. 197, 343 P.2d 833 (1959) ("[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision."). See also *Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co.,* 166 Colo. 471, 444 P.2d 633 (1968) ("Findings of fact by a court should respond to and be within the issues, and a finding outside the issues cannot be supported and cannot be used to formulate a judgment."). Indeed, Plaintiff is ***STILL*** waiting for this Court [let alone Defendant] to ***even begin to*** address his absolutely valid and *critically important* legal argument that Defendant **impermissibly** submitted to the Court affidavit-less business records (i.e. receipts) **IN DIRECT VIOLATION** of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003) (holding that a "business record" is only admissible "when accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record. CRE 902(11)."). **No such "custodial affidavit" WAS EVER ONCE SUBMITTED with Defendant's pile of receipts, and as such, THIS COURT WAS NEVER ALLOWED TO ADMIT THEM.** *Yet it continues to pretend [?] that Plaintiff never brought up this argument.* Come on Jefferson County District Court! **These are absolutely primary, elemental, decades old, clearly established laws**

that are being broken, *in broad daylight,* and Plaintiff isn't receiving ***even a peep*** from the Court **as to how it is allowed to deviate from them.** As such, Plaintiff absolutely cannot be blamed for filing a first, and a second, *and however many is necessary* Motions For Reconsideration until he either **a)** has the absolutely valid case law he references honored so as to **REVERSE** the Court's Order **impermissibly** granting Defendant's MSJ, or **b)** receives clear, cognizant, and legally supportable reasons ***actually explaining*** why the aforementioned Order should *not* be reversed. **Seriously.** The factual and legal arguments Plaintiff has made in **both** his Motions For Reconsideration aren't "merely disagreements with the Court's decision." *Def's Response at ¶ 5.* **They are concrete, substantive, well-articulated arguments** backed by case law directly pulled from the Colorado Rules Of Civil Procedure. This Court is in **direct violation** of these *numerous* precedential Colorado cases that Plaintiff has plainly and repeatedly pointed out, and as such, must **BY LAW** HONOR THEM and REVERSE its Order **impermissibly** granting Defendant's MSJ.

Finally, Defendant Claims that Plaintiff's "Second Motion for Reconsideration is untimely and should be denied" due to it not being "submitted within 14 days from the date of the Court's order." *Def's Response at ¶¶ 6 and 7.* **Once again, Defendant is mistaken.** Colorado Rules Of Civil Procedure Rule 6(a)(1) states that [with regard to the computing of filing deadlines] "The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, ***or a legal holiday,*** in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday." C.R.C.P. Rule 6(a)(2) then states that "the third Monday in January, observed as Martin Luther King Day" is a "legal holiday" for purposes of tolling the deadline. **As such, Plaintiff had until January 21, 2025, *the day after Martin Luther King Day,* to file his Second Motion For Reconsideration.**

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his SECOND MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 14th day of February, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of February, 2025, a true and correct copy of the foregoing **PTF'S REPLY TO DEF'S RESPONSE TO PTF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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Attorneys for Defendant

William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED February 18, 2025 2:05 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Plaintiff's Second Motion for Reconsideration

The motion/proposed order attached hereto: DENIED.

As noted in the Court's January 6 Order, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is again denied.

Issue Date: 2/18/2025

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	FILED IN THE COMBINED COURT JAN 2 1 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION	

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, hereby submits to the Court his SECOND MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

Plaintiff recently filed a MOTION FOR RECONSIDERATION in this matter. In the MOTION, Plaintiff argued that numerous errors of both **FACT** *and* **LAW** were made. In the Court's most recent ORDER denying the MOTION FOR RECONSIDERATION, it **failed** to address **LITERALLY ANY** errors of FACT *or* LAW pointed out by Plaintiff.[1] Instead, to circumvent having to cure the well-pointed-out errors, the Court introduced a *brand new* holding encompassing a *brand new* theory of law. As such, Plaintiff has a right to challenge the *brand new* legal theory, and to which in turn, tolls the statute of limitations for filing a NOTICE OF APPEAL in this action.

1 As such, the Court has **confessed** that all such errors of FACT *and* LAW pointed out by Plaintiff **were indeed curable.**

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. THE COURT IMPERMISSIBLY CONSIDERED PLAINTIFF'S C-MSJ *REPLY* AS SOME SORT OF *SURREPLY* TO DEFENDANT'S MSJ REPLY

In the Court's ORDER denying Plaintiff's MOTION FOR RECONSIDERATION, it held that that because "Plaintiff's reply was filed after the exhibits about which he complains," he purportedly had an "opportunity" to "respond" to them. This was not the complaint Plaintiff made in his MOTION, however,[2] **and this is *still* not how the law works in Colorado.**

First, in *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999), the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond to the fresh, reply-only arguments and evidence, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond it [and the Court held that she was not]. **This is because nowhere in the Colorado Rules Of Civil Procedure *or* Colorado Case Law does any rule or law explain to litigants that REPLY briefs are meant to provide such "notice" of such "need."** As such, Plaintiff could not, and did not fairly and reasonably "know" that he "needed" to use his MSJ's ***reply*** as some ***surreply*** to Defendant's MSJ reply.

Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To A *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the *initial* motions to which they are tied, **they are**

2 The **specific** argument Plaintiff made in his MOTION FOR RECONSIDERATION was that the Court made verifiable errors of **FACT** that **a)** Defendant supposedly submitted ***[WITH ITS INITIAL MSJ]*** a store employee's affidavit and some affidavit-less business records, thereby purportedly "satisfying its ***initial*** burden as the movant" in the matter [when no such evidence was *actually* filed with Defendant's ***initial*** MSJ], and **b)** that Plaintiff supposedly, ***[IN RESPONSE TO DEFENDANT'S INITIAL MSJ]***, "provided no evidence of his actions in the store to ***counter*** this" [when Plaintiff was never put on *actual* notice of the **NEED** to **counter** such *non-existent* evidence]. Side note: Plaintiff actually ***DID*** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively **INFERRED** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

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severely limited by page number and file-by date. Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant in this matter [that it should have presented in its ***initial*** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ.

Third, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact" that is manifestly impossible to overcome, because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** In other words, a party's **offense** argued *in support of their own* motion cannot be used as their **defense** argued *in opposition of the other party's* motion. "Where both parties to a legal action file motions for summary judgment, is the court restricted against denying both motions and requiring the production of additional evidence, or is it obligated under the rules to grant one or the other of the motions and enter judgment accordingly? The answer is no. If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits. **Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties.** The fact that each side in moving for summary judgment in his or its favor, respectively, assert 'that there is no genuine issue as to any material fact' **does not necessarily make it so, and does not bar the court from determining otherwise.** 'It does not follow that, merely because each side moves for a summary judgment, there is no issue of material fact. For, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, **he may be able and should always be allowed to show that,** if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists.'" *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952) (quoting *Walling v. Richmond Screw Anchor Co.,* 154 F.2d 780, 784 (1946)).

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"This legal presumption of admission of fact, however, is not general **but extends only to consideration of the defendants' pending motion.** It may not be applied in connection with plaintiff's similar motion. 'The fact that both parties make motions for summary judgment, and each contends in support of his respective motion that no genuine issue of fact exists, does not require the Court to rule that no fact issue of fact exists. Each, in support of his own motion, may be willing to concede certain contentions of his opponent, **which concession, however, is only for the purpose of the pending motion. If the motion is overruled, the concession is no longer effective.** Appellants' concession that no genuine issue existed was made in support of its own motion for summary judgment. **We do not think that the concession continues over into the Court's separate consideration** of appellee's motion for summary judgment in his behalf after appellants' motion was overruled.'" *Id.* (quoting *Begnaud v. White,* 170 F.2d 323, 327 (1948)). "It is manifest **that when defendants' motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of plaintiff's motion.** This leaves plaintiff's motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Id.*

In layman's terms, Plaintiff made a "concession" under his own "legal theory" that "no genuine issue existed" [and that his MSJ should be granted]. He presented legal argument that Defendant's affidavit of Mahmoud Abu-Shaweesh was **inadmissible** because it "blatantly contradicted the record," *Scott v. Harris,* 550 U.S. 372, 380 (2007), and that the business records (i.e. receipts) it submitted were likewise **inadmissible** because they failed to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). In other words, Plaintiff was arguing **offensively,** whereby his REPLY brief was appropriately tailored to

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support his MSJ – by way of arguing, via *Scott* and *Henderson,* **that no dispute of fact existed in the case.** His reply brief *was not the place, nor the time,* to **defend** against Defendant's belated, reply-only evidence that it had introduced in ***its*** MSJ. Indeed, to hold otherwise would be to require Plaintiff to create a dispute of fact in his own MSJ, which is not his obligation in his own MSJ [his obligation in his own MSJ is to only **defend** against *Defendant's* attempts to create a dispute of fact]. As such, Plaintiff, **if unable to have his own Cross-MSJ granted,** "may be able ***and should always be allowed to show*** that, if [defendant's] legal theory be adopted, a genuine dispute as to a material fact exists." *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952). Plaintiff is allowed to argue "alternative and inconsistent defenses." *M. Snower Co. v. United States,* 140 F.2d 367, 370 (7th Cir. 1944). He is allowed to argue in his Cross-MSJ that no genuine dispute of fact exists, while also arguing in Defendant's MSJ that a genuine dispute of fact exists. And because Defendant **failed** to provide Plaintiff with sufficient **"notice"** of his **"need"** to defend against such not-submitted-with-its-**initial**-MSJ-briefing evidence, **Defendant's MSJ should have been denied.** "It is manifest that when [plaintiff's] motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of [defendant's] motion. This leaves [defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952).

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CONCLUSION

"An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).

"If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might

or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits." *Morlan v. Durland Co.,* 127 Colo. 5, 12-13 (Colo. 1952).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his SECOND MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 21st day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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Attachment to Order 2023CV226

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	FILED IN THE COMBINED COURT JAN 2 1 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ATTORNEY FEES	

Attachment to Order - 2023CV226

Plaintiff, proceeding *pro se*, hereby submits to the Court his RESPONSE to Defendant's MOTION FOR ATTORNEY FEES, and in support thereof, states as follows:

ARGUMENT

I. PLAINTIFF DID NOT HAVE SUFFICIENT, MEANINGFUL KNOWLEDGE THAT HIS CLAIMS AGAINST DEFENDANT WOULD NOT PREVAIL

In Defendant's Motion For Attorney Fees, it begins its **deluge of intellectually dishonest arguments** by claiming that "After having numerous previous lawsuits thrown out based upon the same or similar facts and legal arguments, Plaintiff continues to assert the same failed arguments." *Def's Mtn For Atty Fees at page 3.* However, as will be discussed next, ***each and every one*** of Plaintiff's previous cases [filed against Walmart] were unquestionably and irrefutably **NOT** "based upon the same or similar facts and legal arguments" that he has now

presented, ***for the very first time,*** in his instant case against Defendant [Best Buy]. Therefore, it is nothing short of a **LIE** that Plaintiff "continues to assert the same failed arguments."

a. The FACTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **he was a customer of the stores that detained him. The same is not even remotely true today,** where Plaintiff ***wasn't even a customer of Best Buy,*** but rather "a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store." *See Ptf's Resp To Def's MSJ at page 22.* Next, in all of Plaintiff's previous cases against Walmart, **he utilized back registers and/or did not use plastic bags.**[1] However, once again, **the same is not even remotely true today,** where "back registers" ***don't even exist inside Best Buy*** [i.e. they have universal registers littered all throughout their stores], the major retail chain phased out "plastic bag use" ***in July of 2022, six months BEFORE Plaintiff was even detained*** in the instant case, and again, ***Plaintiff wasn't even a customer that day to EVEN USE*** "back registers" and/or "not use plastic bags."[2] Next, in all of Plaintiff's previous cases against Walmart, **he "knew" about the store's receipt checking policies.**[3] However, once again, **the same is not even remotely true today,** where Plaintiff ***still has no earthy idea if Best Buy EVEN HAS a receipt checking policy on its books, in the first place,*** let alone a compulsory one. *See Ptf's Affidavit Of The Event at ¶ 26.* The only "receipt policy" of Best Buy that Plaintiff is aware of, ***is one in which the major retain chain EMAILS RECEIPTS to its patrons,*** in lieu of giving them a paper one. *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* Of course, such a policy **only supports** Plaintiff's instant case, rather than hurt it. Next, in all of Plaintiff's previous cases against Walmart, **store employees made explicit requests to see his receipt.** However, once again, **the same is not even remotely true today,** where no such explicit requests ***were ever made to Plaintiff,*** whatsoever,

1 Not that either would supply a merchant with "shopkeeper's privilege" *anyways,* as argued elsewhere by Plaintiff.

2 Indeed, this Court **FAILED** to allow the veracity of these facts ***to even be developed, in either direction, in the first place,*** before it tendentiously, summarily, and **impermissibly** dismissed Plaintiff's instant case in its entirety.

3 Not that such would invalidate a patron's valid false imprisonment claim *anyways,* as also argued by Plaintiff.

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Attachment to Order - 2023CV226

by any store employees that day. Finally, in all of Plaintiff's previous cases, **Plaintiff anticipated his potential detentions,** and so, began recordings ahead of time.[4] However, once again, **the same is not even remotely true today,** where Plaintiff did not begin recording his interaction with Defendant ***until after the surprise confrontation occurred.***[5] As such, ***absolutely none*** of Plaintiff's previous cases against Walmart can be fairly and reasonably compared to his instant case against Best Buy.

b. Prior Courts also got several facts WRONG in Plaintiff's previous cases

It is also worth noting that prior Courts got several facts patently WRONG in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart, Inc.*, Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235), a District Court Judge *miraculously* **[but impermissibly]** held that Plaintiff "concealed" merchandise on his way out of each store.[6] **OF COURSE,** Plaintiff has obviously **NEVER, NOT ONCE** "concealed" *anything*, from *anybody*, on *any* shopping occasion, ***ever, period, in the history of his existence,*** for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter![7] *See Ptf's Affidavit Of The Event at ¶ 24* ("At no point in time, on that day of November 25, 2022, had I ever once 'concealed' anything in front of [let alone not in front of] anybody, ever, period.") *and ¶ 25* ("At no point in time, on that day of November 25, 2022, had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees."). Then, in *Montgomery v. Walmart Inc.*, Adams County

4 Not that doing such would invalidate a patron's valid false imprisonment claim *anyways,* as also argued by Plaintiff.

5 *See Def's MSJ Exhibit J at page 10,* where the Court **[impermissibly]** held that "Given Montgomery's repetitive interactions with Walmart, *coupled with his recorded contemplation of his anticipated detention,* the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision.").

6 *See Def's MSJ Exhibits C / D / E / H, Order at page 25,* where the Court **[impermissibly]** held that "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was *concealing* property of the store, which he knew would lead to being detained and asked for his receipts." BTW, the Court also got the sequence wrong, as Plaintiff was FIRST asked to show his receipts, THEN detained. **Not the other way around.** Indeed, it was the very refusal to show the receipts **that was the sole cause of** his detentions [i.e. "bootstrapping"].

7 Not to mention ***that it's an actual crime*** to steal merchandise from a store, **and Plaintiff isn't that freaking stupid.**

Attachment to Order - 2023CV226

District Court Case No. 2021CV68 (Consolidated: 2021CV88), an Appellate Panel *miraculously* **[but impermissibly]** held that it was even Walmart's official receipt checking policy to "confine" patrons "if they chose not to produce [a receipt]." *See Def's MSJ Exhibit J at page 10.* **OF COURSE,** it has always been [and still is] Walmart's **OFFICIAL** receipt checking policy to only ***ASK*** patrons to see their receipts, ***NEVER*** to actually ***detain*** them if they choose to refuse to show one.[8] As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

c. The LEGAL ARGUMENTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that he was a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store.*** *See Ptf's Resp To Def's MSJ at page 22.* This is a **new** and **novel** legal argument that Plaintiff has now presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the store he visited has a policy in which receipts are emailed to patrons instead of printed out and given to them.*** *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* This is also a **new** and **novel** legal argument that Plaintiff has now presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that being *fully stopped* to show one's receipt is not the same as merely *changing directions* toward an *always open* window.*** *See Ptf's Resp To Def's MSJ at page 19, footnote 8.* This is a "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law."

8 *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) ("If a customer refused to have his or her bag checked, **the policy allowed the person to pass**."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.").

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See C.R.C.P. Rule 11(a). Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merely affording a person an opportunity to commit an offense is not entrapment (i.e. entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed).*** *See Ptf's Resp To Def's MSJ at pages 15, footnote 4, and 27.* This is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merchants don't simply get *carte blanche* authority to indiscriminately detain whomever they wish (i.e. a merchant listing off literally all possible actions that are purportedly required for a patron to perform in order to end their detention effectively renders all detentions of patrons literally uncompensable, and the bar to which merchants are required to have "shopkeeper's privilege" under obviously cannot be set at the floor).*** *See Ptf's Reply In Support Of His C-MSJ at page 17, footnote 19.* Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Finally, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the Defendant has offered nothing more than *purely conclusory statements* to support its shopkeeper's privilege position (and that "conclusory statements made without supporting documentation or testimony are insufficient to create an issue of material fact").*** *See Ptf's Resp To Def's MSJ at page 28, footnote 10. See also Ptf's Reply In Support Of His C-MSJ at pages 15 through 20.* Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* As such, an award of attorney fees against Plaintiff for attempting in good faith to establish or reverse all these theories of law in Colorado **would be an inappropriate and gross miscarriage of justice.**

d. Prior Courts also made several BAD legal arguments in Plaintiff's previous cases

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It is also worth noting that prior Courts made several patently AWEFUL legal arguments in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart Inc.,* Jefferson County District Court Case No. 2020CV76, an Appellate Panel *miraculously* **[but impermissibly]** held that Plaintiff's false imprisonment claim failed because he purportedly only sued over being "asked" to show proof of purchase.[9] **HOWEVER,** Plaintiff has ***ALWAYS AND ONLY*** ever argued **that the act of physically blocking all available pathways of his through all available exits** is what has ***specifically*** constituted his false imprisonment claims. Thus, the Court's tendentious holding was a profoundly inaccurate ruling in the matter. Then, in the same case, the Appellate Panel also *miraculously* **[but impermissibly]** held that "being taken to a secluded room," "being forcibly moved within the store," and/or "being arrested," are all purportedly required elements of a valid false imprisonment claim.[10] **HOWEVER,** such is clearly not the law, as the Court has long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid. See also McDonald v. Lakewood Country Club,* 170 Colo. 355, 461 P.2d 437 (1969). As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

e. Numerous LEGAL ARGUMENTS have never even been addressed by the Court

In all of Plaintiff's previous cases against Walmart, **Plaintiff made numerous legal arguments THAT THE COURT LITERALLY FLAT OUT NEVER ADDRESSED** [and still, to this day, has yet to even begin to address]. Specifically, Plaintiff has made relevant legal arguments surrounding his claims that **a)** a very real and constitutionally significant difference exists between

9 *See Def's MSJ Exhibit I at page 8,* where the Court **[impermissibly]** held that "No reasonable juror could conclude that being *asked* to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."

10 *See Def's MSJ Exhibit I at page 8*, where the Court **[impermissibly]** held that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," his false imprisonment claim had failed.

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the definition of "escape" and the definition of "release" (and that the term "escape" applies to pre-confinement situations only and **not** to post-confinement ones once they have occurred), **b)** the phrases "physical barriers" and "unreasonable risk of harm" have been misinterpreted and abused by the Court in such a way that doing so "defeats the legislature's obvious intent" of the use of such phrases (and to which, in turn, renders such interpretations manifestly "absurd"), **c)** *merchants* are the ones who ultimately have the "last clear chance" to avoid or prevent false imprisonments from occurring, *not patrons*, **d)** showing a receipt and not showing a receipt cannot *both* be considered consent (and whereby "showing a receipt" has ***already*** been held by Courts to constitute "voluntarily consenting" to the detention), **e)** a receipt itself is never the "key," but rather the merchant's **own**, personal, ***independent*** act of satisfactorily cross-checking the receipt against the merchandise is the actual "key" (i.e. it is unreasonable to believe that a merchant would ***not*** continue to detain a patron, ***OUTRIGHT***, in the mean time, until ***after*** it completes its ***own*** independent verification of the purchases at hand, ***even after*** the patron hands over the receipt), **f)** if "showing a receipt" is a viable "escape" path, such literally renders the detention to have **paradoxically** never existed in the first place (i.e. it eliminates any capacity to justify the now **non**-detention with affirmative defenses like "shopkeeper's privilege" which are only available in false *imprisonment* claims), **g)** showing a receipt is not merely some "slight inconvenience," but rather the law is already clearly established that any imprisonment, **"no matter how short,"** already qualifies as compensable, **h)** private investigators don't have the right to lawfully detain unidentified citizens until they simply tell them their name / security guards don't have the right to lawfully detain unidentified neighborhood residents until they simply show them their ID, **i)** a mother of seven cannot reasonably be expected to wait 10+ minutes to have *her* entire cart of purchases verified, yet somehow Plaintiff purportedly does not have that same right against false imprisonments just because he can only afford to buy one or two items at a time, **j)** lack of plastic bag use **does not** reasonably indicate that merchandise is "unpurchased," **k)** coming from a "back register" **is not any more suspicious than** coming from a

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"front register" (because of how merchants know *full-well* that they personally installed *both* registers at *both* locations for the ***express*** convenience of their customers), **l)** merchants, **just like police,** are not allowed to **"bootstrap"** mere refusals to cooperate (i.e. refusals to answer questions and/or refusals to consent to searches) into *the very justification* to detain patrons that they otherwise don't have the lawful right to detain, and finally, *but just as importantly,* **m)** that it is **statistics fraud** to not acknowledge that many other people are mindless lemmings who "assuage the perceived evil" by way of voluntarily showing *their* receipts (thus making Plaintiff's behavior look deliberate, when it's really not), as well as that Plaintiff has gone shopping ***thousands of times, at hundreds of merchants,*** nearly all without issue (thus showing that Defendant is the real exception, not Plaintiff). **Every single one** of these legal arguments has been thoroughly prepared by Plaintiff, *in at least two dozen of his briefings by now,* **giving the Court MORE THAN ENOUGH time to prepare reasonable holdings against.** Yet NO such holdings have EVER been made that EVEN REMOTELY address ANY of these CRITICALLY IMPORTANT arguments, **thus making Plaintiff [and any reasonable person in his position] legitimately question the validity of all such holdings.** As such, one cannot reasonably blame Plaintiff for continuing to do what any other person would do under the circumstances: ***keep shopping, or keep leaving stores without shopping, while refusing wholly non-compulsory requests to answer questions and/or be searched by complete and total strangers, then rightfully sue anybody who violates his constitutional right to not be falsely imprisoned absent a clear and reasonable showing of shopkeeper's privilege in the matter.***

f. Plaintiff's future cases against Defendant have no bearing on his current one

Finally, Defendant claims that "Because Plaintiff has already voiced his intent to proceed with more lawsuits against Best Buy, a strong sanction of attorney's fees is necessary here to deter future groundless, frivolous, and/or vexatious lawsuits." *Def's Mtn For Atty Fees at page 3.* The problem here is that ***Defendant has no earthly idea what kinds of cases Plaintiff has yet to bring against it,*** and therefore, has no earthly idea whether or not they are "groundless, frivolous, and/or

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vexatious." As such, a sanction of attorney fees based on *the mere prospect* that future lawsuits warrant them **is a clear violation of due process** [not to mention being totally preposterous].

II. PLAINTIFF DID NOT FILE A FRIVOLOUS LAWSUIT IN BAD FAITH

a. Plaintiff simply shops, and nothing more, at many different stores

Defendant claims that "Plaintiff's conduct on the date of the subject incident demonstrates that he was deliberately trying to engage Best Buy in a situation that would result in a lawsuit. To achieve this goal, Plaintiff drove more than a hundred miles over the course of about eight hours to make numerous purchases at various Best Buy locations on one of the busiest retail shopping days of the year, Black Friday." *Def's Mtn For Atty Fees at page 4.* ***OH MAN,*** there are so many things wrong with this statement, Plaintiff [almost] doesn't know where to begin. First, as far as Plaintiff can tell [please correct him if he's wrong!] it's not against the law to "drive more than a hundred miles" to "make numerous [even 'duplicitous'] purchases" at *wherever the heck* he wants to go shopping in life. Seriously, is Defendant *really* arguing this? Is Plaintiff *missing* something here? Does Defendant *actually* not understand how monumentally BAD of an argument this is? [More on this topic later.] Second, completely absent from such a [loaded] statement is any mention whatsoever *to any and all of the* ***other*** *stores* that Plaintiff may have visited and/or made purchases at that day. Therefore, without knowing how many total stores Plaintiff shopped at on Black Friday [let alone any other day], one cannot reasonably conclude that he was "**deliberately** trying to engage Best Buy" [only]. *Defendant sure loves to make it all about them, don't they!* Indeed, this goes **right back** to Plaintiff's argument regarding **statistics fraud.** Does Defendant ***really, actually believe*** that Plaintiff only "targets" / "provokes" / "insert all other conclusory, meaningless hot words here" just ***its*** stores? That's a little bit of a narcissistic position to take there. Especially when Plaintiff, ***for literally the last decade now,*** has merely "refused to cooperate" (i.e. refused to answer questions and/or refused to consent to searches) at probably over 300 stores on probably over 1,000 shopping experiences at this point. Yet you don't see *any other* lawsuits brought by

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him, against *any other* merchants,[11] do you? ***Hmm, I wonder why.*** Maybe because Best Buy [and Walmart] are the only two "Big Box Bullies" in town willing to [read: brazen enough to, overzealous enough to, and stupid enough to] "Bust Benign Buyer Behavior" of patrons who merely leave its stores after shopping at them. In layman's terms: it's getting old [and Plaintiff is getting tired of hearing] that he is supposedly "deliberately" "trying to stir up" "lawsuits" when he goes shopping, **when all he does in the end is what countless other customers do when they go shopping:** decline to participate in [what are by law supposed to be, but evidently not anymore] wholly non-compulsory encounters with complete and total strangers, **and whereby the true cause of his lawsuits <u>are the few and far between overzealous merchants like Best Buy</u> who happen to overstep their legal boundaries on a very select few number of occasions.**

b. Defendant's evidence that Plaintiff acted "deliberately" literally contradicts itself

Next, on this topic, is quite easily the most downright LAUGHABLE part of Defendant's argument. Evidently Defendant doesn't understand that presenting evidence that Plaintiff "made numerous purchases at various Best Buy locations" all throughout the state, **<u>BUT WHEREBY HE *DIDN'T* GET DETAINED AND *DIDN'T* SUE OVER ANY DETENTIONS THAT *DIDN'T* OCCUR AT ANY SINGLE ONE OF THESE *OTHER* STORE LOCATIONS,</u>** is LITERALLY evidence that IT was the exception this whole time, and not the norm! Indeed, quoting this very Court, if Plaintiff *truly does* "act in a manner that could reasonably be construed as suspicious," *truly does* "intentionally create misunderstandings for purposes of his later lawsuits," and *truly does* "design his conduct to inspire this belief," **THEN WHY ON EARTH DOES HE NOT HAVE A BUNCH MORE FRIVOLOUS LAWSUITS COLLECTED BY NOW THAT WOULD BE A DIRECT RESULT OF HIS OSTENSIBLY PROVOCATIVE BEHAVIOR UNDERTAKEN AT ALL THESE OTHER BEST BUY LOCATIONS!?!?** Oh yeah, that's right. Because **each and every one** of these *other* Best Buy stores acted *reasonably* in **<u>NOT</u>** detaining him, **while Defendant in the**

11 Except Walmart, of course.

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instant case obviously couldn't live up to the same. Indeed, to argue otherwise, would be to LITERALLY say that ***dozens and dozens*** of employees, staffed ***at over a dozen*** Best Buy locations, scattered ***all across*** the front range, **WERE *ALL* WILDLY INCOMPETENT, INTERNAL POLICY VIOLATING, SHOPKEEPER'S PRIVILEGE IGNORANT EMPLOYEES WHO *ALL* LET A BONA FIDE THIEF WALK STRAIGHT OUT OF THEIR STORES, RED HANDED, WITH MERCHANDISE NOT PAID FOR, ON THE BIGGEST SHOPPING DAY OF THE YEAR!?!?!?** Plaintiff has never laughed so hard in his life!!!!! Of course, merely refusing to answer questions and/or refusing to consent to searches is still not much of an "audit" anyways. Indeed, Defendant's subsequent claim that "Plaintiff repeatedly analogizes his conduct to a police bait car trying to catch people committing auto theft," is yet another downright laughable argument. Did Defendant not hear Plaintiff when he mentioned that "the whole point of a sting operation is to be ***not*** different than anybody else," *Ptf's Dep at page 36, line 18,* "people just park their cars, whether they're cops or not," *Ptf's Dep at page 35, line 25,* "[he's] just like any other person who parks their car on the road," *Ptf's Dep at page 36, line 22,* and that, therefore "every car is a bait car on the road," *Ptf's Dep at page 36, line 1?* **Thus, the argument that a "bait car" is in any way, shape, or form, "deliberate" [entrapment] is absolutely downright laughable.** All Plaintiff does is "go shopping and leave." *Ptf's Dep at page 45, line 6.* **THAT'S IT.** When are merchants [and the Court] going to **give it up** that Plaintiff doesn't actually ***DOOOO*** anything that any other customer doesn't *DOOOO* when going shopping. "Everybody's a secret shopper technically." *Ptf's Dep at page 85, line 11.* Sadly, most other patrons simply don't know their rights to decline to participate in **non-compulsory** encounters with complete and total strangers after shopping [and indeed, most are alternatively mindless lemmings who would rather "assuage the perceived evil" by way of voluntarily consenting to any detentions in favor of ostensibly lower prices]. **In the end though,** it's just not Plaintiff who is "provoking" his lawsuits, **its a few overzealous merchants who are.** "And if there weren't people out there willing to bootstrap merely refusing to show a receipt, or answer questions, or

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be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this." *Ptf's Dep at page 46, lines 11-16.* As such, it's time to stop *victim-shaming* and *scapegoating* patrons ***for what merchants actually do.***

c. Defendant is the one who is truly "displaying animosity" in this case

Finally, Defendant claims that Plaintiff's "conduct trying to stir up lawsuits was accompanied by [his] display of animosity toward Best Buy during the pendency of this litigation." *Def's Mtn For Atty Fees at page 4.* **Of critical importance here,** however, is that Plaintiff did not start on the foot of "displaying animosity." He only became upset **AFTER** Defendant started breaking rules, lying to the Court, not acknowledging facts, twisting legal arguments, defaming Plaintiff as a lawsuit scammer, impermissibly submitting affidavit-less business records, etc. etc. etc. etc. etc. **So who's really the disingenuous, "bad faith" actor here?** Even now, Defendant *continues* to omit critical information and lie to the Court [as will be discussed next]. Thus, any reasonable person in Plaintiff's position would be understandably upset, **if not downright infuriated** that ***bar-licensed*** attorneys are evidently willing to *straight up racketeer* to get out of committing actual crimes against them. Yet nobody bats an eye, because they're attorneys. Because they represent a billion dollar company. Because that's evidently ***business as usual*** to act that way in tossing all morals and ethics completely to the side.

III. PLAINTIFFF DID NOT MAINTAIN HIS LAWSUIT IN BAD FAITH

Defendant claims that "Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule26(a)(1) disclosure requirements and deliberately providing evasive discovery responses." *Def's Mtn For Atty Fees at page 4.* It then continues to claim that "Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures." *Id.* **However, no such "deliberate" behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff did not initially include his brother in his Rule 26(a)(1) disclosures, this was an oversight on his part, as he reasonably did not consider him to be "likely to have discoverable information relevant to the claims and defenses of a party." This is because, while Plaintiff's brother did enter the Westminster Best Buy store on

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November 25, 2022 with him, he did not browse the store with him, make purchases with him, or leave with him, nor did he (upon Plaintiff speaking with him later that day) observe Plaintiff's detention by the store employees. To Plaintiff, his brother had [and still has] nothing relevant to provide to the case. Nevertheless, Plaintiff **did** provide Defendant with his First Supplemental Rule 26(a)(1) Disclosures, that cured the aforementioned deficiency, but to which Defendant [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #1 ~ Plaintiff's Rule 26(a)(1) First Supplemental Disclosures.*

Defendant also claims that "Plaintiff's discovery responses demonstrate that Plaintiff was determined to provide as little information as possible in this lawsuit by responding to most discovery requests with "I do not recall." *Def's Mtn For Atty Fees at page 4.* **However, once again, no such "deliberate" behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff initially responded to most initial discovery requests with "I do not recall," this was done out of an abundance of caution, as it was difficult for Plaintiff to recall with a very high level of specificity what exactly occurred that day, and he didn't want to say anything that he didn't remember for sure was true. Plaintiff had visited many different stores that Black Friday, and his interaction with Defendant occurred over two years prior to the making of the discovery requests at issue. However, after Plaintiff spent a fair amount of time working backwards to remember the event, as well as discussing the details of that day with his brother, Plaintiff **did** respond to Defendant's Deficient Discovery Allegations, that cured the aforementioned deficiencies, but to which Defendant once again [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #2 ~ Plaintiff's Response To Def's Deficient Discovery Allegations.*

Ultimately, Plaintiff complied with the aforementioned discovery procedures, Defendant was not required to seek assistance from the Court to compel his compliance, and Defendant never bothered to even request sanctions relating to said deficiencies until now, several months later after they were already cured. "Generally, sanctions under C.R.C.P. 37 'should be applied in a manner that

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effectuates proportionality between the sanction imposed and the culpability of the disobedient party.'" *Pinkstaff v. Black Decker,* 211 P.3d 698, 702 (Colo. 2009) (quoting *Kwik Way Stores, Inc. v. Caldwell,* 745 P.2d 672, 677 (Colo. 1987)). "If Rule 37 sanctions are warranted in a case, 'the trial judge must craft an appropriate sanction by considering the complete range of sanctions and weighing the sanction in light of the full record in the case.'" *Id* (quoting *Nagy v. Dist. Court,* 762 P.2d 158, 161 (Colo. 1988). "When discovery abuses are alleged, courts should carefully examine whether there is any basis for the allegation and, if sanctions are warranted, **impose the least severe sanction** that will ensure there is full compliance with a court's discovery orders **and is commensurate with the prejudice caused** to the opposing party." *Id.* Here today, in Plaintiff's instant case, Plaintiff is unaware of any prejudice caused by his initial discovery deficiencies, nor has Defendant bothered to voice any. As such, any sanction given to Plaintiff should be commensurate with the [little to no] prejudice caused, and an award of attorney fees ***for his whole case, from beginning to end,*** would undoubtedly not be "commensurate" with the few non-dispositive discovery delays that were cured shortly thereafter.

IV. THE COURT VIOLATED NUMEROUS RULES AND LAWS, AND SHOULD NOT HAVE DISMISSED PLAINTIFF'S LAWSUIT IN THE FIRST PLACE

First, the Court **impermissibly** accepted and adopted *purely conclusory statements* made by Defendant during its briefing that Plaintiff is some undeserving-of-due-process "lawsuit scammer" in direct violation of *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).[12]

Next, the Court **impermissibly** held that Plaintiff explicitly "denies having been in Best Buy."[13]

Next, the Court likewise **impermissibly** held that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident."[14]

12 In *Suncor,* the Court held that when ruling on a Motion For Summary Judgment, **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."**

13 Rather, all Plaintiff did was present proper legal argument that *Defendant* failed to show that he was ever inside the store. *Merely presenting legal argument of the opposite of something* ***is not actually*** *an active denial of it.*

14 Rather, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5,* **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had]

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Next, the Court **impermissibly** accepted a blatantly contradictory affidavit of Mahmoud Abu-Shaweesh in direct violation of *Scott v. Harris,* 550 U.S. 372, 380 (2007).[15]

Next, the Court **impermissibly** accepted affidavit-less business records (i.e. receipts) in direct violation of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003).[16] Plaintiff has YET to see this Court *even remotely begin to* address this **absolutely critical** argument.

Finally, the Court **impermissibly** allowed Defendant to inject reply-only arguments into its MSJ briefing in direct violation of *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).[17] The Court even tried to cure this well-pointed-out violation by claiming [in its *Order Denying Plaintiff's Motion For Reconsideration*] that Plaintiff purportedly had an "opportunity" to respond to the belated exhibits. This argument is faulty for several reasons. First, in *Wallman,* the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond. **However, absolutely nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does it explain that REPLY briefs provide such "notice" of such "need."** Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are**

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[n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees," *Plaintiff's Affidavit at ¶ 25.* Moreover, this Court itself has already pointed out that "In assessing a summary judgment motion, **a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence,** and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **was required by law** to **INFER** that said facts presented by Plaintiff specifically applied to him being **INSIDE** the store.

15 In *Scott,* the Court held that "When opposing parties tell two different stories, one of which is blatantly contradicted by the record [which in this case, is Plaintiff's pen camera video of the event], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."

16 In *Henderson,* the Court held that "business records" are only admissible when "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record."

17 In *Wallman,* the Court held that "because plaintiff was not given notice that she needed to present evidence on the causation issue in defendants' initial summary judgment motions and briefs, we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions."

severely limited by page number and file-by date. Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant [that it should have presented in its **initial** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ. Finally, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact," because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** *See Morlan v. Durland Co.,* 127 Colo. 5, 13 (Colo. 1952) ("Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties."). In other words, a party's **offense** argued in their *own* motion cannot be used as their **defense** argued *in the other party's* motion.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR ATTORNEY FEES. Respectfully submitted on this, the 21st day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ATTORNEY FEES** was sent to the following people, via email:

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2025 FEB 24 AM 10: 29

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

FILED
COMBINED COURT
JEFFERSON COUNTY, CO

DATE FILED
February 24, 2025 10:35 AM

FILED
COURT of APPEALS
STATE OF COLORADO

FEB 24 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

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Court of Appeals' Case Number:

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside of a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. The Judge made errors of fact and/or law when making its ruling, however, and incorrectly granted the MOTION in contravention of clearly-established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDER granting Defendant's MSJ, as well as its subsequent two ORDERS denying Plaintiff's MOTION FOR RECONSIDERATION and SECOND MOTION FOR RECONSIDERATION. He seeks to have the ORDER granting Defendant's MSJ be REVERSED, so that his case may be REINSTATED and REMANDED to the Jefferson County District Court for further proceedings not inconsistent with its opinion.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on

(date) November 19, 2024

2. Remaining Issues:

☒ All the issues in the case have been decided.

OR

☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

☐ Any request for attorney fees and costs have been resolved.

OR

☒ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

☐ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

OR

■ Yes. A post-trial motion was filed on: (date) December 3, 2024 and January 21, 2025.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

■ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

■ The district court ruled on the motion on (date) January 6, 2025 and February 18, 2025.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

■ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR SUMMARY JUDGMENT, which dismissed Plaintiff's case in its entirety?

Did the District Court err in denying Plaintiff's MOTION FOR RECONSIDERATION and SECOND MOTION FOR RECONSIDERATION?

VII. Necessity of Transcript:

☒ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

■ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Stephanie E. Boutsicaris & Lori K. Bell

Registration Number: No. 51297 (Boutsicaris) & No. 31714 (Bell)

Name of Law Firm: Montgomery | Amatuzio

Street Address: 4100 E Mississippi Ave Ste 1600

City: Denver State: CO Zip: 80246

Phone Number: (303) 592-6600

E-Mail Address: sboutsicaris@mac-legal.com & lbell@mac-legal.com

For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: February 24, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) February 24, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: sboutsicaris@mac-legal.com & lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED November 19, 2024 2:12 PM CASE NUMBER: 2023CV226
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY, L.P.**	▲ COURT USE ONLY ▲ Case Number: **23CV00226** Division: 06 Courtroom: 520

ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiff's (William Montgomery) and Defendant's (Best Buy) respective Motions for Summary Judgment. The Court, having considered the motions as well as response and reply briefs from all parties and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his Complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a Motion for Summary Judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims under, among other things, Shopkeeper's Privilege. Defendant also submitted to the Court a video made by Plaintiff wherein Plaintiff explains how he gets "free lawsuits" by going into stores and conducting a "sting operation" where he conducts himself in a manner that could be reasonably construed as suspicious and sues store employees for confronting him upon believing he is stealing.[1] Indeed, Defendant cites several nearly identical cases Plaintiff

[1] See Defendant's Exhibit Q at 04:20, explaining how Plaintiff uses registers in the back of the store, does not use bags, and refuses to show employees his receipt; Exhibit Q at 05:05, "That's the crux of my whole sting operation!"; Exhibit Q at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting—where I'm not going to say I have a receipt or not, I'm not even going to say I was a customer or not . . . all I've got to show is that I was surrounded . . . I'm done doing the merchants' homework for them in lawsuits."; Exhibit Q at 20:00, "That's why I don't show my receipt, for a free lawsuit. Because if somebody's going to hand out free lawsuits at the door, I'm game!"

has filed against other stores around Colorado.[2]

Plaintiff filed a Cross Motion for Summary Judgment on September 19, 2024, also seeking summary judgment on all of Plaintiff's claims. In support of his motion, Plaintiff submitted body-worn camera footage of the detainment. Both parties subsequently filed response and reply briefs.

II. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits [submitted] . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c); Miller v. Van Newkirk, 628 P.2d 143, 145 (Colo. App. 1980). A material fact is simply a fact that will affect the outcome of the case. Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 239 (Colo. 1984).

The party moving for summary judgment bears the initial burden of presenting the basis for a motion for summary judgment and identifying those portions of the record which demonstrate the absence of any genuine issues of material fact or any triable issues of fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). Once this initial burden has been met, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. Id. at 713. The nonmoving party must set forth specific facts through affidavits or other means to show that there is a genuine issue for trial and may not rest upon the mere allegations or denials in the pleadings or simple argument. Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991). If the nonmoving party cannot muster sufficient evidence to establish that there is a triable issue of material fact, the moving party is entitled to summary judgment as a matter of law. Keenan, 731 P.2d at 713.

Summary judgment should be granted only when there is a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. KN Energy, Inc. v. Great W. Sugar Co., 698 P.2d 769, 776 (Colo. 1985). In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. Vigil v. Franklin, 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004).

III. ANALYSIS

[2] See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

a. Defendant's Motion for Summary Judgment

Defendant Best Buy filed a Motion for Summary Judgment on July 25, 2024. In its Motion, Defendant seeks this Court dismiss all of Plaintiff's claims and grant Defendant an award of attorney's fees and costs.

i. False Imprisonment

For a plaintiff to prevail on a false imprisonment claim, he must prove that: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." Goodboe v. Gabriella, 663 P.2d 1051, 1055-56 (Colo. App. 1983). However, "[I]t is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt a.

Here, Plaintiff alleges he was falsely imprisoned by three Best Buy employees when they "surrounded [him] on all sides with [his] back against a wall and wouldn't let [him] leave or go anywhere for 12 minutes." (Complaint at p. 1.) Defendant argues that Best Buy cannot be held liable for false imprisonment because (in addition to Shopkeeper's Privilege, discussed below) Plaintiff had the tools of escape and unreasonably refused to use them.

There is no genuine issue of material fact for this claim. Defendant admits its employees detained Plaintiff briefly outside of the Best Buy after suspecting him of stealing store merchandise. Defendant has provided proof that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase. (Defendant's Exhibit N.) Plaintiff does not deny having a receipt at the time of the incident. During Plaintiff's detainment outside of Best Buy, Defendant's employees can repeatedly be heard telling Plaintiff that he can leave as soon as he gives back the stolen goods.[3] (Plaintiff's Exhibit 1.) Not once during the detainment does Plaintiff deny stealing or show proof of purchase. (See Plaintiff's Exhibit 1, showing body-camera footage of the entirety of the detainment.)

The Court agrees with Defendant that showing proof of purchase would have freed Plaintiff from the false imprisonment, and that showing proof of purchase is a slight inconvenience that it was unreasonable of Plaintiff not to utilize. Thus, the Court concludes that Defendant did not

[3] See Plaintiff's Exhibit 1 at 00:05, "Can you just give it back to us now and you can leave?"; Exhibit 1 at 00:22, "You can just give us our product back and you can go on your own way"; Exhibit 1 at 01:26, "Give me the product back and I'll leave you alone, you can go on your own way"; Exhibit 1 at 01:35, "If you want to leave without any issues then just give me my product"; Exhibit 1 at 03:29, "You can make it easy dude, just give me my stuff and you can go."

"confine" Plaintiff and thus cannot be held liable for false imprisonment. As such, Plaintiff's claim for false imprisonment is dismissed on summary judgment.

ii. Defamation Per Se

For a plaintiff to prevail on a claim of defamation, he must prove that there was: "(1) A defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication." Williams v. Dist. Court, 866 P.2d 908, 911 n.4 (Colo. 1993). Statements that are actionable irrespective of special damages are defamatory per se. See Restatement (Second) of Torts § 570. "Historically, a statement constituted defamation per se if it imputed a criminal offense; a venereal or loathsome disease; improper conduct of a lawful trade, business, profession, or office; or unchastity of a woman." Keohane v. Wilkerson, 859 P.2d 291, 301 (Colo. App. 1993).

"One who publishes a false and defamatory communication concerning a private person . . . is subject to liability, if, but only if, he (a) knows that the statement is false and that it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them." Restatement (Second) of Torts § 580B. "Insofar as the truth or falsity of the defamatory statement is concerned, the question of negligence [is] . . . whether [the defendant] had reasonable grounds for believing that the communication was true." Id. cmt g.

Here, Plaintiff alleges he was defamed by Best Buy employees when they "falsely, loudly, rudely, and publicly accused [him] of stealing in front of many others." (Complaint at p. 1.) Because theft is a criminal offense, this qualifies as defamation per se. Defendant argues (again, in addition to Shopkeeper's Privilege, discussed below) that the employees were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy.

There is no genuine issue of material fact relevant to this claim. There is body camera footage from the detainment showing Defendant accusing Plaintiff, in public, of stealing merchandise from the store. (See Plaintiff's Exhibit 1.) Defendant does not deny this.

However, to be liable for defamation, Defendant must have acted with actual knowledge of the statement's falsity, reckless disregard for the truth or falsity of the statement, or negligence. Defendant has submitted proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store. (Defendant's Exhibit P.) Plaintiff provides no evidence of his actions in the store to counter this. Rather, Plaintiff's YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his "sting operation." (See Defendant's Exhibit Q.)

"Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury." Montgomery v. Walmart Stores, 21CA0359 (Colo. App. 2022) (not published pursuant to C.A.R. 35(e)). "However, in the 'clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them,' the issue may be resolved as a matter of law." Id.

Here, the case is clear, the facts are undisputed, and reasonable minds can draw but one inference: Defendant did not act with fault amounting to at least negligence in accusing Plaintiff of stealing. Rather, Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit. As such, the Court concludes Defendant cannot be held liable for defamation and Plaintiff's claim for defamation is dismissed on summary judgment.

iii. Assault

For a plaintiff to prevail on an assault claim, he must prove: (1) The defendant acted "intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact," and (2) "the other is thereby put in such imminent apprehension." Restatement (Second) of Torts § 21. "Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault." Restatement (Second) of Torts § 31 cmt a.

Here, Plaintiff alleges Best Buy's employees assaulted him when they "threatened to 'jump' [him] around the corner and off camera." (Complaint at p. 1.) Defendant argues that its employees never threatened Plaintiff, and if anything said may be construed as a threat, no employee took any other step to show hostility toward Plaintiff.

Because the parties have submitted body-camera footage of the detainment, there is no genuine issue of material fact for this claim. The body-camera footage shows that Defendant's employees never touched Plaintiff. As for "threats," at one point one employee said, "We'll take this off camera—walk away"[4] and throughout the encounter the employees did not correct Plaintiff when Plaintiff said he was worried about being jumped.[5] (Plaintiff's Exhibit 1.) The footage also shows that the employees spent the detainment standing around Plaintiff at a respectable distance, making no threatening movements, and repeatedly saying that they would leave Plaintiff alone as soon as he gave back what he had stolen from their store. (See Plaintiff's Exhibit 1.)

The Court agrees with Defendant that, even if the employees' words could be construed as a threat, there was no additional act apparently intended to carry the threat into execution. As such,

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[4] Plaintiff's Exhibit 1 at 09:27.

[5] Plaintiff's Exhibit 1 at 09:48, "I don't feel safe leaving now," "You shouldn't"; Exhibit 1 at 10:17, "I don't feel like getting jumped off camera," "Then give me my stuff, dude"; Exhibit 1 at 10:44, "I don't feel safe leaving now," "Then give me my shit"; Exhibit 1 at 11:28, "Like I'm just going to trust him that he's not going to jump me," "You shouldn't trust him that he's not. You should give me my stuff."

the mere words were not enough to put Plaintiff in apprehension of imminent bodily contact, and so do not make Defendant liable for an assault. Therefore, Plaintiff's claim for assault is dismissed on summary judgment.

iv. Shopkeeper's Privilege

Under C.R.S. § 18-4-407, colloquially known as "Shopkeeper's Privilege," a merchant or any of its employees, "acting in good faith and upon probable cause based upon reasonable grounds therefor," may detain and question any person that "conceals upon his person or otherwise carries away any unpurchased goods . . . held or owned by any store," in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. "Such questioning of a person by a merchant, merchant's employee, or a peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention." Id. Whether a defendant acted in good faith is a question of fact, meaning summary judgment should be granted "only if, assuming the truth of the plaintiff's evidence, and drawing every favorable inference of fact therefrom, reasonable persons could reach only one conclusion, that being these defendants acted in good faith." Goodboe v. Gabriella, 663 P.2d 1051, 1055 (Colo. App. 1983).

Defendant has submitted a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment. (Defendant's Exhibit N.)[6]

Plaintiff, in his response, denies having been in Best Buy, denies having the store's merchandise on him, and denies concealing anything. However, Plaintiff "may not rest upon the mere allegations or denials in the pleadings" and must set forth specific facts through affidavits or other means. Burman, 821 P.2d at 917. In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees. (Plaintiff's Affidavit of the Event.) This is not inconsistent with Defendant's affidavit, which argued that Defendant's employee saw Plaintiff in the store, watched store security video after Plaintiff exited, and then confronted Plaintiff outside. (Defendant's Exhibit P.) Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.

Even assuming the truth of Plaintiff's evidence and drawing every favorable inference of fact therefrom, reasonable persons could reach only the conclusion that Defendant acted in good faith. Under the circumstances presented by Plaintiff, a reasonable person would believe he may

[6] Plaintiff argues that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any "genuine" issue of fact, not whether there is any conceivable issue of fact.

have been shoplifting. Indeed, Plaintiff designed his conduct to inspire this belief. (See Defendant's Exhibit Q.)

As for probable cause based upon reasonable grounds, Defendant has supplied an affidavit stating that its employee saw Plaintiff "remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," which was then confirmed on store security video. Plaintiff also refused to show his receipt upon being asked. Again, Plaintiff has provided no evidence as to his actions inside the Best Buy store and "may not rest upon the mere allegations or denials in the pleadings." Id. As such, the Court agrees that Defendant had probable cause to believe Plaintiff was shoplifting.

Because Defendant is a merchant; Defendant's employees acted in good faith and upon probable cause in detaining Plaintiff; and Defendant's employees detained Plaintiff in a reasonable manner, Defendant is protected under C.R.S. § 18-4-407 from slander and false imprisonment. As such, even if Plaintiff were able to make a prima facie case of false imprisonment and defamation (which the Court has held above he does not), Defendant would fall within the statue's protections.

b. Plaintiff's Motion for Summary Judgment

Plaintiff William Montgomery filed his Cross Motion for Summary Judgment on September 19, 2024. Plaintiff requests that the Court enter summary judgment as to all of Plaintiff's claims. Plaintiff and Defendant make the same arguments in Plaintiff's pleadings as they had made in Defendant's pleadings.

For the reasons laid out above, the Court denies Plaintiff's request for summary judgment as to all of Plaintiff's claims.

IV. ORDERS

For the reasons stated above, the Motion for Summary Judgment for Defendant is **GRANTED, and Plaintiff's claims are dismissed with prejudice**. The Motion for Summary Judgment for Plaintiff is **DENIED.**

1. Defendant's request for summary judgment on Plaintiff's false imprisonment claim is GRANTED, and the claim is dismissed.
2. Defendant's request for summary judgment on Plaintiff's defamation per se claim is GRANTED, and the claim is dismissed.
3. Defendant's request for summary judgment on Plaintiff's assault claim is GRANTED, and the claim is dismissed.
4. Plaintiff's request for summary judgment on Plaintiff's false imprisonment claim is DENIED.
5. Plaintiff's request for summary judgment on Plaintiff's defamation per se claim is DENIED.

6. Plaintiff's request for summary judgment on Plaintiff's assault claim is DENIED.
7. Costs are awarded to Defendant.
8. Any motion for attorney's fees, if desired, shall be filed pursuant to C.R.C.P. 121 § 1-22.

Done in Golden, Colorado, this 19th day of November 2024.

BY THE COURT:

Christopher C. Zenisek
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED January 6, 2025 2:05 PM CASE NUMBER: 2023CV226 ⚠ **COURT USE ONLY** ⚠ Case Number: 2023CV226 Division: 6 Courtroom:

Order:Plaintiff's Motion for Reconsideration

The motion/proposed order attached hereto: DENIED.

For purposes of analysis, the Court sets aside Plaintiff's pejoratives toward the Court and considers the merits of his motion.

Plaintiff raises many of the same arguments he raised in summary judgment briefing. In resolving the conflated summary judgment motions, the Court considered all briefs and exhibits presented in connection with Defendant's motion and also Plaintiff's cross-motion. Plaintiff's reply was filed after the exhibits about which he complains, giving him opportunity to respond to them. Of note, he also presented an additional affidavit, after Defendant's reply, which the Court also considered. (See 10/28/24 "Plaintiff's second affidavit").

Regardless, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is thus denied.

Issue Date: 1/6/2025

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED February 18, 2025 ⚠ COURT USE ONLY ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Plaintiff's Second Motion for Reconsideration

The motion/proposed order attached hereto: DENIED.

As noted in the Court's January 6 Order, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is again denied.

Issue Date: 2/18/2025

CHRISTOPHER CLAYTON ZENISEK
District Court Judge

2025 FEB 24 AM 10: 29

FILED
COMBINED COURT
JEFFERSON COUNTY, CO

DATE FILED
February 24, 2025 10:36 AM

FILED IN THE
COURT of APPEALS
STATE OF COLORADO

FEB 24 2025

Clerk, Court of Appeals

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

Appeal from:
Jefferson County District Court
District Court Judge: The Hon. Christopher Zenisek
District Court Case Number: 2023CV226

In the Case of:
Plaintiff/Petitioner: WILLIAM MONTGOMERY,
■ Appellant or ☐ Appellee
&
Defendant/Respondent: BEST BUY STORES, L.P.
☐ Appellant or ■ Appellee

FOR COURT USE

Filing Party Name: William Montgomery
Street Address: 2443 S University Blvd # 129
City: Denver State: CO Zip: 80210
Phone: (970) 412-5463
E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Designation of Record

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

Documents to Send

Please send my entire case file to the Court of Appeals. Please include:

1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
4. If a trial was held, all jury instructions, verdict forms, and answers to any special interrogatories.

Transcripts

1. Transcripts Needed:

☒ A transcript is not needed to review the issues on appeal.

OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: February 24, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) February 24, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: sboutsicaris@mac-legal.com, lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

JDF 206	Order re Court Fees

FILED
COMBINED COURT
JEFFERSON COUNTY
2025 FEB 24 A 9:12

DATE FILED
February 24, 2025 9:37 AM

A. Court

☑ District ☐ County ☐ Probate ☐ Juvenile ☐ Supreme

Colorado County: Jefferson

Mailing Address: 100 Jefferson County Pkwy, Golden, CO, 80401

B. Parties to the Case

Petitioner/Petitioner: WILLIAM MONTGOMERY

v.

Defendant/Respondent: BEST BUY STORES, L.P.

This box is for court use only.

C. Case Details

Number: 2023CV226

Division: 6

Courtroom: 520

1. Background

The Court has reviewed the *Motion to Waive Fees* filed by *(name)* William Montgomery

2. Findings and Orders

The Court finds that the Party is:

a) ☒ Indigent.

All Court fees and costs are waived, including:

- Filing Fees.
- Reasonable Copy Fees.
- Jury Fees.
- eFiling and eService Fees *(when available)*.
- Fees for Forms and Instructions.

☐ If checked, also waive/provide: _____

These fees are waived for the duration of the case, or until final orders are issued if in a Domestic Relations case.

b) ☐ Not Indigent but allowed to pay in installments.

The filing fee of $_____ can be paid in: ☐ Two Payments. ☐ Three Payments.

The first payment is due by *(date)* _____

The next payment is due by *(date)* _____

The final payment is due by *(date)* _____

If payment is not received according to the schedule above, the Court can dismiss the

001088

party's claims, or the entire case, without further notice. C.J.D. 98-01 Section (VI).

c) ☐ Not Indigent.

The party is responsible for payment of any court fees and costs.

☐ If checked, the party must pay the filing fee of $_____ by *(date)* _____

3. Findings Made by

Name: Katie Roblez On *(date)* 2-24-25

☐ Judicial Officer ☒ Court Staff

So Ordered

Signature: Nicole Montano Dated: 2/24/25

☐ Judge ☐ Magistrate

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED February 25, 2025 9:24 AM
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy, L.P.	Court of Appeals Case Number: 2025CA327
ADVISEMENT OF FILING NOTICE OF APPEAL	

A Notice of Appeal was filed on 02/24/25 in the case designated above. Include the Court of Appeals case number on all future pleadings and the record on appeal.

Please note that this document is advisory only and does not serve as confirmation that this court has jurisdiction or that all jurisdictional requirements have been met.

Also note that the Court of Appeals is statutorily required to advance industrial claim and juvenile appeals on its calendar. The court will expect counsel, pro-se parties and court reporters to meet all filing deadlines set forth by the Colorado Appellate Rules or by court order. In order to comply with the statutes and avoid unnecessary delay, motions to enlarge the time for filing the record on appeal or the briefs will generally be denied unless extremely compelling reasons are clearly demonstrated.

Required Filings:

The clerk of the trial court will transmit the record to the Court of Appeals. If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a **designation of transcripts** with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of

appeal. The record will be transmitted without transcripts unless appellant complies with C.A.R. 10(d).

The record on appeal is due 04/28/25.

POLLY BROCK
CLERK OF THE COURT OF APPEALS
DATE: 02/25/25

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED February 28, 2025 4:12 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits this Motion to Reconsider the Order re Court Fees. In particular, Best Buy hereby requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, E-filing and service fees, and fees for forms and instructions. In support thereof, Best Buy states as follows:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

LEGAL AUTHORITY

I. Motions to Reconsider

A motion to reconsider must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. C.R.C.P. 121 § 1-15 (11). A motion to reconsider shall be filed within 14 days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. *Id.*

II. Waiver of Costs Pursuant to C.R.S. § 13-16-103

"If the judge or justice of any court, including the supreme court, is at any time satisfied that any person is unable to prosecute or defend any civil action or special proceeding because he is a poor person and unable to pay the costs and expenses thereof, the judge or justice, in his discretion, may permit such person to commence and prosecute or defend an action or proceeding without the payment of costs." C.R.S. § 13-16-103 (1) (emphasis added). The Colorado Supreme Court has held that a court may deny a request for waiver of costs when the claim is in bad faith, vexatious, or plainly frivolous. *Cook v. Dist. Ct. In & For Weld Cnty*., 670 P.2d 758, 760 (Colo. 1983) ("In the absence of factors such as bad faith or a plainly frivolous claim . . . the legislature intended that the judge's discretion be limited to determining whether the petitioning party has the financial resources to pay the costs and expenses incident to the litigation"). Vexatious use of the right of access to the court can constitute a form of bad faith, which may be considered in a court's ruling on a petition to proceed in forma pauperis. *Id.* at n. 6.

The analogous federal statute, 28 U.S.C. § 1915 (1976), has been construed to limit the factors that a court may consider in acting on petitions in forma pauperis to the indigency of the petitioner and whether the claim is frivolous or asserted in bad faith. *Dillard v. Liberty Loan Corp*.,

626 F.2d 363 (4th Cir.1980). Federal courts are expressly authorized to dismiss a case brought in forma pauperis if it "is frivolous or malicious." 28 U.S.C. § 1915(1)(2)(B)(i).

FACTS AND LEGAL ARGUMENTS

I. A Motion to Reconsider is Procedurally Warranted Here

On February 24, 2025, Plaintiff filed a Motion to Proceed in Forma Pauperis. This motion is sealed, and Best Buy is unable to view Plaintiff's Motion. However, upon information and belief, Plaintiff did not present any arguments concerning whether his lawsuit or his forthcoming appeal were filed in bad faith, or whether his lawsuit is frivolous or vexatious. Thus, the Court was not able to weigh the facts or the law to determine whether filing fees should be required in accordance with *Cook.* Defendants in Best Buy's position should have leave for a motion to reconsider because without the opportunity for a motion to reconsider, defendants would be wholly unable to contest a plaintiff's motion to proceed in forma pauperis, which is typically granted before a defendant has notice of such motion. Inability to contest the court's waiver of fees by way of a motion to reconsider would cause manifest injustice because *Cook's* holding would be pragmatically unenforceable.

II. Plaintiff's Complaint Was Filed in Bad Faith

Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado state courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess

stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff has been very vocal both on the internet and in his court pleadings that he takes issue with retail stores and their employees asking patrons to show their receipts before exiting the premises. **Ex. A** (YouTube video by Plaintiff); **Ex. B** (Plaintiff's Reddit posts). For instance, Plaintiff stated in an online post, "I simply have beef with exit-posted policy-violating receipt-nazis foolishly blocking my path on the way out of a store (any store). But seriously though, free lawsuits, anyone? They're basically handing them out the door." **Ex. B,** p. 4. To address this perceived injustice of "receipt showing," Plaintiff has taken great pains to deliberately provoke situations that allow him to file "free lawsuits." *See,* **Ex. B,** p. 3 ("And if people are LITERALLY handing free lawsuits out at the door, I mean, I'm game! It's like finding a $20 bill on the ground. Wouldn't you pick it up?"). Plaintiff's modus operandi is to engage in behavior that raises

suspicion of shoplifting,[1] to get detained,[2] to not show his receipts[3] in order to test his perceived "right" to not show his receipt,[4] and then file a "free lawsuit." Plaintiff engages in this behavior to "audit" stores. **Ex. C** (Excerpts of Plaintiff's Deposition), 85:4; *see also,* **Ex. C,** 107:13-111:25. Plaintiff has repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. C,** 35:23-37:5; 45:16-46:9; **Ex. B,** p. 2.

Between March 31, 2020 and September 20, 2021, Plaintiff filed eight different lawsuits against Walmart, Inc. alleging false imprisonment and/or defamation in facts that appear substantially similar to the facts alleged here. *See,* **Ex. D,** (Compilation of Complaints, Dispositive Rulings, and Appellate Decisions in Walmart, Inc. Lawsuits). Plaintiff not only failed to prove his claims in any of those cases, but also lost several appeals. **Ex. D,** p. 109-156. After Walmart, Inc. banned him from its premises, Plaintiff was forced to find a new target and set his sights on Best Buy.

This is but one of four lawsuits that Plaintiff has filed against Best Buy. Plaintiff filed three other lawsuits against Best Buy for alleged incidents that occurred on Black Friday 2023. **Ex. E** (Complaints for Case Nos. 2024CV132; 2024CV241; and 2024CV242). Even though there has not yet been an exchange of Rule 26 disclosures in any of these cases, the facts and circumstances of the present lawsuit appear eerily similar to those of the other three cases. All four lawsuits arise from incidents that allegedly occurred on Black Friday, one of the busiest shopping days of the

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[1] "That's the crux of my whole sting operation!" **Ex. A,** 5:55.
[2] **Ex. A**, 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[3] "Now I don't show my receipt everywhere I shop." **Ex. A**, approximately 1:25.
[4] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. A**, 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. A**; 8:09.

year. All four lawsuits arise from Plaintiff's deliberate pursuit of situations that would result in a false imprisonment and/or defamation claims. In all four lawsuits, Plaintiff traveled long distances to multiple Best Buy locations in a single day, with Plaintiff driving approximately 124 miles to at least eight different Best Buy stores on Black Friday 2022 and 66 miles to at least seven different Best Buy stores on Black Friday 2023. **Ex. F** (Plaintiff's receipts from the date of the incident for the present lawsuit, as well as a map demonstrating driving distances between each purchase); **Ex. G** (Plaintiff's receipts from Black Friday 2023, as well as a map demonstrating driving distances between each purchase). On both Black Friday 2022 and 2023, Plaintiff made duplicative purchases of the same items, such as the easily concealable Roku remote

Despite allegedly being the "victim" of defamation and false imprisonment on Black Friday 2022, Plaintiff continued to patronize Best Buy stores. Despite allegedly being a "victim" of defamation and false imprisonment multiple times in a single day, Plaintiff continued to patronize Best Buy stores on Black Friday 2023. There is no reasonable explanation for his conduct other than that Plaintiff is vexatiously abusing his right to access the courts. *See, Cook,* 670 P.2d 758 at n.6.

Plaintiff proceeds *pro se* in this lawsuit and his forthcoming appeal, which means his filings and briefs will not be constrained by the Rules of Professional Conduct. Upon information and belief, Plaintiff is judgment-proof, and Best Buy is unlikely to recoup any costs or attorney's fees if it prevails in motions under C.R.S. § 13-17-102. There is virtually no deterrent to Plaintiff filing his "free lawsuits," particularly if the Court makes the process of filing the lawsuit entirely free of charge for Plaintiff. There is also no deterrent for Plaintiff filing repetitive, frivolous motions and repetitive, frivolous appeals. In this lawsuit alone, Best Buy prevailed on its motion for summary

judgment followed by two motions for reconsideration Plaintiff has been undeterred by his arguments repeatedly failing, and Best Buy will soon be litigating Plaintiff's fourth bite at the apple in Plaintiff's "free lawsuit."

Best Buy requests a limited remedy of requiring filing fees in order to encourage Plaintiff to carefully consider whether his claims, motions, and legal arguments have merit and to only incur costs on arguments that are meritorious. If Plaintiff prevails on his appeal, and subsequently on one or more cause of action against Best Buy, he will be able to recover his filing fees, as well as his provable damages. C.R.S. § 13-16-104. Requiring Plaintiff to pay filing fees, combined with the availability of an award of costs, strikes an appropriate balance between deterring repetitive and vexatious lawsuits and appeals while still permitting Plaintiff to put his claims and arguments before the Court and adjudicating his claims on their merits.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, eFiling and service fees, and fees for forms and instructions.

Respectfully submitted February 28, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2025, a true and correct copy of the foregoing **MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/Samantha Trujillo
Samantha Trujillo, Legal Assistant

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February 28, 2025 4:12 PM

Overview Posts Comments

New



r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **Lucky225** 3 mo. ago

I wish I had more time these days to address these types of issues, but in the end, all I can refer you to is my briefings (available publicly). The reason I say this is because you, like everybody else, went RIGHT ALONG with what the judge "said" [vs what actually happened]. Tisk tisk.

Case in point: When you say, "in the latest lawsuit the judge found you had tried to conceal a mouse you purchased earlier," you appear to be making the assumption that the judge got this fact right, BUT IN REALITY THEY DID NOT. Indeed, I have never "concealed" anything. Ever. Which is why said judge probably had said episode of what I have come to call COGNITIVE DISSONANCE. That is, their wee little brain literally **couldn't handle** that I was simply a regular customer [just like you say] who walked out of a store after purchasing items in it. THAT'S IT.

In the end, I never thought my battle would be against corrupt judges who don't care about simple facts, let alone the law. I thought I was just dealing with dumb employees. Whatever, I guess.

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r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **hughie1987** 7 mo. ago

They (multiple of them) corralled me, often into a corner with my back against the wall...

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zoinbergs replied to **BlueWitch1313** 7 mo. ago

Yet another person pushing an "appeal to emotion" logical fallacy. The question at hand is not if I *should* show my receipt, the question is if I am LEGALLY OBLIGATED to. And the answer is still a big fat NO (a couple of immature, emotionally compromised appeals court judges notwithstanding).

PS- While it certainly is within their job description to ASK to see my receipt, it is NOT in their official policy handbook to DETAIN for not showing it. So no, the rogue associates who false imprisoned me WERE NOT doing their job...

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zoinbergs replied to **CoherencyGaming** 8 mo. ago

Man, stop getting your facts wrong [you look like a bigot when you do].

FACT: I walked out like every other customer. I simply refused to show my receipt when requested, and was detained when I continued to try to leave directly after that. I. E. I DID LITERALLY THE EXACT OPPOSITE OF YOUR "WAITING TO GET HELD UP" FACTUALLY UNSUBSTANTIATED SCENARIO ENTAILS. Seriously, did you not read my complaint or briefings? What a kangaroo court you are!

Anyways, you're still evading the original question: is it illegal to detain somebody for refusing to show their receipt, or is it not? Because if it IS truly illegal, it doesn't even matter if I "knew ahead of time I might get the chance to sue over it," A CRIME IS A CRIME! Is a crime is a crime. And detaining me was a crime!

It's like with some idiot who gets caught stealing a car. He can't use the excuse "it was entrapment!" in court as a way to get out of it! A bait car is still a regular car, and he is guilty of grand theft auto. That is, it doesn't matter that the cops "knew ahead of time" that somebody might steal their car. THAT'S NOT ENTRAPMENT, no matter how you try to slice it.

Yet here we are, with store employees who were stupid enough to take my bait [but whereby you're evidently saying that I must have "entrapped" them into unsuspectingly detaining me!?]. Hahaha! What a crock of bullshit. They lynched me, got caught, and were sued, fair and square. No entrapment here!

Seriously though, you should probably look up the definition of "victim shaming." It might do you well to learn a little about yourself [and what logical fallacies you're prone to commiting].

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r/tesdcares • Colorado judge says Git Em can be detained for not showing receipt. Log In

zoinbergs replied to **Pieholden** 9 mo. ago

Unfortunately, since it was the judges who got it wrong, and the article simply quoted the judges, the news organization is not required to correct anything.

I have a writ of certiorari due in the Supreme Court next week though...

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r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

9 mo. ago

[removed]

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r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **Sudden-Guru** 9 mo. ago

You don't care about free money? I doubt that very much so...

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r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **Sudden-Guru** 9 mo. ago

So, every customer who walks out of a Walmart, politely declining to show their receipt is, umm, a jackass?

You do realize that judges can be wrong, too, right?

Actually, judges can be right, too...

https://www.coloradopolitics.com/courts/10th-circuit-allows-man-to-sue-officer-for-seizing-personal-items-from-pockets-at-walmart/article_aee720e0-b0db-11ee-acb8-f775812a674d.html

Clearly "guilty until proven innocent" policing is becoming a legitimate problem in this country.

And if people are LITERALLY handing free lawsuits out at the door, I mean, I'm game! It's like finding a $20 bill on the ground. Wouldn't you pick it up? See Montgomery v. Arrick et al, a case I recently settled...

FREE MONEY EVERYBODY!!!!!!

0 Reply Share ...

zoinbergs replied to **Sudden-Guru** 9 mo. ago

Less toddler personality? You think I'm some kid troll?

The real reason I didn't show my receipt is because I am a 20 year constitutional law scholar who sniffed out a little false imprisonment racket, then decided to see how far he could go up the legal chains or as I call it "bowling for chronies."

Obviously if you read the comments, as a whole, this is a very hotly debated issue. I actually went the professional route, through court, to simply make Walmart and their employees put their money where their mouth is.

Funny thing is, anybody who sides with Walmart on this whole receipt issue is technically a joint and several participant in Walmart's (and now their judge's) false imprisonment racket.

So honestly, I really don't feel like you comprehend the gravity of the situation right now. You are absolutely correct that nobody forces me to shop at Walmart. But it's also SUPER totally illegal to detain non-receipt showers, or it isn't.

Wouldn't you want to know the diffinitive answer to that question?

PS- It's not even Walmart's policy to detain non-receipt showers, so I don't really know where you get this whole "just shop elsewhere" argument from. I simply have beef with exit-posted policy-violating receipt-nazis foolishly blocking my path on the way out of a store (any store). But seriously though, free lawsuits anyone? They're basically handing them out the door.

If only they didn't get a bunch of crooked judges to go along with them...

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zoinbergs commented 9 mo. ago

Greetings!

William Montgomery here, the very subject of this little debate.

1. Went shopping. 2) Bought stuff. 3) Didn't use a plastic bag. 4) Asked for my receipt on the way out. 5) Didn't show it. 6) All exits blocked by several employees = detained. 7) Detained until they force exculpated me or got so frustrated during their backasswards investigation that they charged me for shoplifting without actually ascertaining that I did or not! Lazy bigoted employees...

Anyways, the whole point is, I did NOT do anything out of the ordinary to "provoke" / "instigate" / etc. an illegitimate detention to fake some lawsuit scam over. Nor was I ever disrespectful nor an ass. Nor did I act beligerantly to warrant cops getting called. Nor did I "hang around" to bait a detention.

Rather, I simply caught a business, Walmart, red handed, not following their policies or the law (which if you go shopping there long enough, you'd know they are bound to do eventually).

Seriously, all I did was have INTUITION that I *might* be detained if I didn't show my receipt. So I started recording every shopping encounter. Eventually, after awhile, I was detained for simply not showing my receipt. So I then kept recording, and kept not showing. Jesus Christ this is not rocket science here.

Anyways, twisting my intuition into some crazy unsubstantiated idea that I'm a lawsuit scammer is both disturbing and hilarious at the same time. What a cheap shot. Sad thing is though, is that I look like the odd ball out ONLY BECAUSE everybody else (i.e. all those sheeple out there) shows their receipt, skewing the stats. If everybody didn't show their receipt TOMORROW, got detained for not showing it, then sued over the detention, the Courthouse would be DROWNING in legitimate cases, forcing them to acknowledge that my behavior is not unique, or novel, thus not provocative.

Basically, the Court had a brain anurism and couldn't handle that I knew ahead of time enough to catch a real tort and legitimately sue over it.

YET basically everybody knows Walmart occasionally detains for not showing, and could thus catch a bunch of lawsuits of their own if they wanted!

Classic statistics fraud going on here.

Anyways, I'm always glad to expose another bigot for lynching me because they failed to get both sides of the story. Did you even read my complaints and affidavits? They're not what the judge ordered!

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r/lossprevention • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

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zoinbergs replied to **captwillard024** 9 mo. ago

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zoinbergs replied to **SimpleVegetable5715** 9 mo. ago

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zoinbergs replied to **free2131** 9 mo. ago

Right, just like refusing to be searched by police gives them cause to search...

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r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **WitNWhimsy** 9 mo. ago

As a matter of fact, I was. =)

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zoinbergs replied to **Sudden-Guru** 9 mo. ago

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Rather, I simply caught a business, Walmart, red handed, not following their policies or the law (which if you go shopping there long enough, you'd know they are bound to do eventually).

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Basically, the Court had a brain anurism and couldn't handle that I knew ahead of time enough to catch a real tort and legitimately sue over it.

YET basically everybody knows Walmart occasionally detains for not showing, and could thus catch a bunch of lawsuits of their own if they wanted!

Classic statistics fraud going on here...

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zoinbergs replied to **jhnmiller84** 9 mo. ago

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YET basically everybody knows Walmart occasionally detains people for not showing, their receipt, and could thus catch a bunch of free AND LEGITIMATE lawsuits of their own if they really wanted!

Classic statistics fraud going on here...

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zoinbergs replied to **RogueKhajit** 9 mo. ago

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Classic statistics fraud going on here.

Anyways, I'm always glad to expose another bigot for lynching me because they failed to get both sides of the story. Did you even read my complaints and affidavits? They're not what the judge ordered!

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zoinbergs replied to **Huskerlad10** 9 mo. ago

Yeah, left if I showed my receipt. I.e. if I acquiesed to the act of extortion. Problem is, that wee little window in between when the receipt is shown and when the customer is released. THAT'S a false imprisonment.

Just ask yourself, do you REALLY think Walmart is gonna let you go mid-receipt showing? Haha...

1 Reply Share ...

r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **The_Boognish_Cometh** 9 mo. ago

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zoinbergs commented 9 mo. ago

Except that "showing a receipt" is not a means to "escape" a detention that has already begun to occur. It is only a means to be "released."

The Court basically committed definition fraud...

1 Reply Share ...

---

r/walmart • Walmart not liable for detaining customer who refused to show receipts, appeals court agrees

zoinbergs replied to **lynx3762** 9 mo. ago

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zoinbergs replied to **Head_Razzmatazz7174** 9 mo. ago

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zoinbergs replied to **JohnMayerismydad** 9 mo. ago

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zoinbergs replied to **OstrichSalt5468** 9 mo. ago

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The problem with your assessment of my claims is that you flat out got it wrong, AND you didn't bother to actually read my complaint and/or the judge's order to ascertain precisely what the facts were. And the facts were: that I did NOT do anything out of the ordinary to satisfy the elements of shopkeeper's privilege (probable cause). I went shopping like any other customer, just refusing to show my receipt upon request! That's the whole point of a "sting" -- to be indistinguishable from any other customer (think bait car, or secret shopper). The only difference is that I had intuition enough to pre-record myself going shopping, IN CASE I got detained. That is, what the Court refuses to acknowledge, is that I delete HUNDREDS of recordings of otherwise mundane shopping encounters, but keep (and sue with) just a handful of eventful ones. It disturbs (and infuriates) me that a simple intuition that I might be detained has now been twisted into some sort of "deliberate" / "intentional" / i.e. "lawsuit scamming" behavior purportedly not worthy of upholding rights around.

Seriously, all I did was go shopping, not use a plastic bag, and not show my receipt when requested to do so. That's it! Like, if enough other people stopped being sheeple and did the same thing, the Court would be forced to acknowledge that my behavior is neither unique nor "provocative" in nature to actually begin lawfully detaining over. But since nobody else out there refuses to show their receipt, let alone sue over being subsequently detained if they are so, I look like the odd ball out who must be lawsuit scamming. Dispicable.

PS- Cops can't "bootstrap" refusals to consent to being searched as the new lawful justification to begin searching. Thus, shopkeepers can't "bootstrap" refusals to show receipts upon request as the new lawful justification to begin obtain them forcefully (i.e. detaining until they are shown). This is the crux of my whole legal argument, that for some crazy stupid reason unbeknownst to me this society has somehow forgotten.

1 Reply Share •••

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zoinbergs replied to **Pieholden** 9 mo. ago

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r/doordash_drivers • So get this crap now happening in my area(maybe in yours too??)

Log In

zoinbergs commented 2 yr. ago

Sad to see so much complacency in this thread.

Here's what I do: I tell the merchant it's a violation of my contract to inform DD that I've picked up an order before actually having picked it up. If the merchant still refuses to hand the order over, I call DD support in front of them and explain that yet another merchant is circumventing their confirmation system. This then prompts DD to put me on hold while they call the merchant themselves to ask why they're not handing the order over. If the merchant STILL refuses to hand the order over, DD just tells me that they'll cancel the order, inform the customer of the situation, and give me half pay for my troubles. I then tell the merchant that because THEY technically canceled their own order (by not handing it over) it will not be picked up by the next driver, will sit there and get cold, and they will not be compensated by DD for it. Sometimes I say all this before calling DD, which more often then not gets the merchant to hand the order over. Otherwise, only a select few merchants have had to learn "the hard way" that what they're doing is unacceptable.

Sorry y'all, but I ain't no bitch who takes orders from merchants that invent unauthorized, unofficial, unapproved, employee-style policies for me. I don't work for them. I don't even work for DD. I'm an independent contractor, and unless my contract tells me to press pickup confirmED before I've actually confirmed pickup, I won't do it.

Besides, it's rather illogical to be doing. DD won't let you hit arrived at customer before having arrived at customer, etc. etc. etc.

3 Share ...

r/doordash_drivers • Right or left?

zoinbergs commented 3 yr. ago

God damn timid yuppies and their culture of fear! I can't stand when people play the "safety" card. Whatever. Oh well. At least we're independent contractors and can blacklist whatever restaurants we want...

2 Share ...

r/doordash_drivers • Right or left?

zoinbergs commented 3 yr. ago

I agree. Unfortunately most restaurants treat dashers like they're the bottom of the barrel. What they don't realize is that most customers are repeat customers, and at one point in time did sit down and eat at a restaurant in person. So ultimately the restaurants are screwing themselves.

1 Share ...

r/doordash_drivers • Right or left? Log In

zoinbergs commented 3 yr. ago

Actually, to my knowledge, that's precisely why they're used. So that dashers, at night, don't have to use the drive through. Here in Denver, at a few locations, I can use their doorbell all night long.

Ultimately, I suggest anybody who has the chance to inform any local McDonald's to start utilizing them if they're not already!

1 Share ...

r/doordash_drivers • Right or left?

zoinbergs commented 3 yr. ago

Some Mcdonald's have a doorbell for delivery drivers. =)

3 Share ...

r/doordash_drivers • Not worth

zoinbergs commented 3 yr. ago

Just to average out the comments... dashing here in Denver is FREAKING AWESOME pretty much all the time. Indeed, I average about $26 an hour, and have been consistently doing so for the last six months. So, moral of the story is, YMMV.

1 Share ...

EXHIBIT B

DATE FILED
February 10, 2025 8:12 PM
FILING ID: CFDD2497717A8
CASE NUMBER: 2024CV132

CASE NO. 2023CV00226

WILLIAM MONTGOMERY

V.

BEST BUY, L.P.

DEPOSITION OF:

WILLIAM MONTGOMERY

DATE:

November 05, 2024

PIKE REPORTING COMPANY
YOUR PATH THROUGH LITIGATION
(855) 693-3767 | (720) 738-1300
schedule@yournextdepo.com
www.pikereporting.com

Buyer Behavior. You know, it -- it's a great --

Q. You want to say that slowly so the court reporter can get it?

A. Yeah. Sorry. Yeah. Big-Box Bullies Bust Buyer -- benign Buyer Behavior. This isn't even -- this isn't even new stuff. You know, there's even news articles out there of cops that have caught onto this and they, you know, recording themselves on their way out, politely declining to show receipt, and be detained for 30 minutes in that case, you know.

So finally, ironically thanks to you guys, for using the word entrapment, finally. That's been the -- the secret word that no one's wanted to explain here. That's what all my previous lawsuits have been. You know, everyone has been alluding to, that I entrapped these people by doing a certain thing. But finally, I -- you know, since you guys used the word entrapment, that gave me a chance to go do a bunch of research on that subject. And I found out that, yes, entrapment is not meant to mean that somebody who has -- or somebody who merely affords another person the opportunity to commit a crime is not entrapment.

And so, you know, I'm -- I'm just like a bait car, which I've -- you've seen my arguments there. You know, people just park their cars, whether they're cops

or not, outside. And if they get stolen, it's not a defense to a grand larceny of like, hey man, this wasn't a real car. You know, that was a bait car, cop came forward and said that was bait car. And it's like, no, no, sorry, you -- you're getting convicted of grand larceny, you know.

But yeah, that's the equivalent. I see people -- Walmart coming forward and pointing the finger at me, like, see, see, he's a lawsuit scammer. And it's like, that's not actually a defense. That -- that doesn't replace your need to, you know, collect shopkeeper's privilege, like I said.

Q. So just to be clear, you would analogize your actions to a bait car in a police sting?

A. Yes and no, because I don't like that people even abuse that concept that, you know, I'm going out of my way, like a cop might, to set up a bait car or a sting. But the whole point of a sting operation is to be not different than anybody else. It's just like another car on the road, like anybody else. Obviously, if the person knew was a bait car, they wouldn't steal it. And so, you know, I'm just like any other person who parks their car on the road. And these days with, you know, GPS trackers and stuff, I have one in my car for, you know, when I deliver, you know, any car --

every car -- every car is a bait car on the road. So, can -- can you really say that people are going out of their way to try and, you know, entrap people into stealing their cars? No, they're just parking their car on the -- on the road.

Q. Did you have a GPS tracker on your car around the time of the incident, that's the subject of this lawsuit?

A. I don't -- I think so. Yeah. I -- I -- I recall. I mean -- I -- I mean, I started delivering for DoorDash and Uber Eats in 2021. And so, you know, I -- I try and keep it charged up. You know, it's a battery-operated one. But it's through a company called TrackmateGPS. I don't know how long they keep records for. But -- but yeah, I mean, everyone should have a GPS tracker in their car, personally.

Q. So, you're -- you're not sure if the -- the GPS data from the date of the incident is still -- still available?

A. Yeah -- no, no. They -- they -- they only keep records for, like, three months or something like that.

Q. Okay. And you didn't do anything to try -- try to preserve your data from that day?

A. I mean, honestly, I -- I didn't think that

lemming, and they basically choose to assuage the perceived evil, as one case says it, and they just show the receipt because they think that's what helps keep prices down. And it's just an emotional argument, you know. And -- but this is a court of law over here.

And so, I go shopping and I leave. That's my sting? Like, come on people. Are -- are you -- pardon my French, but are you fucking kidding me? You know. And because I don't show -- because I refuse to cooperate with consensual requests -- they're all consensual, because like I said, the alternative is that it's compulsory, and it's not, this isn't a -- this isn't a Sam's Club or Costco, you know, therefore it's -- it's consensual, I'm allowed to decline, and have it not be used against me.

And -- and cops have ruled, you know, on this in my favor. Or, you know, they've done the same sting as me. Attorneys have chimed in on this. It's -- it's -- it's just so funny that I just -- it's almost entertaining. But it's still -- at the end of the day, truly disturbs me, like, makes me want to leave this country, that people would -- would twist my own intuition against me. Like -- like, it's a bad thing. Like, I -- not that I care. But like, you know, people should commend me for trying to uphold this balance

between due process and crime control.

You know, it's like -- it's almost like somebody who is getting after a cop, like his boss, for setting up a wildly successful bait car, that happens to be in a really bad neighborhood. And he's like inundated with these cases now. And -- and his boss is like, come on, man, dude, like, this is ridiculous. And -- and it's like, dude, the guy should be commended. He's catching crime.

If there weren't people out there, willing to steal a car, he'd be out of a job. And if there weren't people out there willing to bootstrap, merely refusing to show a receipt, or answer questions, or be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this. Sorry.

Q. Do you have any other stores that --

A. Long answer to a short question.

Q. I'm sorry. Do you have any other stores that you feel like have a big problem with this?

A. That's a good question. I've seen other stores do it, yeah. Like Micro Center stopped me once. Mostly electronic stores because of the high value items. But, you know, I've seen some department stores.

Are they intellectually dishonest? Are they, you know, shopping for regular reasons? No. They're - - they're technically being paid to purposely shop, but it's just an audit. It's a secret shopping. It's -- you know, technically certain stores pay customers themselves to shop at those stores. I should -- I should ask Best Buy corporate for a sponsorship to be one of their secret shoppers. They might even pay me to do what I'm doing.

Seriously, you know, to frame me as some lawsuit scammer right next to everybody else who -- everybody's a secret shopper technically. You know, I should say this. This is really, really, really important. But knowing ahead of time that you might be torted does not make you lose your rights if you decide to go shopping anyways. That's like victim shaming basically. There was a very important quote I found from a case law that said -- oh, whatever. Horribly misquoting it, but something to the effect of knowing ahead of time that something might happen and not preventing it from happening is not entrapment.

So yeah, it really comes down to at the end of the day what is entrapment and what is not. And if what am I -- what I am doing is truly speaking entrapment, then that's a whole other story. But so far, every single news article I've ever come across, every single

Q. Okay.

A. I mean, I don't have a perfect memory. So you know, I was answering the way I was answering, out of an abundance of caution, and also, I didn't really remember as much, when they were first asked. So the more I reviewed my video of the footage of the incident, you know, and talked to my brother, you know, kind of remembered a little bit more about that particular day, you know, which is what a deposition would do. You know, like, today, right now, I've -- I've got no qualms about answering certain questions, if -- if I -- if I can remember them, as well as I can.

Q. So did your brother go with you to every single Best Buy location that was in that 29-page list of receipts?

A. Yes. Yeah. For the most part, I -- I -- not for the most part. Yes. I -- I can completely vouch that my brother was with me the entire day, that day.

Q. Was he likewise, you know, making a lot of purchases that he intended to return?

A. I -- I have no idea. I can't speak for him.

Q. So --

A. Like I said, though, I never admitted to intending on returning anything. I only decided to return a bunch of stuff, once I was a little off-put

that Best Buy treating me a certain way. So I -- I don't like your wording there.

Q. Sure. So -- and that's why you proceeded to make purchases on the 26th, the 27th and 28th? Dozens of purchases at Best Buy's locations on the 26th, 27th and 28th of November, 2022?

A. Yeah. There were still all sorts of sales going on at the time. And I had -- you know, I hadn't thought about my feelings yet of how I was -- you know, how I felt about this particular situation here.

Q. Those deals were just too good to turn down, even if it went against your deeply held convictions.

A. Yeah. I, kind of, know what you're doing and I -- I don't buy it, you know. No pun intended. Even if I did intend on returning them, where is that against the law? Where is that against Best Buy's receipt or return policy?

Q. And you're saying that as purely a hypothetical, correct?

A. Yeah. I mean, I don't know. Like, who fucking cares? I bought a bunch of stuff, and whether or not I wanted to return it at any given point in time is 100 percent irrelevant to any -- any claim, or defense, or anything like that.

Even if I absolutely, 100 percent had zero

intention of keeping anything I bought, and if I bought all of it with the sole purpose of trying to catch you guys, which I just know you're frothing at the mouth for some admission on that, it still wouldn't change a single goddamn thing.

I have every single right to go buy stuff, to secret shop people, to know my rights, to catch bigots, and to sue them for falsely imprisoning me. So none of it is relevant. So I'm going to answer every single one of your questions with that slight tinge of, who fucking cares?

Q. Okay. So do you think that I have the right to ask you, at this deposition, what your purpose for being at Best Buy was on that day?

A. Sure. You can ask. Absolutely.

Q. Do you think it's your right to withhold your true purpose for being at Best Buy?

A. You know what's very interesting about that? My brother and I have discussed this in great length over the last couple of years. And what we've finally discovered is a good way to put it, which is this; people intellectually dishonestly think that there is some sort of true dichotomy that exists out there, when it's really a false dichotomy, that people are allowed to have -- or that people are not allowed to have

multiple intentions.

So, i.e., I'm either disingenuously only buying things at that store to provoke suspicions, or I'm just some innocent customer that just wants to buy stuff. No. You -- you -- I'm allowed to be both. I'm allowed to buy a bunch of stuff and keep it if I wanted to keep it, buy it with the intention of possibly seeing if there's, you know, someone that's going to detain me over them while also just enjoying my -- my day.

You know, I'm allowed to go and buy stuff, you know, and have dual intentions. It's -- it's so weird that people would put me in this category of, like, one or the other, you know? Like, the way you asked that. I could do both. I could literally want to buy a bunch of stuff, want to get deals. A lot of times in the past I've bought stuff to resell. I've bought stuff heavily on sale during Black Fridays so that I could turn around and resell them, you know?

That's three intentions now, you know? And if -- if when I'm shopping, I just so happen to realize that those situations may also create false, unreasonable provocations that I might be detained, then so be it. I'm allowed to do that, too. Like, I can't stand when people are, like, we caught you as a lawsuit scammer because you weren't intending to buy any of

those items that day.

Yeah. Of course I was intending on buying all those items that day. Like, I'm allowed to do whatever I want with my money. It's my money, and it was a sale, and I'm allowed to buy stuff, and, you know -- like, a lot of times just keep whatever I want to keep, or not keep whatever I want to keep.

Like, sorry -- these ideas of -- of, you know, false dichotomy is just silly. I'm allowed to have both intentions. I'm allowed to go shopping with the intention of seeing if somebody might be stupid enough to falsely imprison me, and I'm also allowed to go shopping and see great deals, and change my mind after the fact, if I find out that that's just not a good enough deal. Like, I -- I -- I just don't see where you're going to be able to extrapolate a goddamn bonafide confession out of me.

Oh, I am a lawsuit scammer. Oh, see, you got it. You got it on taped confession. Go show that to the jury now. Like, come on. I don't even know -- no offense, but I don't think that your career as an attorney is off to a great start. Usually, attorneys are very -- very -- supposed to be very intellectually honest. They have this thing called The Bar Association Rules of Professional Conduct, and I've already caught

District Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED February 10, 2020 2:58:12 PM FILING ID: CFDD2497717A0 CASE NUMBER: 2024CV132
Plaintiff(s): WILLIAM MONTGOMERY v. Defendant(s): WAL-MART STORES, INC., JOHN DOE. 7455 W Colfax Ave Lakewood, CO 80214	DATE FILED February 10, 2020 2:58:12 PM FILING ID: CFDD2497717A0 CASE NUMBER: 2020CV76 ▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 305 W Magnolia St PMB 221 Fort Collins, CO 80521 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20CV76 Division 2 Courtroom 4B

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WAL-MART STORES, INC., JOHN DOE, defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 7455 W Colfax Ave, City of Lakewood, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

On March 31, 2019, JOHN DOE (a presently unidentified employee employed by WAL-MART STORES, INC., stole three bags of ice (total purchase price of $5.17 which includes tax) from me while I attempted to leave his store after purchasing them. Immediately prior to stealing my items, he cornered me, blocked my path, and wouldn't let me leave on my way out.

The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

305 W Magnolia St PMB 221, Fort Collins, CO 80521
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED: January 19, 2021 2:55 PM CASE NUMBER: 2020CV76
William Montgomery, Plaintiff, **v.** **Wal-Mart Stores, Inc., and John Doe,** Defendants.	▲COURT USE ONLY▲ **Case Number:** 20CV76 **Division:** 2 **Courtroom:** 4B

ORDER: MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Defendant Wall Mart Stores, Inc.'s September 29, 2020 Motion for Summary Judgment. On October 19, 2020, Plaintiff William Montgomery filed *pro se* his Response. On October 22, 2019, Walmart filed its Reply. The Court dispenses with a hearing. Having considered the relevant pleadings, case file, and applicable law, the Court **ORDERS** the following.

I. BACKGROUND

This case arises from an argument over $5.17 worth of melting ice purchased at a Wal-Mart Store. On March 31, 2020, Plaintiff filed *pro se* a Complaint w/ Jury Demand. The Complaint alleges that a Wal-Mart associate "stole three bags of ice" purchased for $5.17 from Plaintiff while Plaintiff "attempted to leave [Defendant's] store." Compl. ¶ 4. The Complaint further alleges that "prior to stealing my items, [the associate] cornered me, blocked my path, and wouldn't let me leave on my way out." *Id.*

On the day of the incident Plaintiff audio recorded himself shopping in the Wal-Mart store in Lakewood, Colorado. Ex. A. According to the audio, Plaintiff took two bags of ice to a register, where he purchased the ice. Ex. A at 55:30-56:00.[1] At the register, Plaintiff also paid for a third bag of ice, which he could pick up as he exited the store. *Id.* Plaintiff left the register with his two bags of ice and two receipts. *Id.* at 56:00-57:00

While leaving the store, Plaintiff picked up his third bag of ice and headed towards the exit. *Id.* at 59:30-1:03:00. Before getting there, an associate approached him. *Id.* The associate asked to see receipts for the $5.17 worth of ice, but Plaintiff refused. *Id.* A second associate joined, and Plaintiff put down the ice as the three argued about Plaintiff's refusals to show his receipts. *Id.*[2] Soon after, the second associate took away the ice. *Id.*

[1] Citations to the audio exhibits are approximated to within 30 seconds.

[2] Plaintiff extensively disputes when and how the second associate observed Plaintiff with the bags of ice. Resp. pp.2-5, ¶¶ 8, 10.

Next, Plaintiff was asked to leave, and Plaintiff stepped outside the doors of the store while continuing the argument with a store manager. *Id.* at 1:06:00-1:07:30; Ex. B at 6:00-8:00. The manager repeatedly asked to see the receipts, and Plaintiff continually refused. *Id.* Ultimately, Plaintiff left. *Id.* Later that day, he called the Lakewood police to report the incident. Ex. B.

Now, Defendant argues that Plaintiff's Complaint makes a sole claim for civil theft. Mot. 2, 5. For this claim, Defendant asserts that there was no requisite intent to show theft of Plaintiff's ice. Mot. 6. Allegedly, the second associate did not believe Plaintiff owned the ice when it was taken. Mot. 6-8. Defendant also alleges that Plaintiff admits the associate lacked the necessary intent for theft. Reply 4-5.

Plaintiff responds that there is a second claim of false imprisonment for the associates allegedly blocking Plaintiff's exit from the store. Resp. 6.[3] As such, Plaintiff argues that Defendant lacked the "shopkeeper's privilege" to lawfully detain Plaintiff. Resp. 7-10. And Plaintiff asserts that Defendant is attempting to shift the burden and obscure the facts for what is allegedly a "classic example of theft." Resp. 10-11.

II. LEGAL STANDARD

Summary judgment is appropriate when, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." C.R.C.P. 56(c); *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). A material fact is one that will affect the outcome of the case. *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party. *Martini*, 42 P.3d at 632.

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. *Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987). If the moving party meets its burden, the nonmoving party must demonstrate by relevant and specific facts that a real controversy exists. *Knittle v. Miller*, 709 P.2d 32, 35 (Colo. App. 1985). The nonmoving party "must by affidavit or otherwise set forth specific facts showing there is a genuine issue for trial." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084-85 (Colo. App. 1991). Mere conclusory statements based upon unsubstantiated beliefs are insufficient to raise a genuine factual issue. *See Ellerman v. Kite*, 625 P.2d 1006, 1008 (Colo. 1981); *see also Ginter v. Palmer & Co.*, 585 P.2d 583, 585 (Colo. 1978). If the nonmoving party fails to establish a genuine issue for trial, then summary judgment may be entered in favor of the moving party if the moving party has met its ultimate burden of persuasion. *Sanderson v. Am. Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010).

[3] The Response has no page numbers. Cited pages numbers are based on Court's printed pdf. copy.

III. ANALYSIS

A. Claims for Relief

As an initial matter, the Court addresses Defendant's assertion that Plaintiff improperly raised the claim of false imprisonment for the first time in his Response. Reply 2-3.

A complaint must plead sufficient facts to state a plausible claim for relief. C.R.C.P. 8; *see Warne v. Hall*, 373 P.3d 588, 589-90 and 595 (Colo. 2016) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A properly pled complaint provides "a short and plain statement of the claim showing that the pleader is entitled to relief." C.R.C.P. 8(a)(2). Rule 8 demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Complaint must provide the defendant reasonable notice of the matter presented. *Lorenzen v. Pinnacol Assurance*, 457 P.3d 100, 111 (Colo. App. 2019). But the notice-pleading requirement is a liberal policy. *Camp Bird Colorado, Inc. v. Bd. of Cty. Comm'rs of Cty. of Ouray*, 215 P.3d 1277, 1282 (Colo. App. 2009). "[W]hile the complaint need not list all examples of defendant's misconduct, it must at least give the defendant sufficient notice of the basis of the claim so that the defendant can use the discovery rules to prevent any surprise at trial." *Lorenzen*, 457 P.3d at 111.

Here, the Complaint states that Defendant "stole three bags of ice" from Plaintiff when Plaintiff "attempted to leave [Defendant's] store." Compl. ¶ 4. From that, Defendant reasonably construed that Plaintiff's Complaint presented a claim of theft. Mot. 2; Reply 2-3. The Complaint also states that Defendant "cornered me, blocked my path, and wouldn't let me leave." Compl. ¶ 4. By comparison, it is reasonable to construe that Plaintiff's Complaint also presented a claim of false imprisonment. Plaintiff is not required to recite a formulaic title of "false imprisonment" when the statements "cornered me, blocked my path, and wouldn't let me leave" provide notice of the basis for a claim which could guide discovery. *Iqbal*, 556 U.S. at 678; *Lorenzen*, 457 P.3d at 111.

Defendant argues that Plaintiff's interrogatories[4] do not indicate a claim for false imprisonment because the *pro se* Plaintiff merely listed "Loss of Liberty" under "Categories of Damages" to suggest false imprisonment. Reply 3. However, Defendant did construe the theft claim from the similar listing of "Theft of goods" under the same "Categories of Damages." Reply 3. Defendant does not explain why notice existed for one claim but not the other when they were both presented in identical manners. Furthermore, there seems little risk of surprise at trial because Plaintiff mentions false imprisonment numerous times in his audio recordings, which were exhibits submitted and cited to by Defendant. Ex. A; Ex. B; *Lorenzen*, 457 P.3d at 111.

Therefore, the Court finds that the Complaint contains two claims of which Defendant had reasonable notice. The false imprisonment claim was thus sufficiently pled and not raised for the first time in Plaintiff's Response.

[4] The Court could not review the interrogatories because Defendant did not file them with its Motion.

Although Defendant's briefs sometimes refer to a "sole" claim, Defendant's Motion ultimately requests for the Court enter judgement in Defendant's favor, which the Court interprets as requesting the Court grant judgment on all claims. The Court will review both the claim of false imprisonment and the claim of theft for genuine issues. The Court does so in consideration that the facts for both claims substantially overlap and because Plaintiff had the opportunity to argue for the false imprisonment claim in his Response.

B. False Imprisonment

Although Plaintiff asserts that there are disputed facts, the Court finds there is no genuine issue of material fact over the claim of false imprisonment.

"[T]o confine one intentionally without lawful privilege and against one's consent within a limited area for any appreciable time, however short, constitutes the tort of false imprisonment." *Blackman for Blackman v. Rifkin*, 759 P.2d 54, 58 (Colo. App. 1988); *see Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983) (citing *Restatement (Second) of Torts* § 35 (1965)). The *Second Restatement of Torts* states that confinement includes the following:

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

Restatement (Second) of Torts § 36 (1965) (Oct. 2020 Update); *see also* Restatement (Third) of Torts: Inten. Torts to Persons § 8 TD (2018) ("An actor confines another within the meaning of § 7(b) if: (a) the actor employs physical barriers that preclude, or appear to preclude, the other from exiting the area of confinement, and the other is unaware of a readily available and safe means of exit....").

Here, Plaintiff must prove he was confined in order to prove false imprisonment. To show he was confined, he must show the confinement did not contain a reasonable means of escape known by Plaintiff. *Id.* Stipulating *arguendo* that Plaintiff was prevented from leaving, Plaintiff could have left the store if he showed the receipts according to the following undisputed facts:

- The first associate asked Plaintiff to see a receipt (Ex. A at 59:30 to 1:00:00);
- The second associate told Plaintiff he could not let Plaintiff leave *without* showing a receipt (Ex. A at 1:01:00-1:04:00);
- The second associate stated that Plaintiff is not imprisoned (Ex. A at; 1:02:30 to 1:03:00);

- Plaintiff stated that he was being prevented from leaving *unless* he showed a receipt (Ex. B at 35:00-35:30); and
- Plaintiff stated in his brief that Defendants "afforded Plaintiff every chance to go home with his merchandise" (Resp. 10).

Even if the Court makes all inferences in Plaintiff's favor—that the associates acted intentionally, that Defendant lacked shopkeepers' privilege, that the associates blocked Plaintiff's way, etc.—there is no dispute that Plaintiff could have left the store if he showed his receipts.

As such, the Court examines whether there is a dispute as to whether Plaintiff could knowingly and reasonably produce the receipts. Plaintiff argues he could not leave the store without "substantial personal difficulty" under the circumstances. Resp. 9. Whether Plaintiff *subjectively* wanted to show his receipts is not relevant to the issue of whether showing a receipt is an *objectively* reasonable action to escape imprisonment. The facts show that:

- Plaintiff received the receipts at the cash register (Ex. A at 55:00-57:00);
- Plaintiff admitted to having had the receipts (Ex. B 17:30 to 18:30);
- After the incident, Plaintiff quickly retrieved the receipts once he decided to share them with Lakewood Police (Ex. B 19:00-20:00);
- Plaintiff told the associates he purchased the ice at the nearby register, implying he had the receipts Ex. A 59:00 to 1:00:00); and
- Plaintiff told the Lakewood Police he simply does not like showing receipts (Ex. B at 2:00 to 2:30).

Plaintiff chose not to show the receipts, although he received the receipts, had the receipts during the incident, and could have easily produce them. Therefore, there is no dispute that Plaintiff knew of a reasonable means to leave the store by showing the receipts, and so, he was not completely confined.

Plaintiff has provided no evidence to demonstrate there is a dispute, as Plaintiff merely provides allegations to refute the Motion. Thus, there is no dispute of material fact that Plaintiff was not confined. As a matter of law, Plaintiff cannot prove a necessary element to show he was falsely imprisoned. C.R.C.P. 56(c)

The Court also notes *arguendo*, under the *Restatement*, Plaintiff's confinement could not result from Defendant merely preventing Plaintiff from going towards the exit. *Restatement (Second) of Torts* § 36 (1965). The Court finds there is no dispute that Plaintiff was blocked as he was leaving the store. *See* Compl. ¶ 4; Mot. 3. Plaintiff provides mere allegations that he was cornered or that Defendant did more than block his path. Compl. ¶ 4. Thus, Plaintiff fails to prove confinement as a matter of law pursuant to the third element of the *Restatement (Second) of Torts* § 36 (1965).

C. Civil Theft

The Court finds that there is no genuine issue that the second associate lacked the necessary intent to deprive Plaintiff of the ice.

Civil theft requires "that the defendant knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception and acts intentionally or knowingly in ways that deprive the other person of the property permanently." *Scott v. Scott*, 428 P.3d 626, 633 (Colo. App. 2018) (citations omitted). Civil theft requires the same specific intent to permanently deprive as criminal theft. *Id.* "It is the intent at the time of taking to permanently deprive that is the essential element of theft." *People v. Burke*, 549 P.2d 419, 421 (Colo. App. 1976).

Here, while making all inferences of disputed facts in Plaintiff's favor, there is no dispute that the associate did not intended to permanently deprive Plaintiff. At the time of the taking, the associate undisputedly thought Plaintiff did not own the ice because Plaintiff would not show his proof of purchase. This is demonstrated by the associate, in accompaniment with his college, repeatedly requesting to see Plaintiff's receipt before taking the ice. *See supra* p. 4. Furthermore, Plaintiff admits as much in his pleadings, as he states:

- "Defendants simply asked Plaintiff to see his receipt, *concluded that he stole items from them*, reclaimed what they believed was theirs, and went about their business after escorting Plaintiff out of their store" (Resp. 10) (emphasis added); and
- "Defendant's had every intention of permanently keeping what *they thought was 'their' merchandise*, so long as Plaintiff continued to not give into their demands" (Resp. 10) (emphasis added).

Therefore, it is undisputed that the second associate did not intend to permanently deprive Plaintiff of the ice.

Even when making all inferences over the disputed facts in Plaintiff's favor, the exhibits show the associate took the ice after Plaintiff refused to show the receipts and upon the belief that Plaintiff had not purchased them. Plaintiff fails to raise a genuine issue because he responds with mere allegations and conclusory statements, and these statements support, rather than deny, that the associate assumed Plaintiff stole the ice. *Ellerman v. Kite*, 625 P.2d 1006, 1008 (Colo. 1981).

Therefore, there is no dispute of material fact that the second associate lacked the specific intent to permanently deprive Plaintiff at the time of taking. As a matter of law, Plaintiff cannot prove a necessary element to support his claim for theft. C.R.C.P. 56(c)

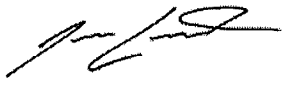
IV. CONCLUSION

For these reasons, the Court rules there are no genuine issues of material fact to Plaintiff's claim of false imprisonment and claim of theft. Therefore, the Court **GRANTS** Defendant's Motion for Summary Judgment. Judgement is entered for the Defendant Wal-Mart Stores, Inc.

The Court awards Defendant its costs in defending this action.

SO ORDERED in Golden, Colorado on January 19, 2021.

BY THE COURT:



Jason D. Carrithers
District Court Judge

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	FILED IN ADAMS COUNTY COMBINED COURT DATE FILED: September 3, 2020 CASE NUMBER: 2020CV67 2020 ▲ COURT USE ONLY ▲
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., XAVION CAWINS, FELIX DOE, SHANE DOE, JOSEPH DOE, NEIL DOE.** 200 W 136TH AVE WESTMINSTER, CO 80234	
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20CV067 Division Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., XAVION CAWINS, FELIX DOE, SHANE DOE, JOSEPH DOE, NEIL DOE., defendant(s), is (are) resident(s) of Adams County, with a post office address of 200 W 136th Ave, City of Westminster, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 6, 2019**, while attempting to leave a Walmart after shopping, **XAVION, FELIX, SHANE, JOSEPH,** and **NEIL** – all employees of **WALMART INC.** – detained me, assaulted me, took my items from me, slandered me in front of others, and reported to the police that I had stolen from them. Once the police arrived, I was further detained, searched, and arrested by them for shoplifting. However I was 100% innocent.

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/09/03
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

District Court, Adams County, Colorado 1100 Judicial Center Drive Brighton, Colorado 80601	DATE FILED: August 19, 2022 4:38 PM CASE NUMBER: 2020CV67
Plaintiff: William Montgomery v Defendant: Walmart Inc.	**COURT USE ONLY** Case Number: 2020CV67 Division: W

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on competing motions for summary judgment. Defendant filed its Motion for Summary Judgment on May 2, 2022. Plaintiff filed his Response on May 23. Defendant filed its Reply and Notice of Supplemental Authority on May 31. Also on May 23, Plaintiff filed his own Cross Motion for Summary Judgment. Defendant filed its Response on June 13 and Plaintiff filed his Reply on July 5.

Having reviewed the briefs, relevant portions of the case file, and the applicable legal authority, the Court finds and orders as follows.

I. BACKGROUND

This dispute arises from an incident at a Walmart store located at 200 W 136th Ave. in Westminster, Colorado. On the evening of September 6, 2019, Plaintiff entered the store and purchased some items.[1] He declined to have the items bagged, so they were loose in the shopping cart he was using. Upon exiting, he was stopped by one or more Walmart employees/associates who requested to see his receipt. Plaintiff refused multiple requests. Several associates stated they were concerned he was shoplifting. Plaintiff was advised that he could leave if he gave the products back or showed his receipt. When Plaintiff refused to produce a receipt or leave the items, a Walmart Asset Protection associate called the

[1] Plaintiff had entered the store wearing a recording device in anticipation of a dispute regarding the request for a receipt. The record reflects his actions on September 6, 2019 are consistent with a pattern of similar conduct at Walmart stores throughout the metro area, which result in Plaintiff filing similar lawsuits.

Westminster Police Department. Once the officers arrived, they detained the Plaintiff. Upon completion of their investigation, Plaintiff was released without charges.

Plaintiff filed the Complaint on September 3, 2020, alleging that the Walmart employees wrongfully detained or falsely imprisoned him, assaulted him, and slandered him. Defendant's Motion seeks dismissal of Plaintiff's claims on grounds there are no material facts to support a finding that Plaintiff's freedom of movement was ever restricted, that there was an act of assault, that he suffered any harm to his reputation, or that he suffered actual or special damages. Defendant further contends its actions are protected under the shopkeeper's privilege. Plaintiff asserts that he paid for the items and should be allowed to leave the store without showing a receipt, and contends that the fact he had a receipt is irrelevant. He contends evidence that Defendant's associates blocked his path creates a dispute of fact preventing entry of summary judgment on false imprisonment. He also contends disputes of fact preclude summary judgment on assault and defamation claims. Plaintiff further states Defendant had no reasonable grounds upon which to rely on the shopkeeper's privilege.

Plaintiff's Cross-Motion includes an extensive list of purported undisputed facts, and requests judgment in his favor on all claims. Defendant denies many of the facts as set forth by Plaintiff, and continues to assert that the undisputed material facts support their own Motion (including that Plaintiff was asked to show a receipt upon exiting the store and refused to do so set into motion his temporary detention, questioning, and release).

II. LEGAL AUTHORITY

A. Summary Judgment

The purpose of summary judgment is "to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992). "Summary judgment is appropriate when the pleadings and supporting documents clearly demonstrate that no issues of material fact exist...." *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). "A material fact is one that will affect the outcome of the case." *Western*

Innovations, Inc. v. Sonitrol, Corp., 187 P.3d 1155, 1158 (Colo. Ct. App. 2008). "[A] genuine issue of material fact cannot be raised simply by allegations of pleadings or argument of counsel." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084 (Colo. Ct. App. 1991). "In addition to concerning a material fact, the issue in dispute must be 'genuine.' To avoid summary judgment, the evidence presented in opposition to such a motion must therefore be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party." *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007).

"The moving party bears the initial responsibility of informing the court of the basis for the motion and identifying those portions of the record and of the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." *Quist v. Specialties Supply Co., Inc.*, 12 P.3d 863, 868 (Colo. Ct. App. 2000). "[O]nce this initial burden of production is met, the burden shifts to the opposing party to demonstrate that there exists a triable issue of fact." *City of Aurora v. ACJ Partnership*, 209 P.3d 1076, 1082 (Colo. 2009). "The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party." *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

Summary judgment has been described as a "drastic remedy" to be granted only "when it is clear that the applicable legal standards have been met." *People ex rel. Reign v. Meagher*, 465 P.3d 554, 559 (Colo. 2020).

Affidavits in support of a summary judgment motion "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." C.R.C.P. 56(e). The supporting affidavit must contain evidentiary material that would be admissible as part of the affiant's testimony if the affiant was in court and testifying on the witness stand. *USA Leasing, Inc., L.L.C. v. Montelongo*, 25 P.3d 1277, 1278 (Colo. App. 2001).

B. False Imprisonment/False Arrest

To prove false imprisonment or false arrest, a plaintiff must prove by a preponderance of the evidence the following elements:

1. The defendant intended to restrict the plaintiff's freedom of movement;
2. The defendant, directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short; and
3. The plaintiff was aware their freedom of movement was restricted

See CJI-Civ. 21:1; *See also* Restatement (Second) of Torts § 35 (1965).

"Restriction of freedom of movement" is when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." *See* CJI-Civ. 21:2; *See also* Restatement (Second) of Torts § 36 (1965).

"[I]mprisonment is … a total restraint of the liberty of the person, for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him." Restatement (Third) of Torts: Inten. Torts to Persons § 7 TD (2018); A classic statement of the principles underlying false imprisonment is contained in *Bird v. Jones*, 7 Q.B. 742; 115 Eng. Rep. 668 (1845) (Patteson, J).

In a prima facie case for false imprisonment, a plaintiff need not prove unlawful detention, improper motivation, or unjustified actions on the part of defendant, as the issues of legal justification are substantive matters of concern only once an affirmative defense is raised by defendant. *Martensen v. Koch*, 301 F.R.D. 562, 571 (D. Colo. 2014).

C. Defamation/Slander

The elements of defamation are: (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* CJI-Civ. 21:2.

A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." CJI-Civ. 22:8; *See Burns v. McGraw Hill Broadcasting*, 659 P.2d 1351, 1357 (Colo. 1983.)

The plaintiff must prove that the statement in not only false but also material. To be material, "the alleged misstatement must be likely to cause reasonable people to think 'significantly less favorably' about the plaintiff than they would if they knew the truth; a

misstatement is not actionable if the comparative harm to the plaintiff's reputation is real but only modest." *Bustos v. A & E Television Networks*, 646 F.3d 762, 765 (10th Cir. 2011); *See also* CJI-Civ. 22:13.

A defamation *per se* claim requires a plaintiff to prove: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication. *See Lawson v. Stow*, 327 P.3d 340, 345 (Colo. App. 2014); *Yeiser v. DG Retail, LLC*, 18-CV-0320-WJM-STV, 2021 WL 1439853, at *7 (D. Colo. Apr. 16, 2021). A private individual's statements to law enforcement regarding "possible criminal conduct" are subject to a qualified privilege because such statements are matters of public concern. *See id.*; *see also Lawson*, 327 P.3d at 346.

D. Assault

To recover on a claim for assault, a plaintiff must prove: (1) the defendant intended to cause an offensive or harmful physical contact with the plaintiff or intended to place the plaintiff in apprehension of such contact; (2) the defendant placed the plaintiff in apprehension of immediate physical contact; and (3) that contact was or appeared to be harmful or offensive. *See* CJI-Civ. 20:1.

E. Shopkeeper's Privilege

The shopkeeper's privilege under C.R.S. § 18-4-407 permits merchants or their employees to detain and question suspected shoplifters under certain circumstances, and protects them from civil liability for false imprisonment, slander, false arrest, and related civil claims. However, the privilege only applies when the merchant acts in good faith and upon probable cause based upon reasonable grounds to believe the person was shoplifting, and detains them in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. *See J.S. Dillon & Sons Store Co. v. Carrington* 455 P.2d 201, 246 (Colo. 1969) (referencing former statute C.R.S. § 40-5-28). *See also* CJI-Civ. 21:7. A person has reasonable grounds to believe a person is shoplifting, or has probable cause to believe a person is shoplifting, if a reasonable person under the same or similar circumstances would

believe this fact exists. "Probable cause" and "reasonable grounds" are equivalent terms. *See People v. Villard*, 670 P.2d 593, 598 (Colo. 1984); *See also* CJI-Civ. 21:13.

III. ANALYSIS

A. Shopkeeper's Privilege

The undisputed facts demonstrate that Defendant had reasonable grounds to believe Plaintiff had wrongfully taken or failed to purchase the items in his shopping cart as he began to exit the store. Indeed, Defendant intentionally designed his conduct to inspire such a belief on the part of Defendant's employees.[2]

There is no evidence Defendant's employees acted in bad faith. Nor is there any evidence that, after stopping Plaintiff, Defendant's employees were not engaged in ascertaining whether he had committed an act of theft.

Under the circumstances presented by Plaintiff, a reasonable person would believe he was or may have been shoplifting. Defendant had probable cause and reasonable grounds to stop him and inquire, within the meaning of C.R.S. § 18-4-407. Defendant is entitled to the immunity or other protections afforded by the shopkeeper's privilege. The statute precludes Defendant's civil liability for all of Plaintiff's claims except for the assault claim.

B. Individual Claims

Even if the shopkeeper's privilege did not apply to create immunity for Defendant's conduct, defeating Plaintiff's false imprisonment and defamation claims, the undisputed facts demonstrate that Plaintiff cannot meet the mandatory elements for any of his claims.

---

[2] His strategy was to induce Defendant's employees to request a receipt. Including the absence of bags for the items, the placement of the items in the cart, and the decision to purchase the items at a cash register at the rear of the store then bypass cash registers at the front of the store with his unbagged items. None of his behaviors are improper, but together they were plainly designed to create the impression that he had not purchased the items, and to give Defendant's employees a reason to confront him about them or to ask for a receipt. Even if Defendant could credibly claim his actions were not deliberately designed to create such an impression, the circumstances were such that the employees' request for a receipt was not unreasonable. Additionally, Plaintiff's brother had called law enforcement during the investigation and reported that Plaintiff had not "finished" paying for the items when he tried to leave the store, and wanted to go pay for his items.

1. False Imprisonment

Plaintiff argues this lawsuit as a matter of principle; he believes he should be able to shop without being stopped on the way out to show a receipt. Colorado law does not include an absolute right to shop free from any inconveniences. Private parties, including merchants, have the right to protect their property in a reasonable manner. Theft of merchandise is a significant problem today, the cost of which gets passed on to the consumers. To curtail theft, most consumers are not bothered by the inconvenience of being asked to stop and provide their receipt.

Defendant relies on the definition of "restriction of movement" as set forth in CJI 21:2 to solidify its argument that there was no false imprisonment to begin with. Defendant argues all Plaintiff had to do was to show his receipt to go on his way. He held the means to escape, and chose not to use it. (Defendant also contends that, in any event, its actions are protected by the shopkeeper's privilege.)

Plaintiff stands by his assertion that "**it is his absolute, unequivocal, 100% OBJECTIVE right to not show [the receipt], to anybody, PERIOD**." Plaintiff's Response, at p. 15 (emphasis original). Plaintiff relies, in part, on the comment section in Restatement (Second) of Torts § 36, from which CJI 21:2 is formulated. However, the Restatement comment provides the following example:

> On the other hand, it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience....
>
> **Illustrations**:
>
> 1. A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B.

Restatement (Second) of Torts § 36, cmt. a.

Plaintiff gets caught up on the clause 'intends to imprison' and argues this only applies if there is an exit provided before any blockage. However, the example above

demonstrates his theory is not supported. If there is an exit within the party's control, even if inconvenient and even if some exit options are blocked, the party is not confined.

Plaintiff also refers to a 1923 case from Massachusetts (*Jacques v. Childs Dining Hall Co.,* 138 N.E. 843 (Mass. 1923)),[3] in which the court addressed whether the "situation was in the control of the defendant." *Jacques*, 138 N.E. at 844-45. While the case is aged and the statutes and case law between the states differ, the basic principles regarding false imprisonment are related. The restaurant in *Jacques* held the key to "escape." The customer was held for 25-30 minutes while the restaurant investigated whether she paid the proper bill. *Id.* at 844. The customer had no way of proving she had. *See id.* She did not hold a receipt that would have allowed her to leave, nor did she have the option of returning her items, as Plaintiff did in this case. Another Massachusetts case decided shortly after *Jacques*, *Sweeney v. F.W. Woolworth Co.*, 142 N.E. 50 (Mass. 1924), found no false imprisonment of a juvenile, suspected of shoplifting, who had to empty his pockets before being permitted to leave the store. *Sweeney*, 142 N.E. at 51.

Plaintiff references another Massachusetts case, this time a federal case, in *Ball v. Wall-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000), in which the court denied summary judgment. There, an exiting shopper was stopped to have her bags searched and to compare her receipt to the items she had. *Ball*, 102 F. Supp. 2d at 57. The employee stood in front of her and blocked her cart, with customers behind her, and began to inspect her bags. *Id.* The court found there was a genuine issue of material fact as to whether the shopper was under a reasonable apprehension that she could not leave without interference if and when she decided to. *Id.* Again, here, the undisputed facts demonstrate Plaintiff was given options to depart without interference. Moreover, *Jacques*, *Sweeney*, and *Hall* were decided under Massachusetts law as it existed at the time of each case; none applied the same definition of "restriction of movement" that Colorado courts have adopted.

In addition, Plaintiff makes arguments regarding constitutional rights against search and seizure, and to be secure in papers and effects. Defendant is a private company with a

[3] *See* Plaintiff's Response at p. 13, or Cross Motion at p. 12. Much of the Cross Motion and Plaintiff' Response to Defendant's Motion is redundant.

right to protect its property in a reasonable manner, while the Fourth Amendment applies to government actors.

Cases as far back as 1845, including the *Bird* case refenced above, refer to situations where there is "partial obstruction of a person's will" imposing an "inconvenience." The central concern is who is in control of the situation. As demonstrated in the case law, false imprisonment arises from more than mere loss of power or total freedom; it requires restraint and detention. False imprisonment is not met by the loss of freedom to go on in whatever way a person wishes. In *Bird*, for example, a man was prevented from going in a certain direction when he tried to get closer to see a boat race. He could stay put or turn around, but could not go on as he pleased in the direction he wanted. This was a mere inconvenience but not false imprisonment.

Colorado law favors the interpretation that false imprisonment is closer to total restraint than a partial obstruction of a person's unilateral will. It recognizes that the world has many inconveniences, and that none of us enjoys the complete freedom to move about without interruption or interference.

It is undisputed that Plaintiff held a receipt throughout the interaction with Defendant's employees. He anticipated it would be requested, and the undisputed facts demonstrate he took steps to ensure it would be requested.[4] He knew all he had to do was show it and he could leave. Showing the receipt would slightly delay and inconvenience him, but less so than refusing to show it. He was not forcefully detained, or completely restrained against his will. He had control over the means to his release. He controlled the situation and set into motion the employees stopping him, calling the manager over, calling the police, and the police investigating the situation. Therefore, the Court finds there are no disputed material facts that could support a finding of false imprisonment.

Plaintiff sought to add allegations in support of his claim of false arrest in his Cross Motion. The Court notes that Plaintiff was handcuffed and questioned by police outside of the store and outside of the control of Defendant. The police indicated they handcuffed him

[4] *See* note 2, above.

for safety to make sure no weapons were present. They questioned him, located the receipt, and released him. For many of the same reasons stated above, the Court does not find material facts to support a claim of false arrest against Defendant, particularly based on the conduct of law enforcement outside of Defendant's store and not controlled by Defendant.

2. Defamation

Plaintiff has provided no credible evidence of any harm to his reputation in the estimation of a substantial and respectable minority of the community. Defendant asserts Plaintiff must prove not only damage to his reputation, but also actual and special damages, and that he has failed to present any material facts to support these elements. In tacit admission of the absence of any evidence of damages for the defamation claim, Plaintiff asserts he need not prove special damages because he alleges a claim of defamation per se, based on accusations he was shoplifting.

Plaintiff was stopped on the way out of the store and was asked to produce a receipt. Plaintiff's actions led Defendant's employees to suspect he was shoplifting.[5] There is evidence that at least one customer assumed he was shoplifting, and offered to pay for the items. But this was due to Plaintiff's own actions and statements claiming the items were his, while at the same time refusing to produce a receipt, rather than by any statement by Defendant's employees. Further, the evidence reflects that Defendant's employees' statements were made under a reasonable belief that Plaintiff was shoplifting, and for the purpose of determining and reporting suspected criminal activity under the qualified immunity afforded by the Shopkeeper's Privilege.

There is no genuine dispute of material facts that would support the mandatory element of damages for Plaintiff's defamation claim. Plaintiff also has not demonstrated that there was an accusation of theft by Defendants' employees that was untrue, overheard, and understood by a third person such as to support a claim of defamation *per se*. And under either a defamation or defamation *per se* claim, Plaintiff lacks evidence sufficient to

[5] *See* note 2, above.

support the required element of harm to his reputation in the estimation of the community, as required for either claim.

3. Assault

It is undisputed that there was incidental physical contact between the Walmart employees and Plaintiff during this incident. At most, Plaintiff describes it as "abrupt and unwanted physical contact" as the employees "rushed him" to regain control over the store items. Plaintiff has neither submitted nor even alleged evidence supporting that the employees intended any harmful or offensive contact or put him in fear of it. There is no genuine dispute of material fact that would support the mandatory element of intent on the part of Defendant to support Plaintiff's assault claim.

IV. ORDER

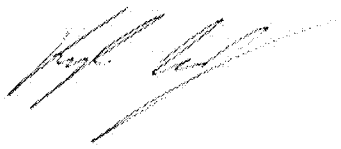
For the foregoing reasons, Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Cross-Motion for Summary Judgment is DENIED.

Plaintiff's claims in this action are DISMISSED.

Judgment is entered in favor of Defendant and against Plaintiff. subject to additional determinations regarding costs, if any, pursuant to C.R.C.P. 54(d). Within 14 days of this Order, counsel for Defendant shall submit: (1) a bill of costs and supporting material; or (2) a proposed form of order for Final Judgment. If Defendant seeks to recover costs, an order for final judgment will be issued after costs are determined. Submission of any proposed order shall be consistent with the practice standards of C.R.C.P. 121, § 1-16.

SO ORDERED August 19, 2022.

BY THE COURT:



Kyle Seedorf
District Court Judge

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed SEP 0 3 2020 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., DJ DOE, CHRISTIAN DOE, JOHN DOE.** 601 ENGLEWOOD PKWY ENGLEWOOD, CO 80110	DATE FILED: September 3, 2020 12:51 PM CASE NUMBER: 2020CV148 ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20 CV 148 Division 21 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., DJ DOE, CHRISTIAN DOE, JOHN DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 601 Englewood Pkwy, City of Englewood, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On September 3, 2019, DJ DOE, CHRISTIAN DOE, AND JOHN DOE (two employees -- DJ and CHRISTIAN -- whose last names are unknown, and a third employee -- JOHN DOE -- whose entire name is unknown), all employees of WALMART INC., didn't let me leave, on my way out of their store, after I refused to show them my receipt. Claim: **FALSE IMPRISONMENT.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/09/03
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

DISTRICT COURT, ARAPAHOE COUNTY,COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	DATE FILED: February 25, 2022 2:10 PM CASE NUMBER: 2020CV148
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
	Case Number: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

THE COURT, being duly advised in these premises after consideration of Defendant's Motion for Summary Judgment (the Motion), the response (containing a cross motion for summary judgment) and replies thereto hereby finds and orders as follows:

1. Statement of Case:

a. William Montgomery ("Montgomery") pro se - filed a series of complaints against Walmart Inc. and its employees (Walmart) alleging as follows:

(1) First Claim for Relief 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

(2) Second Claim for Relief 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

(3) Fourth Claim for Relief 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was arrested for threatening Cordero Duarte, making claims of malicious prosecution.

(4) Fifth Claim for Relief 2021CV217: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

(5) Sixth Claim for Relief 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

b. The Court notes that:

(1) An order denying Walmart's Motion to Dismiss concerning the Fourth Claim for Relief has already been issued. See, Order Re: Defendant's Motion to Dismiss with Prejudice (Fourth Claim for Relief (2020CV217).

(2) An order granting Walmart's Motion to Dismiss Montgomery's Third Claim for relief 2020CV209 has already been issued. See, Order Granting Motion to Dismiss Third Claim for Relief (2020CV209).

c. The Motion, pursuant to C.R.C.P. Rule 56, states:

(1) Montgomery's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim. The Court notes that this request is based on the standards set forth by C.R.C.P. Rule 12(b)(5).

(2) Montgomery's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

(3) Montgomery's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Montgomery has not disclosed any evidence that his freedom of movement was restricted.

(4) Montgomery's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his reputation was not harmed in the estimation of at least a substantial and respectable minority of the community.

d. In response, Montgomery attaches four affidavits, in turn referring to audio recordings he preserved of his interactions at the Walmart stores he visited, and body camera video taken by the Aurora Police during their interactions at those Walmart stores, in support of his remaining claims. He also makes a cross motion for summary judgment for his false imprisonment, defamation, and slander claims (the "Cross Motion").

e. In response to the Cross Motion, Walmart argues that Montgomery failed to comply with C.R.C.P. 16.1(k)(3) and pursuant to C.R.C.P. 16.1(k)(7) and C.R.C.P. 37(c) Montgomery's affidavits and other evidence submitted in support of his position is inadmissible. Further, Walmart attaches Cordero Duarte's affidavit concerning the October 22, 2018 incident in support of their argument that he had probable cause to believe that Montgomery was threatening him.

2. The Court finds that pro se litigants are bound by the same rules of civil procedure as attorneys licensed to practice law in this state (*Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); see also *Loomis v. Seely*, 677 P.2d 400 (Colo.App.1983); *People v. Romero*, 694 P.2d 1256 (Colo.1985)) and while judge may not become a surrogate attorney for a pro se litigant (*Loomis v. Seely,* supra) the Court has an ethical obligation "to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard." (Code of Judicial Conduct, Rule 2.2, Comment [4]). As a reasonable accommodation to the pro se plaintiff the Court:

a. Accepts Montgomery's cross motion for summary judgment despite it being contained within a response in violation of C.R.C.P. Rule 121, 1-15 (1)(d); and,

b. Accepts Montgomery's exhibits and affidavits, as fulfilling the disclosures required by C.R.C.P. Rule 16.1(k) but pursuant to C.R.C.P. 16.1(k)(7) and C.R.C.P. 37(c) these disclosures constitute the entirety of evidence Montgomery could present at trial.

3. The Court further finds, based on admissions, or failure to support denial with reference to factual allegations, that the following alleged facts are undisputed, material, and admissible, reflecting by reference below the paragraph numbers relied on by the parties:

¶3. A year after the incident, Montgomery filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. See (First Compl. at ⁋ 4).

¶6. Montgomery filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution (Defendant's Motion, Undisputed Facts, ¶ 6).

¶8. On October 22, 2018, Walmart employees called the Aurora Police Department on Montgomery for an apparent shoplifting incident at the store. (Defendant's Motion, Undisputed Facts, ¶ 8); (Defendant's Motion, Ex. A, p. 6).

¶10. Officer Baker documented Montgomery's admission that he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. (Plaintiff's Motion, Exhibit 4.1, at 8:30). Montgomery went on and stated that the business and the person (loss prevention) did not have "shopkeepers privilege" to stop him. (Defendant's Motion, Undisputed Facts, ¶ 10); (Defendant's Motion, Ex. A, p. 6).

¶11. Montgomery told Officer Baker that "he came to the store and planned on suing." (Plaintiff's Motion, Exhibit 4.1, at 9:36); (Defendant's Motion, Undisputed Facts, ¶ 10); (Defendant's Motion, Ex. A, p. 6).

¶12. Officer Baker also documented Montgomery's statement that he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts. (Defendant's Motion, Undisputed Facts, ¶ 12); (Defendant's Motion, Ex. A, p. 9).

¶13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now." (Plaintiff's Motion, Exhibit 4.1, at 9:36); (Defendant's Motion, Undisputed Facts, ¶ 13); (Defendant's Motion, Ex. A, pp. 6-7).

¶17. Montgomery filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. See (Fourth Compl. at ¶ 4).

¶19. A year later, Montgomery filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. See (Fifth Compl. at ¶ 4).

¶22. A year later, Montgomery filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. See (Sixth Compl. at ¶ 4).

¶23. In all of Montgomery's claims, Montgomery entered a Walmart Superstore. On or about September 3, 2019, at approximately 6:38pm, Montgomery entered a Walmart Superstore located at 601 Englewood Pkwy, Englewood, CO, 80110. See (Plaintiff's Affidavit #1, ¶ 1). In Plaintiff's Claims #2 and #4, on or about October 22, 2018, at approximately 8:12pm, Montgomery entered a Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231. See (Plaintiff's Affidavit #2 & #4, ¶ 2). In Plaintiff's Claim #5, on or about January 4, 2020, at approximately 1:44pm, Montgomery entered a Walmart Superstore located at 10900 E Briarwood Ave, Centennial, CO, 80012. See (Plaintiff's Affidavit #5, ¶ 2). In Plaintiff's Claim #6, on or about September 20, 2020, at approximately 4:02pm, Montgomery entered a Walmart Superstore located at 14000 E Exposition Ave, Aurora, CO, 80012. See (Plaintiff's Affidavit #6, ¶ 2).

¶24. Just before entering all Walmart Superstores in all of Montgomery's claims, Montgomery started audio recordings on his cellular phone, later saving and labeling each based on the date, time, and location that each was recorded on/at. See (Plaintiff's Motion, Exhibits 1, 3, 8, and 13). Montgomery entered each WALMART SUPERSTORE with the intent to "secret shop" the Walmart employees and prove that Walmart employees "profile people as guilty until proven innocent." See (Plaintiff's Motion, Exhibits 1, at 13:32).

¶26. Once inside all Walmart Superstores in all of Montgomery's claims, Montgomery traveled throughout each store's various departments, where he selected items for purchase directly off their shelves. See (Plaintiff's Affidavit #1, ¶¶ 5, 7, and 10); (Plaintiff's Affidavit #2 & #4, ¶¶ 5, 7, 10, 13, 16, and 19); (Plaintiff's Affidavit #5, ¶¶ 6, 8, and 11); (Plaintiff's Affidavit #6, ¶¶ 5, 7, and 10); (Plaintiff's Motion, Exhibits 1, 3, 8, and 13).

¶29. Inside all Walmart Superstores in all of Montgomery's claims, Montgomery either had a store employee ring up his items for him, or he rang them up himself at a self-checkout register. He then paid for all the items he shopped for at all the stores he visited. See (Plaintiff's Affidavit #1,¶ 10); (Plaintiff's Affidavit #2 & #4, ¶¶ 13, 19); (Plaintiff's Affidavit #5, ¶ 11); (Plaintiff's Affidavit #6, ¶ 10); (Plaintiff's Motion, Exhibit 1 at 2:38, Exhibit 3 at 33:16, 41:34, Exhibit 8 at 10:53, and Exhibit 13 at 13:21).

¶31. While on his way out of all Walmart Superstores in all of Montgomery's claims, Montgomery was asked to show his receipt by store employees who had either been "posted up" at their exits, or who had otherwise appeared shortly thereafter from right around the corner, and whom Montgomery had never once observed to be located anywhere else in each store (let alone follow him throughout each as he shopped) until he finally saw them for the very first time as he proceeded to leave each. See (Plaintiff's Affidavit #1, ¶¶ 14, 15); (Plaintiff's Affidavit #2 & #4, ¶¶ 24-26); (Plaintiff's Affidavit #5, ¶¶ 15, 16); (Plaintiff's Affidavit #6, ¶ 14); (Plaintiff's Motion, Exhibit 1 at 4:43, Exhibit 3 at 45:39, Exhibit 8 at 19:44, and Exhibit 13 at 17:33).

¶33. When asked by all store employees or security guards at all Walmart Superstores in all of Montgomery's claims, Montgomery declined to show his receipt, but in response had his path blocked by store employees. See (Plaintiff's Affidavit #1, ¶¶ 16-20); (Plaintiff's Affidavit #2 & #4, ¶¶ 26-28); (Plaintiff's Affidavit #5, ¶¶ 17-20); (Plaintiff's Affidavit #6, ¶¶ 15-19); (Plaintiff's Motion, Exhibits 1, 3, 8, and 13).

¶34. In Plaintiffs Claims #6, store employees at both stores slandered Montgomery, by making statements like "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have." See (Plaintiff's Affidavit #6, ¶ 21); (Plaintiff's Motion, Exhibits #13).

¶35. Eventually, Montgomery then left each respective store, without further issue. See (Plaintiff's Affidavit #1, ¶¶ 22-27); (Plaintiff's Affidavit #6, ¶¶ 20-24); (Plaintiff's Motion, Exhibits 1 and 13).

¶36. In Plaintiffs Claim #2, at the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, Montgomery was physically moved into the store's loss prevention office by Alberto Carlos Cordero-Duarte. Montgomery argued with Cordero-Duarte until he was told to leave. See (Plaintiff's Affidavit #2 & #4, ¶¶ 29-35); (Plaintiff's Motion, Exhibit 3).

¶37. A fellow store employee who had witnessed the event called the Aurora Police Department to report a physical disturbance. See (Plaintiff's Motion, Exhibit 6, p. 6).

¶39. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, Officer Kaycie Sawyer and Officer Scott Baker. Officer Baker directed Montgomery to provide his ID, which he did without issue, while Officer Sawyer went inside the store to speak with CORDERO-DUARTE. See (Plaintiff's Affidavit #2 & #4, ¶¶ 42, 43); (Plaintiff's Motion, Exhibits 4, 5, and 6).

¶40. Once inside the store's loss prevention office, Cordero-Duarte told Officer Sawyer that he "was on the floor walking, [and] saw [Montgomery] pick the merchandise out of the shelf, and, he walked out." See (Plaintiff's Motion, Exhibit 4.1 at 2:07).

¶41. Officer Sawyer eventually asked Cordero-Duarte if he would like to charge Montgomery with shoplifting, which he said he did. See (Plaintiff's Motion, Exhibit 4.1 at 2:38). Officer Sawyer then radioed Officer Baker of Cordero-Duarte's intention to charge Montgomery with shoplifting. See (Plaintiff's Motion, Exhibit 4.1 at 3:27).

¶42. OFFICER SAWYER went back outside to where Officer Baker and Montgomery had been standing, directed Montgomery to take off his backpack, and arrested Montgomery, using handcuffs, for what she told him was "theft." See (Plaintiff's Affidavit #2 & #4, ¶ 44); (Plaintiff's Motion, Exhibit 4.1 at 6:59-8:25).

¶43. Once Officer Sawyer finished handcuffing Montgomery, Montgomery informed the officer that he had receipts for all of his recently purchased merchandise, that they were located in his jacket pocket and cell phone case, and that the store employees she spoke with had lied to her in addition to her not appropriately viewing the store's video footage for herself. Officer Sawyer then obtained both of Montgomery's receipts, went back into the store to speak with Cordero-Duarte again, and left Montgomery in handcuffs outside next to Officer Baker. See (Plaintiff's Affidavit #2 & #4, ¶ 45); (Plaintiff's Motion, Exhibit 4.1).

¶44. Once back inside the store's loss prevention office, Cordero-Duarte confessed to Officer Sawyer that he had only been posted up at the store's exit, "in the corner, [where] somebody was talking to [him]," when he first saw Montgomery leaving and had initially decided to confront him. See (Plaintiff's Motion, Exhibit 4.1 at 11:17).

¶45. Eventually, Officer Sawyer came back outside, and was immediately asked by Officer Baker if the store wanted Montgomery "trespassed." She then went back into the store to speak with Cordero-Duarte again, who said he did want Montgomery "trespassed." See (Plaintiff's Affidavit #2 & #4, ¶ 46); (Plaintiff's Motion, Exhibit 4.1).

¶46. After a minute or two, Officer Sawyer came back outside, and removed her handcuffs from Montgomery. Montgomery was then told by both officers that he was "free to go," and that if he wanted to stay until his "trespass notice" was issued, that he could freely do so, which he did. Officer Sawyer then went back inside to obtain from CORDERO-DUARTE Montgomery's "trespass notice." See (Plaintiff's Affidavit #2 & #4, ¶ 47); (Plaintiff's Motion, Exhibit #4.1).

¶47. Once back inside the store's loss prevention office, Cordero-Duarte told Officer Sawyer that he "was on the floor, [he] was walking the floor when [he] saw [Plaintiff] taking the merchandise." See (Plaintiff's Motion, Exhibit 4.2 at 4:44).

¶48. Later that evening, after arresting Montgomery on another charge, Officer Sawyer wrote in her police report that, upon being dispatched to the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, she spoke with Cordero-Duarte, who told her that he "observed what appeared to be Montgomery, William 07071985 (CODL) conceal various merchandise including; oil stabilizer, antifreeze, a gallon of water, and juice." She further wrote that Cordero-Duarte "watched Montgomery select these numerous items and place them in his backpack and walk past all points of sale." See (Plaintiff's Motion, Exhibit 6, p. 6).

¶49. In Plaintiffs Claim #4, at the Walmart Superstore located at 9400 E Hampden Ave, Aurora, CO, 80231, after Cordero-Duarte physically moved Montgomery into the store's loss prevention office, he physically let go of him, told him to have a seat, and continued to stand in his way while Montgomery continued to try to leave. See (Plaintiff's Affidavit #2 & #4, ¶ 33); (Plaintiff's Motion, Exhibit 3 at 48:04).

¶50. For the next few minutes, Montgomery told Cordero-Duarte to let him go, that he was committing crimes, and that he would be fired from his job for doing so. Cordero-Duarte responded by continuing to tell Montgomery to drop his merchandise or show his receipt. See (Plaintiff's Affidavit #2 & #4, ¶ 34); (Plaintiff's Motion, Exhibit 3 at 48:04-50:44).

¶51. Eventually, Cordero-Duarte stopped arguing with Montgomery, and told him that he could leave the store. The exact words Cordero-Duarte said to Montgomery were, "Do you want to walk out with the merchandise? Okay, go ahead, go ahead." See (Plaintiff's Affidavit #2 & #4, ¶ 35); (Plaintiff's Motion, Exhibit 3 at 50:45).

¶52. After Cordero-Duarte told Montgomery that he could leave the store, Montgomery told him that he had a medical problem, and that he needed to spit into a nearby trashcan. The exact words Montgomery said to CORDERO-DUARTE were, "I have a medical problem." Montgomery then turned to his left and spat into a nearby trashcan. See (Plaintiff's Affidavit #2 & #4, ¶ 36); (Plaintiff's Motion, Exhibit 3 at 50:49).

¶56. After ten or fifteen minutes, two police officers from the Aurora Police Department arrived on scene, Officer Kaycie Sawyer and Officer Scott Baker. Officer Baker directed Montgomery to provide his ID, which he did without issue, while Officer Sawyer went inside the store to speak with Cordero-Duarte. See (Plaintiff's Affidavit #2 & #4, ¶¶ 42, 43); (Plaintiff's Motion, Exhibits 4, 5, and 6).

¶58. After speaking with Cordero-Duarte regarding Montgomery spitting, Officer Sawyer spoke with him regarding Montgomery shoplifting. She then came back outside and arrested Montgomery for "theft." In response, Montgomery provided her with his receipts, which she then used to go back inside the store and exonerate him with. After that, she eventually went outside to remove her handcuffs from Montgomery. She then went back inside to obtain from Cordero-Duarte a "trespass notice" he requested that Montgomery be given. See (Plaintiff's Affidavit #2 & #4, ¶¶ 44-47); (Plaintiff's Motion, Exhibit 4.1).

¶59. Once back inside the store's loss prevention office, Officer Sawyer inquired and Cordero-Duarte stated that during his encounter with Montgomery, he said to him, "Don't spit on my face," and that Montgomery replied to him with, "I will, get off me!" He then told the officer that Montgomery further said to him, "I will, I have a medical condition, blah blah blah blah blah blah blah blah," and that he further replied to Montgomery with, "Okay, whatever dude, just leave the store." Then, after being asked one last time if Montgomery had indeed threatened to spit on him, Cordero-Duarte confirmed for the officer that he indeed said to Montgomery, "Don't spit on me," and that Montgomery indeed said to him, "I will, if you don't let me go. I have to go, I have to go, let me go. I'm, I'm good, I'm good to go, let me go right now." See (Plaintiff's Motion, Exhibit 4.2 at 2:14-2:43).

¶61. Eventually, Officer Sawyer came back outside to where Montgomery and Officer Baker had been standing, and placed Montgomery into handcuffs again. This time she told Montgomery that he was being arrested for "disorderly conduct," which OFFICER BAKER clarified was based on the purported use of "threats." See (Plaintiff's Affidavit #2 & #4, ¶ 48); (Plaintiff's Motion, Exhibit 4.2 at 1:28).

¶64. Montgomery was held for next two (2) legal days at The Aurora Police Station, from the evening of October 22, 2018, to the afternoon of October 23, 2018, where he had been booked under Aurora Municipal Code Section 94-42(4). He was then released from custody by way of signing a PR bond with the station worth $500. On his way out, Montgomery was given a copy of the Summons & Complaint (#J243907) Officer Sawyer had issued to him the night before. See (Plaintiff's Affidavit #2 & #4, ¶ 51); (Plaintiff's Motion, Exhibit 6, p. 14).

¶65. Montgomery spent the next two months attending all the necessary court appearances required of him until December 10, 2018, the date on which an AURORA MUNICIPAL JUDGE granted a Motion To Dismiss filed by the Aurora City Attorney, citing "lack of evidence" as his reasoning, and to which dismissed Montgomery's harassment case in its entirety thus relieving him of all legal obligations to defend himself in it further. See (Plaintiff's Affidavit #2 & #4, ¶ 52); (Plaintiff's Motion, Exhibit 7).

¶66. In Plaintiffs Claim #5, at the Walmart Superstore located at 10900 E Briarwood Ave, Centennial, CO, 80012, before entering the store, and while still in his vehicle parked in the store parking lot, Montgomery inserted into one of his jacket pockets two previously purchased RV lights that he had been contemplating on returning that day (depending on if he needed the money or not). See (Plaintiff's Affidavit #5, ¶ 4).

¶67. After being prevented from leaving both store exits by two store employees, Montgomery was verbally escorted by a third store employee into a loss prevention office located just around the corner. The employee did not ask Montgomery to come with her, she told him that he was required to come with her, so he did. See (Plaintiff's Affidavit #5,¶ 1); (Plaintiff's Motion, Exhibit 8 at 22:51).

¶68. While inside the store's loss prevention office, the third store employee told Montgomery, in front of three other store employees, "I need my merchandise back." See (Plaintiff's Affidavit #5, ¶ 22); (Plaintiff's Motion, Exhibit 8 at 23:24).

¶69. On January 4, 2020, at 2:09pm, Kadyn Moyer, the second store employee who stopped Montgomery from leaving the store's southern exit, called the ARAPAHOE COUNTY SHERIFF'S OFFICE, and reported to them that he had a "shoplifter" in his security office, whom he further reported he "[thought was] on drugs." See (Plaintiff's Motion, Exhibit 11, p. 6).

¶70. For the next nine or so minutes Montgomery stayed in the store's loss prevention office with its employees until several members of the Arapahoe County Sheriff's Office arrived on scene, Sergeant Brett Cohn, Deputy Trevor Cuaz, and an unknown deputy. Sergeant Cohn and the unknown deputy entered the store's loss prevention office to speak with Montgomery and the store employees, while Deputy Cuaz stationed himself around the comer, just outside the office. See (Plaintiff's Affidavit #5, ¶ 23); (Plaintiff's Motion, Exhibit 8 at 23:25-32:23).

¶71. Once inside the store's loss prevention office, Sergeant Cohn directed Montgomery to provide his ID, which he did without issue. He then asked the third store employee if Montgomery had a receipt for his items. The third store employee told him, in front of Montgomery, the other employees, and an unknown Deputy, "No," followed by, "That's my stuff." See (Plaintiff's Affidavit #5, ¶ 24); (Plaintiff's Motion, Exhibit 8 at 32:27-32:50).

¶75. DEPUTY CUAZ then entered the store's loss prevention office, and placed Montgomery into handcuffs. See (Plaintiff's Affidavit #5, ¶ 28); (Plaintiff's Motion, Exhibit 8 at 35:41).

¶77. After being searched and having all his items seized, the police cross referenced the receipt they took from him against the merchandise they took from him. See (Plaintiff's Affidavit #5, ¶ 30); (Plaintiff's Motion, Exhibit 8 at 37:30).

¶78. The police concluded that Montgomery had paid for some items, but not others. The officers charged Montgomery for purportedly shoplifting the two RV lights. Montgomery never provided an explanation or offered a receipt for the RV lights to the officers during the entirety of their time with him. See (Plaintiff's Affidavit #5, ¶ 31); (Plaintiff's Motion, Exhibit 8 at 45:17).

¶82. Montgomery spent the next two months attending all the necessary court appearances required of him until March 12, 2020, the date on which he appeared at the Arapahoe County Courthouse, spoke with his Public Defender, Elizabeth Frawley, and asked her for his discovery, and whereby she then entered the Arapahoe County District Attorney's office while Montgomery waited outside, and eventually came back and informed him that the DA had dropped his charges. Montgomery then obtained an ORDER from the Court, which reported his case as "Dismissed by Court," and to which established dismissal of his shoplifting case in its entirety thus relieving him of all legal obligations to defend himself in it further. See (Plaintiff's Affidavit #5, ¶ 133); (Plaintiff's Motion, Exhibit 12).

4. The Court finds:

a. Montgomery voluntarily abandoned his "false arrest" claim in his Fifth Claim For Relief. (Cross Motion, pg. 41). His remaining theory in his Fifth Claim for Relief (2021CV217) is defamation similar to his slander claim in his Sixth Claim for Relief (2021CV235slander) which he claims are based on statements which are per se actionable:

(1) Montgomery states: "Accusing someone of theft, when such accusation is untrue and is overheard and understood by a third person, is defamation actionable per se. RESTATEMENT (SECOND) OF TORTS 750; *Denver Publ'g v. Bueno*, 54 P.3d 893, 899 n. 9 (Colo. 2002)..." and that he is not "otherwise required to allege and prove 'special damages'" because defamation per se does not require proof of special damages." (Cross Motion, p. 39).

(2) Montgomery states in conclusion that there is "no genuine dispute of material fact that Defendants defamed" him as a "shoplifter." (Cross Motion, p. 40).

b. Rule 56(e) requires supporting and opposing affidavits setting forth "facts as would be admissible in evidence" and "the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial." *Terrell v. Walter E. Heller & Co.*, 439 P.2d 989 (Colo. 1968).

c. However, to avoid summary judgment, the evidence presented in opposition to such a motion must be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party. *Andersen v. Lindenbaum*, 160 P.3d 237 (Colo. 2007).

5. Concerning Montgomery's claims for false imprisonment the Court further finds as follows:

a. CJI 21:1 states in relevant part:

(1) The defendant intended to restrict the plaintiff's freedom of movement;

(2) The defendant, directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short; and

(3) The plaintiff was aware that his freedom of movement was restricted.

b. CJI 21:2 states in relevant part:

(1) A person's freedom of movement is actually limited, or he believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property. (Restatement (Second) Of Torts § 36 cmt. d (1965)).

(2) The person is restrained by physical force, however slight, to which the person submitted. (*McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437 (1969); *Crews-Beggs Dry Goods Co. v. Bayle*, 97 Colo. 568, 51 P.2d 1026 (1935))

c. CJI 21:7 AND 21:8 (citing to C.R.S. 18-4-407 and the common law (the "Shopkeeper's Privilege")) in relevant part state that it is an affirmative defense to the claim of false imprisonment if in relevant part:

(1) The defendant was an owner or employee of a store selling merchandise;

(2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods, wares, or merchandise held or owned by the store, or otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store (*Gonzales v. Harris*, 528 P.2d 259 (1974) (concealment within the store is prima facie evidence of the intent to commit the crime of theft));

(3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft.

d. CJI 21:13 states that a person has probable cause to believe a fact exists if a reasonable person under the same or similar circumstances would believe the fact exists. Probable cause exists when there is a fair probability that defendant committed a crime, based on the facts known at the time of arrest (*People v. Brown*, 217 P.3d 1252 (Colo. 2009)). Circumstantial evidence provides probable cause, even if evidence might also support other inferences; *Scott v. People*, 166 Colo. 432, 444 P.2d 388 (1968); *Lavato v. People*, 159 Colo. 223, 411 P.2d 328 (1966); *Gonzales v. People*, 156 Colo. 252, 398 P.2d 236 (1965); *Baldwin v. Huber*, 223 P.3d 150 (Colo. App. 2009). See also, Restatement (Second) Of Torts § 119 cmt. j (1965); 1 F. Harper Et Al., Harper, James, And Gray On Torts § 3.18 (3d ed. 2006).

e. CJI 21:9, Restatement (Second) Of Torts sections 67, 76, 80, and 87 (1965) states that it is an affirmative defense to the claim of false imprisonment:

(1) When the defendant restricted the plaintiff's freedom of movement, he believed and had reasonable grounds to believe that the plaintiff intended to interfere or continue to interfere with the defendant's right to possess his personal property; and

(2) This restriction of the plaintiff's freedom of movement was reasonably imposed, under the circumstances, to prevent the plaintiff's actions, considering the length of the time of the restriction, the seriousness of the threatened harm to, or interference with, the defendant's property, and the seriousness of any harm that might result to the plaintiff from the restriction.

(3) CJI 21:10, C.R.S. 16-3-201 states that it is an affirmative defense to the claim of false imprisonment, in relevant part, the plaintiff, at the time of the arrest, was committing a crime in the presence of the defendant, and the defendant arrested the plaintiff for that crime, or, the plaintiff knew that his or her conduct would cause the defendant to believe that the plaintiff was committing a crime in the defendant's presence, and the defendant arrested the plaintiff for that crime. The "in presence" requirement is met if the citizen observes acts which are in themselves sufficiently indicative of the commission of a crime; *People v. Olguin*, 528 P.2d 234, 236 (Colo. 1974).

f. CJI 21:12, *Hart v. Herzig*, 283 P.2d 177, 180-81 (1955); Restatement (Second) Of Torts § 112 (1965); see also *People v. Tottenhoff*, 691 P.2d 340 (Colo. 1984)) state that an arrest is taking another into custody by physical force or by asserting legal authority over him for the apparent purpose of having that person dealt with as provided by law (An "arrest" is complete when a person is told to "just wait here." (*People v. Benner*, 530 P.2d 964, 965, (Colo. 1975)) or when such person is physically prohibited from leaving (Olguin, supra)).

g. CJI 21:16 states that a person does not have to indicate an intent to arrest, in relevant part, if he or she reasonably believes that a reasonable person should know that he is being arrested and for what offense. *Olguin, supra*; see also, Restatement (Second) Of Torts § 128(2) (1965); And 1 F. Harper et al., Harper, James, and Gray On Torts § 3.17, at 361, and § 3.18, at 408 (3d ed. 2006).

6. Concerning Montgomery's claims for malicious prosecution the Court further finds as follows:

a. CJI 17:1 states in relevant that to prevail on a claim for malicious prosecution:

(1) A criminal case was brought against the plaintiff;

(2) The criminal case was brought as a result of oral or written statements made by the defendant;

(3) The criminal case ended in favor of the plaintiff;

(4) The defendant's statements against the plaintiff were made without probable cause, or, if the complaint was filed with probable cause, the defendant continued to prosecute the criminal action after he no longer had probable cause to believe the plaintiff guilty;

(5) The defendant's statements against the plaintiff were motivated by malice towards the plaintiff.

b. To be terminated in favor of the malicious prosecution plaintiff, the prior proceedings must be dismissed on the merits. *Hewitt v. Rice*, 119 P.3d 541, 544 (Colo. App. 2004), aff'd, 154 P.3d 408 (Colo. 2007) ("Favorable termination is a question of law requiring an action to be resolved on the merits in favor of the party claiming malicious prosecution").

c. Malice is any motive other than a desire to bring an offender to justice. *Suchey v. Stiles*, 394 P.2d 739, 741 (Colo. 1964).

7. Concerning Montgomery's claims for defamation per se the Court further finds as follows:

a. Imputing crime or criminal offense upon another may be slanderous per se (See, *O'Cana v. Espinosa*, 347 P.2d 1118, 1119 (Colo. 1960)(holding that the word's "'You are thieves and if it had not been for Malouffs you would be in the penitentiary today" are slanderous per se), but the statement must be unmistakably recognized as injurious (*Keohane v. Wilkerson*, 859 P.2d 291, 301 (Colo. App. 1993), aff'd sub nom. *Keohane v. Stewart*, 882 P.2d 1293 (Colo. 1994)) leading Colorado courts to construe defamation per se narrowly (*Keohane v. Wilkerson, supra*).

b. The use of derogatory terms that do not themselves impute the commission of a crime are not slanderous per se and cannot be isolated from their context and the total attendant circumstances but rather "such words must impute conduct constituting a criminal offense chargeable … and of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace." *Cinquanta v. Burdett*, 388 P.2d 779, 780 (Colo. 1963)(use of the word "crook" was not slanderous per se).

c. In determining whether a statement is slanderous per se the court cannot isolate the offending words from their context and must examine the words in the light of the total attendant circumstances. Id. It is the general rule that such words must impute conduct constituting a criminal offense chargeable by indictment or by information either at common law or by statute and of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace. *Cinquanta v. Burdett, supra*)

d. Colorado law recognizes a qualified privilege for communications by a party with a legitimate interest to persons having a corresponding interest and communications promoting legitimate individual, group, or public interests (*Patane v. Broadmoor Hotel, Inc.*, 708 P.2d 473 (Colo. App. 1985), citing *Denver Public Warehouse Co. v. Holloway*, 283 P. 131(Colo. 1905). This qualified privilege, based on a presumption of the absence of malice which must be overcome by the plaintiff is determined by the Court even "where evidence of ill will is forthcoming; but, if, taken in connection with admitted facts, the words complained of are such as must have been used honestly and in good faith by the defendant," *Ling v. Whittemore*, 343 P.2d 1048 (Colo. 1959), relying on *Denver Public Warehouse Co., supra.*

e. Further, statements made to law enforcement officers are entitled to a qualified privilege as well; *Burke v. Greene*, 963 P.2d 1119, 1122 (Colo. App. 1998) because a qualified privilege "is sufficiently protective of [those] wishing to report events concerning crime and balances society's interest in detecting and prosecuting crime with a defendant's interest not to be falsely accused." *Id.* Unless the statement is made with "malice (i.e., with knowledge that they were false or with reckless disregard for whether they were true or false)" (*Id.*) the qualified immunity protects the statement.

f. Thus, statements made to peace officers are recoverable only if the alleged statements were made with malice i.e. "knowledge that they were false or with reckless disregard for whether they were true or false." *Burke v. Greene*, *supra*; see also *Seible v. Denver Post Corp.*, 782 P.2d 805 (Colo.App.1989).

g. Montgomery states that the basis for his Fifth Claim for Relief is that the "Defendants impermissibly imputed the crime of larceny onto Plaintiff..." when they referred to him as a "shoplifter." (Cross Motion, p. 39). Montgomery also claims the statements "I need my merchandise back," while inside the store's loss prevention office, in front of three other store employees is actionable. ((Cross Motion, Exhibit 8 at 23:24; Plaintiff's Affidavit #5, ¶ 22) as well as the statement to the Arapahoe County Sheriff's Office that a Walmart employee had a "shoplifter" in his security office whom he thought was "on drugs." See (Cross Motion, Exhibit 11, p. 6).

h. Montgomery states that the basis for his Sixth Claim For Relief is that the "Defendants impermissibly imputed the crime of larceny onto Plaintiff..." when they stated "we're losing money with what you have...give us our products...we need our products back..." (Cross Motion, p. 40) as well as the statement "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have." (Cross Motion, Exhibit #13; Plaintiff's Affidavit #6, ¶ 21).

8. The Court concludes:

a. Montgomery's First Claim for Relief, Fifth Claim for Relief and Sixth Claim for Relief allege false imprisonment. The Court concludes that Montgomery knew that he could escape without causing an unreasonable risk of harm to him or herself or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited. Further, the undisputed facts show that Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store, which he knew would lead to being detained and asked for his receipts. In doing so Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence. Not only was Montgomery's conduct sufficient to cause the Walmart employees to believe that his intent was to commit a crime, but he specifically intended that result happen. Reasonable people acting in good faith under the same or similar circumstances would have reasonable grounds - as did the Walmart employees - to find probable cause existed to detain and question Montgomery in order to ascertain whether he had committed a theft by, in a reasonable manner, asking to see his receipts, and therefore,

the Walmart employees including Duarte were protected by the Shopkeepers Privilege. No reasonable jury could return a verdict for Montgomery by finding otherwise.

b. Montgomery's Second Claim for Relief and Fourth Claim for Relief concern the October 22, 2018 incident, and his Sixth Claim for Relief concerning the September 20, 2020 incident allege malicious prosecution.

(1) The summons Municipal Court of Aurora he received for harassment against Cordero-Duarte (threats and obscenities) related to the October 22, 2018 incident was dismissed due to a lack of evidence rather than on the merits but was issued with probable cause regardless of the disputed facts concerning whether Montgomery threatened to spit on Cordero-Duarte. Further, there is no evidence that this charge was pursued by Cordero-Duarte nor that the statements against Montgomery were motivated by malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(2) The events of January 4, 2020 when Montgomery claims he was summoned to the Arapahoe County Court for theft, was based on a cross reference of his receipts and the merchandise in his possession by investigating officers and not by Walmart employees. In fact, Montgomery's refusal to disclose the fact that not all the merchandise in his possession, specifically RV lights were from a previous purchase contributed to the probable cause determination by law enforcement. Further, there are no facts to support any claim that these statements were motivated by malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

c. Montgomery's Fifth Claim for Relief and Sixth Claims for Relief are also based on defamation per se:

(1) The statements "I need my merchandise back," while inside the store's loss prevention office, in front of three other store employees is protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(2) The statement to the Arapahoe County Sheriff's Office that a Walmart employee had a "shoplifter" in his security office whom he thought was "on drugs" is protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

(3) The statement "we're losing money with what you have...give us our products...we need our products back" as well as the statement "What you have in your hands, with no receipt, which means that you are leaving, and we're losing money with what you have" are ambiguous at best, do not impute conduct constituting a criminal offense nor of such kind as to involve infamous punishment or moral turpitude conveying the idea of major social disgrace, are protected by qualified immunity, and Montgomery has shown no evidence to overcome the presumption that there was an absence of malice. Therefore, there are no genuine material facts in dispute which can justify this claim.

9. Accordingly, the Court orders as follows:

a. The request pursuant to C.R.C.P Rule 12 to dismiss Montgomery's Second, Fourth, and Fifth Claims for Relief for failing to properly allege the elements required for maintaining a malicious prosecution claim is untimely (see C.R.C.P. 12(a)(1)) and DENIED.

b. However, the requests in the Motion pursuant to C.R.C.P. Rule 56 are GRANTED as to all of Montgomery's claims for the reasons stated above.

c. Montgomery's cross-motion is DENIED.

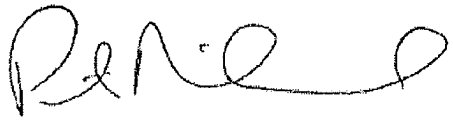
d. Any further pending request for relief by either party is DENIED.

e. Further proceedings, including trial and the trial management conference are vacated.

f. Defendants may submit a bill of costs within twenty-one days.

SO ORDERED, February 24, 2022:

BY:



District Court Judge Peter F. Michaelson

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed NOV 27 2020 DATE FILED: November 27, 2020 CASE NUMBER: 2020CV209
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JANE DOE 1, JANE DOE 2, JOHN DOE.** 9400 E HAMPDEN AVE AURORA, CO 80231	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 20cv209 Division 15 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JANE DOE 1, JANE DOE 2, JOHN DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 9400 E Hampden Ave, City of Aurora, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On NOVEMBER 26, 2018, JANE DOE 1, JANE DOE 2, AND JOHN DOE, all employees of WALMART INC., detained me on my way out of their store, after I refused to show them my receipt. They also grabbed my items out of my hands, as well as tell other people that I stole from them. **Claims: FALSE IMPRISONMENT, ASSAULT, and DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2020/11/27
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

DATE FILED: December 27, 2021 10:30 PM
FILING ID: EDBDC9ED38A27
CASE NUMBER: 2020CV148

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	

Defendants Walmart, Inc. et al ("Walmart"), by and through counsel, Treece Alfrey Musat P.C., hereby submit their Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter consolidates six (6) separate Arapahoe County Complaints filed by *pro se* Plaintiff, William Montgomery, against Walmart.[1] Plaintiff has also filed (3) filed pro se Complaints against Walmart in Adams County,[2] and he initiated his pro se Court of Appeals case for a Complaint against Walmart he filed in Jefferson County.[3] Plaintiff's method of operation at all Walmart stores is to begin audio recording before he enters the store. Invariably, Plaintiff will refuse to show his receipt for the items in his possession, with a goal of filing suit against Walmart under theories of false imprisonment, false arrest, malicious prosecution, and defamation. Plaintiff has failed to disclose evidence sufficient to meet his burden of proof on each of these claims. Accordingly, summary judgement is warranted.

STATEMENT OF UNDISPUTED FACTS

1. All six (6) of Plaintiff's Complaints filed under this Consolidated Case were filed *pro se*. *See* First Compl 2020CV148; Second Compl 2020CV184; Third Compl 2020CV209 (Dismissed. MTD Granted); Fourth Compl 2020CV217; Fifth Compl 2021CV1 (also referred to as 2021CV231); and Sixth Compl 2021CV235.

2. In his First Claim for Relief (2020CV148), Plaintiff claims that on September 3, 2019, Walmart employees "didn't let me leave, on my way out of their store, after I refused to show them my receipt." *See* First Compl. at ¶ 4.

3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id.*

4. In his Second Claim for Relief (2020CV184), Plaintiff claims that on October 22, 2018, a Walmart employee "lied to an Aurora Police Officer that Plaintiff had shoplifted at his store." *See* Second Compl. at ¶ 4.

5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id.*

---

[1] 2020CV148; 2020CV184; 2020CV209 (Dismissed. MTD Granted); 2020CV217; 2021CV1 (also referred to as 2021CV231); and 2021CV235.
[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation.* **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B.**

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

Second Claim for Relief: 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

Fourth Claim for Relief: 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte (Duarte) occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was accused of threatening Duarte and was arrested, making claims of malicious prosecution.

Fifth Claim for Relief: 2021CV1: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

Sixth Claim for Relief: 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *See West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering*, 72 P.3d at 453 (*citing Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970)). "[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts." *Lewis v. McGraw Hill Broadcasting Co.*, 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim.

Plaintiff has the burden to prove the following elements to succeed on a claim for malicious prosecution: (1) A criminal case was brought against the plaintiff; (2) The criminal case was brought as a result of (an) oral or written statement(s) made by the defendant; (3) The criminal case ended in favor of the plaintiff; (4) The defendant's statement(s) against the plaintiff (was) (were) made without probable cause; (5)The defendant's statement(s) against the plaintiff (was) (were) motivated by malice towards the plaintiff; and (6)As a result of the criminal case, the plaintiff had damages. Colo. Jury Instr., Civil 17:1.

In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

II. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Defendants are not legally responsible for Plaintiff's false imprisonment and false arrest claims because Defendants had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff does not dispute that he failed to show a receipt in any of these cases. Plaintiff has not disclosed any evidence that Plaintiff was detained for any purpose other

than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

III. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Plaintiff has not disclosed any evidence that his freedom of movement was restricted.

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." ***See*** **Colo. Jury. Instr., Civ. 21:2.**

Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C.** Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to.* **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id.* Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed JAN 04 2021 CLERK OF THE COMBINED COURT ARAPAHOE COUNTY, COLORADO
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., KADYN MOYER, JOHN DOE, JANE DOE.** 10900 E BRIARWOOD AVE CENTENNIAL, CO 80112	DATE FILED: January 4, 2021 CASE NUMBER: 2021CV1 ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV1 Division Courtroom 15

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., KADYN MOYER, JOHN DOE, JANE DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 10900 E Briarwood Ave, City of Centennial, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **JANUARY 4, 2020,** while attempting to leave a Walmart after shopping, **KAYDYN MOYER, JOHN DOE, and JANE DOE** – all employees of **WALMART, INC.** – detained me, slandered me in front of others, and reported to the police that I had stolen from them. Once the police arrived, they further detained, searched, arrested, and prosecuted me. All charges were dropped. **Claims: FALSE IMPRISONMENT, DEFAMATION, FALSE ARREST, and MALICIOUS PROSECUTION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

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Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery 2021/01/04
Signature of Plaintiff(s)

_____
Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	DATE FILED: December 27, 2021 10:30 PM FILING ID: EDBDC9ED38A27 CASE NUMBER: 2020CV148
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	

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Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

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3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id.*

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5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id.*

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[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation.* **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B.**

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

Second Claim for Relief: 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

Fourth Claim for Relief: 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte (Duarte) occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was accused of threatening Duarte and was arrested, making claims of malicious prosecution.

Fifth Claim for Relief: 2021CV1: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

Sixth Claim for Relief: 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *See West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering*, 72 P.3d at 453 (*citing Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970)). "[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts." *Lewis v. McGraw Hill Broadcasting Co.*, 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim.

Plaintiff has the burden to prove the following elements to succeed on a claim for malicious prosecution: (1) A criminal case was brought against the plaintiff; (2) The criminal case was brought as a result of (an) oral or written statement(s) made by the defendant; (3) The criminal case ended in favor of the plaintiff; (4) The defendant's statement(s) against the plaintiff (was) (were) made without probable cause; (5)The defendant's statement(s) against the plaintiff (was) (were) motivated by malice towards the plaintiff; and (6)As a result of the criminal case, the plaintiff had damages. Colo. Jury Instr., Civil 17:1.

In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

II. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Defendants are not legally responsible for Plaintiff's false imprisonment and false arrest claims because Defendants had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff does not dispute that he failed to show a receipt in any of these cases. Plaintiff has not disclosed any evidence that Plaintiff was detained for any purpose other

than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

III. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Plaintiff has not disclosed any evidence that his freedom of movement was restricted.

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." ***See*** **Colo. Jury. Instr., Civ. 21:2.**

Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C.** Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to.* **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id.* Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., AUSTIN DOE.** 200 W 136TH AVE WESTMINSTER, CO 80234	DATE FILED: August 6, 2021 CASE NUMBER: 2021CV68 **RECEIVED AUG 06 2021** ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV68 Division C Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., AUSTIN DOE, defendant(s), is (are) resident(s) of Adams County, with a post office address of 200 W 136th Ave, City of Westminster, State of Colorado.
2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR
3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.
4. Such claim arises from the following event(s) or transaction(s):

   On **AUGUST 6, 2020**, while attempting to leave a Walmart after shopping, **AUSTIN DOE** (whose last name is unknown), an employee of **WALMART INC.**, detained me and wouldn't let me leave his store, after I refused to show him my receipt. He was only called over by another employee "posted up" at the store's exit, so neither one of them had witnessed anything remotely resembling a theft. Claim: **FALSE IMPRISONMENT.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.
5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

District Court, Adams County, Colorado 1100 Judicial Center Drive Brighton, Colorado 80601	DATE FILED: December 9, 2022 4:20 PM CASE NUMBER: 2021CV68
Plaintiff: WILLIAM MONTGOMERY v. **Defendant:** WALMART, INC	Case Number: 2021CV68 Consolidated with 2021CV88 Division: C

ORDER RE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant's Motion For Summary Judgment filed on October 31, 2022. Plaintiff filed a Response on November 21, 2022. A Reply was not filed. The Court, being fully informed in the premises, hereby makes the following findings and orders:

BACKGROUND

This matter arises out of two Adams County Complaints that were filed by pro se Plaintiff, William Montgomery, against Walmart. Plaintiff filed a third complaint in Adams County in 2020 (2020CV67). To date, Plaintiff has also filed six (6) pro se Complaints against Walmart in Arapahoe County, and a pro se Court of Appeals case for a claim against Walmart he filed in Jefferson County[1].

All aforementioned cases arise from instances, in which, Plaintiff enters a Walmart store under what appears to be a plan to be sought and detained by Walmart managers. In each of the incidents, including in this case, Plaintiff begins audio recording before he enters the store. Before exiting, he engages in acts designed to elicit a Walmart Asset Protection employee to ask him if he has a receipt for the items in his possession. Plaintiff then refuses to show his receipt or refuses to respond to the questions as to whether he has a receipt. Plaintiff elevates the situation

[1] The Court takes Judicial Notice of the findings of fact and orders in the following cases: Walmart/Montgomery Arapahoe (Claim 1 – 20CV148 – DOI: 09/03/19) MSJ granted 02/25/22; Walmart/Montgomery Arapahoe (Claim 2 – 20CV184 – DOI: 10/22/18) MSJ granted 02/25/22; Walmart/Montgomery Arapahoe (Claim 3 - 20CV209 – DOI: 11/26/18) – MTD granted 03/23/21; Walmart/Montgomery Arapahoe (Claim 4 – 20CV217 – DOI: 10/22/18) MSJ granted on 02/25/22; Walmart/Montgomery Arapahoe (Claim 5 – 21CV231, aka 21CV1 – DOI: 01/04/20) MSJ granted on 02/25/22; Walmart/Montgomery Arapahoe (Claim 6 - 21CV235 - DOI: 09/20/20) MSJ granted 02/25/22; Appeal from 20CV76 MSJ granted on 01/19/21.

where police are usually called. He threatens suit against Walmart and eventually brings suit against Walmart under various theories including false imprisonment and defamation.

Here, the sole claim set forth in the complaint filed in 2020CV68 is false imprisonment. In the case which was consolidated with this action, 2020CV88, the claims pled are false imprisonment and defamation.

LEGAL STANDARD – SUMMARY JUDGMENT

The purpose of summary judgment is "to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Peterson v. Halsted*, 829 P.2d 373, 375 (Colo. 1992).

"Summary judgment is appropriate when the pleadings and supporting documents clearly demonstrate that no issues of material fact exist, and the moving party is entitled to judgment as a matter of law." *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). "A material fact is one that will affect the outcome of the case." *Western Innovations, Inc. v. Sonitrol, Corp.*, 187 P.3d 1155 (Colo. App. 2008). "[A] genuine issue of material fact cannot be raised simply by allegations of pleadings or argument of counsel." *Brown v. Teitelbaum*, 830 P.2d 1081, 1084-85 (Colo. App. 1991). "In addition to concerning a material fact, the issue in dispute must be 'genuine.'"

"The moving party bears the initial responsibility of informing the court of the basis for the motion and identifying those portions of the record and of the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." *Quist v. Specialties Supply Co., Inc.*, 12 P.3d 863, 868 (Colo. App. 2000).

"[O]nce this initial burden has been met, the burden shifts to the non-moving party to establish that there is a triable issue of fact." *City of Aurora v. ACJ Partnership*, 209 P.3d 1076 (Colo. 2009). To avoid summary judgment, the evidence presented in opposition to such a motion must therefore be sufficient to demonstrate that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to existence of a triable issue of fact must be resolved against the moving party." *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002).

Summary judgment is a drastic remedy, but it is one that should be granted when there is a clear showing that the controlling standards are met. *HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879, 887 -888 (Colo. 2002).

LEGAL STANDARD – FALSE ARREST

Plaintiff has to prove the following elements by a preponderance of the evidence to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of

movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. [C.J.I., Civ. 21:1].

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." [C.J.I., Civ. 21:2].

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. [C.J.I., Civ. 21:7].

LEGAL STANDARD – DEFAMATION

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. [C.J.I., Civ. 21:2]. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." [C.J.I., Civ. 22:7]; *See Burns v. McGraw Hill* Broadcasting, 659 P.2d 1351,1357 (Colo. 1983.)

A defamation per se claim requires a plaintiff to prove: (1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication. *See Lawson v. Stow*, 327 P.3d 340, 345 (Colo. App. 2014)

SHOPKEEPER'S PRIVILEGE

If any person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. C.R.S. § § 18-4-407. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *Id.*

UNDISPUTED FACTS

The August 6, 2020 Incident (Complaint originally filed in 2021CV68):

1. On August 6, 2020, Plaintiff activated a concealed audio recording device before entering a Walmart store. [Ex. A[2]].

2. At the beginning of this recording Plaintiff can be heard telling an unknown third party: "(unintelligible) . . . basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." [*Id.* at 1:42].

3. Plaintiff forgets his wallet when checking out and returns to his vehicle to obtain it. On the way back into the store he comments to himself on the receipt line and implies that he won't be showing his receipt. [*Id.* at 12:20].

4. Approximately sixteen (16) minutes into the recording, Plaintiff is heard attempting to exit the store when he is asked by a Walmart associate to show his receipt for the merchandise. [*Id.* at 16:48].

5. The associate offers to get the AP (short for asset protection) for Plaintiff. Plaintiff responds, "I mean if you want to hold me, that's all you buddy." "Unless you're a cop I'm not going to answer questions." [*Id.*]

6. The AP arrives and asks Plaintiff at least five (5) times for his receipt. He says, "If not, you can go back and pay for it and I'll let you go." Plaintiff became defensive at the request to see his receipt for the items; and proceeds to ignore and/or refuse repeated requests to see his receipt. [*Id.* at 17:30].

7. When asked if he had a receipt, Plaintiff responded "Last time I checked I do not have to show it to you." [*Id.* at 16:20].

8. The AP told Plaintiff that if he showed his receipt he could go. [*Id.* at 18:55].

9. Plaintiff is eventually told to leave the store. Plaintiff responded by screaming that he would be seeing the AP in Court. [*Id.* at 20:25].

The September 3, 2020 Incident (Complaint originally filed in 2021CV68)

10. On September 3, 2020, Plaintiff again activated a concealed audio recording device before entering a Walmart store. [Ex. B[3]].

11. While checking out, Plaintiff instructs the cashier to put an item on a separate receipt from the other items. [*Id.* at 10:55]. According to Plaintiff he originally asked for a separate receipt for a non-food-based item, but when he discovered he could not afford the non-food item he cancelled that transaction and received only one receipt. [*Id.*; Plaintiff's Affidavit – Claim 2, ¶10].

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[2] Plaintiff titled this audio recording "Westminster Walmart Detains Me Again."
[3] Plaintiff titled this audio recording "Tower Road Walmart Detains Me."

12. Plaintiff received a receipt for his purchase and did want any bags for his items because the bags are not environmentally friendly. [*Id.*; Plaintiff's Affidavit – Claim 2, ¶10].

13. Upon exiting the store, Plaintiff was asked for his receipt. He responded with "Receipt Nazi?" [*Id.* at 14:17].

14. The Walmart associates ask multiple times for his receipt and state "All you got to do is show the receipt and you can go." [*Id.* at 16:00].

15. Plaintiff responds "you can ask but I do not have to show you. I don't have to show you anything." [*Id.* at 20:20-29].

16. After the police are called, Plaintiff is told he can leave. After being told he can leave, Plaintiff requests to stay so that he can talk to the police. When told he could not stay, Plaintiff tells the associates that he will see them in Court. [*Id.* at 21:39].

ANALYSIS

False Arrest:

An essential claim to Plaintiff's false arrest claim includes a showing that Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time. A person's freedom of movement is not restricted if the person knows of a way to escape without causing an unreasonable risk of harm to him. [*See*, C.J.I., Civ. 21:2].

Here, on both occasions Plaintiff knew that all he had to do to prevent detention was to show his receipt. In fact, the facts here, and in prior cases, clearly demonstrate that Plaintiff's purpose on his recorded trips to Walmart is to get detained and record himself being detained. [*See* Exhibits A - F]. He knows it is Walmart's policy to ask for receipts from customers exiting the stores. [Ex. A at 1:42]. He is told that all he has to do is present a receipt and he can leave. [Ex. A at 18:55; Ex. B at 16:00].

Even construing the above facts in the light most favorable to Plaintiff leads to the conclusion that no reasonable jury could return a verdict in favor of Plaintiff on his claim for false arrest[4].

While not necessary, it is important to note that Plaintiff's claim for false arrest also fails on the grounds of the shopkeeper's privilege and privilege to detain. Again, Plaintiff admits that he was repeatedly asked to show his receipt for merchandise in his possession and repeatedly either refused or refused to even answer whether he had a receipt for his purchases. No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for

[4] Plaintiff submits in his affidavit regarding the second claim in this case that he threw his receipt away. From this Plaintiff argues that his lack of a receipt dispels the notion that he had a means of escape without causing unreasonable risk of harm. However, given Plaintiff's prior activity and knowledge in these various detention cases, if Plaintiff threw away the receipt it would be his actions that prevented his means of escape, not the Defendant's. Plaintiff cannot manufacture a way out of his reasonable means of escape then argue he had no reasonable means of escape.

preventing a person from leaving their store with goods for which the person refuses to show a receipt.

Defamation and Defamation per se[5]:

"Where the moving party does not bear the burden of persuasion at trial, [the] initial burden of production may be satisfied by showing that there is an absence of evidence in the record to support the nonmoving party's case." *Quist v. Specialties Supply Co., Inc.*,12 P.3d 863, 868 (Colo. App. 2000). *Accord Lombard v. Colorado Outdoor Educ. Center,* 179 P.3d 16 (Colo. App. 2007), *rev'd on other grounds.*

Here, essential to a defamation and defamation *per se* claim is the element of a defamatory statement. A defamatory statement is one that "tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." [C.J.I., Civ. 22:7]. Therefore, essential to a defamation and defamation *per se* claim is a showing of harm to Plaintiff's reputation "in the estimation of a substantial and respectable minority" of the community.

Walmart argues that there is an absence of any evidence of reputational harm. With respect to the defamation claim Walmart also argues that there is an absence of evidence of any special damages incurred by Plaintiff as a result of any defamatory statements. The Court finds that Walmart met its initial burden for purposes of summary judgment. The burden then shifted to Plaintiff to demonstrate by affidavit, depositions or other evidence, a triable issue of fact.

Plaintiff has not produced any evidence that he suffered economic loss. That fact alone supports summary judgment in favor of Walmart on a defamation claim.

Plaintiff has not produced any credible evidence of harm to his reputation. He submits affidavits stating that he "felt [his] reputation was damaged, that others perceived [him] as a thief." [Aff. Claim 1, ¶ 23 and Affidavit Claim 2, ¶ 24]. But these conclusory statements are not corroborated by other evidence. "A litigant "cannot avoid a summary disposition of his case by merely asserting a fact, without any evidence to support it." *Coffman v. Williamson*, 348 P.3d 929 (Colo. 2015); *Norton v. Dartmouth Skis, Inc.,* 147 Colo. 436, 364 P.2d 866, 868 (Colo. 1961); *see also Bernard v. Grp. Publ'g, Inc.,* 970 F.Supp.2d 1206, 1213 (D. Colo. 2103) (explaining that unsubstantiated, self-serving testimony in an affidavit does not create a genuine issue of material fact for summary judgment purposes where the record does not contain corroborating evidence). Plaintiff's failure to produce credible evidence of harm to his reputation is fatal to both a claim for defamation and defamation *per se*.

---

[5] Plaintiff did not clearly assert a defamation *per se* claim in his Complaint in 2021CV88 and only listed a defamation claim. However, Plaintiff raises the issue of a defamation *per se* claim in his response to the summary judgment motion. The Court notes that Plaintiff is proceeding *pro se*. The Court also notes that *pro se* litigants are bound by the same rules of civil procedure as attorneys. (*Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004); *see also Loomis v. Seely*, 677 P.2d 400 (Colo. App. 1983); *People v. Romero*, 694 P.2d 1256 (Colo. 1985). Finally, the Court notes that it must "make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard." (Code of Judicial Conduct, Rule 2.2, Comment [4]). Therefore, the Court will address a defamation *per se* claim as a reasonable accommodation to Plaintiff.

Finally, the Court notes for reasons stated above, the shopkeepers privilege would act as a bar to Plaintiff's defamation claims as well.

CONCLUSION

Based on the foregoing, Defendant's Motion for Summary Judgment is **GRANTED**.

Judgment is hereby entered in favor of Defendant and against Plaintiff on Plaintiff's claim for false arrest in 2020CV68.

Judgment is also entered in favor of Defendant and against Plaintiff on Plaintiff's claims for false arrest, defamation, and defamation *per se* in 2020CV88.

SO ORDERED THIS 9th day of December, 2022

BY THE COURT:



District Court Judge

District Court Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	FILED IN ADAMS COUNTY COMBINED COURT SEP 03 2021
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JANE DOE.** 3301 TOWER RD AURORA, CO 80011	DATE FILED: September 3, 2021 CASE NUMBER: 2021CV88 ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21 CV88 Division Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JANE DOE., defendant(s), is (are) resident(s) of Adams County, with a post office address of 3301 Tower Rd, City of Aurora, State of Colorado.
2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR
3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.
4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 3, 2020**, while attempting to leave a Walmart after shopping, **JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, and JANE DOE** (whose names are yet to be known), all employees of **WALMART INC.**, detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered me (as a thief) publicly in front of others. Claims: **FALSE IMPRISONMENT & DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.
5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO 1100 Judicial Center Dr. Brighton, CO 80601 (303) 659-1161	DATE FILED: October 31, 2022 4:23 PM FILING ID: 9F14A41EEEEC5 CASE NUMBER: 2021CV68
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC.	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700; Fax: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant, Walmart, Inc.*	Case No.: 2021cv68 (Consolidated Case: 2021cv88) Division: C
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	

Defendant Walmart, Inc. ("Walmart" or "Defendant"), by and through counsel, Treece Alfrey Musat P.C., hereby submits its Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that she has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter is the first of three (3) Adams County Complaints that were filed within a year by *pro se* Plaintiff, William Montgomery, against Walmart.[1] To date, Plaintiff has also filed six (6) *pro se* Complaints against Walmart in Arapahoe County,[2] and a *pro se* Court of Appeals case for a claim against Walmart he filed in Jefferson County.[3] All aforementioned cases arise from instances, in which, Plaintiff planned and sought to be detained by Walmart managers. Plaintiff's method of operation before each incident at the Walmart stores is to begin audio recording before he enters. Before exiting, he will display conspicuous behavior to suggest that he is shoplifting, so that Walmart's Asset Protection employees will be prompted to ask him if he has a receipt for the items in his possession. Invariably, Plaintiff will refuse to show his receipt for the items in his possession and cause a raucous, so that he may manufacture a basis for suit against Walmart under various theories including false imprisonment and defamation.

Here, the sole claim set forth in the complaint filed in 2020cv68 is false imprisonment. In the case which was consolidated with this action, 2020cv88, the claims pleaded are false imprisonment and defamation.

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[1]20CV067 (filed September 3, 2020); 21CV68 (filed August 6, 2021); 21CV88 (filed September 3, 2021).
[2]Walmart/Montgomery Arapahoe (Claim 1 – 20CV148 – DOI: 09/03/19) MSJ granted 02/25/22
Walmart/Montgomery Arapahoe (Claim 2 – 20CV184 – DOI: 10/22/18) MSJ granted 02/25/22
Walmart/Montgomery Arapahoe (Claim 3 - 20CV209 – DOI: 11/26/18) – MTD granted 03/23/21
Walmart/Montgomery Arapahoe (Claim 4 – 20CV217 – DOI: 10/22/18) MSJ granted on 02/25/22
Walmart/Montgomery Arapahoe (Claim 5 – 21CV231, aka 21CV1 – DOI: 01/04/20) MSJ granted on 02/25/22
Walmart/Montgomery Arapahoe (Claim 6 - 21cv235 - DOI: 09/20/20) MSJ granted 02/25/22.
A notice of appeal has been filed in this matter.
[3] 2021CA359. (Appeal from 20CV76 MSJ granted on 01/19/21).

STATEMENT OF UNDISPUTED FACTS

The August 6, 2020 Incident (Complaint originally filed in 2021cv68)

1. On August 6, 2020, Plaintiff activated a concealed audio recording device before entering a Walmart store. **Ex. A. (*Exhibits A and B are audio files and can be downloaded here:*** https://we.tl/t-x8d1Xae0fn).

2. At the beginning of this recording Plaintiff can be heard telling an unknown third party: "(intelligible) . . . basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." **Id. at 1:42.**

3. Plaintiff forgets his wallet when checking out and returns to his vehicle to obtain in. On the way back into the store he comments to himself on the receipt line and implies that he won't be showing his receipt. **Id. at 12:20.**

4. .Approximately sixteen (16) minutes into the recording, Plaintiff is heard attempting to exit the store when he is asked by a Walmart associate to show his receipt for the merchandise. ***Id.* at 16:48.**

5. The associate offers to get the AP (short for asset protection) for Plaintiff. Plaintiff responds "I mean if you want to hold me (unintelligible) buddy." "Unless you're a cop I'm not going to answer questions." **Id.**

6. The AP arrives and asks Plaintiff at least five (5) times for his receipt. He says "If not, you can go back and pay for it and I'll let you go." Plaintiff became defensive at the request to see his receipt for the items; and proceeded to ignore and/or refuse repeated requests to see his receipt. ***Id.* at 17:30.**

7. When asked if he had a receipt, Plaintiff responded "Yes, I have it that doesn't mean . . . (unintelligible)." **Id. at 17:55.**

8. The AP told Plaintiff that if he showed his receipt he could go. **Id. at 18:55.**

9. Plaintiff is eventually told to leave the store. Plaintiff responded by screaming that he would be seeing the AP in Court. **Id. at 20:25.**

The September 3, 2020 Incident (Complaint originally filed in 2021cv68)

10. On September 3, 2020, Plaintiff again activated a concealed audio recording device before entering a Walmart store. **Ex. B.**

11. While checking out, Plaintiff instructs the cashier to put an item on a separate receipt from the other items. **Id. at 10:55.** Plaintiff received receipts for his purchase and did want any bags for his items. **Id.**

12. Upon exiting the store, Plaintiff was asked for his receipt. He responded with "Receipt Nazi?" **Id. at 14:17.**

13. The Walmart associates ask multiple times for his receipt and state "All you got to do is show the receipt and you can go." **Id. at 16:00.**

14. After the police are called, Plaintiff is told he can leave. After being told he can leave, Plaintiff requests to stay so that he can talk to the police. When told he could not stay, Plaintiff tells the associates that he will see them in Court. **Id. at 21:39.**

INCORPORATION OF PRIOR ORDERS

Defendant incorporates, as if set forth fully herein, the law and holdings set forth in prior orders addressing Plaintiff's claims. *See* Order: Motion for Summary Judgment, dated 01/19/21 (Jefferson County) attached hereto as **Ex. C**, Order re: Motions for Summary Judgment, dated

02/25/22 (Arapahoe County), attached hereto as **Ex. D,** Court of Appeals Opinion Affirming Grant of Summary Judgment, attached hereto as **Ex. E,** and Order Granting Summary Judgment, dated 08/19/2022 (Adams County) attached hereto as **Ex. F.**

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." See *West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering,* 72 P.3d at 453 (citing *Sullivan v. Davis*, 172 Colo. 490, 474 P.2d 218 (1970)). "[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts." *Lewis v. McGraw Hill Broadcasting Co.*, 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary

judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's claims for false imprisonment should be dismissed because Walmart maintained Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407 and because his freedom of movement was not restricted.

Plaintiff has to prove the following elements by a preponderance of the evidence to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury

Instr., Civil 21:1. "Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." *See* Colo. Jury. Instr., Civ. 21:2.

If any person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. *See* Colo. Rev. Stat. Ann. § 18-4-407. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *Id.*

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Here, Plaintiff's freedom of movement was never restricted, as required by Colo. Jury. Instr., Civ. 21:2. Plaintiff indisputably knew that showing his receipt would allow him to easily

leave the store. *See* Exs. C-D. Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, Plaintiff chose not to show his receipt for the purpose of provoking a confrontation with Walmart's Asset Protection department. Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." As the Court of Appeals held, "[n]o reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment." **Ex. E,** p. 8.

Additionally, Defendant is not responsible for Plaintiff's false imprisonment claim as a matter of law because Defendant had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff cannot dispute that he repeatedly refused to show his receipt for the merchandise in his possession. Indeed, Plaintiff has not disclosed any evidence that he was detained for any purpose other than to investigate whether or not he paid for the merchandise.

Plaintiff's freedom of movement was not restricted, as required by Colo. Jury. Instr., Civ. 21:2 to maintain a claim for false imprisonment. Furthermore, Plaintiff's false imprisonment and defamation claim is barred by both the statutory and common law Shopkeeper's privilege and should be dismissed.

II. Plaintiff's claim for defamation/slander must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community

The elements of defamation are (1) a defamatory statement concerning another; (2)

published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting*, 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Adams County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id.*

"Plaintiff also has not demonstrated that there was an accusation of theft by Defendant's employees that was untrue, overheard, and understood by a third person such as to support a claim of defamation *per se*. And under either a defamation or defamation *per se* claim, Plaintiff lacks evidence sufficient to support the required element of harm to his reputation in the estimation of the community, as required for either claim." **Ex. F. pp 10-11.**

Moreover, as set forth above, Defendant's shopekeeper's privilege bars Plaintiff's claim for defamation. Accordingly, Plaintiff has failed to meet his burden of proof for his allegations of defamation.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of the asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. Based on the undisputed facts and the applicable points of law discussed herein, Defendant respectfully requests that the Court enter judgment in their favor on all of Plaintiff's claims against Defendant, for its costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 31st day of October, 2022.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendant Walmart, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2022, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

District Court Arapahoe County, Colorado Court Address: 7325 S Potomac St #100 Centennial, CO 80112 (303) 645-6600	Filed SEP 20 2021 CLERK OF THE DISTRICT COURT ARAPAHOE COUNTY, COLORADO
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **WALMART INC., JAROD DOE, MARCUS DOE, JASON DOE.** 14000 E EXPOSITION AVE AURORA, CO 80012	DATE FILED: September 20, 2021 CASE NUMBER: 2021CV235 ▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd PMB 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com FAX Number: Atty. Reg. #:	Case Number: 21CV235 Division 21 Courtroom

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. WALMART INC., JAROD DOE, MARCUS DOE, JASON DOE., defendant(s), is (are) resident(s) of Arapahoe County, with a post office address of 14000 E Exposition Ave, City of Aurora, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On **SEPTEMBER 20, 2020,** while attempting to leave a Walmart after shopping, **JAROD DOE, MARCUS DOE, and JASON DOE,** (whose last names are yet to be known), all employees of **WALMART INC.,** detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered me (as a thief) publicly in front of others. Claims: **FALSE IMPRISONMENT & DEFAMATION.**

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of defendant(s) is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd PMB 129, Denver, CO 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

CRCCP FORM 2 SC 6/00 COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

EXHIBIT D

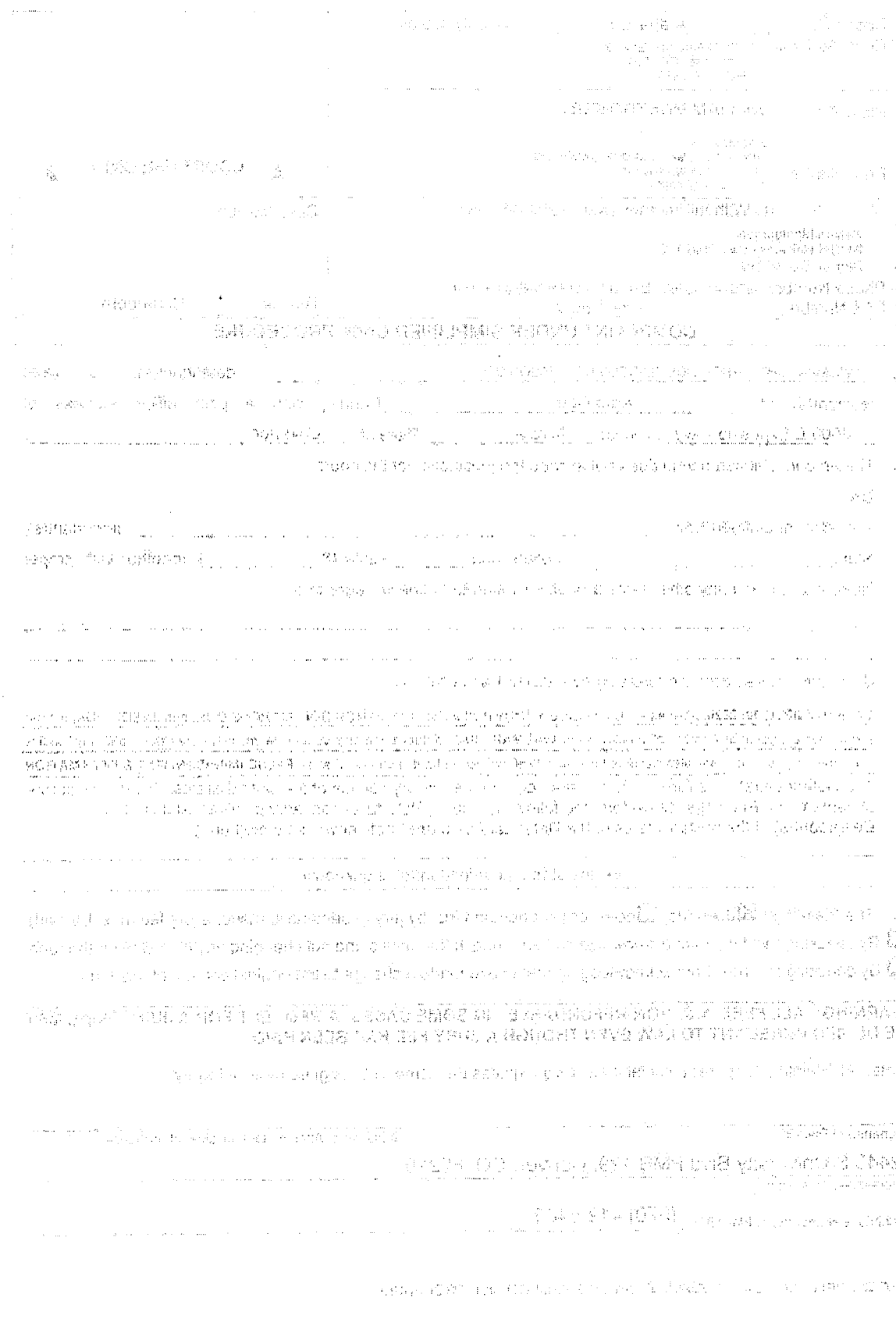

EXHIBIT D

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St., #100 Centennial, CO 80112	DATE FILED: December 27, 2021 10:30 PM FILING ID: EDBDC9ED38A27 CASE NUMBER: 2020CV148
Plaintiff: WILLIAM MONTGOMERY, **Defendants:** WALMART, INC. et al	**▲ COURT USE ONLY ▲**
Kathleen J. Johnson, No. 44524 Rachelle J. Veikune, No. 51810 TREECE ALFREY MUSAT P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Telephone: (303) 292-2700 Telecopier: Not Designated Email: kjohnson@tamlegal.com; rveikune@tamlegal.com *Attorneys for Defendant Walmart, Inc. and Alberto Carlos Cordero-Duarte*	Case Numbers: 2020CV148 (Consolidated cases: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 21CV235) Division: 21

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Walmart, Inc. et al ("Walmart"), by and through counsel, Treece Alfrey Musat P.C., hereby submit their Motion for Summary Judgment pursuant to C.R.C.P. 56 as follows:

Colo. R. Civ. P. 121 §1-15(8) Certification: Undersigned counsel certifies that her office has conferred in good faith with Plaintiff concerning this Motion. Plaintiff indicated that he is opposed to this Motion and the relief sought herein.

BACKGROUND

This matter consolidates six (6) separate Arapahoe County Complaints filed by *pro se* Plaintiff, William Montgomery, against Walmart.[1] Plaintiff has also filed (3) filed pro se Complaints against Walmart in Adams County,[2] and he initiated his pro se Court of Appeals case for a Complaint against Walmart he filed in Jefferson County.[3] Plaintiff's method of operation at all Walmart stores is to begin audio recording before he enters the store. Invariably, Plaintiff will refuse to show his receipt for the items in his possession, with a goal of filing suit against Walmart under theories of false imprisonment, false arrest, malicious prosecution, and defamation. Plaintiff has failed to disclose evidence sufficient to meet his burden of proof on each of these claims. Accordingly, summary judgement is warranted.

STATEMENT OF UNDISPUTED FACTS

1. All six (6) of Plaintiff's Complaints filed under this Consolidated Case were filed *pro se*. *See* First Compl 2020CV148; Second Compl 2020CV184; Third Compl 2020CV209 (Dismissed. MTD Granted); Fourth Compl 2020CV217; Fifth Compl 2021CV1 (also referred to as 2021CV231); and Sixth Compl 2021CV235.

2. In his First Claim for Relief (2020CV148), Plaintiff claims that on September 3, 2019, Walmart employees "didn't let me leave, on my way out of their store, after I refused to show them my receipt." *See* First Compl. at ¶ 4.

3. A year after the incident, Plaintiff filed his First Claim for Relief on September 3, 2020 with the sole claim for false imprisonment. *Id.*

4. In his Second Claim for Relief (2020CV184), Plaintiff claims that on October 22, 2018, a Walmart employee "lied to an Aurora Police Officer that Plaintiff had shoplifted at his store." *See* Second Compl. at ¶ 4.

5. Plaintiff alleges that he was charged, arrested, and prosecuted for shoplifting on October 22, 2018. *Id.*

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[1] 2020CV148; 2020CV184; 2020CV209 (Dismissed. MTD Granted); 2020CV217; 2021CV1 (also referred to as 2021CV231); and 2021CV235.
[2] 2020CV67; 2021CV68; and 2021CV88.
[3] 2021CA359.

6. Two years later, Plaintiff filed his Second Claim for Relief on October 22, 2020 with the sole claim of malicious prosecution. *Id.*

7. Plaintiff was not arrested or charged with shoplifting for the October 22, 2018 incident, rather, he was arrested and charged with Harassment for his involvement in the incident. *See* Ex. B, (CBI report Jan 7 2021).

8. On October 22, 2018, Walmart employees called the Aurora Police Department on Plaintiff for an apparent shoplifting incident at the store. **Ex. A, p. 6.**

9. While police officers investigated the incident, Officer Scott Baker interviewed Plaintiff, as documented by Officer Baker's report of the same. **See Ex. A, p. 8.**

10. Officer Baker documented Plaintiff's admission that *he goes around to stores (preferably Walmart) and "stings" the store so he can sue them for false arrest. Montgomery went on and stated that the business and the person (loss prevention did not have "shopkeepers privilege" to stop him. Id.*

11. Mr. Montgomery told Officer Baker that "he came to the store and planned on suing." *Id.*

12. Officer Baker also documented Plaintiff's statement that *he abandoned his plan when he did not see any yellow jackets (managers). Montgomery stated he was on his way out of the store when loss prevention confronted him at the exit. Montgomery stated the loss prevention person asked to see his receipt for the items. Montgomery stated he did not feel that he should show the loss prevention person his receipts.* **See Ex. A, p. 9.**

13. Officer Kaycie Sawyer, another officer who investigated the October 22, 2020 incident, reported that *Montgomery said something to the effect of "this is my third time doing this" "I am really sorry that I put you guys up to this, I am going to have to see you in federal court now."* **Ex. A, pp. 6-7.**

14. Officer Sawyer further reported that *Montgomery continued to state that his rights had been violated and that he was planning on a federal law suit against me. It appeared as if Montgomery was attempting to agitate me the entire time I was conducting an investigation.* **See Ex. A, p. 7.**

15. At the end of their investigation, Aurora Police Officers arrested Plaintiff and issued him a summons for Harassment. *Id.*

16. In his Fourth Claim for Relief (2020CV217), Plaintiff claims that on October 22, 2018, Walmart asset protection employee, Mr. Alberto Duarte, "lied to an Aurora Police Officer that Plaintiff had threatened to spit on him." *See* Fourth Compl. at ¶ 4.

17. Plaintiff filed his Fourth Claim for Relief on December 10, 2020 with the sole claim of malicious prosecution. *Id.*

18. In his Fifth Claim for Relief (2021CV1) Plaintiff claims that on January 4, 2020, Walmart employees "detained me, slandered me in front of others, and reported to the police that I had stolen from them." *See* Fifth Compl. at ¶ 4.

19. A year later, Plaintiff filed his Fifth Claim for Relief on January 4, 2021, with claims of false imprisonment, false arrest, malicious prosecution, and defamation. *Id.*

20. Plaintiff was not arrested or charged or prosecuted for his involvement in the January 4, 2021 incident. ***See* Ex. B.**

21. In his Sixth Claim for Relief (2021CV235) Plaintiff claims that on September 20, 2020, Walmart employees "detained me and wouldn't let me leave their store, after I refused to show them my receipt. They also slandered my (as a thief) publicly in front of others." *See* Sixth Compl. at ¶ 4.

21. A year later, Plaintiff filed his Sixth Claim for Relief on September 20, 2021, with claims of false imprisonment and defamation. *Id.*

SUMMARY OF REMAINING CLAIMS
(For Ease of Reference)

First Claim for Relief: 2020CV148: Alleges that on September 3, 2019 an incident occurred at a Walmart store located at 601 Englewood Parkway, after Montgomery refused to show a receipt making a claim of false imprisonment.

Second Claim for Relief: 2020CV184: Alleges that on October 22, 2018 an incident occurred at a Walmart store located at 9400 E Hampden Avenue, when Montgomery was accused of shoplifting and was arrested making a claim of malicious prosecution.

Fourth Claim for Relief: 2020CV217: Alleges that on October 22, 2018 an incident involving Alberto Carlos Cordero Duarte (Duarte) occurred at a Walmart store located at 9400 E Hampden Avenue when Montgomery was accused of threatening Duarte and was arrested, making claims of malicious prosecution.

Fifth Claim for Relief: 2021CV1: Alleges that on January 4, 2020 an incident occurred at a Walmart store located at 10900 E. Briarwood Ave., when Montgomery was accused of shoplifting and arrested, making claims of false imprisonment, defamation, false arrest, and malicious prosecution.

Sixth Claim for Relief: 2021CV235: Alleges that on September 20, 2020, an incident occurred at a Walmart store located at 14000 E. Exposition Ave, when Montgomery was accused of shoplifting and detained, making claims of false imprisonment and slander.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law." *See West Elk Ranch, L.L.C. v. United States*, 65 P.3d 479, 481 (Colo. 2002). Summary judgment serves the wholesome utility of testing, in advance of trial, and on the intrinsic merits, whether there is in actuality a real basis for a claim. *Cucharas Sanitation & Water District v. Mounsey*, 805 P.2d 1177 (Colo. App. 1990). In reviewing a motion for summary judgment, the courts must give the non-moving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts as to whether an issue of fact exists against the moving party. *Home Engineering Services Inc. v. Kaiser-Hill Company, LLC*, 72 P.3d 451, 453 (Colo. App. 2003) (citing *Mancuso v. United Bank*, 818 P.2d 732 (Colo. 1991)). Once the moving party demonstrates an absence of issues of material fact, the non-moving party must show that there is a genuine issue for trial. *See Home Engineering*, 72 P.3d at 453 (*citing Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970)). "[T]he party opposing summary judgment is not entitled to rely on the pleadings, but must raise a genuine issue for trial based on specific evidentiary facts." *Lewis v. McGraw Hill Broadcasting Co.*, 832 P.2d 1118, 1124 (Colo. App. 1992). If the non-movant fails to demonstrate the existence of facts from which a reasonable jury could find in his favor, summary judgment is proper even on issues which would ordinarily be given over to the jury for resolution. *See Davis v. Regis College, Inc.*, 830 P.2d 1098, 1101 (Colo. App. 1992).

When a party that does not bear the burden of persuasion at trial moves for summary judgment, the "moving party's initial burden of production is satisfied by showing an absence of evidence in the record to support the nonmoving party's case." *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). "The burden then shifts to the nonmoving party to present sufficient evidence to demonstrate that a reasonable jury could return a verdict for the nonmoving party." *Id.*

As the party opposing the motion for summary judgment, Plaintiff cannot rely on the mere allegations of its pleadings, but must, by affidavit or otherwise as provided in C.R.C.P. 56, set forth specific facts showing a genuine issue of material fact. *McDaniels v. Laub*, 186 P.3d 86, 87 (Colo. App. 2008). "If the nonmoving party cannot muster sufficient evidence to make out a triable issue of fact, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law." *D.R. Norton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163, 1167 (Colo. App. 2008).

ARGUMENT

I. Plaintiff's Second, Fourth, and Fifth Claims for Relief fail to properly allege the elements required for maintaining a malicious prosecution claim.

Plaintiff has the burden to prove the following elements to succeed on a claim for malicious prosecution: (1) A criminal case was brought against the plaintiff; (2) The criminal case was brought as a result of (an) oral or written statement(s) made by the defendant; (3) The criminal case ended in favor of the plaintiff; (4) The defendant's statement(s) against the plaintiff (was) (were) made without probable cause; (5)The defendant's statement(s) against the plaintiff (was) (were) motivated by malice towards the plaintiff; and (6)As a result of the criminal case, the plaintiff had damages. Colo. Jury Instr., Civil 17:1.

In his Second Claim for Relief, Plaintiff claims he was charged, arrested, and prosecuted for shoplifting. *See* Second Compl. at ¶ 4. Plaintiff alleged no supporting facts for his claim that a criminal case was brought against him for shoplifting. Indeed, according to the Colorado Bureau of Investigation, no criminal case was brought against Plaintiff for shoplifting or theft arising from the October 22, 2018 incident. ***See* Ex. B.** Additionally, Plaintiff makes no allegation and provides no evidence that any alleged statements, made by Walmart or its employees, were made without probable cause and with malice towards him. Importantly, Plaintiff does not state that he suffered any damages as a result of the alleged malicious prosecution. Plaintiff's Second Claim for Relief must be dismissed because Plaintiff fails to satisfy the elements required to maintain his claim for malicious prosecution.

Furthermore, as to all claims for malicious prosecution, Plaintiff was required to make C.R.C.P. 16.1(k)(1) disclosures of all documents that are relevant to his claims. Plaintiff has not disclosed any evidence of a criminal case or its disposition. Plaintiff has not disclosed any evidence of damages or evidence that any statements made were motivated by malice towards Plaintiff. Plaintiff has failed to disclose any evidence in support of his mere allegations, and therefore, these claims must be dismissed.

II. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Walmart maintains Shopkeeper's Privilege pursuant to C.R.S. § 18-4-407.

Plaintiff has the burden to prove the following elements to succeed on a claim for false imprisonment 1) Walmart intended to restrict Plaintiff's freedom of movement; 2) Walmart, directly or indirectly, restricted Plaintiff's freedom of movement for a period of time; and 3) Plaintiff was aware his freedom of movement was restricted. Colo. Jury Instr., Civil 21:1. If any

person conceals on his person or otherwise carries away any unpurchased goods or merchandise held or owned by any store, the merchant, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant does not render the merchant or merchant's employee, civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention. *See* Colo. Rev. Stat. Ann. § 18-4-407.

A defendant is not legally responsible to a plaintiff on his claim of false imprisonment/false arrest if the affirmative defense of a privilege to detain for investigation is proved. The defense is proved when: (1)The defendant was an owner or employee of a store; (2) The defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the plaintiff concealed upon his person any unpurchased goods or merchandise held or owned by the store, or otherwise carried away any unpurchased goods or merchandise held or owned by the store; and (3) The defendant detained and questioned the plaintiff in a reasonable manner for the purpose of determining whether the plaintiff committed theft. *See* Colo. Jury Instr., Civil 21:7.

Defendants are not legally responsible for Plaintiff's false imprisonment and false arrest claims because Defendants had reasonable grounds to believe that Plaintiff had either wrongfully taken merchandise or failed to pay for these items, and detained plaintiff solely for the purpose of questioning him about the matter. *See* Colo. Jury. Instr., Civ. 21:8 (common law privilege to detain for investigation). Plaintiff does not dispute that he failed to show a receipt in any of these cases. Plaintiff has not disclosed any evidence that Plaintiff was detained for any purpose other

than to investigate whether or not he paid for merchandise. To be sure, Plaintiff confessed to police officers that he routinely seeks to be detained by Walmart employees under suspicion of shoplifting, so that he may create a basis for legal action against Walmart. **See Ex. A,** p. 8. Accordingly, Plaintiff's claims are barred by both the statutory and common law Shopkeeper's privilege.

III. Plaintiff's claims for false imprisonment and false arrest in his First, Fifth, and Sixth Claims for Relief should be dismissed because Plaintiff has not disclosed any evidence that his freedom of movement was restricted.

"Restriction of freedom of movement" is defined as when "a person's freedom of movement is actually limited, or he believes that it has been limited and does not know of any way to escape without causing an unreasonable risk of harm to him." ***See*** **Colo. Jury. Instr., Civ. 21:2.**

Here, Plaintiff indisputably knows that showing his receipt would allow him to easily leave the store. ***See*** **Order granting MSJ, attached hereto as Exhibit C.** Rather, as in every case filed by Plaintiff against Walmart alleging false imprisonment or false arrest, it is Plaintiff's own subjective desire not to show his receipt. Plaintiff *believes the onus IS NEVER, HAS NEVER BEEN, AND WILL NEVER BE on a customer (let alone detainee) to "show his receipt" to literally anybody, ever, period. There exists no law, no store policy, nothing remotely of the sort to even begin to create such an obligation. A receipt is nothing more than a citizen's private property, to which he (and only he) retains sole ownership and access to.* **Exh. D, Plaintiff's Court of Appeals Opening Brief, p. 9.** Showing a valid receipt, which would allow Plaintiff to immediately exit the store, does not subject Plaintiff to an "unreasonable risk of harm." Therefore, Plaintiff's claims for false imprisonment must be dismissed.

IV. Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed because his Reputation Was Not Harmed in the Estimation of at Least a Substantial and Respectable Minority of the Community.

The elements of defamation are (1) a defamatory statement concerning another; (2) published to a third party; (3) falsity of the statement; and (4) special damages caused by publication. *See* Colo. Jury. Instr., Civ. 21:2. A statement is defamatory if "it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community." Colo. C.J.I. 22:7; *See Burns v. McGraw Hill Broadcasting,* 659 P.2d 1351,1357 (Colo. 1983.)

Plaintiff has no evidence of any harm to his reputation in the estimation of a substantial and respectable minority of Arapahoe County. Moreover, Plaintiff has no evidence of any actual or special damages as a result of this alleged statement. *See* C.J.I.-Civ §§ 22.12 and 22.13, and cases cited therein. To date, Plaintiff has not disclosed any calculation or computation of damages. To prove "special damages," Plaintiff must identify a specific monetary loss. Colo. C.J.I. 22:12. Hurt feelings or injury to reputation do not constitute "special damages" unless accompanied by a specific monetary loss. *Id.* Accordingly, as Plaintiff has failed to meet his burden of proof for his allegations of defamation and slander, Plaintiff's claims for defamation in his Fifth and Sixth Claims for Relief must be dismissed.

CONCLUSION

Plaintiff cannot satisfy the required elements for any of his asserted claims. There is an absence of any evidence in the record to support the Plaintiff's case. *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1216 (Colo. App. 2010). Based on the undisputed facts and the applicable points of law discussed herein, Defendants respectfully request that the Court

enter judgment in their favor on all of Plaintiff's claims against Defendants, for their costs, and for such other relief the Court deems just and proper.

Respectfully submitted this 27th day of December, 2021.

TREECE ALFREY MUSAT P.C.

s/ KJJ, original signature on file

Kathleen J. Johnson, No. 44524
Rachelle J. Veikune, No. 51810
Attorneys for Defendants Walmart, Inc. and Alberto Carlos Cordero-Duarte

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2021, a true and correct copy of the foregoing was served via U.S. Mail and Email upon the following:

William Montgomery
2443 S. University Blvd., PMB 129
Denver, CO 80210
zoinbergs@gmail.com
Pro-Se Plaintiff

s/ Ronda Frazier, original signature on file
Ronda Frazier

COLORADO COURT OF APPEALS

DATE FILED: May 12, 2022
CASE NUMBER: 2021CA359

Court of Appeals No. 21CA0359
Jefferson County District Court No. 20CV76
Honorable Jason Carrithers, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart Stores, Inc.,

Defendant-Appellee.

ORDER AFFIRMED

Division I
Opinion by JUDGE TOW
Dailey and Berger, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced May 12, 2022

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Rachelle J. Veikune, Denver, Colorado, for Defendant-Appellee

¶ 1 Plaintiff, William Montgomery, appeals the district court's judgment in favor of defendant, Walmart Stores, Inc. (Walmart). We affirm.

I. Background

¶ 2 The following undisputed facts are gleaned from the pleadings and the parties' summary judgment briefing.

¶ 3 Montgomery entered a Walmart store and took two bags of ice out of a large cooler. He took the two bags to the cashier and bought them. Montgomery then asked the cashier if he could pay for a third bag of ice and then go get it from the cooler. The cashier agreed and Montgomery paid for the third bag of ice. The cashier gave Montgomery a receipt for that purchase and told Montgomery that "they'll ask for it."

¶ 4 A Walmart associate who was stationed at the exit watched Montgomery go to the cooler, get the third bag of ice, and proceed toward the exit. At the exit, the associate told Montgomery that he watched him do that and asked to see his receipt. Montgomery laughed and did not show his receipt. A second associate then asked to see the receipt. Montgomery refused to show his receipt. The second associate clarified that he was not accusing

Montgomery of anything but was just asking to see the receipt and explained that he did not know if Montgomery had a receipt.

¶ 5 Montgomery placed the bags of ice on the floor and started to search for Walmart's policies and "case law" on his cell phone. The second associate picked up the ice and began talking to the Walmart manager about the situation. The manager then asked Montgomery — six times — if he had a receipt. In response, Montgomery asked, "do I have to show the receipt." He was told he could take the ice out of the store if he showed a receipt. Ultimately, the manager asked Montgomery to leave, and he left without taking the ice.

¶ 6 Montgomery reported the incident to the police, insisting that Walmart be charged with a crime.[1] He then sued Walmart for false imprisonment and civil theft of $5.17 (the price of the three bags of ice). The district court granted Walmart's motion for summary judgment on both claims.

[1] It does not appear that any charges were filed.

II. Standard of Review

¶ 7 We review de novo a district court's order granting summary judgment. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 8 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact and there is a clear showing that the moving party is entitled to summary judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001). The moving party bears the burden of showing the absence of a genuine issue of fact. *Id.* The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27; C.R.C.P. 56(e).

A. False Imprisonment

¶ 9 Montgomery contends that the district court erred by concluding that he was not confined because all he had to do before being permitted to leave with the ice was show his receipt. We discern no error.

¶ 10 "[T]o confine one intentionally without lawful privilege and against one's consent within a limited area for any appreciable time, however short, constitutes the tort of false imprisonment." *Blackman for Blackman v. Rifkin*, 759 P.2d 54, 58 (Colo. App. 1988) (quoting 1 F. Harper & F. James, The Law of Torts § 3.7 (O. Gray 2d ed. 1986); *see also Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983) (citing Restatement (Second) of Torts section 35 (Am. L. Inst. 1965) in discussing what constitutes false imprisonment).[2]

¶ 11 To determine whether the Walmart employees "confined" Montgomery, the district court looked to section 36 of the

[2] Walmart did not assert in its motion for summary judgment, and does not assert here, that its employees had lawful authority to detain Montgomery under what is known as the "shopkeepers' privilege." *See* § 18-4-407, C.R.S. 2021. Thus, we do not address that issue.

Restatement (Second) of Torts, Westlaw (database updated Oct. 2020), which provides

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

¶ 12 Relying on this language, the district court concluded that showing the receipt was a reasonable means of leaving the store, and Montgomery was aware of that fact. Therefore, the district court concluded, Montgomery was not confined. As a threshold matter, we agree with the district court that section 36(2) of the Restatement (Second) of Torts accurately states the law. In particular, a comment to the provision notes that "it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a.

¶ 13 Montgomery does not claim he did not know that all he needed to do was show his receipt in order to leave the store but contends that showing his receipt was not a reasonable means of escape.[3] He argues — without citation to any statute or case law — that "showing a receipt is not an objectively reasonable action, under any circumstance." Indeed, he likens the request to being surrounded by a gang demanding money to let him leave. Notwithstanding how sincere Montgomery's subjective belief may be, his analogy objectively fails. Being mugged is not a "slight inconvenience"; being asked by a retailer to show a receipt as proof that an item was actually purchased — which is precisely what a receipt is designed for — is *at most* a "slight inconvenience."[4]

¶ 14 Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury. *See, e.g., Deines v. Atlas Energy Servs., Inc.*, 2021 COA

[3] In this context, we view the term "escape" to simply refer to ending any confinement that may have occurred.

[4] Nor do we agree with Montgomery's claim that leaving would subject him to "social disgrace" and being labeled a thief. The only suggestion there may have been to the viewing public that he may not have paid for the ice was created by his own conduct in refusing to produce the receipt as proof of purchase.

24, ¶ 10 (noting that issues of negligence and proximate case — both of which involve determinations of reasonableness — "are matters generally left to be resolved by the jury"). However, in the "clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Id.* (quoting *Starks v. Smith*, 475 P.2d 707, 707 (Colo. App. 1970) (not published pursuant to C.A.R. 35(f)).

¶ 15 This is one such clear case. No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment. As a matter of law, then, Montgomery had a reasonable means by which he could exit the store. He simply chose not to avail himself of it.

¶ 16 We also note that Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested. We are aware of no case — and Montgomery presents none — in which a store patron was found to have been falsely imprisoned in the absence of one or more of those facts. Nor are we aware of — and, again, Montgomery does not cite to — any case or statute that prohibits a merchant from requiring customers to

display a receipt before leaving a store with goods in hand.[5] Accordingly, the district court properly decided that Walmart was entitled to judgment as a matter of law on the false imprisonment claim.[6]

B. Civil Theft

¶ 17 Montgomery also contends that the district court erred by concluding that the second Walmart associate lacked the requisite intent to deprive him of his property. Again, we discern no error.

¶ 18 Civil theft requires that the defendant "'knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception,' and acts intentionally or knowingly in ways that deprive the other person of the property permanently." *Scott v. Scott*, 2018 COA 25, ¶ 26 (quoting *Van Rees v. Unleaded Software, Inc.*, 2016 CO 51, ¶ 21); *see also* § 18-4-401(1), C.R.S. 2021. "Thus, civil theft, like criminal theft, requires the specific intent of the defendant to permanently

[5] Montgomery is not left without recourse. He remains free to opt not to frequent merchants who engage in this practice and to take his business elsewhere.

[6] In light of our conclusion, we need not address the district court's alternate reliance on section 36(3) of the Restatement (Second) of Torts, Westlaw (database updated Oct. 2020).

deprive the *owner* of the benefit of the property." *Scott*, ¶ 26 (emphasis added).

¶ 19 To succeed in his civil theft claim, as relevant here, Montgomery had to show that the second associate had the specific intent to deprive him of his ice. In Montgomery's response to Walmart's motion for summary judgment, he admitted the following:

- "The Defendants simply asked Plaintiff to see his receipt, *concluded that he stole items from them, reclaimed what they believed was theirs*, and went about their business after escorting Plaintiff out of their store."
- "The Defendants had every intention of permanently keeping *what they thought was 'their' merchandise*, so long as Plaintiff continued to not give into their demands."

(Emphasis added.) It was, therefore, undisputed that the second associate thought that Montgomery did not own the ice. Thus, Montgomery failed to create a dispute of material fact regarding the associate's (or Walmart's) unlawful intent. Accordingly, the district

court properly determined that Walmart was entitled to judgment as a matter of law on the civil theft claim.

¶ 20 Finally, we will not consider Montgomery's conversion claim on appeal because he failed to bring it in the district court. *See O'Connell v. Biomet, Inc.*, 250 P.3d 1278, 1282 (Colo. App. 2010) (specific arguments that were never "presented to, considered by, or ruled upon by a trial court may not be raised for the first time on appeal").

III. Conclusion

¶ 21 We affirm the judgment.

JUDGE DAILEY and JUDGE BERGER concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

COLORADO COURT OF APPEALS

DATE FILED: October 26, 2023
CASE NUMBER: 2023CA159

Court of Appeals No. 23CA0159
Adams County District Court Nos. 21CV68 & 21CV88
Honorable Teri Lynn Vasquez, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart Inc.,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division B
Opinion by JUDGE SCHUTZ
Tow and Grove, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced October 26, 2023

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Denver, Colorado, for Defendant-Appellee

¶ 1 Plaintiff, William Montgomery, appeals the trial court's order granting summary judgment in favor of defendant, Walmart Inc. We affirm.[1]

I. Factual and Procedural Background

¶ 2 This appeal addresses two consolidated cases filed by Montgomery against Walmart in Adams County District Court. Both cases arise out of a repeated fact pattern in which Montgomery enters a Walmart store, purchases merchandise, refuses to produce receipts for that merchandise when asked to do so before exiting, is briefly detained by Walmart employees, and thereafter sues Walmart (and on some occasions Walmart employees and responding law enforcement officers) for false imprisonment, defamation, and related claims. Many of these claims have resulted in the entry of summary judgment against

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[1] We note that Montgomery's reply brief contains numerous obscenities and ad hominem attacks on appellee, its counsel, and judicial officers. Such rhetoric has no place in the legal system. *See, e.g., Martin v. Essrig*, 277 P.3d 857, 860-61 (Colo. App. 2011). We also note that the reply brief was previously struck because it was not timely filed. Mr. Montgomery is hereby notified that if he files papers or pleadings containing such rhetoric in the future, his appeal may be summarily dismissed, and other appropriate sanctions will be imposed.

EXHIBIT D

001254

Montgomery, with Montgomery thereafter appealing to this court, where the panels affirmed the summary judgment orders. *See Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)); *Montgomery v. Walmart, Inc.*, (Colo. App. No. 22CA0625, June 1, 2023) (not published pursuant to C.A.R. 35(e)). Nevertheless, Montgomery has persisted in repeating the same scenario, with minor factual variations, followed by the filing of similar claims.

¶ 3 In case no. 21CV68, the underlying interaction started when Montgomery decided to shop at Walmart once again. Aware of Walmart's policy of requesting receipts from some exiting customers, Montgomery decided to tape-record his interaction so that he would have a record if such an encounter ensued. At the beginning of the recording, Montgomery tells an unidentified third party that "basically what I do is not show my receipt, they'll lose their shit, they'll call the cops, and you'll get a free false arrest." Montgomery thereafter entered Walmart, selected the item he wished to purchase, and proceeded to the self-checkout machines at the front of the store. He had forgotten his wallet, so he exited the store without any items before returning to the checkout with

his wallet. He then paid for the items. He declined to use a plastic shopping bag, believing them to be environmentally unfriendly. By affidavit, Montgomery stated as follows: "Regarding my receipt, I don't recall if I kept it on me, or threw it away. Because I had no intention of returning what I had just purchased, I think I might have thrown it away."

¶ 4 The exit closest to the self-checkout machine was closed, so Montgomery walked to the next exit, carrying the purchased items. As he approached the exit doors, a Walmart employee asked to see Montgomery's receipt. Montgomery declined the request, and when he attempted to leave, the employee stepped in front of him. A second employee was called and again asked Montgomery for his receipt, and he again declined to produce it. The two employees were blocking Montgomery's path to the door. The employees told Montgomery that if he showed them his receipt, he could leave. Eventually a third Walmart employee appeared. This employee recognized Montgomery from a past encounter and told him to leave the store. Montgomery did so. Based on these facts, Mongomery alleged a single claim of false imprisonment.

¶ 5 Case no. 21CV88 involved a similar scenario. Montgonery turned on his phone recorder, entered Walmart, and began shopping for items. This time he purchased various food and non-food items. He then went to the automotive register, which is located in the back of the store away from primary checkout registers, where he asked that the food and non-food items be rung up separately. He then determined he did not have enough money to purchase the non-food items, so he asked that they be removed from the purchase and then paid for the food items. Again, Montgomery eschewed using a bag and could not recall whether he kept or discarded his receipt but thought he "might have thrown it away."

¶ 6 Montgomery then travelled to the front exit doors, where he was asked for his receipt. He declined to produce it and was eventually confronted by three Walmart employees who blocked his exit but told Montgomery that he would be allowed to leave if he showed them his receipt. Montgomery declined to produce a receipt and did not state that he had discarded it. Montgomery alleged that several store employees "accus[ed] him of 'stealing' from the store" and that another patron offered to pay for his items. After a

few minutes, the employees permitted Montgomery to leave the store. On the basis of these facts, Montgomery asserted claims for false imprisonment and defamation.

¶ 7 Walmart moved for summary judgment on all three claims. The trial court granted the motion, and Montgomery appeals that order.

II. Analysis

¶ 8 Montgomery contends that the trial court erred by concluding that the undisputed material facts established that he could not prevail on his false imprisonment and defamation claims.

A. Standard of Review and Applicable Law

¶ 9 Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c). "The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party." *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988). "The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts . . . ." *Martini v. Smith*, 42 P.3d 629, 632 (Colo.

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2002). We review a district court's grant of summary judgment de novo. *Shelter Mut. Ins. Co. v. Mid-Century Ins. Co.*, 246 P.3d 651, 657 (Colo. 2011). On review, our task is to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law in granting the defendant's motion. *City of Fort Collins v. Colo. Oil & Gas Ass'n*, 2016 CO 28, ¶ 9.

B. False Imprisonment

¶ 10 To prevail on a claim of false imprisonment, a plaintiff must establish the following: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." *Goodboe v. Gabriella*, 663 P.2d 1051, 1055-56 (Colo. App. 1983).

¶ 11 With respect to the second element, a person's "freedom of movement" is restricted if he has been limited to a certain area "and does not know of any way to escape without causing an unreasonable risk of harm" to himself. *See* CJI-Civ. 21:2(1) (2023). Additional guidance is provided by section 36 of the Restatement (Second) of Torts (Am. L. Inst. 1965), which provides:

> (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
>
> (2) *The confinement is complete although there is a reasonable means of escape, unless the other knows of it.*
>
> (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

(Emphasis added.) The italicized language and a related comment make clear that false imprisonment does not occur if the claiming party has a reasonable means of escaping the confinement. Restatement (Second) of Torts § 36 & cmt. a ("[I]t is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience . . . .").

¶ 12 The question, then, is whether Montgomery had a reasonable means of escaping his alleged confinement by the Walmart employees. Past divisions of this court, addressing Montgomery's prior lawsuits against Walmart, have concluded that Montgomery was not confined for purposes of his false imprisonment claims because he had a receipt that would allow him to avoid

confinement, and production of the receipt was not an unreasonable means of avoiding or terminating his confinement. *See Montgomery*, No. 21CA0359, slip op. at ¶ 15; *Montgomery*, No. 22CA0625, slip op. at ¶ 12.

¶ 13 In an effort to avoid the reasoning of these prior appellate decisions, Montgomery notes that he has averred that he does not remember whether he kept his receipt and thinks he "might" have discarded it. Thus, he argues, the evidence does not establish that he had a receipt and associated means of escape available to him at the time he was confronted and detained. We are not persuaded this fact, even if true, would change the outcome.

¶ 14 The evidence is undisputed that, at the time he entered the Walmart store in both underlying cases, Montgomery was aware of Walmart's policy of stopping some exiting customers to ask for receipts. Montgomery was also aware that if he chose not to produce a receipt, he might be briefly detained as employees investigated the matter. At the same time, Montgomery also knew that if he retained and produced his receipt, he would not be detained. Despite this knowledge, Montgomery either chose to

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discard his receipt or to disregard the fact that the receipt would have allowed him to avoid the confinement of which he complains.

¶ 15 Given Montgomery's repetitive interactions with Walmart, coupled with his recorded contemplation of his anticipated detention, the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision. Similarly, no reasonable juror could conclude that it was an unreasonable burden to expect Montgomery, under these circumstances, to retain his receipt and show it to the Walmart employee as he exited. Simply put, Montgomery had a reasonable means of both avoiding confinement and "escaping" confinement by using a receipt.

¶ 16 Nor are we persuaded otherwise by Montgomery's reliance on case law from other jurisdictions. Montgomery leans heavily on *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000). In the first instance, *Ball* was decided based on Massachusetts law, which is not controlling here. Moreover, the facts of *Ball* are materially different than those presented here. Most significantly, there is no indication that the customer detained in *Ball* was aware of Walmart's receipt checking policy. Here, in contrast, Montgomery

- was fully aware of the Walmart receipt policy;
- had been subjected to the receipt policy on numerous prior occasions;
- continued to shop at Walmart while expressly contemplating that he would likely be asked for a receipt and briefly confined if he chose not to produce it; and
- nevertheless chose to either discard or disregard his receipt at the checkout and then refused to produce it as requested.

These facts were not present in *Ball*; therefore, we find it unpersuasive.

¶ 17 The trial court did not err by concluding, as a matter of law, that no reasonable juror could find in Montgomery's favor on his claims for false imprisonment.[2] We therefore will not disturb its entry of summary judgment.

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[2] For the reasons explained more fully below, the trial court also properly concluded that Montgomery's false imprisonment claims are barred by the shopkeeper's privilege. *See* § 18-4-407, C.R.S. 2023.

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C. Defamation

¶ 18 The term defamation encompasses claims for both libel and slander. *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). Generally, a libel claim must be based on a written defamatory statement. *Id.* Slander is based on oral statements. Montgomery bases his defamation claim on statements allegedly made by Walmart employees that "accus[ed] him of 'stealing' from the store." Thus, he characterizes the claim as one for slander per se.[3]

¶ 19 Even if we assume, without deciding, that the alleged accusation of theft was slanderous per se, that does not end the inquiry. A claim for libel per se is defeated if the declarant was acting pursuant to a recognized privilege. Section 18-4-407, C.R.S. 2023, which is titled "Questioning of persons suspected of theft without liability," establishes what is commonly referred to as the

---

[3] In his complaint, Montgomery stated a claim for "defamation." Nonetheless, in his response to Walmart's motion for summary judgment, and again on appeal, Montgomery relies on principles of slander per se as the basis for his defamation claim. Construing his filings liberally, we conclude that Montgomery adequately asserted a claim for slander per se. *See, e.g., Gandy v. Williams*, 2019 COA 118, ¶ 8 ("[W]e liberally construe [pro se] filings while applying the same law and procedural rules applicable to a party represented by counsel.").

shopkeeper's privilege, allows a store employee, "acting in good faith and upon probable cause based upon reasonable grounds" to "detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft." Given the combination of unique circumstances surrounding Montgomery's purchases and subsequent rescission of some of the purchases, his use of the automotive register to purchase food items, his eschewing the use of a bag, and his persistent failure to produce a receipt when requested, we conclude the employees, acting in good faith, had reasonable grounds for concluding there was probable cause that Montgomery was committing a theft.[4] Similarly, we conclude the brief detention and questioning — including an accusation of theft — were made in a reasonable manner to ascertain whether a theft occurred. Thus, the shopkeeper's privilege applied, and it defeats Montgomery's claim for slander per se.

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[4] Our holding should not be interpreted to mean that any one of these factors, standing alone, would be sufficient to provide probable cause under the shopkeeper's privilege.

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III. Conclusion

¶ 20 The judgment is affirmed.

JUDGE TOW and JUDGE GROVE concur.

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Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

COLORADO COURT OF APPEALS

DATE FILED: June 1, 2023
CASE NUMBER: 2022CA625

Court of Appeals No. 22CA0625
Arapahoe County District Court Nos. 20CV148, 20CV184, 20CV209, 20CV217, 21CV1 & 21CV235
Honorable Peter F. Michaelson, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Walmart, Inc. and Alberto Carlos Cordero Duarte,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE GROVE
Dailey and Gomez, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 1, 2023

William Montgomery, Pro Se

Treece Alfrey Musat P.C., Kathleen J. Johnson, Rachelle J. Veikune, Denver, Colorado, for Defendants-Appellants

¶ 1 Plaintiff, William Montgomery, appeals the district court's judgment in favor of defendants, Walmart Stores, Inc., and Albert Carlos Cordero Duarte (collectively, Walmart). We affirm.

I. Background

¶ 2 This consolidated case is one of several in which Montgomery has gone to Denver-area Walmart stores to, as the district court put it, "sting[]" them "so he can sue them for false arrest." The cases generally follow the same pattern: Montgomery buys items from the store (or enters the store with items that he has previously purchased), declines a bag "for environmental reasons," and then walks out of the store carrying the items in his hand and without a visible receipt. If he is stopped and asked for his receipt, he refuses to provide it until after he is detained, and in some cases arrested.

¶ 3 After some of these encounters (including the incidents underlying this appeal), Montgomery has sued Walmart and/or its employees for, among other things, false imprisonment, malicious prosecution, and defamation. *See Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)) (*Montgomery I*).

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¶ 4 Montgomery has also filed many federal civil rights lawsuits against law enforcement officers who have taken action against him on suspicion of shoplifting. *See, e.g.*, *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB-MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

¶ 5 Based on our review of the record and the district court's summary judgment order, the consolidated cases before us in this appeal are generally similar to those cited above. In each incident, all of which Montgomery audio recorded, store employees stopped Montgomery when exiting a Walmart while carrying merchandise in his hands or on his person (but not in a bag) and asked for his receipt. Even though he had receipts for his purchases,

Montgomery refused to provide them. Walmart's loss-prevention officers then called the police, who responded, and in some cases, detained and/or arrested Montgomery on suspicion of shoplifting. Only then did Montgomery produce receipts demonstrating that he had purchased, rather than stolen, the items he was carrying.

¶ 6 Montgomery sued Walmart in six different cases. Only one complaint is in the record before us (and even that one has virtually no detail), but in a case management order consolidating five of the cases, the district court categorized each case as a separate "claim for relief." The case management order listed the "claims for relief" as follows:

- Claim 1: 2020CV148: False imprisonment;
- Claim 2: 2020CV184: Malicious prosecution;
- Claim 3: 2020CV209: False imprisonment, assault, and defamation;
- Claim 4: 2020CV217: Malicious prosecution; and
- Claim 5: 2021CV1: False imprisonment, defamation, false arrest, and malicious prosecution.

¶ 7 A sixth case (Claim 6: 2021CV235) alleging false imprisonment and slander was added at some point after the cases were

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consolidated. The complaint for Claim 6 does not appear in the record, but the parties addressed it in their summary judgment briefing.

¶ 8 After the cases were consolidated, and as relevant here, Walmart moved to dismiss Claim 3.[1] The court granted the motion in a written order, concluding that it was barred by the statute of limitations. Montgomery does not challenge that order on appeal, so we do not consider it further.

¶ 9 Both parties later moved for summary judgment on the remaining Claims. In a detailed written order, the court granted Walmart's motion and denied Montgomery's. As relevant here, the court ruled as follows:

- Montgomery abandoned the cause of action for false arrest in Claim 5.
- Walmart was entitled to summary judgment on the false imprisonment causes of action in Claims 1, 5, and 6

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[1] Walmart's motion to dismiss Claim 3 is not in the record before us. Nor is Montgomery's response, if any was filed. But the court's order granting Walmart's motion to dismiss Claim 3 with prejudice is part of the appellate record.

because the undisputed facts showed that its employees "would have reasonable grounds . . . to find probable cause existed to detain and question Montgomery in order to ascertain whether he had committed a theft by, in a reasonable manner, asking to see his receipts."

- Walmart was entitled to summary judgment on the malicious prosecution causes of action in Claims 2, 4, and 6 because he failed to allege the elements that were necessary for him to prevail.[2]
- Walmart was entitled to summary judgment on Montgomery's defamation causes of action in Claims 5 and 6 because the employees' statements were protected by qualified privilege,[3] and "Montgomery has

---

[2] We note that the court's consolidation order indicated that Montgomery's Claim 5 also included a malicious prosecution cause of action. Because the complaint for Claim 5 is not in the record before us, we cannot confirm that this is accurate. However, assuming that Claim 5 included a malicious prosecution cause of action, the court's summary judgment order did not specifically rule on it. On appeal, however, Montgomery does not address this omission or otherwise suggest that he was entitled to relief on that specific cause of action. We therefore consider it abandoned.

[3] The district court erroneously referred to the qualified *privilege* associated with statements involving matters of public concern as

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shown no evidence to overcome the presumption that there was an absence of malice."

II. Standard of Review

¶ 10 We review de novo a district court's order granting summary judgment. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19.

¶ 11 Summary judgment is appropriate when the pleadings and supporting documents fail to establish a genuine issue of material fact, and there is a clear showing that the moving party is entitled to summary judgment as a matter of law. *Salas v. Grancare, Inc.*, 22 P.3d 568, 571 (Colo. App. 2001). The moving party bears the burden of showing the absence of a genuine issue of fact. *Id.* The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts. *Martini v. Smith*, 42 P.3d 629, 632 (Colo. 2002). If the moving party meets its initial burden, the burden shifts to the opposing party to show that a genuine dispute of material fact exists. *Rome v. Mandel*, 2016 COA 192M, ¶ 18. "[T]he nonmoving party may not rest on mere

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qualified *immunity*. Walmart repeats this mistake in its answer brief.

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allegations or demands in its pleadings but must provide specific facts demonstrating a genuine issue for trial." *Rocky Mountain Expl., Inc. v. Davis Graham & Stubbs LLP*, 2018 CO 54, ¶ 27.

III. False Imprisonment

¶ 12 The district court rejected Montgomery's false imprisonment causes of action (which appeared in Claims 1, 5, and 6) on two distinct grounds: (1) Montgomery was not confined because he "knew that he could escape without causing an unreasonable risk of harm to him[self] . . . by merely presenting his receipt to Walmart employees"; and (2) in each case, "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was concealing property of the store," thus triggering the "shopkeepers' privilege" created by section 18-4-407, C.R.S. 2022. We agree with both facets of the court's reasoning.

¶ 13 First, when faced with this precise question in *Montgomery I*, the division affirmed the district court's conclusion that "showing the receipt was a reasonable means of leaving the store, and Montgomery was aware of that fact." *Montgomery I*, slip op. at 5. As support for this proposition, the *Montgomery I* division relied on

a comment to section 36(2) of the Restatement (Second) of Torts, which says that "it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

¶ 14 Montgomery disagrees with the division's reliance on this comment, arguing that it applies to "PRE-confinement situations only." Montgomery does not define "pre-confinement," and it is not entirely clear from the context what he intends it to mean. In any event, the illustrations in the Restatement support the *Montgomery I* division's interpretation of the comment. For example, the first illustration in comment a provides as follows: "A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B." *Id.* If Montgomery's interpretation of the Restatement were correct, the false imprisonment described in this illustration would be complete, at the latest, when A locks B in the room. But the comment makes clear that, because B has a "means of escape of which he is himself aware" that can be utilized with only "a slight inconvenience," he has not been confined. *Id.*

¶ 15 As the *Montgomery I* division held, the circumstances giving rise to Montgomery's false imprisonment cause of action are directly analogous to the illustrations in the Restatement. In particular, just as the "athletic young man" could escape a locked room with a minimum of inconvenience by exiting through the window, Montgomery could have left the store with his purchased goods in hand simply by showing the receipt that he had concealed on his person. Indeed, as the district court observed, the undisputed facts show that Montgomery was aware that, in each case, he could have resolved the situation merely by showing his receipts. Specifically, the court concluded that the undisputed facts showed that "Montgomery knew that he could escape without causing an unreasonable risk of harm to him[self] . . . or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited."

¶ 16 Like the *Montgomery I* division, we recognize that reasonableness is a matter usually left to the jury. *See, e.g., Deines v. Atlas Energy Servs., LLC*, 2021 COA 24, ¶ 10 (noting that issues of negligence and proximate cause — both of which involve determinations of reasonableness — "are matters generally to be

resolved by the jury"). However, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Gibbons v. Ludlow*, 2013 CO 49, ¶ 13 (quoting *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008)).

¶ 17 We agree with the district court in this case — and with the *Montgomery I* division's analysis based on substantially similar facts — that no reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment. As a matter of law, then, for those interactions in which Montgomery was merely asked for his receipt at the exit, he had a reasonable means by which he could exit each of the stores. He simply chose not to avail himself of it.

¶ 18 Second, even if Montgomery was confined without a reasonable means of escape, we agree with the district court the

undisputed facts implicate the "shopkeepers' privilege" established by section 18-4-407.[4]

¶ 19 Section 18-4-407, which is titled "Questioning of person suspected of theft without liability," exempts store employees from civil or criminal penalties if they detain and question suspected shoplifters in a reasonable manner. As relevant here, the statute provides as follows:

> If any person . . . conceals upon his person or otherwise carries away any unpurchased goods, wares, or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question

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[4] In *Montgomery I*, the division observed that "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested." *Montgomery v. Walmart Stores, Inc.*, slip op. at 7 (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)). In at least two of the situations here (Claims 4 and 5), Montgomery was escorted to the loss prevention office by a Walmart employee and subsequently handcuffed by responding officers. He later showed his receipts and was released. We are not convinced that escorting Montgomery to the loss prevention office makes any substantive difference to the question whether he had a "means of escape of which he is himself aware," Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965) — namely, showing his receipt. But to the extent that these circumstances do undermine the applicability of the Restatement, the shopkeepers' privilege applies.

> such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee, or peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

¶ 20 In *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 247-48, 455 P.2d 201, 203 (1969), our supreme court noted that the "intent of the statute" is "to afford under certain circumstances a degree of protection to the person who stops and questions another for the purpose of ascertaining whether such other person is guilty of shoplifting but who it later develops is actually not guilty of any shoplifting." Accordingly, the statute

> affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting.

Id. at 248, 455 P.2d at 203.

¶ 21 In *Carrington*, the supreme court observed that "the evidence on this particular issue [i.e., whether the store employees were

justified in questioning the plaintiff about his purchases] was not in dispute," and thus it was able to "conclude that as a matter of law the defendant's agents acted in good faith and upon probable cause based upon reasonable grounds."[5] *Id.* at 248, 455 P.2d at 204.

¶ 22 The undisputed facts here lead us to the same conclusion. As the district court noted, "Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence." That conclusion is confirmed not only by Montgomery's description of his actions, but also by own statements made to store employees and responding officers — which included his admissions that he

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[5] To be sure, the court in *J.S. Dillon & Sons Stores Co. v. Carrington*, 169 Colo. 242, 244, 455 P.2d 201, 202 (1969), did conclude that there were disputed facts concerning the plaintiff's other tort claims, which arose from his allegations that he was "forcibly and violently seized and assaulted" and "subjected to great indignities, humiliation and disgrace," both of which led to him to suffer complications from a previous surgery. As best we can tell from the record before us, Montgomery did not pursue any causes of action other than false imprisonment, malicious prosecution, and defamation. In contrast to the claims that were remanded for further consideration in *Carrington*, the facts underlying those claims that might implicate the shopkeepers' privilege are undisputed, and thus amenable to resolution as a matter of law.

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was conducting a "sting," and that "he came to the store and planned on suing."

¶ 23 Accordingly, even if Montgomery was "confined" by the store employees, those employees are immune from liability for false imprisonment under section 18-4-407. The district court therefore properly granted summary judgment on these causes of action in Walmart's favor.

IV. Malicious Prosecution

¶ 24 Montgomery's Claims 2, 4, and 5 sought relief for malicious prosecution.[6] We agree with the district court's conclusion that Walmart was entitled to summary judgment on these claims.

¶ 25 At the threshold, without the complaint or any relevant citations to the record, we are unable to discern the basis for malicious prosecution as asserted in Claim 5. We therefore do not

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[6] The court's summary judgment order states that Claims 2, 4, and 6 include malicious prosecution claims, but the order consolidating Montgomery's cases reflects that cause of action only in Claims 2, 4, and 5. The complaint underlying Claim 6 is not in the record, but Walmart's summary judgment motion states that it asserted claims of false imprisonment and defamation. Consistent with this description, Montgomery's description of "facts unique to Claims #1 and #6" in his opening brief does not describe any acts that could give rise to a malicious prosecution cause of action.

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consider it further. *See Cikraji v. Snowberger*, 2015 COA 66, ¶ 10 ("[W]e will not comb the record for facts supporting plaintiff's arguments that were not cited in his brief.").[7]

¶ 26 A claim of malicious prosecution requires the plaintiff to establish the following factors:

> (1) A criminal case was brought against the plaintiff.
>
> (2) The criminal case was brought as a result of oral or written statements made by the defendant.
>
> (3) The criminal case ended in favor of the plaintiff.
>
> (4) The defendant's statements against the plaintiff were made without probable cause, or, if the complaint was filed with probable cause, the defendant continued to prosecute the criminal action after he no longer had probable cause to believe the plaintiff guilty.

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[7] To the extent that the malicious prosecution cause of action in Claim 5 might have arisen from a theft charge that was later dropped, Walmart would be immune from civil liability under the shopkeepers' privilege. *See* § 18-4-407, C.R.S. 2022. However, we do not apply the shopkeepers' privilege analysis to the malicious prosecution cause of action arising from the harassment charges underlying Claims 2 and 4. Rather, those claims fail because Montgomery failed to establish at least two of the elements of a malicious prosecution claim.

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(5) The defendant's statements against the plaintiff were motivated by malice toward the plaintiff.

(6) As a result of the criminal case, the plaintiff suffered damages.

CJI-Civ. 17:1 (2022).

¶ 27 Claims 2 and 4 were based on a harassment charge for using threats and obscenities against a Walmart employee. The charge was dismissed by the prosecution without any decision having been rendered on the merits, but the district court concluded that it nonetheless was based on probable cause irrespective of whether Montgomery did in fact threaten the Walmart employee. The court also concluded that summary judgment was warranted because "there was no evidence that [the harassment] charge was pursued by [the Walmart employee] nor that the statements against Montgomery were supported by malice."

¶ 28 We agree with all of the district court's rationales:

- Montgomery did not establish that the store employee's statements against Montgomery were made without probable cause, nor did he provide any evidence that any of the defendants' statements against him were motivated

by malice. *See Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 858 (Colo. App. 2007) ("[W]hen a response to a motion for summary judgment . . . states conclusions on ultimate issues without including facts that tend to prove or disprove the allegations made in the motion for summary judgment, it is insufficient to give rise to genuine issues of fact.").

- Montgomery presented no evidence that would support a conclusion that the harassment case was dismissed on the merits or that it was terminated under circumstances that fairly imply his innocence.

¶ 29 Accordingly, Montgomery failed to establish at least two of the elements of malicious prosecution in Claims 2 and 4. Summary judgment was therefore proper.

V. Defamation

¶ 30 Finally, Montgomery contends that the court erroneously entered summary judgment for Walmart on his defamation claims, which appeared in Claims 5 and 6. We discern no error.

¶ 31 At the outset, as we have already noted, the shopkeepers' privilege covers defamation. Thus, to the extent that the allegations

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001285

of defamation are based on statements made by Walmart employees when they confronted him and asked to see his receipts, Walmart is arguably immune from civil liability because, as we have already concluded, they had probable cause for doing so under section 18-4-407 and, as a matter of law, none of the statements that they made — all of which were focused on whether Montgomery had in fact shoplifted — exceeded the scope of that privilege.

¶ 32 Even if the statements were not covered by shopkeepers' privilege, however, Montgomery's claims of defamation would still fail. Because the statements pertained to potential criminal activity, the statements were matters of public concern. *See Lawson v. Stow*, 2014 COA 26, ¶ 21. And "[w]here a statement relates to a matter of public concern, the speaker's communication is subject to a qualified privilege." *Id.* at ¶ 18. Under this standard, (1) the defamed party must prove the falsity of the statement by clear and convincing evidence, rather than by a mere preponderance; (2) the defamed party must prove that the speaker published the statement with actual malice — that is, with actual knowledge that the statement was false or with reckless disregard for whether the statement was true; and (3) the defamed party must

establish actual damages to maintain the action, even if the statement is defamatory per se. *Id.*

¶ 33 As discussed above, there is no evidence in the record that the Walmart employees were speaking with actual malice when they referred to Montgomery as a shoplifter, told him they needed their products back, or expressed concerns that Montgomery was on drugs. To the contrary, Montgomery deliberately led store employees to believe that he was shoplifting with the express purpose of filing suit for, among other things, defamation and false imprisonment. Based on the undisputed facts in the record, Montgomery is therefore unable to overcome the presumption that the employees' statements were not made with actual knowledge that they were false or with reckless disregard for whether the statements were true. The district court thus properly entered summary judgment on this cause of action.

VI. Conclusion

¶ 34 The judgment is affirmed.

JUDGE DAILEY and JUDGE GOMEZ concur.

EXHIBIT D

001287

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.

EXHIBIT D

District Court, Adams County, Colorado Court Address: 1100 Judicial Center Dr Brighton, CO 80601 (303) 659-1161	FILED IN ADAMS COUNTY COMBINED COURT DATE FILED February 28, 2025 4:12 PM DATE FILED NOV 22 2024 November 22, 2024 5:31 PM CASE NUMBER: 2024CV132 ▲ COURT USE ONLY ▲
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **BEST BUY STORES, L.P.** 104 W 104th Ave Denver, CO 80234 (303) 252-8677; **JUAN PACHECO & MATTHEW LACKEY** 50 W Community Center Dr Northglenn, CO 80234 (303) 450-8892	
Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com	Case Number: 24CV132 Division: W Courtroom: 507

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. BEST BUY STORES, L.P., defendant(s), is (are) resident(s) of Adams County, with a post office address of 104 W 104th Ave, City of Denver, State of Colorado.

   POLICE OFFICERS JUAN PACHECO & MATTHEW LACKEY, in their individual capacities, defendant(s), is (are) resident(s) of Adams County, with a post office address of 50 W Community Center Dr, City of Northglenn, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

3. Such claim arises from the following event(s) or transaction(s):

   On 2023/11/24, at 1:10pm, an unidentified Best Buy employee [John Doe] wouldn't let me leave the store, through its only exit, after I purchased an item in it. The employee then told nearby off-duty Northglenn Police Officers Juan Pacheco and Matthew Lackey that I had "not paid for" the item. The officers then handcuffed me, searched me without fully arresting, transporting, and booking me, and let me go once they learned that I did pay for the item. **CLAIMS AGAINST BEST BUY: 1) FALSE IMPRISONMENT, 2) FALSE ARREST, 3) DEFAMATION *PER SE*. CLAIMS AGAINST THE POLICE: 1) FALSE ARREST, 2) ASSAULT, 3) BATTERY, 4) UNLAWFUL SEARCH & SEIZURE.** On 2024/05/24, I served a "Notice Of Claim / Intent To Sue" on the Northglenn City Attorney, who represents their police officers.

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States.

   Military status of Defendants is unknown.

4. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd # 129, Denver, CO, 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

MFP AV

District Court, Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	FILED COMBINED COURT JEFFERSON COUNTY 2024 NOV 21 P 4:04 DATE FILED November 21, 2024 CASE NUMBER: 2024CV241
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **BEST BUY STORES, L.P.** 9369 Sheridan Blvd, Westminster, CO 80031 (303) 426-4434; **CHRIS WU & TANNER SPEHAR** 9110 Yates St Westminster, CO 80031 (303) 658-4360; **IRON SPEAR PROTECTION GROUP LLC KNOWLE OGLE & JACOB [DOE]** 1110 Boston Ave Longmont, CO 80501 (720) 818-7767	▲ **COURT USE ONLY** ▲
Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com	Case Number: 24CV241 Division: 9 Courtroom: 550

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. BEST BUY STORES, L.P., defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 9369 Sheridan Blvd, City of Westminster, State of Colorado.

   POLICE OFFICERS CHRIS WU & TANNER SPEHAR, in their individual capacities, defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 9110 Yates St, City of Westminster, State of Colorado.

   IRON SPEAR PROTECTION GROUP LLC / KNOWLE OGLE & JACOB [DOE], defendant(s), is (are) workers(s) in Jefferson County, with a post office address of 1110 Boston Ave, City of Longmont, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

3. Such claim arises from the following event(s) or transaction(s):

   On 2023/11/24 at 11:07am, an unidentified Best Buy employee [John Doe] told Iron Spear Security Guard Knowle Ogle that I had stolen an item from the store [I paid for the item]. Knowle Ogle and his co-worker Jacob [Doe] then wouldn't let me leave the store, through its only exit. The security guards then summoned Westminster Police Officers Chris Wu and Tanner Spehar, who they then likewise told that I had stolen an item from the store. The police officers then handcuffed me, searched me without fully arresting, transporting and booking me, and let me go once they learned that I did pay for the item. **CLAIMS AGAINST BEST BUY: 1) DEFAMATION *PER SE* 2) FALSE ARREST. CLAIMS AGAINST IRON SPEAR AND ITS EMPLOYEES: 1) FALSE IMPRISONMENT, 2) DEFAMATION *PER SE*, 3) FALSE ARREST. CLAIMS AGAINST THE POLICE: 1) FALSE ARREST, 2) ASSAULT, 3) BATTERY, 4) UNLAWFUL SEARCH AND SEIZURE.** On 2024/05/23, I served a "Notice Of Claim / Intent To Sue" on the Westminster City Attorney, who represents their police officers.

   The Defendant(s) ☐ is (are) ☐ is not (are not) in the military service of the United States.
   Military status of Defendants is unknown.

4. The Plaintiff(s) ☒ does (do) ☐ does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd # 129, Denver, CO, 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

County Court Jefferson County, Colorado Court Address: 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	FILED COMBINED COURT JEFFERSON COUNTY 2024 NOV 21 P 4:12
Plaintiff(s): **WILLIAM MONTGOMERY** v. Defendant(s): **BEST BUY STORES, L.P.** 1400 Denver West-Marriott Blvd Lakewood, CO 80401 (303) 273-5617	DATE FILED November 21, 2024 CASE NUMBER: 2024CV242 **COURT USE ONLY**
Party Without Attorney (Name and Address): William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 Phone Number: (970) 412-5463 E-mail: zoinbergs@gmail.com	Case Number: 24CV242 Division: 11 Courtroom: 140

COMPLAINT UNDER SIMPLIFIED CIVIL PROCEDURE

1. BEST BUY STORES, L.P., defendant(s), is (are) resident(s) of Jefferson County, with a post office address of 1400 Denver West-Marriott Blvd, City of Lakewood, State of Colorado.

2. The amount claimed herein does not exceed the jurisdiction of the court.

   OR

3. The amount claimed from _____, defendant(s), is/are _____ dollars and _____ cents ($_____), together with proper interest, costs and any other items allocable by statute or specific agreement.

4. Such claim arises from the following event(s) or transaction(s):

   On 2023/11/24, at 2:04pm, two unidentified Best Buy employees wouldn't let me leave their store, through its only exit, after I purchased an item in it. They also falsely loudly, rudely, and publicly accused me of stealing in front of many others.

   CLAIMS AGAINST BEST BUY AND ITS TWO EMPLOYEES: 1) FALSE IMPRISONMENT, 2) DEFAMATION *PER SE*.

   The Defendant(s) ☐is (are) ☐is not (are not) in the military service of the United States. In support of this statement, the Plaintiff(s) set(s) forth the following facts: (State facts concerning military status of the Defendant(s), if the military status of the Defendant(s) is (are) not known, so state here.)

   Military status of Defendant is unknown.

5. The Plaintiff(s) ☒does (do) ☐does (do) not demand trial by jury (if demand is made, a jury fee must be paid).

☐ By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

☒ By checking this box, I am acknowledging that I have made a change to the original content of this form.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Plaintiffs filing this complaint must sign, unless the complaint is signed by an attorney.

/s/ William Montgomery
Signature of Plaintiff(s)

Signature of Attorney for Plaintiff(s) (if applicable)

2443 S University Blvd # 129, Denver, CO, 80210
Address(es) of Plaintiff(s)

Telephone Number(s) of Plaintiff(s) (970) 412-5463

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DATE FILED
February 28, 2025 4:12 PM

Member ID: 4552643388

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10000149800302263917976250785776950

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-022639-179762-507857-76950
0164 024 3401 11/25/22 10:15

Duplicate Receipt
****

EXHIBIT F

6480937 B08XVYZ1Y5 24.99
FIRE TV STICK 4K
49.99 Was Price
25.00- Sale Discount
Sales Tax 1.94

Subtotal 24.99
Sales Tax 1.94
===
Total 26.93
**********1264 ChipRead USD$ 26.93
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 001273
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 24410154554009
Other Savings: 25.00
Total Savings: 25.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

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0164 024 3401 112522

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10000149800324900407057476214141085

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-249004-070574-762141-41085
0164 057 6368 11/25/22 10:28

Duplicate Receipt
****

EXHIBIT F

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 21251HFDE4T3RR
Sales Tax 3.12

Subtotal 39.99
Sales Tax 3.12

Total 43.11
**********1264 ChipRead USD$ 43.11
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 000434
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 57710281200320
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

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0164 057 6368 112522

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Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498006-977366-258324-422823-15410
0164 060 1540 11/25/22 10:45

Duplicate Receipt
****

EXHIBIT F

6501931 43UQ9000PUD 299.99
LG 43UQ9000 4K UHD SMART WEBO
349.99 Was Price
50.00- Sale Discount
Sales Tax 23.44

Subtotal 299.99
Sales Tax 23.44
===
Total 323.43
**********4073 ChipRead USD$ 323.43
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02573B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 50.00
Total Savings: 50.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

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0164 060 1540 112522

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10000149800323568844076127689373350

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Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-440761-276893-73350
1171 019 8947 11/25/22 11:19

Duplicate Receipt
****

EXHIBIT F

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
===
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02531B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

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1171 019 8947 112522

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Sincerely,

Your Customer Care Team

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********* Duplicate Receipt *********

```
          Welcome to Best Buy #1171
                6707 S VINE ST
                   CENTENNIAL, CO 80122



Val:100001-498003-235688-495355-145965-63661
        1171 060 4620 11/25/22 11:25

                  Duplicate Receipt
                 ******************
```


EXHIBIT F

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27141HFDE75CP9
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02590B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
1171 060 4620 112522

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We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800295606133688695420397330

********* Duplicate Receipt *********

Welcome to Best Buy #210
5395 S WADSWORTH BLVD
LAKEWOOD, CO 80123

Val:100001-498002-956061-336886-954203-97330
0210 064 2607 11/25/22 12:02

Duplicate Receipt
****

6517336 GA03131-US 19.99
STREAMING SNOW
29.99 Was Price
10.00- Sale Discount
Sales Tax 1.59
6453900 DIGITAL ITE 0.00
GET 3 MONTHS OF YOUTUBE PREMI
Sales Tax 0.00

Subtotal 19.99
Sales Tax 1.59

Total 21.58
**********4073 ChipRead USD$ 21.58
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02535B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

Enjoy 3 months free to YouTube Premium
with your Best Buy purchase.
To redeem your YouTube Premium offer,
go to:
youtube.com/redeem
and enter the code below.

TONQ2VVRIFFX

Or follow the emailed instructions emailed
to You

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
Return and Exchange promise and most
purchases may be returned through
Jan. 14, 2023. Activatable devices have a
14-day return policy (30 days for
Verizon activatable devices). Major
appliances have a 15-day return policy.
For details, go to BestBuy.com/Returns.
To learn about our privacy practices,
go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0210 064 2607 112522

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View: Web

Member ID: 4552643388

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Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900407989627512143086

********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                   LAKEWOOD, CO 80123



Val:100001-498003-249004-079896-275121-43086
       0210 064 2616 11/25/22 12:25

                  Duplicate Receipt
                 ******************
```

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.17

Subtotal 39.99
Sales Tax 3.17
===
Total 43.16
**********4073 ChipRead USD$ 43.16
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02545B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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Your Customer Service PIN is:
0210 064 2616 112522

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Sincerely,

Your Customer Care Team

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10000149800411451671905758504420805

********* Duplicate Receipt *********

Welcome to Best Buy #1224
384 S WADSWORTH BLVD
LAKEWOOD, CO 80226

Val:100001-498004-114516-719057-585044-20805
1224 056 6368 11/25/22 13:19

Duplicate Receipt
****

6498806 E410MA-TB.C 99.99
ASUS E410MA-TB.CL464BK SMB
249.99 Was Price
150.00- Sale Discount
Public Improvement 2.50
Sales Tax 5.62

Subtotal 99.99
Public Improvement Fee 2.50
Sales Tax 5.62
==========
Total 108.11
**********0527 USD$ 108.11
Mastercard - MASTERCARD
Approval 32431B
CARD ENTRY: Contactless MODE: Issuer
AID: A0000000041010
Other Savings: 150.00
Total Savings: 150.00
My Best Buy
Member ID 4552643388

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1224 056 6368 112522

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Sincerely,

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10000149800324900408522249982315411

********* Duplicate Receipt *********

```
          Welcome to Best Buy #209
             9369 SHERIDAN BLVD
                 WESTMINSTER, CO 80031



Val:100001-498003-249004-085222-499823-15411
        0209 068 7367 11/25/22 14:20

                  Duplicate Receipt
                 ******************
```

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 26291HFDE6USKP
Sales Tax 3.34

Subtotal	39.99
Sales Tax	3.34
Total	43.33
**********0527 ChipRead USD$	43.33

Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72572B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010

Other Savings:	10.00
Total Savings:	10.00

My Best Buy
Member ID 4552643388

WILLIAM,
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Posted points: 0
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0209 068 7367 112522

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10000149800324900401732911599493232

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1416
               104 W 104TH AVE
                      DENVER, CO 80234



Val:100001-498003-249004-017329-115994-93232
        1416 017 6112 11/25/22 15:35

                   Duplicate Receipt
                  ******************
```

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
===
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 69102B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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Your Customer Care Team

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10000149800324900402131930321463765

********* Duplicate Receipt *********

Welcome to Best Buy #1079
210 KEN PRATT BLVD
LONGMONT, CO 80501

Val:100001-498003-249004-021319-303214-63765
1079 020 6714 11/25/22 16:59

Duplicate Receipt
****

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 29011HFDE7AW8C
Sales Tax 3.40

Subtotal 39.99
Sales Tax 3.40
===
Total 43.39
**********0527 ChipRead USD$ 43.39
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 38951B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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1079 020 6714 112522

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Sincerely,

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10000149800324900408523856908813914

********* Duplicate Receipt *********

Welcome to Best Buy #1416
104 W 104TH AVE
DENVER, CO 80234

Val:100001-498003-249004-085238-569088-13914
1416 068 5385 11/25/22 17:43

Duplicate Receipt
****

EXHIBIT F

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
===
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72872B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

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1416 068 5385 112522

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********* Duplicate Receipt *********

```
          Welcome to Best Buy #1134
               3511 N SALIDA CT
                      AURORA, CO 80011



Val:100001-498003-249004-018656-919056-17118
        1134 018 6211 11/25/22 18:40

                    Duplicate Receipt
                  ******************
```

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27121HFDE7AB6Q
Sales Tax 3.40

Subtotal 39.99
Sales Tax 3.40

Total 43.39
**********0527 ChipRead USD$ 43.39
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 46618B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

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1134 018 6211 112522

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Sincerely,

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10000149800324900401864470901491231

********* Duplicate Receipt *********

Welcome to Best Buy #217
13801 E MISSISSIPPI AVE
AURORA, CO 80012

Val:100001-498003-249004-018644-709014-91231
0217 018 6470 11/25/22 20:01

Duplicate Receipt
****

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.20

Subtotal 39.99
Sales Tax 3.20
Total 43.19
**********0527 ChipRead USD$ 43.19
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 63864B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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Your Customer Service PIN is:
0217 018 6470 112522

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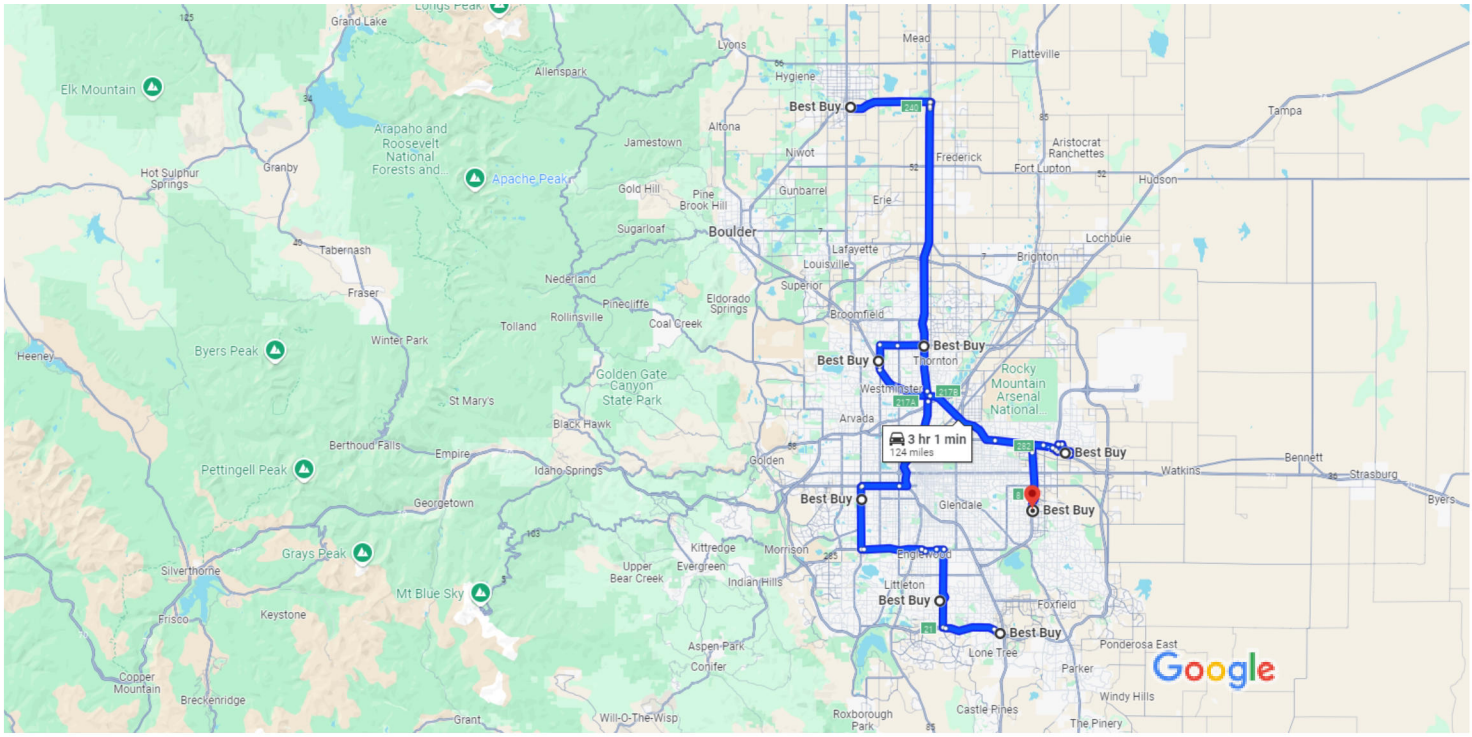
Google Maps

Best Buy, 8682 Park Meadows Center Dr, Lone Tree, CO 80124 to Best Buy, 13801 E Mississippi Ave, Aurora, CO 80012

Drive 124 miles, 3 hr 1 min



Map data ©2024 Google 5 mi

Best Buy
8682 Park Meadows Center Dr, Lone Tree, CO 80124

Get on CO-470 W from Park Meadows Center Dr

4 min (0.8 mi)

1. Head northeast toward Park Meadows Center Dr

7 ft

2. Turn right toward Park Meadows Center Dr

161 ft

3. Turn left toward Park Meadows Center Dr

177 ft

4. Turn right toward Park Meadows Center Dr

269 ft

5. Turn left onto Park Meadows Center Dr

0.3 mi

6. Use the middle 2 lanes to take the ramp onto CO-470 W

0.3 mi

Follow CO-470 W to CO-177 N/S University Blvd in Highlands Ranch. Take exit 21 from CO-470 W

4 min (4.2 mi)

7. Merge onto CO-470 W

EXHIBIT F

3.9 mi

8. Use the right lane to take exit 21 to merge onto CO-177 N/S University Blvd

0.3 mi

Continue on CO-177 N/S University Blvd to your destination in Centennial

6 min (2.5 mi)

9. Merge onto CO-177 N/S University Blvd

Pass by Chase Bank (on the right in 1.9 mi)

2.1 mi

10. Use the left lane to turn left onto E Arapahoe Rd

0.2 mi

11. Turn left onto S Vine St

0.1 mi

12. Turn right

230 ft

13. Turn right

256 ft

14 min (7.4 mi)

Best Buy
6707 S Vine St d, Centennial, CO 80122

Take E Arapahoe Rd to S University Blvd

2 min (0.3 mi)

14. Head south toward S Vine St

184 ft

15. Turn left toward S Vine St

243 ft

16. Turn left onto S Vine St

459 ft

17. Turn right onto E Arapahoe Rd

0.2 mi

Continue on S University Blvd. Take US Hwy 285 S and CO-121 N/S Wadsworth Blvd to W Alameda Ave in Lakewood

27 min (14.7 mi)

18. Use the left 2 lanes to turn left onto S University Blvd

4.1 mi

19. Use the left 2 lanes to turn left onto E Hampden Ave

20. Continue onto Hampden Bypass/E Jefferson Ave — 0.6 mi

0.9 mi

21. Continue straight to stay on Hampden Bypass/E Jefferson Ave
Continue to follow Hampden Bypass

0.3 mi

22. Continue onto W Hampden Ave/US Hwy 285 S
Continue to follow US Hwy 285 S
Pass by Taco Bell (on the left)

4.6 mi

23. Take the CO-121/Wadsworth Blvd exit

0.2 mi

24. Keep right at the fork and merge onto CO-121 N/S Wadsworth Blvd
Pass by McDonald's (on the right in 2.1 mi)

4.0 mi

Take S Vance St to your destination

1 min (0.2 mi)

25. Turn right onto W Alameda Ave

325 ft

26. Turn right onto S Vance St

423 ft

27. Turn right
Destination will be on the left

308 ft

30 min (15.3 mi)

Best Buy
384 S Wadsworth Blvd, Lakewood, CO 80226

Get on US-6 E from S Wadsworth Blvd

4 min (1.3 mi)

28. Head east toward S Vance St

308 ft

29. Turn left onto S Vance St

328 ft

30. Turn left onto W Alameda Ave

417 ft

31. Turn right onto S Wadsworth Blvd

0.9 mi

32. Use the right lane to take the ramp onto US-6 E

0.1 mi

Continue on US-6 E. Take I-25 N and US-36 W to Sheridan Blvd in Westminster. Take the CO-95 S/Sheridan Blvd exit from US-36 W

17 min (16.2 mi)

33. Merge onto US-6 E

2.9 mi

34. Use the right 3 lanes to merge onto I-25 N

8.1 mi

35. Use the left 2 lanes to take exit 217A to merge onto US-36 W toward Boulder

4.9 mi

36. Take the CO-95 S/Sheridan Blvd exit toward 92nd Ave

0.2 mi

37. Slight right onto the ramp to Sheridan Blvd

138 ft

38. Take the ramp onto Sheridan Blvd

243 ft

Continue on Sheridan Blvd to your destination in Jefferson County

3 min (0.5 mi)

39. Merge onto Sheridan Blvd

0.3 mi

40. Use the left 2 lanes to turn left onto 9300 N

276 ft

41. Turn right

367 ft

42. Turn left

390 ft

43. Turn right

75 ft

25 min (18.0 mi)

Best Buy
9369 Sheridan Boulevard, Westminster, CO 80031

Continue to Sheridan Blvd

2 min (0.2 mi)

44. Head north

112 ft

45. Turn right

404 ft

46. Turn left toward 9400 N

446 ft

47. Continue onto 9400 N

230 ft

Follow Sheridan Blvd and W 104th Ave to Northglenn

10 min (4.6 mi)

48. Turn left onto Sheridan Blvd

0.1 mi

49. Keep left to stay on Sheridan Blvd

1.1 mi

50. Turn right onto W 104th Ave

1.4 mi

51. Keep right to stay on W 104th Ave

Pass by Panda Express (on the right in 0.4 mi)

2.0 mi

Drive to your destination

1 min (410 ft)

52. Turn right

354 ft

53. Turn left

56 ft

14 min (4.9 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 N from W 104th Ave

3 min (0.5 mi)

54. Head west toward Bannock St

249 ft

55. Turn right onto Bannock St

335 ft

56. Turn right onto W 104th Ave

Pass by Applebee's Grill + Bar (on the right)

0.2 mi

57. Use the 2nd from the left lane to turn left to merge onto I-25 N

0.3 mi

Follow I-25 N to CO-119 in Weld County. Take exit 240 from I-25 N

16 min (18.9 mi)

58. Merge onto I-25 N

18.5 mi

59. Take exit 240 for CO-119 W toward Firestone/Longmont

0.3 mi

Follow CO-119 to your destination in Longmont

11 min (6.6 mi)

60. Turn left onto CO-119 (signs for Longmont)

6.5 mi

61. Turn right

138 ft

62. Turn left

69 ft

63. Turn right

233 ft

64. Turn right

62 ft

30 min (26.0 mi)

Best Buy
210 Ken Pratt Blvd Suite 100, Longmont, CO 80501

Get on I-25 S in Weld County from CO-119

12 min (6.9 mi)

65. Head east toward S Martin St

0.2 mi

66. At the traffic circle, take the 1st exit onto S Martin St

312 ft

67. Use the left 2 lanes to turn left onto CO-119

6.1 mi

68. Turn right onto W I-25 Frontage Rd (signs for I-25 S)

0.2 mi

69. Use any lane to merge onto I-25 S via the ramp to Denver

0.4 mi

Follow I-25 S to W 104th Ave in Northglenn. Take exit 221 from I-25 S

16 min (18.6 mi)

70. Merge onto I-25 S

18.4 mi

71. Take exit 221 to merge onto W 104th Ave

0.2 mi

Take Bannock St to your destination

2 min (0.2 mi)

72. Merge onto W 104th Ave

325 ft

73. Turn left onto Bannock St

404 ft

74. Turn left

249 ft

30 min (25.7 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 S

2 min (0.4 mi)

75. Head west toward Bannock St

249 ft

76. Turn right onto Bannock St

335 ft

77. Turn right onto W 104th Ave
Pass by Applebee's Grill + Bar (on the right)

308 ft

78. Turn right to merge onto I-25 S

0.2 mi

Follow I-25 S, I-270 and I-70 E to N Airport Blvd in Aurora. Take exit 285 from I-70 E

17 min (15.8 mi)

79. Merge onto I-25 S

3.4 mi

80. Use the left 2 lanes to take exit 217B for I-270 E toward Airport/Aurora/Limon

0.5 mi

81. Merge onto I-270

6.6 mi

82. Merge onto I-70 E

4.5 mi

83. Take exit 285 for Airport Blvd

0.3 mi

84. Use the left lane to take the Airport Blvd N ramp

0.5 mi

Continue on N Airport Blvd to your destination

4 min (1.8 mi)

85. Merge onto N Airport Blvd

0.6 mi

86. Turn right onto E 40th Ave

0.3 mi

87. Turn right onto Salida St

0.7 mi

88. Turn right onto N Salida Ct/Waco Wy

0.1 mi

89. Turn right

Destination will be on the left

121 ft

24 min (17.9 mi)

Best Buy
3511 N Salida Ct Ste 10, Aurora, CO 80011

Get on I-70 W from Salida St and Tower Rd

4 min (0.9 mi)

90. Head southeast toward Waco Wy

121 ft

91. Turn left toward Waco Wy

331 ft

92. Continue onto Waco Wy

364 ft

93. Turn right onto Salida St

0.3 mi

94. Turn right onto Tower Rd

0.3 mi

95. Use the right lane to take the ramp onto I-70 W

0.2 mi

Continue on I-70 W. Take I-225 S to E Alameda Ave in Arapahoe County. Take exit 8 from I-225 S

8 min (7.1 mi)

96. Merge onto I-70 W

2.1 mi

97. Use the right 2 lanes to take exit 282 for I-225 S toward Colorado Springs/Aurora

1.4 mi

98. Continue onto I-225 S

3.3 mi

99. Use the right 2 lanes to take exit 8 for Alameda Avenue

0.4 mi

Take S Abilene St to your destination

4 min (1.2 mi)

100. Use the middle lane to turn left onto E Alameda Ave

0.1 mi

101. Turn right at the 1st cross street onto S Abilene St

1.1 mi

102. Turn right

371 ft

Please keep this email for your records.

View: Web

DATE FILED
February 28, 2025 4:12 PM
FILING ID: CFDD2497717A8
CASE NUMBER: 2025CV132

Member ID: 4552643338

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Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149667166445014249555381383859

********* Duplicate Receipt *********

Welcome to Best Buy #1416
104 W 104TH AVE
DENVER, CO 80234

Val:100001-496671-664450-142495-553813-83859
1416 057 0914 11/24/23 13:02

Duplicate Receipt
****

EXHIBIT G

```
6425976    GA01919-US              37.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            12.00- Sale Discount
          Serial # 23121HFDE59FJY
        Sales Tax               3.32
                                ----------
                        Subtotal    37.99
                       Sales Tax     3.32
                                  ==========
                           Total    41.31
**********2889   ChipRead USD$    41.31
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 001463
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 57713022695072
                Other Savings:    12.00
                Total Savings:    12.00
             My Best Buy
           Member ID 4552643388
Most purchases made between Oct. 27, 2023
and Dec. 30, 2023 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 13, 2024. Activatable devices have a
    14-day return policy (30 days for
      Verizon activatable devices).
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
       go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           1416 057 0914 112423
```




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********* Duplicate Receipt *********

```
          Welcome to Best Buy #217
          13801 E MISSISSIPPI AVE
                    AURORA, CO 80012



Val:100001-496673-914782-980029-528359-76765
        0217 018 5798 11/24/23 18:39

                  Duplicate Receipt
                 ******************
```

```
6501941    32LQ630BPUA           169.99
       LG 32LQ630B LED 720P HD SMART
             179.99  Was Price
            10.00- Sale Discount
        Sales Tax             13.60
6449512    3941R2                 24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              1.99
                                ----------
                       Subtotal   194.98
                     Sales Tax    15.59
                                ==========
                          Total   210.57
**********2889   ChipRead USD$   210.57
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 000712
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 18818392540515
                Other Savings:    25.00
                Total Savings:    25.00
              My Best Buy
           Member ID 4552643388
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    purchases may be returned through
Jan. 13, 2024. Activatable devices have a
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      Verizon activatable devices).
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  To learn about our privacy practices,
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      Your Customer Service PIN is:
           0217 018 5798 112423
```




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10000149667147803203329173415472265

********* Duplicate Receipt *********

```
          Welcome to Best Buy #209
             9369 SHERIDAN BLVD
                 WESTMINSTER, CO 80031



Val:100001-496671-478032-033291-734154-72265
        0209 057 2350 11/24/23 11:01

                  Duplicate Receipt
                 ******************
```

```
6449512    3941R2                  24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              2.07
                                ----------
                        Subtotal    24.99
                       Sales Tax     2.07
                                  ==========
                           Total    27.06
**********2889   ChipRead USD$    27.06
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 000693
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 57711010226536
                Other Savings:    15.00
                Total Savings:    15.00
             My Best Buy
          Member ID 4552643388
Most purchases made between Oct. 27, 2023
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           0209 057 2350 112423
```



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Your Customer Care Team

Your Best Buy Receipt

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10000149667146471644607699665272467

********* Duplicate Receipt *********

```
          Welcome to Best Buy #382
           1400 DENVER WEST BLVD
                   LAKEWOOD, CO 80401



Val:100001-496671-464716-446076-996652-72467
        0382 051 4486 11/24/23 14:09

                  Duplicate Receipt
                 ******************
```

```
6449512    3941R2                  24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              1.86
                               ----------
                        Subtotal    24.99
                       Sales Tax     1.86
                                   ==========
                           Total    26.85
**********2889   ChipRead USD$    26.85
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 000978
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 51114085805607
                Other Savings:    15.00
                Total Savings:    15.00
             My Best Buy
          Member ID 4552643388
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           0382 051 4486 112423
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********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S Wadsworth Blvd
                   Lakewood, CO 80123



Val:100001-496671-464716-454064-056270-55683
        0210 057 6259 11/24/23 15:36

                  Duplicate Receipt
                 ******************
```

```
6449512    3941R2                  24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              1.97
                               ----------
                        Subtotal    24.99
                       Sales Tax     1.97
                                   ==========
                           Total    26.96
**********2889   ChipRead USD$    26.96
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 001193
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 57715362579143
                Other Savings:    15.00
                Total Savings:    15.00
             My Best Buy
          Member ID 4552643388
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and Dec. 30, 2023 qualify for our Holiday
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Jan. 13, 2024. Activatable devices have a
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           0210 057 6259 112423
```



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Your Customer Care Team

Your Best Buy Receipt

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10000149667146471645807152950891840

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1171
                6707 S VINE ST
                   CENTENNIAL, CO 80122



Val:100001-496671-464716-458071-529508-91840
        1171 060 8661 11/24/23 17:10

                  Duplicate Receipt
                 ******************
```

```
6449512    3941R2                  24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              1.67
                               ----------
                        Subtotal    24.99
                       Sales Tax     1.67
                                   ==========
                           Total    26.66
**********2889   ChipRead USD$    26.66
             US Debit - DEBIT
         MONTGOMERY/WILLIAM
              Approval 001844
              Verified By PIN
       CARD ENTRY: Chip MODE: Issuer
            AID: A0000000042203
     Reference Number: 60017095712904
                Other Savings:    15.00
                Total Savings:    15.00
               My Best Buy
            Member ID 4552643388
Most purchases made between Oct. 27, 2023
and Dec. 30, 2023 qualify for our Holiday
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    purchases may be returned through
Jan. 13, 2024. Activatable devices have a
    14-day return policy (30 days for
      Verizon activatable devices).
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
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      Your Customer Service PIN is:
           1171 060 8661 112423
```



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Your Best Buy Receipt

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10000149667146471645406343615072660

********* Duplicate Receipt *********

```
          Welcome to Best Buy #164
        8682 PARK MEADOWS CENTER DR
                  LONE TREE, CO 80124



Val:100001-496671-464716-454063-436150-72660
        0164 057 0549 11/24/23 17:39

                  Duplicate Receipt
                 ******************
```

```
6449512    3941R2                  24.99
       ROKU EXPRESS 4K+
              39.99  Was Price
            15.00- Sale Discount
        Sales Tax              1.94
                                ----------
                        Subtotal    24.99
                       Sales Tax     1.94
                                   ==========
                           Total    26.93
**********2889   ChipRead USD$    26.93
             US Debit - DEBIT
        MONTGOMERY/WILLIAM
              Approval 000877
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 57717392939116
                Other Savings:    15.00
                Total Savings:    15.00
             My Best Buy
          Member ID 4552643388
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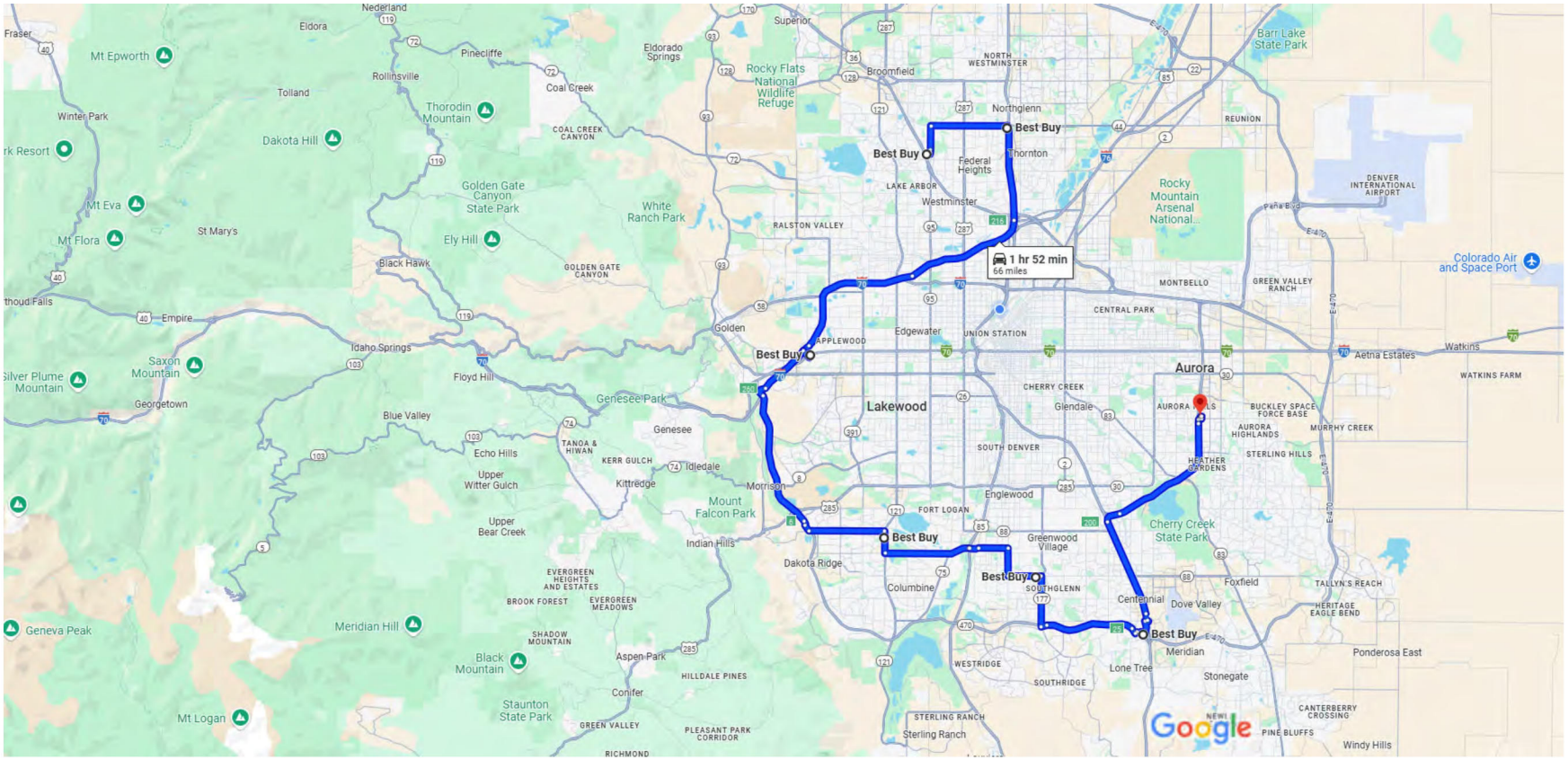
Google Maps

Best Buy, 9369 Sheridan Boulevard, Westminster, CO 80031 to Best Buy, 13801 E Mississippi Ave, Aurora, CO 80012

Drive 66.0 miles, 1 hr 52 min



Map data ©2025 Google 2 mi

Best Buy
9369 Sheridan Boulevard, Westminster, CO 80031

Continue to Sheridan Blvd

2 min (0.3 mi)

↑ 1. Head north

49 ft

2. Turn right

0.2 mi

3. Turn right toward 9400 N

240 ft

4. Continue onto 9400 N

230 ft

Drive from W 104th Ave to Northglenn

10 min (4.6 mi)

5. Use the left 2 lanes to turn left onto Sheridan Blvd

0.1 mi

6. Continue straight to stay on Sheridan Blvd

1.1 mi

7. Turn right onto W 104th Ave

Pass by Panda Express (on the right in 1.7 mi)

3.4 mi

Drive to your destination

1 min (410 ft)

8. Turn right

354 ft

9. Turn left

56 ft

14 min (5.0 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 S

2 min (0.4 mi)

10. Head west toward Bannock St

249 ft

11. Turn right onto Bannock St

335 ft

12. Turn right onto W 104th Ave

Pass by Applebee's Grill + Bar (on the right)

302 ft

13. Slight right to merge onto I-25 S

0.2 mi

Continue on I-25 S. Take I-76 W and I-70 W to Denver West Colorado Mills Pkwy in Lakewood. Take exit 263 from I-70 W

16 min (16.5 mi)

14. Merge onto I-25 S

4.0 mi

15. Take exit 216 to merge onto I-76 W toward Grand Jct

5.5 mi

16. Use any lane to merge onto I-70 W

6.6 mi

17. Take exit 263 toward Denver West Colorado Mills Pkwy

0.4 mi

Continue on Denver West Colorado Mills Pkwy to your destination

3 min (0.5 mi)

18. Turn left onto Denver West Colorado Mills Pkwy

0.3 mi

19. Continue onto Colorado Mills Pkwy

0.1 mi

20. Turn left

194 ft

21. Turn right

56 ft

22. Turn left

184 ft

23. Turn left

56 ft

24. Turn right

Destination will be on the right

194 ft

22 min (17.4 mi)

Best Buy
1400 Denver West-Marriott Blvd, Lakewood, CO 80401

Get on I-70 W from Denver West Colorado Mills Pkwy

3 min (0.7 mi)

25. Head southwest toward Colorado Mills Pkwy

10 ft

26. Turn right toward Wide Acres Rd

164 ft

27. Turn right toward Wide Acres Rd

52 ft

28. Turn left onto Wide Acres Rd

89 ft

29. Turn right onto Colorado Mills Pkwy

289 ft

30. Continue onto Denver West Colorado Mills Pkwy (signs for I-70)

0.3 mi

31. Use the left 2 lanes to turn left to merge onto I-70 W

0.3 mi

Take CO-470 E to Quincy Ave in Dakota Ridge. Take exit 6 from CO-470 E

9 min (9.1 mi)

32. Merge onto I-70 W

2.1 mi

33. Use the right 2 lanes to take exit 260 for 470 toward Colorado Spgs

0.6 mi

34. Merge onto CO-470 E

6.2 mi

35. Take exit 6 for Quincy Ave

0.2 mi

Take W Belleview Ave to your destination in Lakewood

9 min (4.1 mi)

36. Turn left onto Quincy Ave

0.3 mi

37. At the traffic circle, take the 2nd exit onto W Belleview Ave

3.4 mi

38. Turn right onto CO-121 S

0.3 mi

39. Turn right

148 ft

40. Turn left

Destination will be on the right

184 ft

21 min (13.9 mi)

Best Buy
5395 S Wadsworth Blvd, Lakewood, CO 80123

Continue to CO-121 S/S Wadsworth Blvd

52 sec (328 ft)

41. Head east

184 ft

42. Turn right toward CO-121 S/S Wadsworth Blvd

144 ft

Take W Bowles Ave, W Littleton Blvd, S Broadway and E Arapahoe Rd to S Vine St in Centennial

20 min (8.8 mi)

43. Turn right onto CO-121 S/S Wadsworth Blvd

0.7 mi

44. Use the left 2 lanes to turn left onto W Bowles Ave

3.8 mi

45. Continue straight onto W Littleton Blvd

312 ft

46. Use any lane to turn left onto W Alamo Ave

0.4 mi

47. Continue onto W Littleton Blvd

Pass by First Interstate Bank (on the right in 1.2 mi)

1.3 mi

48. Turn right onto S Broadway

1.3 mi

49. Use the left 2 lanes to turn left onto E Arapahoe Rd

1.3 mi

Continue on S Vine St to your destination

1 min (0.2 mi)

50. Turn right onto S Vine St

459 ft

51. Turn right at the 1st cross street

243 ft

52. Turn right

184 ft

22 min (9.0 mi)

Best Buy
6707 S Vine St d, Centennial, CO 80122

Get on CO-470 E in Highlands Ranch from CO-177 S/S University Blvd

8 min (2.9 mi)

53. Head south toward S Vine St

184 ft

54. Turn left toward S Vine St

243 ft

55. Turn left onto S Vine St

459 ft

56. Turn right onto E Arapahoe Rd

0.2 mi

57. Turn right onto CO-177 S/S University Blvd

Pass by Circle K (on the left in 1.1 mi)

2.3 mi

58. Turn left to merge onto CO-470 E

0.3 mi

Follow CO-470 E to S Yosemite St in Lone Tree. Take exit 25 from CO-470 E

4 min (4.2 mi)

59. Merge onto CO-470 E

4.0 mi

60. Use the right lane to take exit 25 for Yosemite Street

0.3 mi

Take Park Meadows Center Dr to your destination

3 min (0.5 mi)

61. Use the middle lane to turn left onto S Yosemite St

0.1 mi

62. Turn right onto Park Meadows Center Dr

0.3 mi

63. Turn right

453 ft

64. Turn left

Destination will be on the right

187 ft

15 min (7.6 mi)

Best Buy
8682 Park Meadows Center Dr, Lone Tree, CO 80124

Get on I-25 N in Arapahoe County from Park Meadows Center Dr

4 min (1.3 mi)

65. Head southeast

121 ft

66. Turn left

417 ft

67. Turn right toward Park Meadows Center Dr

259 ft

68. Turn left toward Park Meadows Center Dr

62 ft

69. Turn right onto Park Meadows Center Dr

0.5 mi

70. Use the left 2 lanes to turn right onto E County Line Rd

0.1 mi

71. Use the right 2 lanes to turn right to merge onto I-25 N

0.5 mi

Follow I-25 N and I-225 N to E Mississippi Ave in Aurora. Take exit 7 from I-225 N

11 min (11.4 mi)

72. Merge onto I-25 N

4.5 mi

73. Use the right 2 lanes to take exit 200 for I-225 N toward I-70/Airport/Aurora/Limon

0.7 mi

74. Continue onto I-225 N

6.0 mi

75. Use the right lane to take exit 7 for Mississippi Ave

0.2 mi

76. Slight right onto the Mississippi Ave E ramp to Abilene St N

456 ft

Continue on E Mississippi Ave to your destination

3 min (0.3 mi)

77. Use the left lane to merge onto E Mississippi Ave

305 ft

78. Use the left lane to turn left onto S Abilene St

0.1 mi

79. Turn left

243 ft

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED February 28, 2025 4:12 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES

THIS COURT, having reviewed Best Buy's Motion to Reconsider the Order re Court Fees, and finding good cause, hereby GRANTS this Motion. Plaintiff is hereby required to pay all standard filing fees, reasonable copy fees, jury fees, e-Filing and service fees, and fees for forms and instructions in this matter. Furthermore, Plaintiff is hereby ordered to pay all standard fees for any filings that were filed on or after February 24, 2025. If payment is not received within 30 days of this Order, the Court will strike all filings filed on or after February 24, 2025, without further notice.

So ordered on _____.

_____
Presiding Judge, District Court for Jefferson County, Colorado

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED March 18, 2025 1:15 PM
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **2023CV00226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S MOTION FOR ATTORNEY FEES

THIS MATTER comes before the Court on Defendant Best Buy Stores' motion for attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims. The Court granted summary judgment for, among other things, Shopkeeper's Privilege. The Court also received body camera footage of the alleged detainment from Plaintiff, which showed Defendant's employees asking Plaintiff to return the purported stolen merchandise while they stood near him for several minutes outside the store.

Additionally, the Court received a YouTube video from Defendant that Plaintiff had recorded and uploaded. In this video, Plaintiff explains how he gets "free lawsuits" by going into stores and conducting himself in a manner that could be reasonably construed as suspicious and then suing when employees confront him upon believing he is stealing. Plaintiff has also filed numerous nearly identical cases against other stores around Colorado.[1]

Since the time the Court granted Defendant's motion for summary judgment, Plaintiff has filed at least three additional lawsuits against Best Buy, also alleging claims of false imprisonment: Case No. 2024CV00132 (Adams County District Court), Case No. 2024CV000241 (Jefferson

[1] See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

County District Court), and Case No. 2024CV000242 (Jefferson County District Court).

Defendant filed this motion for attorney fees on December 31, 2024. Plaintiff filed a response and Defendant replied.

II. LEGAL STANDARD

A Colorado court shall award reasonable attorney fees "against any attorney or party who has brought or defended a civil action . . . that the court determines lacked substantial justification" or "was interposed for delay or harassment," or who has "unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures." C.R.S. § 13-17-102(2), (4). "Lacked substantial justification" means "substantially frivolous, substantially groundless, or substantially vexatious." C.R.S. § 13-17-102(9)(a).

Parties appearing pro se shall not be assessed attorney fees "unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense . . . was substantially frivolous, substantially groundless, or substantially vexatious[.]" C.R.S. § 13-17-102(6).

"A claim is frivolous if the proponent has no rational argument to support it based on evidence or the law. A claim is groundless if there is no credible evidence to support the allegations in the complaint. A vexatious claim or defense is one brought or maintained in bad faith." Zivian v. Brooke-Hitching, 28 P.3d 970, 974 (Colo. App. 2001).

"Meritorious actions that prove unsuccessful and good faith attempts to extend, modify, or reverse existing law are not frivolous." City of Aurora v. Colo. State Eng'r, 105 P.3d 595, 620 (Colo. 2005). However, awarding attorney fees is an important sanction against an attorney or party who brings unjustified litigation. Sifton v. Stewart Title Guar. Co., 259 P.3d 542, 546 (Colo. App. 2011).

III. ANALYSIS

Defendant argues that Plaintiff's action was substantially vexatious and that Plaintiff knew or should have known his action was substantially vexatious. The Court agrees.

An action is "substantially vexatious" if "brought or maintained in bad faith to annoy or harass another, and vexatiousness includes conduct that is arbitrary, abusive, stubbornly litigious, or disrespectful of the truth." In re Parental Responsibilities of I.M., 410 P.3d 488, 492 (Colo. App. 2013).

The Court finds that Plaintiff planned this lawsuit before bringing it. (See Defendant's Ex. L, YouTube Video at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting.") On the date of the incident, Plaintiff sought to engage Best Buy in a situation that would result in a lawsuit. To do so, Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous. (Defendant's Ex. O, Google Maps). These purchases were made, at least in part, with the hopes of

baiting the Best Buy stores into confronting Plaintiff. (Defendant's Ex. Q, Deposition at 109:16-111:17). When speaking about his actions on that day, Plaintiff analogized his conduct to that of a police bait car. (Defendant's Ex. Q, Deposition at 35:23-37:5, 45:16-46:9).

Once the lawsuit was underway, the Court finds that Plaintiff continued to maintain the lawsuit in bad faith. Before filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure:

> I'm not going to be so nice next time [I file a lawsuit]. I've already got cases where I have it all set up perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man.

(Defendant's Ex. L, YouTube Video at 17:15-17:55).

During discovery, Plaintiff failed to comply with his Rule 26(a)(1) disclosure requirements and provided evasive discovery responses. Plaintiff omitted his brother from his 26(a)(1) Initial Disclosures, despite stating that his brother spent the entire day of the incident with him. (Defendant's Ex. S, Initial Disclosures; Defendant's Ex. Q, Deposition at 107:13-18). Plaintiff responded to many of Defendant's discovery requests with "I do not recall," despite in later pleadings making definite statements about the same subject matter. (Defendant's Ex. T). This all appears to be purposeful by Plaintiff to provide Defendant with as little information as possible, especially given the context of his earlier statement plotting to refuse to cooperate with opposing counsel.

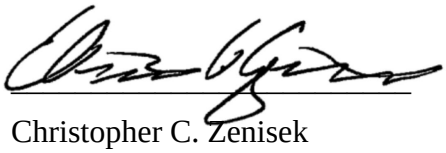
The above facts lead the Court to conclude that Plaintiff brought and maintained this suit in bad faith and, based on his statements in his deposition and YouTube video, knowingly did so. Plaintiff's planning and searching for a lawsuit and failure to cooperate honestly with the discovery process are stubbornly litigious, disrespectful of the truth, and abusive of the court system. For this reason, the Court concludes that attorney fees are justified under C.R.S. § 13-17-102. Additionally, the Court hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts, which he currently appears determined to continue.

IV. CONCLUSION

For the reasons discussed above, Defendant's motion for attorney fees is **GRANTED**. Defendant will be awarded reasonable attorney fees. Defendant Best Buy shall submit its computation within 21 days. Plaintiff may object to reasonableness within the 14 days that follow.

Done in Golden, Colorado this 18th day of March, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED March 21, 2025 FILED IN THE COMBINED COURT MAR 2 1 2025 JEFFERSON COUNTY COLORADO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE TO DEFENDANT BEST BUY'S MOTION TO RECONSIDER THE ORDER RE COURT FEES	

Plaintiff, proceeding *pro se*, hereby RESPONDS in opposition to Defendant Best Buy's MOTION TO RECONSIDER, and in support thereof, states as follows:

BACKGROUND

In Plaintiff's most recently filed MOTION TO WAIVE FEES, filed on February 24, 2025, Plaintiff sought to waive **the appeal filing fee** only, and nothing more. Thus, that is the sole dispositive issue currently being presented by Plaintiff, and the sole issue for this Court to decide.

ARGUMENT

I. PLAINTIFF'S COMPLAINT WAS NOT FILED IN BAD FAITH

In Defendant's MOTION TO RECONSIDER, it begins by claiming that "Plaintiff has been told by Colorado state courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. §

18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess stolen items." *Def BB's MTR at page 3.* The problem with this haughty statement made by Defendant is that it is generalized, conclusory, and does not *actually* establish precisely **HOW** the particular findings of the purportedly related cases to which it has subsequently listed off are ***actually*** relevant to Plaintiff's instant case.

a. The FACTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **he was a customer of the stores that detained him. The same is not even remotely true today,** where Plaintiff ***wasn't even a customer of Best Buy,*** but rather "a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store." *See Ptf's Resp To Def's MSJ at page 22.* Next, in all of Plaintiff's previous cases against Walmart, **he utilized "back registers" and/or forwent the use of "plastic bags."**[1] However, **the same is not even remotely in Plaintiff's instant case,** where "back registers" ***don't even exist inside Best Buy*** [i.e. they have universal registers littered all throughout their stores], and the major retail chain phased out "plastic bag use" ***in July of 2022, six months BEFORE Plaintiff was even detained*** in the instant case. And again, ***Plaintiff wasn't even a customer that day to EVEN USE*** "back registers" and/or "not use plastic bags."[2] Next, in all federal lawsuits that Plaintiff lodged against police officers who had been posted up at and/or had responded to Walmart's calls for service, all of those cases were summarily dismissed ***on the grounds of qualified immunity***, and as such, were never decided on their merits. Finally, in all of Plaintiff's previous cases against Walmart and/or the police who had been posted up at and/or had responded to the store chain, **it was held that he "knew" about the store's receipt checking policies.**[3]

1 Not that either would supply a merchant with "shopkeeper's privilege" *anyways,* as historically argued by Plaintiff.

2 Indeed, this Court **FAILED** to allow the veracity of these facts ***to even be developed, in either direction, in the first place,*** before it tendentiously, summarily, and **impermissibly** dismissed Plaintiff's instant case in its entirety.

3 Not that such would invalidate a patron's valid false imprisonment claim *anyways*, as historically argued by Plaintiff. Also, **it's not even Walmart's policy to detain patrons who refuse to show their receipt.** *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) ("If a customer refused to have his or her bag checked, **the policy allowed the**

However, once again, **the same is not even remotely true today,** where Plaintiff ***still has no earthy idea if Best Buy EVEN HAS a receipt checking policy on its books, in the first place,*** let alone a compulsory one. And again, it bears repeating, ***that Plaintiff wasn't even a customer that day to EVEN RECEIVE a receipt for which he might have otherwise been required to show.***

Therefore, whether Best Buy had shopkeeper's privilege **IN THIS 100% UNIQUE CASE** in which plaintiff was **a)** not even a customer, of **b)** an entirely different store, that **c)** employed entirely different policies, where **d)** he did not use back registers, **e)** did not forgo plastic bag use, **f)** was not asked to show a receipt upon leaving, and **g)** did not refuse to show a receipt upon leaving, **is a novel question of fact and law** that Plaintiff has presented to this Court, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).*

b. The LEGAL ARGUMENTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that he was a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store.*** *See Ptf's Resp To Def's MSJ at page 22.* This is a new and novel legal argument that Plaintiff has presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the store he visited has a policy in which receipts are emailed to patrons instead of printed out and given to them.***[4] *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* This is also a new and novel legal argument that Plaintiff has presented, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that being *fully stopped* to***

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person to pass."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.").

4 Not that such is even applicable in Plaintiff's instant case, **in which he wasn't even a customer of the store in the first place,** to even receive a receipt [let alone be emailed one] for which he might have otherwise been required to show.

show one's receipt is not the same as merely *changing directions* toward an *always open* window. *See Ptf's Resp To Def's MSJ at page 19, footnote 8.* This is a "good faith argument" that Plaintiff has presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merely affording a person an opportunity to commit an offense is not entrapment (i.e. entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed).*** *See Ptf's Resp To Def's MSJ at pages 15, footnote 4, and 27.* This is another "good faith argument" that Plaintiff has presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merchants don't simply get *carte blanche* authority to indiscriminately detain whomever they wish (i.e. a merchant listing off literally all possible actions that are purportedly required for a patron to perform in order to end their detention effectively renders all detentions of patrons literally uncompensable, and the bar to which merchants are required to have "shopkeeper's privilege" under obviously cannot be set at the floor).*** *See Ptf's Reply In Support Of His C-MSJ at page 17, footnote 19.* Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Finally, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the Defendant has offered nothing more than *purely conclusory statements* to support its shopkeeper's privilege position (and that "conclusory statements made without supporting documentation or testimony are insufficient to create an issue of material fact").*** *See Ptf's Resp To Def's MSJ at page 28, footnote 10. See also Ptf's Reply In Support Of His C-MSJ at pages 15 through 20.* Again, this is another "good faith argument" that Plaintiff has presented, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).*

As such, Plaintiff filed this lawsuit in a **100% IRREFUTABLE, 100% INDISPUTABLE GOOD FAITH ATTEMPT** to either "establish a new theory of law in Colorado," *see C.R.S. § 13-17-102 (7),* or "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).*

c. Defendant Best Buy is the one with a "modus operandi," and Plaintiff cannot be blamed for developing an intuition of that

In Defendant's MOTION TO RECONSIDER it states that "Plaintiff has been very vocal both on the internet and in his court pleadings that he takes issue with retail stores and their employees asking patrons to show their receipts before exiting the premises." *Def BB's MTR at page 4.* **However, Plaintiff is clearly not alone with regard to the legitimate concerns he has developed over the years that "Big-Box Bullies" like Best Buy continue to flagrantly violate the law.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). *See Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, https://consumerist.com/2010/12/man-records-himself-being-detained-at-walmart-for-a-receipt-check.html (Dec 23, 2010). *See Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996). *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000). *See Non-Exhaustive List Of Recent News Articles Condemning Receipt Checkpoints As Unlawful,* Plaintiff's Exhibit #1. **As such, Plaintiff absolutely cannot be blamed for likewise "taking issue."**

Of course, Defendant then states that "To address this perceived injustice of 'receipt showing,' Plaintiff has taken great pains to deliberately provoke situations that allow him to file "free lawsuits." *Def BB's MTR at page 4.* However, as Plaintiff has argued before, **IT IS AN ABSOLUTELY LAUGHABLE NOTION** that Plaintiff is the one "deliberately" "provoking" his false imprisonments, **when it is stores like Best Buy and Walmart** that are the ones ROUTINELY handing out the "free lawsuits" at the door.[5] If it weren't for these very select few "Big-Box Bullies"

5 ***Critically important here,*** is that in Defendant's MTR, it repeatedly misquotes Plaintiff's use of the phrase "free lawsuit" to indicate that he "files lawsuits for free." However, Plaintiff's exclusive use of the phrase "free lawsuit" has only ever been to indicate **how overzealous stores like Walmart and Best Buy routinely, flagrantly violate the law,** which essentially allows *anybody* [who happens to know their their rights] the

being so paranoid, overzealous, and lynchy, neither Plaintiff, nor any other patron in his position, would have standing to sue. They simply wouldn't be detained, and life would go on. **Indeed, it is Defendant Best Buy's "modus operandi" – and not Plaintiff's – to detain patrons for simply refusing to show their receipts upon leaving. ENTIRE LAW REVIEW ARTICLES have been written on THIS EXACT "modus operandi" existing FOR RETAIL STORE CHAINS, not patrons.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). Also worth noting on this topic, is that, again, "back registers" ***don't even exist inside Best Buy,*** and the major retail chain phased out "plastic bag use" ***in July of 2022,*** thus eliminating the ***very capacity*** for either to "raise suspicion" of shoplifting, as Defendant Best Buy attempts to argue. Rather, in Plaintiff's instant case, **he was simply a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store,** *and literally nothing more.* There's no "modus operandi" in that. There's only the act of ***victim blaming*** being done by ***the very perpetrator*** who is the true guilty party in this action.[6] Indeed, probably the most disturbing statement made to date by Defendant, is its claim that "After Walmart, Inc. banned him from its premises, Plaintiff was forced to find a new target and set his sights on Best Buy." **As if Plaintiff goes around "finding targets" to get false imprisoned by!** If that were the case [and he were truly "entrapping" otherwise reasonably acting merchants] Plaintiff would undoubtedly have filed *hundreds, if not thousands* of [frivolous] lawsuits by now. *But that's obviously not the case.* **Even more laughable: That Plaintiff "set his sights" on Best Buy!** Try: Best Buy is **one of basically only two** "Big-Box Bullies" in town **who routinely, flagrantly violate false imprisonment law.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). **No other merchant**

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opportunity to simply not show their receipt upon leaving in order to secure a legitimate lawsuit in the matter. In layman's terms, the lawsuits ***wouldn't even exist*** if such "Big-Box Bully" stores ***didn't regularly hand them out.***

6 Victim blaming is a well known act in society in which the victim of a crime or any wrongful act is [impermissibly] held entirely or partially at fault for the harm that befell them. The act is also commonly referred to as "victim shaming."

(besides Walmart) is so stupid and predictable. Indeed, on this note of predictability, how does Defendant not realize that its argument that "Plaintiff has repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft" is an argument ***against*** it, not ***for*** it? **If there weren't people out there willing to commit auto theft, there wouldn't be police officers setting out bait cars!**[7] DUH. And the argument that Plaintiff "deliberately" shops on Black Friday is of no help to Best Buy either, as a patron learning that a false imprisonment is more likely to occur on a particular day (such as Black Friday) is just as valid as a police officer learning that a car theft is more likely to occur on a particular day (such as New Year's). *See Highest Vehicle Theft Days Ranked,* Automotive Fleet, https://www.automotive-fleet.com/318154/days-with-high-vehicle-thefts-ranked (Oct 31, 2018). Same goes with the idea of purchasing a particular product (a Roku, for example[8]). That's just a police officer honing in on the idea that certain vehicles are more likely to get stolen, than others. *See Report: These Are The Vehicles Most Likely To Be Stolen,* Cars.com, https://www.cars.com/articles/report-these-are-the-vehicles-most-likely-to-be-stolen-470867 (Sep 1, 2023). **It's called intuition,** and it's nothing to write home about. In the end, **Defendant needs to just give it up that Plaintiff is "acting deliberately."** Rather, **it's** the one acting deliberately – so much so that people (like Plaintiff) are simply able to hone in on the flagrantly unlawful behavior.

d. Defendant's evidence that Plaintiff "acted deliberately" literally contradicts itself

Next, on this topic, is quite easily THE MOST DOWNRIGHT LAUGHABLE PART of Defendant's argument. Evidently Defendant doesn't understand that presenting evidence that Plaintiff made numerous purchases at various Best Buy locations all throughout the state, **BUT WHEREBY**

7 Also worth noting on this topic, is that Defendant [and this Court] have evidently failed to comprehend that **BAIT CARS ARE NOT ILLEGAL.** They do not constitute "entrapment." *See Adams v. State,* 270 S.W.3d 657, 661-62 (Tex. App. 2008) ("Bait car programs do not conflict with article 2.13 because the use of bait cars allows police to catch criminals *that have already decided to steal vehicles,* regardless of whether the vehicle is a bait car.") (emphasis added). **IN LAYMAN'S TERMS FOR DEFENDANT AND THIS COURT TO UNDERSTAND:** Plaintiff's mere refusals to answer questions and/or mere refusals to consent to searches upon leaving stores allows him to catch merchants **that have already decided to [unlawfully] detain patrons over such impermissible [i.e. "bootstrapped"] reasons, regardless of whether his refusals are "deliberate."**

8 Of course, Plaintiff never "concealed" the Roku, *or any other product for that matter,* as Plaintiff knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter.

HE *DIDN'T* GET DETAINED AND *DIDN'T* SUE OVER ANY DETENTIONS THAT *DIDN'T* OCCUR AT ANY OF THESE *OTHER* STORE LOCATIONS, is LITERALLY evidence that IT was the exception this whole time, and not the norm! Indeed, if Plaintiff *truly does* "act in a manner that could reasonably be construed as suspicious," *truly does* "intentionally create misunderstandings for purposes of his later lawsuits," and *truly does* "design his conduct to inspire this belief," **THEN WHY ON EARTH DOES HE NOT HAVE LITERALLY DOZENS MORE FRIVOLOUS LAWSUITS COLLECTED BY NOW THAT WOULD BE A DIRECT RESULT OF HIS OSTENSIBLY PROVOCATIVE BEHAVIOR UNDERTAKEN AT ALL THESE OTHER BEST BUY LOCATIONS!?!?** Oh yeah, that's right. Because most of these *other* Best Buy stores acted *reasonably* in **NOT** detaining him, **while Defendant in the instant case obviously couldn't live up to the same.** Indeed, to argue otherwise, would be to LITERALLY say that ***dozens and dozens*** of employees, staffed ***at over a dozen*** Best Buy locations, scattered ***all across*** the front range, **WERE *ALL* WILDLY INCOMPETENT, INTERNAL POLICY VIOLATING, SHOPKEEPER'S PRIVILEGE IGNORANT EMPLOYEES WHO *ALL* LET A BONA FIDE THIEF WALK STRAIGHT OUT OF THEIR STORES, RED HANDED, WITH MERCHANDISE NOT PAID FOR, ON THE BIGGEST SHOPPING DAY OF THE YEAR!?!?!?** Plaintiff has never laughed so hard in his life!!!!! Of course, merely refusing to answer questions and/or refusing to consent to searches is still not much of an "audit" anyways. Did Defendant not hear Plaintiff when he mentioned that "the whole point of a sting operation is to be ***not*** different than anybody else," *Ptf's Deposition at page 36, line 18,* "people just park their cars, whether they're cops or not," *Ptf's Deposition at page 35, line 25,* "[he's] just like any other person who parks their car on the road," *Ptf's Deposition at page 36, line 22,* and that, therefore "every car is a bait car on the road," *Ptf's Deposition at page 36, line 1?* **Thus, the argument that a "bait car" is in any way, shape, or form, "deliberate" [entrapment] is absolutely downright laughable.** All Plaintiff does is "go shopping and leave." *Ptf's Deposition at page 45, line 6.* **THAT'S IT.** When are

merchants going to **give it up** that Plaintiff doesn't actually **_DOOOO_** anything that any other customer doesn't *DOOOO* when going shopping. "Everybody's a secret shopper technically." *Ptf's Deposition at page 85, line 11.* Sadly, most other patrons simply don't know their rights to decline to participate in **non-compulsory** encounters with complete and total strangers after shopping [and indeed, most are alternatively mindless lemmings who would rather "assuage the perceived evil" by way of voluntarily consenting to any detentions in favor of ostensibly lower prices]. **In the end though,** once again, it's just not Plaintiff who is "provoking" his lawsuits, **its a few paranoid, overzealous, lynchy merchants who are.** "And if there weren't people out there willing to bootstrap merely refusing to show a receipt, or answer questions, or be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this." *Ptf's Deposition at page 46, lines 11-16.* **Most importantly on this topic,** is that "**these stores have no incentive to change" [so long as too few people sue upon being torted by them].** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009) at page 42. As such, Plaintiff **absolutely cannot be blamed** for attempting to foster such "change" that is so sorely needed right now.

IV. THIS COURT VIOLATED NUMEROUS RULES AND LAWS, AND SHOULD NOT HAVE DISMISSED PLAINTIFF'S LAWSUIT IN THE FIRST PLACE, THUS PROVIDING HIM WITH GOOD FAITH REASONS TO APPEAL

Defendant claims that in Plaintiff's lawsuit against the store, it [fairly] "prevailed on its motion for summary judgment followed by two motions for reconsideration." *Def BB's MTR at page 6.* However, anybody with half a brain who reads Plaintiff's FIRST AND SECOND MOTIONS FOR RECONSIDERATION would quickly see that **Plaintiff was railroaded, sandbagged, and wholly denied due process in the matter.**

First, this Court **impermissibly** accepted and adopted *purely conclusory statements* made by Best Buy during its briefing that Plaintiff is some undeserving-of-due-process "lawsuit

scammer" in direct violation of *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).[9]

Next, this Court **impermissibly** held that Plaintiff "denies having been in Best Buy."[10]

Next, this Court **impermissibly** held that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident."[11]

Next, this Court **impermissibly** accepted a blatantly contradictory affidavit of Mahmoud Abu-Shaweesh in direct violation of *Scott v. Harris,* 550 U.S. 372, 380 (2007).[12]

Next, this Court **impermissibly** accepted affidavit-less business records (i.e. receipts) in direct violation of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003).[13] Plaintiff has YET to see this Court *even remotely begin to* address this **absolutely critical** argument.

Finally, this Court **impermissibly** allowed Defendant to inject reply-only arguments into its MSJ briefing in direct violation of *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).[14] This Court even tried to cure this well-pointed-out violation by claiming [in its *Order Denying Plaintiff's Motion For Reconsideration*] that Plaintiff purportedly had an "opportunity" to respond to the belated

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9 In *Suncor,* the Court held that when ruling on a Motion For Summary Judgment, **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."**

10 Rather, all Plaintiff did was present proper legal argument that *Best Buy* failed to show that he was ever inside the store. *Merely presenting legal argument of the opposite of something* ***is not actually*** *an active denial of it.*

11 Rather, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees." Moreover, as this Court itself pointed out, "In assessing a summary judgment motion, **a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence,** and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **was required by law** to **INFER** that said facts presented by Plaintiff specifically applied to him being **INSIDE** the store.

12 In *Scott,* the Court held that "When opposing parties tell two different stories, one of which is blatantly contradicted by the record [which in this case, is Plaintiff's pen camera video of the event], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."

13 In *Henderson,* the Court held that "business records" are only admissible when "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record."

14 In *Wallman,* the Court held that "because plaintiff was not given notice that she needed to present evidence on the causation issue in defendants' initial summary judgment motions and briefs, we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions."

exhibits. This argument is faulty for several reasons. First, in *Wallman,* the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond. **However, absolutely nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does it explain that REPLY briefs provide such "notice" of such "need."** Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are severely limited by page number and file-by date.** Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *countering* **new** allegations made by Defendant [that it should have presented in its **initial** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ. Finally, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact," because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** *See Morlan v. Durland Co.,* 127 Colo. 5, 13 (Colo. 1952) ("Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties."). In other words, a party's **offense** argued in their *own* motion cannot be used as their **defense** argued *in the other party's* motion [which is precisely what this Court **impermissibly** did in the case].

As such, Plaintiff has made *more than enough* absolutely valid legal arguments that he will now be submitting "in good faith" to the Colorado Court Of Appeals, so that it may properly **REVERSE** this Court's **flagrantly erroneous** ORDER impermissibly granting Defendant's MSJ in this matter.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **DENY** Defendant's MOTION TO RECONSIDER THE ORDER RE COURT FEES in this matter, so that Plaintiff may be allowed to proceed on appeal without prepayment of the appeal's filing fees.

Respectfully submitted on this, the 21st day of March, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of March, 2025, the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT BEST BUY'S MOTION TO RECONSIDER THE ORDER RE COURT FEES** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Attorneys for Defendant

William Montgomery
William Montgomery

NON-EXHAUSTIVE LIST OF RECENT NEWS ARTICLES CONDEMNING RECEIPT CHECKPOINTS AS UNLAWFUL

Cop Records Himself Detained At Walmart Receipt Check, The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010) ("[S]tores cannot legally prevent you from leaving if you decide to not show your receipt.");

Walmart is found not liable after detaining a customer who refused to show receipts at the door, Business Insider, https://tinyurl.com/yvzax7m2 (Jun 5, 2023) ("Shoppers are not legally required to show receipts.");

Walmart Can't Be Sued For Wrongly Disdaining Customer William Montgomery, He Lost His Lawsuits, NewsOnyx, https://tinyurl.com/2p9ecf4x (Jun 2023) ("It is not legally required for one to show their receipts.");

I refused to show my receipt at Walmart and was detained even though it's not illegal – a judge ruled in store's favor, The U.S. Sun, https://tinyurl.com/24pxecm4 (Oct 24, 2023) ("A lawyer revealed that it is not mandatory by law for customers to show receipts at stores like Walmart.");

I'm a lawyer – retailers like Walmart can't legally check your receipt if you refuse but Costco has found a loophole, The U.S. Sun, https://tinyurl.com/43cm6fzm (Oct 23, 2023) ("They can ask you to show your receipt and you can consensually allow them to do it. But there is no power or authority to detain you if you say no." "Stores like Walmart [] could risk legal issues if they attempt to enforce these checks." "[I]f non-membership stores attempted to detain customers for this consumers would be able to sue for false imprisonment if they did not commit a crime.");

I'm a criminal attorney – there's a big problem Walmart & Target staff ignore when they demand to see your receipt, The U.S. Sun, https://tinyurl.com/mrxzw248 (Oct 31, 2023)

("[E]mployees can still ask for your receipt but a customer doesn't have to show it if they don't want to. 'Even the police, they have no right to stop you and force you to show a receipt without reasonable suspicion to stop you and probable cause to search you.'");

Walmart 'cannot come after you' for refusing to show receipt at self-checkout unless they spot key details, expert warns, The U.S. Sun, https://tinyurl.com/yfhnn5xc (Dec 31, 2023) ("[Y]ou can invoke your rights and refuse to show your receipt to the worker at the door when asked.");

'You can walk on by,' cop tells Walmart shoppers about receipt checks – but a specific law makes things 'tricky,' The U.S. Sun, https://tinyurl.com/3chf9xwh (Jan 3, 2024) ("Failing to show a receipt at a store's exit isn't enough of a reason for a store like Walmart to detain a suspected stealer.");

Walmart can't force you to show receipt or have bag checked at the door unless they have a vital excuse, lawyer warns, The U.S. Sun, https://tinyurl.com/mu8cnysf (Jan 17, 2024) ("[W]ithout probable cause to establish Shopkeeper's Privilege," – i.e. "suspicion of shoplifting through other behaviors or actions," – "a receipt check inquiry can be refused legally at Walmart.");

'That's false imprisonment,' lawyer insists as he warns Walmart and major retailers about unnecessary receipt checks, The U.S. Sun, https://tinyurl.com/ycj27x7a (Jan 20, 2024) ("If you haven't done anything wrong and they can't confirm with video cameras or eyewitnesses…and they detain you without consent, that's false imprisonment.");

Walmart needs to remember customer rights before receipt checks – expert advises walk away if they don't have evidence, The U.S. Sun, https://tinyurl.com/u3577pss (Jun 29, 2024) ("If the customer has done nothing wrong, the store would then be engaged in unlawfully confining the innocent customer, resulting in a sort of false imprisonment.").

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED March 28, 2025 6:32 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6

BEST BUY'S REPLY IN SUPPORT OF ITS MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits this Reply in Support of Its Motion to Reconsider the Order re Court Fees, as follows:

The doctrine of issue preclusion, often referred to as collateral estoppel, bars relitigation of issues when "(1) the issue sought to be precluded is identical to an issue actually and necessarily determined in the prior proceeding; (2) the party against whom estoppel is asserted has been a party to or is in privity with a party to the prior proceeding; (3) there is a final judgment on the

merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding." *Vanderpool v. Loftness*, 2012 COA 115, ¶ 13, 300 P.3d 953, 957–58, as modified on denial of reh'g (Aug. 30, 2012).

Here, Best Buy is able to demonstrate all elements necessary for issue preclusion on this Motion:

(1) This Court has already ruled upon the identical issue of whether this lawsuit was filed vexatiously and in bad faith. *See,* Order Re: Defendant's Motion for Attorney's Fees (entered March 18, 2025);

(2) Plaintiff was a party to the matter in which the Court ruled that this matter was filed vexatiously and in bad faith;

(3) There was a final judgment on the merits in the Motion for Attorney's Fees; and

(4) Plaintiff had full opportunity to file a response, litigate the motion, and in fact, did so.

Thus, Plaintiff is issue precluded as to whether this lawsuit filed vexatiously and in bad faith, and the Court must find in favor of Best Buy on the present Motion.

In any event, Plaintiff's Response is demonstrative of his conduct in abusing access to the Courts. Plaintiff's Response is near identical to the same responses that are being filed over and over in other courts. To that end, Best Buy will conserve time and financial resources by attaching Plaintiff's response and Best Buy's reply to a previous Waiver of Fees briefing filed in another case pending before the District Court for Jefferson County, Colorado. **Ex. H.** Pursuant to C.R.C.P. 10(c), Best Buy hereby incorporates by reference all facts, legal authority, and arguments contained in Best Buy's reply depicted in **Ex. H.**

Plaintiff attempts to distinguish the present case from his prior lawsuits with Walmart. However, some of the very facts that are allegedly crucial to the present case were deliberately withheld from Best Buy. For instance, Plaintiff asserts that the fact that Plaintiff was not a paying customer is crucial in this case. However, Plaintiff provided evasive written discovery responses to this very fact. **Ex. I,** Plaintiff's Resp. to Request for Production No. 1. This in and of itself demonstrated that Plaintiff is abusing his access to the Court and not seeking a just determination of the issues on the merits.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court find that there is clear and convincing evidence that Plaintiff filed and maintained this lawsuit in bad faith and require Plaintiff to pay filing fees, reasonable copy fees, jury fees, eFiling and service fees, and fees for forms and instructions, including fees related to Plaintiff's pending appeal for this matter.

Filed **March 28, 2025.**

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on March 28, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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s/ Stephanie Boutsicaris

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED March 28, 2025 6:32 PM
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2024CV242** Division: **11** Courtroom: **140**
PLAINTIFF'S RESPONSE TO DEFENDANT BEST BUY'S MOTION TO RECONSIDER THE ORDER RE COURT FEES	

Plaintiff, proceeding *pro se*, hereby RESPONDS in opposition to Defendant Best Buy's MOTION TO RECONSIDER, and in support thereof, states as follows:

ARGUMENT

I. PLAINTIFF'S COMPLAINT WAS NOT FILED IN BAD FAITH

a. The FACTS in Plaintiff's instant case are entirely different, and qualified immunity is not applicable at the state level

In Defendant Best Buy's MOTION TO RECONSIDER, it begins by claiming that "Plaintiff has been told by Colorado state courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect

of theft to ascertain whether they possess stolen items." *Def BB's MTR at page 3.* The problem with this haughty statement made by Defendant Best Buy is that it is generalized, conclusory, and does not *actually* establish precisely **HOW** the particular findings of the purportedly related cases to which it has subsequently listed off are ***actually*** relevant to Plaintiff's instant case.

First, in all *state* lawsuits that Plaintiff lodged against Defendant Walmart, **he utilized back registers and/or forwent the use of plastic bags.**[1] However, **the same is not even remotely true today,** where "back registers" ***don't even exist inside Best Buy*** [i.e. they have universal registers littered all throughout their stores], and the major retail chain phased out "plastic bag use" ***in July of 2022, a year and six months BEFORE Plaintiff was even detained*** in the instant case. Then, in all *federal* lawsuits that Plaintiff lodged against police officers who had been posted up at and/or had responded to Walmart's calls for service, each of those cases were summarily dismissed ***on the grounds of qualified immunity***, and as such, were never decided on their merits. Finally, in all of Plaintiff's previous cases against Walmart and/or the police who had been posted up at and/or had responded to the store chain, **he "knew" about the store's receipt checking policies.**[2] However, once again, **the same is not even remotely true today,** where Plaintiff ***still has no earthy idea if Best Buy EVEN HAS a receipt checking policy on its books, in the first place,*** let alone a compulsory one. More importantly on this topic, is that the only receipt "policy" of Best Buy that Plaintiff is aware of, ***is one in which the major retain chain EMAILS receipts to its patrons,*** in lieu of giving them a paper one, **WHICH IS OF ABSOLUTE PARAMOUNT IMPORTANCE in Plaintiff's instant case,** as he was, indeed, **emailed a receipt in lieu of receiving a paper one.**

Therefore, whether Best Buy had shopkeeper's privilege **in the 100% unique case presented**

1 Not that either would supply a merchant with "shopkeeper's privilege" *anyways,* as historically argued by Plaintiff.

2 Not that such would invalidate a patron's valid false imprisonment claim *anyways*, as historically argued by Plaintiff. Also, **it's not even Walmart's policy** to detain patrons who refuse to show their receipt, as argued in the next section.

here today is a novel question of fact and law that Plaintiff has presented to this Court in good faith.

b. Prior Courts also got several facts WRONG in Plaintiff's previous cases

It is also worth noting that prior Courts got several facts patently WRONG in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart, Inc.,* Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235), a District Court Judge *miraculously* **[but impermissibly]** held that Plaintiff "concealed" merchandise on his way out of each store.[3] **OF COURSE,** Plaintiff has obviously **NEVER, NOT ONCE** "concealed" *anything*, from *anybody*, on *any* shopping occasion, ***ever, period, in the history of his existence,*** for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter![4] Then, in *Montgomery v. Walmart Inc.,* Adams County District Court Case No. 2021CV68 (Consolidated: 2021CV88), an Appellate Panel *miraculously* **[but impermissibly]** held that it was even Walmart's official receipt checking policy to "confine" patrons "if they chose not to produce [a receipt]." *See Order Granting MSJ in that case.* **OF COURSE,** it has always been [and still is] Walmart's **OFFICIAL** receipt checking policy to only ***ASK*** patrons to see their receipts, ***NEVER*** to actually ***detain*** them if they choose to refuse to show one.[5]

As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **factually unfound** holdings [i.e. all of them] are **ALL** inapplicable to Plaintiff's instant case.

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3 *See Order Granting MSJ in that case,* where the Court **[impermissibly]** held that "Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was ***concealing*** property of the store, which he knew would lead to being detained and asked for his receipts." Also, the Court got the sequence wrong, as Plaintiff was FIRST asked to show his receipts, THEN detained. **Not the other way around.** Indeed, it was the very refusal to show the receipts **that was the sole cause of** his detentions [i.e. "bootstrapping"].

4 Not to mention ***that it's an actual crime*** to steal merchandise from a store, **and Plaintiff isn't that freaking stupid.**

5 *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) ("If a customer refused to have his or her bag checked, **the policy allowed the person to pass**."). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed,* TheWrightStuff, https://tinyurl.com/yc8d59aj (Jun 2, 2023) ("The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.").

c. The LEGAL ARGUMENTS in Plaintiff's instant case are entirely different

First, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the store he visited has a system in which receipts are EMAILED to patrons instead of printed out and given to them.*** This is a **new** and **novel** legal argument that Plaintiff is presenting, ***for the very first time,*** "in a good faith attempt to establish a new theory of law in Colorado." *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that being *fully stopped* to show one's receipt is not the same as merely *changing directions* toward an *always open* window.*** This is another "good faith argument" that Plaintiff is presenting, ***for the very first time,*** "for the extension, modification, or reversal of existing law." *See C.R.C.P. Rule 11(a).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merely affording a person an opportunity to commit an offense is not entrapment (i.e. entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed).*** *See Mora v. People,* 172 Colo. 261, 262 (Colo. 1970). This is another "good faith argument" that Plaintiff is presenting, ***for the very first time,*** "for the extension, modification, or reversal of existing law." Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that merchants don't simply get *carte blanche* authority to indiscriminately detain whomever they wish (i.e. a merchant listing off literally all possible actions that are purportedly required for a patron to perform in order to end their detention effectively renders all detentions of patrons literally uncompensable, and the bar to which merchants are required to have "shopkeeper's privilege" under obviously cannot be set at the floor).*** Again, this is another "good faith

argument" that Plaintiff is presenting, ***for the very first time,*** "for the extension, modification, or reversal of existing law." Finally, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court ***that the Defendant will likely offer nothing more than *purely conclusory statements* to support its shopkeeper's privilege position (and that "conclusory statements made without supporting documentation or testimony are insufficient to create an issue of material fact").*** *See Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Again, this is another "good faith argument" that Plaintiff is presenting, ***for the very first time,*** "for the extension, modification, or reversal of existing law."

As such, requiring Plaintiff to pay fees for attempting in good faith to establish or modify all these theories of law in Colorado **would be an inappropriate and gross miscarriage of justice.**

d. Prior Courts also made several BAD legal arguments in Plaintiff's previous cases

It is also worth noting that prior Courts made several patently AWFUL legal arguments in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart Inc.,* Jefferson County District Court Case No. 2020CV76, an Appellate Panel *miraculously* **[but impermissibly]** held that Plaintiff's false imprisonment claim failed because he purportedly only sued over being "asked" to show proof of purchase.[6] **HOWEVER,** Plaintiff has ***ALWAYS AND ONLY*** ever argued **that the act of physically blocking all available pathways of his through all available exits** is what has ***specifically*** constituted his false imprisonment claims. Thus, the Court's tendentious holding was a profoundly inaccurate ruling in the matter. Then, in the same case, the Appellate Panel also *miraculously* **[but impermissibly]** held that "being taken to a secluded room," "being forcibly moved within the store," and/or "being arrested," are all purportedly

6 *See Order Granting MSJ in that case,* where the Court **[impermissibly]** held that "No reasonable juror could conclude that being *asked* to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment." Seriously, he wasn't just ***"asked"*** for his receipt. He was ***detained – outright – for not showing it!***

required elements of a valid false imprisonment claim.[7] **HOWEVER,** such is clearly not the law, as the Court has long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid. See also McDonald v. Lakewood Country Club,* 170 Colo. 355, 461 P.2d 437 (1969).

As such, ***each and every*** one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapplicable to Plaintiff's instant case.

e. Numerous LEGAL ARGUMENTS have never even been addressed by the Court

In all of Plaintiff's previous cases against Walmart, **Plaintiff made numerous legal arguments THAT THE COURT LITERALLY FLAT OUT NEVER ADDRESSED** [and still, to this day, has yet to even begin to address]. Specifically, Plaintiff has made relevant legal arguments surrounding his claims that **a)** a very real and constitutionally significant difference exists between the definition of "escape" and the definition of "release" (and that the term "escape" applies to pre-confinement situations only **and not to post-confinement ones** once they have occurred), **b)** the phrases "physical barriers" and "unreasonable risk of harm" have been misinterpreted and abused by the Court in such a way that doing so "defeats the legislature's obvious intent" of the use of such phrases (and to which, in turn, renders such interpretations manifestly "absurd"), **c)** *merchants* are the ones who ultimately have the "last clear chance" to avoid or prevent false imprisonments from occurring, *not patrons*, **d)** showing a receipt and not showing a receipt cannot *both* be considered consent (and whereby "showing a receipt" has ***already*** been held by Courts to constitute "voluntarily consenting" to the detention), **e)** a receipt itself is never the "key," but rather the merchant's **own**,

7 *See Def's MSJ Exhibit I at page 8*, where the Court **[impermissibly]** held that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," his false imprisonment claim had failed.

personal, ***independent*** act of satisfactorily cross-checking the receipt against the merchandise is the actual "key" (i.e. it is unreasonable to believe that a merchant would ***not*** continue to detain a patron, ***OUTRIGHT***, in the mean time, until ***after*** it completes its ***own*** independent verification of the purchases at hand, ***even after*** the patron hands over the receipt), **f)** if "showing a receipt" is a viable "escape" path, such literally renders the detention to have **paradoxically** never existed in the first place (i.e. it eliminates any capacity to justify the now **non**-detention with affirmative defenses like "shopkeeper's privilege" which are only available in false *imprisonment* claims), **g)** showing a receipt is not merely some "slight inconvenience," but rather the law is already clearly established that any imprisonment, **"no matter how short,"** already qualifies as compensable, **h)** private investigators don't have the right to lawfully detain unidentified citizens until they simply tell them their name / security guards don't have the right to lawfully detain unidentified neighborhood residents until they simply show them their ID, **i)** a mother of seven cannot reasonably be expected to wait 10+ minutes to have *her* entire cart of purchases verified, yet somehow Plaintiff purportedly does not have that same right against false imprisonments just because he can only afford to buy one or two items at a time, **j)** lack of plastic bag use **does not** reasonably indicate that merchandise is "unpurchased," **k)** coming from a "back register" **is not any more suspicious than** coming from a "front register" (because of how merchants know *full-well* that they personally installed *both* registers at *both* locations for the ***express*** convenience of their customers, thus rendering any "suspicion" a self-fulfilling prophesy), **l)** merchants, **just like police,** are not allowed to **"bootstrap"** mere refusals to cooperate (i.e. refusals to answer questions and/or refusals to consent to searches) into *the very justification* to detain patrons that they otherwise don't have the lawful right to detain, and finally, *but just as importantly,* **m)** that it is **statistics fraud** to not acknowledge that many other

people are mindless lemmings who "assuage the perceived evil" by way of voluntarily showing *their* receipts (thus making Plaintiff's behavior look deliberate, when it's really not), as well as that Plaintiff has gone shopping ***thousands of times, at hundreds of merchants,*** nearly all without issue (thus showing that Defendant Best Buy is the one acting deliberately, not Plaintiff). **EVERY SINGLE ONE** of these legal arguments has been thoroughly prepared by Plaintiff, *in at least two dozen of his briefings by now,* **giving the Court MORE THAN ENOUGH time to prepare reasonable holdings against.** Yet NO such holdings have EVER been made that EVEN REMOTELY address ANY of these CRITICALLY IMPORTANT arguments, **thus making Plaintiff [and any reasonable person in his position] legitimately question the validity of all such holdings.**

As such, one cannot reasonably blame Plaintiff for continuing to do what any other person would do under the circumstances: ***keep shopping, or keep leaving stores without shopping, while refusing wholly non-compulsory requests to answer questions and/or be searched by complete and total strangers, then rightfully sue anybody who violates his constitutional right to not be falsely imprisoned absent a clear and reasonable showing of shopkeeper's privilege in the matter.***

f. Defendant Best Buy is the one with a "modus operandi," and Plaintiff cannot be blamed for developing an intuition of that

In Defendant Best Buy's MOTION TO RECONSIDER it states that "Plaintiff has been very vocal both on the internet and in his court pleadings that he takes issue with retail stores and their employees asking patrons to show their receipts before exiting the premises." *Def BB's MTR at page 4.* **However, Plaintiff is clearly not alone with regard to the legitimate concerns he has developed over the years that "Big-Box Bullies" like Best Buy continue to flagrantly violate the law.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). *See Cop Records Himself Detained At Walmart Receipt*

Check, The Consumerist, https://consumerist.com/2010/12/man-records-himself-being-detained-at-walmart-for-a-receipt-check.html (Dec 23, 2010). *See Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996). *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000). *See Non-Exhaustive List Of Recent News Articles Condemning Receipt Checkpoints As Unlawful,* Plaintiff's Exhibit #1. **As such, Plaintiff absolutely cannot be blamed for likewise "taking issue."**

Of course, Defendant Best Buy then states that "To address this perceived injustice of 'receipt showing,' Plaintiff has taken great pains to deliberately provoke situations that allow him to file "free lawsuits." *Def BB's MTR at page 4.* However, as Plaintiff has argued before, **IT IS AN ABSOLUTELY LAUGHABLE NOTION** that Plaintiff is the one "deliberately" "provoking" his false imprisonments, **when it is stores like Best Buy and Walmart** that are the ones ROUTINELY handing out the "free lawsuits" at the door.[8] If it weren't for these very select few "Big-Box Bullies" being so paranoid, overzealous, and lynchy, neither Plaintiff, nor any other patron in his position, would have standing to sue. They simply wouldn't be detained, and life would go on. **Indeed, it is Defendant Best Buy's "modus operandi" – and not Plaintiff's – to detain patrons for simply refusing to show their receipts upon leaving. ENTIRE LAW REVIEW ARTICLES have been written on THIS EXACT "modus operandi" existing FOR RETAIL STORE CHAINS, not patrons.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). Also worth noting on this topic, is that, again, "back registers" ***don't even exist inside Best Buy,*** and the major retail chain phased out "plastic bag

8 ***Critically important here,*** is that in Defendant Best Buy's MTR, it repeatedly misquotes Plaintiff's use of the phrase "free lawsuit" to indicate that he "files lawsuits for free." However, Plaintiff's exclusive use of the phrase "free lawsuit" has only ever been to indicate **how overzealous stores like Walmart and Best Buy routinely, flagrantly violate the law,** which essentially allows *anybody* [who happens to know their their rights] the opportunity to simply not show their receipt upon leaving in order to secure a legitimate lawsuit in the matter. In layman's terms, the lawsuits wouldn't even exist if such "Big-Box Bully" stores ***didn't regularly hand them out.***

use" ***in July of 2022,*** thus eliminating the ***very capacity*** for either to "raise suspicion" of shoplifting, as Defendant Best Buy attempts to argue. Rather, in Plaintiff's instant case, **he simply refused to show his receipt** [that he couldn't even show because it was emailed to him] *and literally nothing more.* There's no "modus operandi" in that. There's only the act of ***victim blaming*** being done by ***the very perpetrator*** who is the true guilty party in this action.[9] Indeed, probably the most disturbing statement made to date by Defendant Best Buy, is its claim that "After Walmart, Inc. banned him from its premises, Plaintiff was forced to find a new target and set his sights on Best Buy." **As if Plaintiff goes around "finding targets" to get false imprisoned by!** If that were the case [and he were truly "entrapping" otherwise reasonably acting merchants] Plaintiff would undoubtedly have filed *hundreds, if not thousands* of [frivolous] lawsuits by now. *But that's obviously not the case.* **Even more laughable: That Plaintiff "set his sights" on Best Buy!** Try: Best Buy is **one of basically only two** "Big-Box Bullies" in town **who routinely, flagrantly violate false imprisonment law.** *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009). **No other merchant (besides Walmart) is so stupid and predictable.** Indeed, on this note of predictability, how does Best Buy not realize that its argument that "Plaintiff has repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft" is an argument ***against*** it, not ***for*** it? **If there weren't people out there willing to commit auto theft, there wouldn't be police officers setting out bait cars.** DUH.[10] And the argument that Plaintiff "deliberately" shops on Black Friday is of no help to Best Buy either, as a patron learning that a false imprisonment is more likely to occur on a particular day (such as Black Friday) is just as valid as a police officer learning that a car theft is more likely to occur on a particular

9 Victim blaming is a well known act in society in which the victim of a crime or any wrongful act is [impermissibly] held entirely or partially at fault for the harm that befell them. The act is also commonly referred to as "victim shaming."

10 In case Best Buy fails to comprehend such: it's the person willing to commit auto theft (i.e. false imprisonment).

day (such as New Year's). *See Highest Vehicle Theft Days Ranked,* Automotive Fleet, https://www.automotive-fleet.com/318154/days-with-high-vehicle-thefts-ranked (Oct 31, 2018). Same goes with the idea of purchasing a particular product (a Roku, for example[11]). That's just a police officer honing in on the idea that certain vehicles are more likely to get stolen, than others. *See Report: These Are The Vehicles Most Likely To Be Stolen,* Cars.com, https://www.cars.com/articles/report-these-are-the-vehicles-most-likely-to-be-stolen-470867 (Sep 1, 2023). **It's called intuition,** and it's nothing to write home about. In the end, **Best Buy needs to just give it up that Plaintiff is "acting deliberately."** Rather, **it's** the one acting deliberately – so much so that people (like Plaintiff) are simply able to begin honing in on the flagrantly unlawful behavior.

g. Defendant's evidence that Plaintiff "acted deliberately" literally contradicts itself

Next, on this topic, is quite easily THE MOST DOWNRIGHT LAUGHABLE PART of Defendant's argument. Evidently Defendant doesn't understand that presenting evidence that Plaintiff made numerous purchases at various Best Buy locations all throughout the state, **BUT WHEREBY HE *DIDN'T* GET DETAINED AND *DIDN'T* SUE OVER ANY DETENTIONS THAT *DIDN'T* OCCUR AT ANY OF THESE *OTHER* STORE LOCATIONS,** is LITERALLY evidence that IT was the exception this whole time, and not the norm! Indeed, if Plaintiff *truly does* "act in a manner that could reasonably be construed as suspicious," *truly does* "intentionally create misunderstandings for purposes of his later lawsuits," and *truly does* "design his conduct to inspire this belief," **THEN WHY ON EARTH DOES HE NOT HAVE LITERALLY DOZENS MORE FRIVOLOUS LAWSUITS COLLECTED BY NOW THAT WOULD BE A DIRECT RESULT OF HIS OSTENSIBLY PROVOCATIVE BEHAVIOR UNDERTAKEN AT ALL THESE OTHER BEST BUY LOCATIONS!?!?** Oh yeah, that's right. Because most of these *other* Best Buy stores

11 Of course, Plaintiff never "concealed" the Roku, *or any other product for that matter,* as Plaintiff knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter.

acted *reasonably* in **NOT** detaining him, **while Defendant in the instant case obviously couldn't live up to the same.** Indeed, to argue otherwise, would be to LITERALLY say that ***dozens and dozens*** of employees, staffed ***at over a dozen*** Best Buy locations, scattered ***all across*** the front range, **WERE *ALL* WILDLY INCOMPETENT, INTERNAL POLICY VIOLATING, SHOPKEEPER'S PRIVILEGE IGNORANT EMPLOYEES WHO *ALL* LET A BONA FIDE THIEF WALK STRAIGHT OUT OF THEIR STORES, RED HANDED, WITH MERCHANDISE NOT PAID FOR, ON THE BIGGEST SHOPPING DAY OF THE YEAR!?!?!?** Plaintiff has never laughed so hard in his life!!!!! Of course, merely refusing to answer questions and/or refusing to consent to searches is still not much of an "audit" anyways. Did Defendant not hear Plaintiff when he mentioned that "the whole point of a sting operation is to be ***not*** different than anybody else," *Ptf's Deposition at page 36, line 18,* "people just park their cars, whether they're cops or not," *Ptf's Deposition at page 35, line 25,* "[he's] just like any other person who parks their car on the road," *Ptf's Deposition at page 36, line 22,* and that, therefore "every car is a bait car on the road," *Ptf's Deposition at page 36, line 1?* **Thus, the argument that a "bait car" is in any way, shape, or form, "deliberate" [entrapment] is absolutely downright laughable.** All Plaintiff does is "go shopping and leave." *Ptf's Deposition at page 45, line 6.* **THAT'S IT.** When are merchants going to **give it up** that Plaintiff doesn't actually ***DOOOO*** anything that any other customer doesn't *DOOOO* when going shopping. "Everybody's a secret shopper technically." *Ptf's Deposition at page 85, line 11.* Sadly, most other patrons simply don't know their rights to decline to participate in **non-compulsory** encounters with complete and total strangers after shopping [and indeed, most are alternatively mindless lemmings who would rather "assuage the perceived evil" by way of voluntarily consenting to any detentions in favor of ostensibly lower prices]. **In the end though,** once again, it's just not Plaintiff who is "provoking" his lawsuits, **its a few paranoid, overzealous, lynchy merchants who are.** "And if there weren't people out there willing to bootstrap merely refusing to show a receipt, or answer questions, or be searched, there wouldn't be any of these

false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this." *Ptf's Deposition at page 46, lines 11-16.* **Most importantly on this topic,** is that "these stores have no incentive to change" [so long as too few people sue upon being torted by them]. *See* Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009) at page 42. As such, Plaintiff **absolutely cannot be blamed** for attempting to foster such "change" that is so sorely needed right now.

h. The previous Court violated numerous rules and laws, and should not have dismissed Plaintiff's lawsuit in the first place

Last, ***but certainly not least,*** is Defendant Best Buy's claim that in Plaintiff's first lawsuit against the store, it [fairly] "prevailed on its motion for summary judgment disposing of all claims against Best Buy." *Def BB's MTR at page 5.* However, anybody with half a brain who reads Plaintiff's FIRST AND SECOND MOTIONS FOR RECONSIDERATION would quickly see that Plaintiff was railroaded, sandbagged, and wholly denied due process in the matter.

First, the previous Court **impermissibly** accepted and adopted *purely conclusory statements* made by Best Buy during its briefing that Plaintiff is some undeserving-of-due-process "lawsuit scammer" in direct violation of *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008).[12]

Next, the previous Court **impermissibly** held that Plaintiff "denies having been in Best Buy."[13]

Next, the previous Court **impermissibly** held that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident."[14]

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12 In *Suncor,* the Court held that when ruling on a Motion For Summary Judgment, **"A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."**

13 Rather, all Plaintiff did was present proper legal argument that *Best Buy* failed to show that he was ever inside the store. *Merely presenting legal argument of the opposite of something* ***is not actually*** *an active denial of it.*

14 Rather, Plaintiff **DID** submit an affidavit substantiating that he "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," *Plaintiff's Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that "on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees." Moreover, as the Court itself pointed out, "In assessing a summary judgment motion, **a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the**

Next, the previous Court **impermissibly** accepted a blatantly contradictory affidavit of Mahmoud Abu-Shaweesh in direct violation of *Scott v. Harris,* 550 U.S. 372, 380 (2007).[15]

Next, the previous Court **impermissibly** accepted affidavit-less business records (i.e. receipts) in direct violation of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003).[16] Plaintiff has YET to see anybody *even remotely begin to* address this **absolutely critical** argument.

Finally, the previous Court **impermissibly** allowed Best Buy to inject reply-only arguments into its MSJ briefing in direct violation of *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).[17] The Court even tried to cure this well-pointed-out violation by claiming [in its *Order Denying Plaintiff's Motion For Reconsideration*] that Plaintiff purportedly had an "opportunity" to respond to the belated exhibits. This argument is faulty for several reasons. First, in *Wallman,* the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond, it was whether she was "given ***NOTICE*** that she ***NEEDED*** to" respond. **However, absolutely nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does it explain that REPLY briefs provide such "notice" of such "need."** Second, it is **utterly inappropriate** to require a Plaintiff to use *their* **Reply** "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are severely limited by page number and file-by date.** Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Best Buy [that it should have presented in its **initial** MSJ] when he was already working tirelessly with

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evidence, and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, the Court **was required by law** to **INFER** that said facts presented by Plaintiff specifically applied to him being **INSIDE** the store.

15 In *Scott,* the Court held that "When opposing parties tell two different stories, one of which is blatantly contradicted by the record [which in this case, is Plaintiff's pen camera video of the event], so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."

16 In *Henderson,* the Court held that "business records" are only admissible when "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record."

17 In *Wallman,* the Court held that "because plaintiff was not given notice that she needed to present evidence on the causation issue in defendants' initial summary judgment motions and briefs, we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions."

said limited space and time to prepare the arguments necessary to *support* **his own** Cross-MSJ. Finally, conflating one MSJ's ***reply*** as another MSJ's ***surreply*** creates an insurmountable "uncertainty of fact," because of how easily a party's "concessions," "admissions," and/or "legal theories" made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing.*** *See Morlan v. Durland Co.,* 127 Colo. 5, 13 (Colo. 1952) ("Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties."). In other words, a party's **offense** argued in their *own* motion cannot be used as their **defense** argued *in the other party's* motion [which is exactly what the previous Court **impermissibly** did in the case].

As such, this Court should take the previous Court's rulings with a [very large] grain of salt, and suspend judgment that Plaintiff's next case filed against the same "Big-Box Bully" has indeed, been done "in bad faith." It is beyond debate that Plaintiff has been systematically denied justice by the Court, likely because nobody wants to hold such a large, tax-paying corporate entity accountable for its actions. But this should not be the reason to take away Plaintiff's right to seek redress in his absolutely legitimate cases, especially considering how indigent he is in the matter. There is no way on Earth that Plaintiff can afford to pay any fees in this or any other matter right now. He has cripplingly disabling medical problems that affect his ability to work, and he lives out of an RV for crying out loud. Best Buy has done **NOTHING BUT** violate clearly established case law, as well as the Colorado Rules Of Civil Procedure, and Plaintiff should not be the one made to pay for that.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court **DENY** Defendant Best Buy's MOTION TO RECONSIDER THE ORDER RE COURT FEES.

Respectfully submitted on this, the 3rd day of March, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 3rd day of March, 2025, the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT BEST BUY'S MOTION TO RECONSIDER THE ORDER RE COURT FEES** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Pkwy Golden, CO 80401	DATE FILED March 7, 2025 4:53 PM FILING ID: 94094E1A972B1 CASE NUMBER: 2024CV242
WILLIAM MONTGOMERY Plaintiff, v. **BEST BUY STORES, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2024CV242 Division: 11 Courtroom: 140
BEST BUY'S REPLY IN SUPPORT OF ITS MOTION TO RECONSIDER THE ORDER RE COURT FEES	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio submits its Reply in Support of Its Motion to Reconsider the Order Re Court Fees as follows:

A court may deny a request for waiver of costs when the claim is in bad faith, vexatious, or plainly frivolous. *Cook v. Dist. Ct. In & For Weld Cnty.,* 670 P.2d 758, 760 (Colo. 1983). Vexatious use of the right of access to the court can constitute a form of bad faith, which may be considered in a court's ruling on a petition to proceed in forma pauperis. *Id*. at n. 6. In this lawsuit,

Plaintiff is vexatiously asserting the same facts and legal arguments that have failed him previously, hoping for a different result. To support his objections to Best Buy's Motion, Plaintiff repeatedly misrepresents his prior lawsuits to the Court, arguing that he is presenting new facts and arguments for the "very first time," despite having asserted the same facts and arguments in his previous lawsuit against Best Buy. Plaintiff's Resp. p. 4-5. Plaintiff fails to articulate any reasonable justification for this lawsuit and fails to demonstrate that this lawsuit is not filed in bad faith. Therefore, this Court should reconsider its Order re Court Fees and require that Plaintiff pay all standard filing fees and court fees in this matter.

I. Plaintiff fails to meaningfully differentiate the facts of the present lawsuit.

Plaintiff describes several reasons why this lawsuit is factually "unique," and thus not a futile endeavor: (1) Plaintiff's decision to not use a back register in the present lawsuit, (2) Plaintiff not using a plastic bag in the present lawsuit, (3) the existence (or lack thereof) of Best Buy's receipt policy, and (4) Best Buy's use of email receipts in the present lawsuit. *See,* Plaintiff's Resp., p. 2. However, all of these matters were already presented by Plaintiff in *William Montgomery v. Best Buy, L.P.*, Case No. 2023CV226 (the "2023 Lawsuit"):

(1) In Plaintiff's First Motion for Reconsideration in the 2023 Lawsuit, Plaintiff argued, "Best Buy stores don't even have 'back registers.'" **Ex. J,** p. 12.

(2) In Plaintiff's First Motion for Reconsideration in the 2023 Lawsuit, Plaintiff argued, "[Best Buy] began phasing out plastic bags way back in July of 2022.'" **Ex. J,** p. 12; *see also,* **Ex. K** (Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment), Facts Nos. 27-28 (discussing how Plaintiff declined to use plastic bags in the 2023 Lawsuit).

(3) In Plaintiff's Response in Opposition to Best Buy's Motion for Summary Judgment in the 2023 Lawsuit, Plaintiff argued, "At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of 'receipt showing.'" **Ex. L,** Fact No. 43.

(4) In Plaintiff's Second Affidavit in the 2023 Lawsuit, Plaintiff argued, "About five years ago I opted to have all Best Buy receipts emailed to me upon completion of making a purchase at any and all of their stores. When somebody else whom I have authorized to use a credit or debit card of mine that is linked to my Best Buy account makes a purchase on my behalf, I receive the same email in my inbox as if I had made the purchase myself." **Ex. M, ¶** 5.

Because Plaintiff has already presented all of these factual assertions in the 2023 Lawsuit, Plaintiff knows these arguments are frivolous and futile. Furthermore, Plaintiff's arguments that previous courts failed to address his previous arguments or that previous courts were "wrong," only reinforce the fact that Plaintiff is abusing the court system to re-litigate prior court decisions and court rulings.

II. Plaintiff fails to meaningfully differentiate his legal arguments from prior cases.

Plaintiff fails to assert any meaningfully new legal theories in the present lawsuit. In both the present briefing and his corresponding briefing in Case No. 2024CV132, Plaintiff argues that his new legal argument is that "being 'fully stopped' to show one's receipt is not merely the same as merely *changing directions* toward an 'always open' window." Plaintiff's Resp., p. 4. This argument is confusing as there is no mention of an "always open window" in any of the four

lawsuits Plaintiff filed against Best Buy. The 2023 Lawsuit involved Plaintiff's allegation that he was fully stopped in one place for 14 minutes. **Ex. L,** Fact No. 39. If Plaintiff is now alleging that he "merely changed direction" in the present lawsuit, his allegations of false imprisonment in this lawsuit would be factually even weaker than the 2023 Lawsuit and thus even more likely to fail.

For his remaining "new" legal arguments, Plaintiff has asserted each of these arguments, near verbatim, in the 2023 Lawsuit. Plaintiff already asserted his arguments concerning entrapment in the 2023 Lawsuit when he argued, "'Entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed.' *Mora v. People,* 172 Colo. 261,262 (Colo. 1970)." **Ex. L,** n. 4. Plaintiff has also previously asserted his "carte blanche" arguments: "Merchants do not enjoy carte blanche authority to detain their patrons." **Ex. L,** p. 20. Plaintiff has also previously made the same arguments about *Suncor* and the use of conclusory statements. **Ex. J,** n. 1.

Plaintiff cannot meaningfully differentiate the facts or the legal issues of this case from his previous failed cases, including the 2023 Lawsuit; rather, he is forcing Best Buy to relitigate and expend resources on this lawsuit, all while Plaintiff gets a "free lawsuit." Best Buy respectfully requests this Court to find that there is clear and convincing evidence that Plaintiff is filing this lawsuit in bad faith and order Plaintiff to pay filing fees and other standard court fees in this matter.

Respectfully submitted March 7, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on March 7, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

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☐ U.S. Mail ☐ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED March 28, 2025 6:32 PM
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **23CV226** Division: **6**
PLAINTIFF'S RESPONSE TO DEF'S FIRST SET OF DISCOVERY REQUESTS	

Plaintiff, proceeding *pro se*, hereby RESPONDS to Defendant's First Set of Written Discovery Requests, as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Did you purchase any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO ("the Best Buy Store") on November 25, 2022?

ANSWER NO. 1: I do not recall whether or not I purchased any item from the Best Buy Store located at 9369 Sheridan Blvd, Westminster, CO on November 25, 2022.

INTERROGATORY NO. 2: Did you have a receipt on your person showing what you purchased from the Best Buy Store when exiting the Best Buy Store on November 25, 2022?

ANSWER NO. 2: I do not recall whether or not I had a receipt on my person, as I do not recall whether or not I had purchased any item from the Best Buy Store on November 25, 2022.

INTERROGATORY NO. 3: Did Best Buy employees request to see a receipt when exiting the Best Buy Store on November 25, 2022?

ANSWER NO. 3: Best Buy employees did not request to see a receipt from me on November 25, 2022, however this is not an admission that I had been "exiting" the Best Buy Store on November 25, 2022 when I was approached by the Defendant. Rather, I do not recall whether I had been exiting or entering the Store at the time that I was confronted.

INTERROGATORY NO. 4: When did you [begin] recording your visit to the Best Buy Store on November 25, 2022?

ANSWER NO. 4: I began recording my visit to the Best Buy Store at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

REQUEST FOR PRODUCTION

REQUEST NO. 1: Please produce any documents that support the contention that you purchased items from the Best Buy Store on November 25, 2022, to include, but not limited to, receipts, bank statements, or credit card statements.

ANSWER NO. 1: I am unable to produce any documents that support the contention that I purchased items from the Best Buy Store on November, 25, 2022, as I do not recall whether or not I purchased any item from the Store, that day, in the first place.

REQUEST NO. 2: Please produce the entire video of your visit to the Best Buy Store on November 25, 2022, from when you started the recording to the end of the recording.

ANSWER NO. 2: I already produced the entire video of my visit to the Best Buy Store on November 25, 2022, from when I started the recording to the end of the recording.

REQUEST FOR ADMISSION

REQUEST NO. 1: Please admit you refused to show your receipt to employees of the Best Buy Store on November 25, 2022.

ANSWER NO. 1: I am unable to admit that I refused to show any receipt(s) to employees of the Best Buy Store on November 25, 2022, as they never requested to see any from me in the first place.

REQUEST NO. 2: Please admit that you had a receipt with you when leaving the Best Buy Store on November 25, 2022.

ANSWER NO. 2: I am unable to admit that I had any receipt(s) with me on November 25, 2022. Additionally, I am unable to admit that I had been "leaving" the Best Buy Store on November 25, 2022 when I was approached by the Defendant, as I do not recall whether I had been leaving or entering the Store at the time that I was confronted.

REQUEST NO. 3: Please admit that you began recording your visit to the Best Buy Store on November 25, 2022 before you entered the Best Buy Store.

ANSWER NO. 3: I am unable to admit that I began recording my visit to the Best Buy Store on November 25, 2022 before I entered the Store, as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

REQUEST NO. 4: Please admit that you edited the video in your initial C.R.C.P. 26 disclosures so the time you spent in the store was deleted from the video.

ANSWER NO. 4: I am unable to admit that I edited the video in my initial C.R.C.P. 26 disclosures so the time I spent in the store was deleted from the video, as I began recording at 2:19pm on November 25, 2022 when the Defendant began accusing me of shoplifting.

CERTIFICATION

I, William Montgomery, do hereby declare, under penalty of perjury under the laws of the State of Colorado, that the foregoing answers are true and correct to the best of my knowledge.

Respectfully served on this, the 25th day of July, 2024.

s/ William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 25th day of July, 2024, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEF'S FIRST SET OF DISCOVERY REQUESTS** was sent to the following people, via email:

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Attorneys for Defendant

s/ William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED March 31, 2025 12:07 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Motion to Reconsider The Court's Order re Court Fees

The motion/proposed order attached hereto: DENIED.

Defendant raises some valid points regarding the frivolity of Plaintiff's multiple, tactical lawsuits. That being stated, the Court is not convinced that Defendant has shown a "manifest error of fact or law the clearly mandates a different result or other circumstance resulting in manifest injustice" regarding the in forma pauperis determination. C.R.C.P. 121, Section 1-15(11).

Thus, the motion to reconsider is denied.

Issue Date: 3/31/2025



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES	

Attachment to Order - 2023CV226

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits this Motion to Reconsider the Order re Court Fees. In particular, Best Buy hereby requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, E-filing and service fees, and fees for forms and instructions. In support thereof, Best Buy states as follows:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

LEGAL AUTHORITY

I. Motions to Reconsider

A motion to reconsider must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. C.R.C.P. 121 § 1-15 (11). A motion to reconsider shall be filed within 14 days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. *Id.*

II. Waiver of Costs Pursuant to C.R.S. § 13-16-103

"If the judge or justice of any court, including the supreme court, is at any time satisfied that any person is unable to prosecute or defend any civil action or special proceeding because he is a poor person and unable to pay the costs and expenses thereof, the judge or justice, in his discretion, may permit such person to commence and prosecute or defend an action or proceeding without the payment of costs." C.R.S. § 13-16-103 (1) (emphasis added). The Colorado Supreme Court has held that a court may deny a request for waiver of costs when the claim is in bad faith, vexatious, or plainly frivolous. *Cook v. Dist. Ct. In & For Weld Cnty*., 670 P.2d 758, 760 (Colo. 1983) ("In the absence of factors such as bad faith or a plainly frivolous claim . . . the legislature intended that the judge's discretion be limited to determining whether the petitioning party has the financial resources to pay the costs and expenses incident to the litigation"). Vexatious use of the right of access to the court can constitute a form of bad faith, which may be considered in a court's ruling on a petition to proceed in forma pauperis. *Id.* at n. 6.

The analogous federal statute, 28 U.S.C. § 1915 (1976), has been construed to limit the factors that a court may consider in acting on petitions in forma pauperis to the indigency of the petitioner and whether the claim is frivolous or asserted in bad faith. *Dillard v. Liberty Loan Corp*.,

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626 F.2d 363 (4th Cir.1980). Federal courts are expressly authorized to dismiss a case brought in forma pauperis if it "is frivolous or malicious." 28 U.S.C. § 1915(1)(2)(B)(i).

FACTS AND LEGAL ARGUMENTS

I. A Motion to Reconsider is Procedurally Warranted Here

On February 24, 2025, Plaintiff filed a Motion to Proceed in Forma Pauperis. This motion is sealed, and Best Buy is unable to view Plaintiff's Motion. However, upon information and belief, Plaintiff did not present any arguments concerning whether his lawsuit or his forthcoming appeal were filed in bad faith, or whether his lawsuit is frivolous or vexatious. Thus, the Court was not able to weigh the facts or the law to determine whether filing fees should be required in accordance with *Cook.* Defendants in Best Buy's position should have leave for a motion to reconsider because without the opportunity for a motion to reconsider, defendants would be wholly unable to contest a plaintiff's motion to proceed in forma pauperis, which is typically granted before a defendant has notice of such motion. Inability to contest the court's waiver of fees by way of a motion to reconsider would cause manifest injustice because *Cook's* holding would be pragmatically unenforceable.

II. Plaintiff's Complaint Was Filed in Bad Faith

Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado state courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess

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stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff has been very vocal both on the internet and in his court pleadings that he takes issue with retail stores and their employees asking patrons to show their receipts before exiting the premises. **Ex. A** (YouTube video by Plaintiff); **Ex. B** (Plaintiff's Reddit posts). For instance, Plaintiff stated in an online post, "I simply have beef with exit-posted policy-violating receipt-nazis foolishly blocking my path on the way out of a store (any store). But seriously though, free lawsuits, anyone? They're basically handing them out the door." **Ex. B,** p. 4. To address this perceived injustice of "receipt showing," Plaintiff has taken great pains to deliberately provoke situations that allow him to file "free lawsuits." *See,* **Ex. B,** p. 3 ("And if people are LITERALLY handing free lawsuits out at the door, I mean, I'm game! It's like finding a $20 bill on the ground. Wouldn't you pick it up?"). Plaintiff's modus operandi is to engage in behavior that raises

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suspicion of shoplifting,[1] to get detained,[2] to not show his receipts[3] in order to test his perceived "right" to not show his receipt,[4] and then file a "free lawsuit." Plaintiff engages in this behavior to "audit" stores. **Ex. C** (Excerpts of Plaintiff's Deposition), 85:4; *see also,* **Ex. C,** 107:13-111:25. Plaintiff has repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. C,** 35:23-37:5; 45:16-46:9; **Ex. B,** p. 2.

Between March 31, 2020 and September 20, 2021, Plaintiff filed eight different lawsuits against Walmart, Inc. alleging false imprisonment and/or defamation in facts that appear substantially similar to the facts alleged here. *See,* **Ex. D,** (Compilation of Complaints, Dispositive Rulings, and Appellate Decisions in Walmart, Inc. Lawsuits). Plaintiff not only failed to prove his claims in any of those cases, but also lost several appeals. **Ex. D,** p. 109-156. After Walmart, Inc. banned him from its premises, Plaintiff was forced to find a new target and set his sights on Best Buy.

This is but one of four lawsuits that Plaintiff has filed against Best Buy. Plaintiff filed three other lawsuits against Best Buy for alleged incidents that occurred on Black Friday 2023. **Ex. E** (Complaints for Case Nos. 2024CV132; 2024CV241; and 2024CV242). Even though there has not yet been an exchange of Rule 26 disclosures in any of these cases, the facts and circumstances of the present lawsuit appear eerily similar to those of the other three cases. All four lawsuits arise from incidents that allegedly occurred on Black Friday, one of the busiest shopping days of the

[1] "That's the crux of my whole sting operation!" **Ex. A,** 5:55.
[2] **Ex. A**, 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[3] "Now I don't show my receipt everywhere I shop." **Ex. A**, approximately 1:25.
[4] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. A**, 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. A**; 8:09.

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year. All four lawsuits arise from Plaintiff's deliberate pursuit of situations that would result in a false imprisonment and/or defamation claims. In all four lawsuits, Plaintiff traveled long distances to multiple Best Buy locations in a single day, with Plaintiff driving approximately 124 miles to at least eight different Best Buy stores on Black Friday 2022 and 66 miles to at least seven different Best Buy stores on Black Friday 2023. **Ex. F** (Plaintiff's receipts from the date of the incident for the present lawsuit, as well as a map demonstrating driving distances between each purchase); **Ex. G** (Plaintiff's receipts from Black Friday 2023, as well as a map demonstrating driving distances between each purchase). On both Black Friday 2022 and 2023, Plaintiff made duplicative purchases of the same items, such as the easily concealable Roku remote

Despite allegedly being the "victim" of defamation and false imprisonment on Black Friday 2022, Plaintiff continued to patronize Best Buy stores. Despite allegedly being a "victim" of defamation and false imprisonment multiple times in a single day, Plaintiff continued to patronize Best Buy stores on Black Friday 2023. There is no reasonable explanation for his conduct other than that Plaintiff is vexatiously abusing his right to access the courts. *See, Cook,* 670 P.2d 758 at n.6.

Plaintiff proceeds *pro se* in this lawsuit and his forthcoming appeal, which means his filings and briefs will not be constrained by the Rules of Professional Conduct. Upon information and belief, Plaintiff is judgment-proof, and Best Buy is unlikely to recoup any costs or attorney's fees if it prevails in motions under C.R.S. § 13-17-102. There is virtually no deterrent to Plaintiff filing his "free lawsuits," particularly if the Court makes the process of filing the lawsuit entirely free of charge for Plaintiff. There is also no deterrent for Plaintiff filing repetitive, frivolous motions and repetitive, frivolous appeals. In this lawsuit alone, Best Buy prevailed on its motion for summary

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judgment followed by two motions for reconsideration Plaintiff has been undeterred by his arguments repeatedly failing, and Best Buy will soon be litigating Plaintiff's fourth bite at the apple in Plaintiff's "free lawsuit."

Best Buy requests a limited remedy of requiring filing fees in order to encourage Plaintiff to carefully consider whether his claims, motions, and legal arguments have merit and to only incur costs on arguments that are meritorious. If Plaintiff prevails on his appeal, and subsequently on one or more cause of action against Best Buy, he will be able to recover his filing fees, as well as his provable damages. C.R.S. § 13-16-104. Requiring Plaintiff to pay filing fees, combined with the availability of an award of costs, strikes an appropriate balance between deterring repetitive and vexatious lawsuits and appeals while still permitting Plaintiff to put his claims and arguments before the Court and adjudicating his claims on their merits.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, eFiling and service fees, and fees for forms and instructions.

Respectfully submitted February 28, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

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CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2025, a true and correct copy of the foregoing **MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/Samantha Trujillo
Samantha Trujillo, Legal Assistant

Attachment to Order - 2023CV226

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 10, 2025 4:05 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
BEST BUY'S MOTION FOR EXTENSION OF TIME	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Extension of Time. Best Buy respectfully requests that this Court permit it to submit its attorney's fees computation on or before April 17, 2025. As grounds, Best Buy states as follows:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with pro se Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

MOTION

1. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. Colo. R. Civ. P. 6 (b).
2. A trial court's decision to grant an extension of time will not be disturbed upon appeal absent an abuse of discretion. *E.g., Mitchell v. Espinosa*, 125 Colo. 267, 277, 243 P.2d 412, 417 (Colo. 1952).
3. Defendant's computation of attorney's fees was due on April 8, 2025.
4. Best Buy is hereby requesting a one-week extension of time from today to submit this computation, with a new deadline of April 17, 2025.
5. Because this case has been ongoing for more than a year, Best Buy's bills consist of hundreds of pages of documents and must be re-formatted in such a way to remove privileged and sensitive information, particularly in light of the pending appeal in this matter.
6. Best Buy notes that Mr. Montgomery has six cases against Best Buy, in both Colorado trial courts and Colorado appellate courts. Despite all of these cases being factually near identical, all are in different phases of litigation or appeal, each with its own disjointed schedule and deadlines. Undersigned counsel represents Best Buy in all six cases.

7. Plaintiff's vexatious and never-ending lawsuits against Best Buy has created difficulties in keeping cases organized and separate. This regrettably resulted in calendaring errors by Best Buy regarding the deadline for this computation.
8. Based on the foregoing, Best Buy's actions constitute *excusable* neglect.
9. Best Buy respectfully requests that the Court grant Best Buy grace in responding to the chaos that Plaintiff has stirred up through his litigation practices.
10. Best Buy requests that this Court permit a brief extension to April 17, 2025. Upon information and belief, such extension will not prejudice Plaintiff.
11. Best Buy fully expects Plaintiff to appeal any adverse order of the Court, including if this Court finds in Best Buy's favor on this motion for extension of time.

WHEREFORE, for the foregoing reasons, Best Buy respectfully request that this Court permit Best Buy to submit its computation of attorney's fees on or before April 17, 2025.

Filed on April 10, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on April 10, 2025, a true and correct copy of the foregoing **BEST BUY'S MOTION FOR EXTENSION OF TIME** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 10, 2025 4:05 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING BEST BUY'S MOTION FOR EXTENSION OF TIME

THIS COURT, having reviewed Best Buy's Motion for Extension of Time and finding good cause, hereby GRANTS this Motion. Best Buy is permitted to submit its computation of attorney's fees on or before April 17, 2025.

So ordered on _____, 2025**.**

_____
Presiding Judge, District Court for Jefferson County, Colorado

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 16, 2025 3:18 PM
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
AFFIDAVIT OF STEPHANIE BOUTSICARIS CONCERNING ATTORNEY'S FEES	

My name is Stephanie Boutsicaris, and I am over the age of 18. I have personal knowledge of the statements contained herein:

1. I am an attorney licensed to practice in Colorado.

2. On this particular case, Best Buy, L.P. was billed for my law firm's services.

3. Upon reviewing billing records, billable employees at our firm worked the following amount of hours on this case:

   a. **Lori K. Bell: 76.9 hours**

   b. **Katie I. Salazar (Paralegal): 4.3 hours**

c. **Glenn D. Germany: 36.6 hours**

d. **Jaime I. Gress (Paralegal): 1.6 hours**

e. **Abigail L. Spohn (Paralegal): 5.1 hours**

f. **Stephanie E. Boutsicaris: 36.3 hours**

g. **Mary B. Pucelik: 7.2 hours**

4. **Exhibit A** provides additional detail on the tasks performed by each billable employee described above.

5. I, Stephanie Boutsicaris, have been licensed to practice law since 2017. I graduated from University of Virginia School of Law in 2017, and during my career as an attorney, I have tried more than twenty jury trials, often as a first chair. I am a senior attorney at Montgomery Amatuzio.

6. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with five to nine years' experience would be at least $225 per hour. *See,* 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B,** p. 52. However, I am aware of a federal court awarding attorney's fees for as much as $450 per hour for a Denver-area attorney with less experience than myself. *See,* Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera,* 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

7. Therefore, reasonable attorney's fees for myself on this matter would total at least **$8167.50**.

8. Glenn D. Germany has been practicing law since 2011. He obtained his bar license in California in 2011 and his bar license in Colorado in 2023. He graduated from Santa Clara University School of Law in 2011.

9. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with ten to nineteen years' experience would be at least $250 per hour. *See,* 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B,** p. 52. However, I am aware of a federal court awarding attorney's fees for as much as $450 per hour for a Denver-area attorney with less experience than Mr. Germany. *See,* Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera,* 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

10. Therefore, reasonable attorney's fees for Mr. Germany on this matter would total at least **$9150.00**.

11. Mary B. Pucelik has been practicing law since 1992. She was admitted to practice law in California in 1992. She was admitted to practice law in Oregon in 1993 and admitted to Colorado in 2013. Ms. Pucilek graduated from Lewis and Clark, Northwestern School of Law where she was on law review.

12. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with thirty to thirty-nine years' experience would be at least $275 per hour. *See,* 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B,** p. 52. However, I am aware of a federal court awarding attorney's fees for as much as $450 per hour for a Denver-area attorney with less experience than Ms. Pucilek. *See,* Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera,* 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

13. Therefore, reasonable attorney's fees for Ms. Pucelik on this matter would total at least **$1980.00**.

14. Lori K. Bell is an equity partner at our firm, and she has been licensed to practice law in Colorado since 1999. Ms. Bell graduated from University of Denver's Sturm College of Law in 1999 and during her career as an attorney, she has tried dozens of jury trials.

15. For purposes of this motion for attorney's fees, a reasonable market rate for a partner at a private law firm in Colorado would be at least $295 per hour. *See,* 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B,** p. 8. However, I am aware of a federal court awarding attorney's fees for as much as $750 per hour for a Denver-area attorney with less half the level of experience as Ms. Bell. *See,* Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera,* 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

16. Therefore, reasonable attorney's fees for Ms. Bellon this matter would total at least **$22,685.50**

17. For purposes of this motion for attorney's fees, a reasonable market rate for a paralegal would be between $95 and $125 per hour. *See*, 2017 Colorado Bar Association Economic Survey, **Ex. B,** p. 42. However, I am aware of a federal court awarding paralegal fees for as much as $125 per hour for a Denver-area paralegal who also billed for clerical tasks. *See,* Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera,* 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021). Ms. Wolfe does not bill for strictly clerical tasks. Our firm has legal assistants for strictly clerical tasks, and they are not asked to keep track of hours by task or by case.

18. Based on the above hours, reasonable fees for the paralegal services of Ms. Salazar, Ms. Spohn, and Ms. Gress (totaling 11 hours) would amount to at least **$1100.00,** based upon a rate of $100 per hour.

19. Based upon the above information, a reasonable amount of attorney's fees and other costs and fees would total at least **$43,083.00.**

20. The reasonable market rates above likely reflect underestimates of the current market rate, given that the survey referenced herein is from eight years ago.

Stephanie Boutsicaris (signature)
Attorney for Defendant Best Buy, LP

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 16th day of April 2025, by Stephanie Boutsicaris

Witness my hand and official seal. My commission expires: December 22, 2025

JACOB ELSNER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214049081
MY COMMISSION EXPIRES DECEMBER 22, 2025

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that, on April 16, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/ Stephanie Boutsicaris

EXHIBIT A- Computation of Attorney's Fees

Lori K. Bell

DATE FILED
April 16, 2025 3:18 PM

Date	Time Spent	Task Performed
12/14/2023	0.40	Confer with Ms. Castner regarding new claim and investigation strategy.
12/19/2023	0.30	Analysis of pleadings and orders submitted by Plaintiff and Court to assess status of case.
12/19/2023	0.40	Consider scope of plaintiff's prior and pending claims to determine strategy for researching resulting lawsuits.
12/19/2023	0.40	Examination of other lawsuits and charges against Mr. Montgomery located in Court website and determine cases to recommend to client to obtain.
12/21/2023	0.70	Examination of register of actions for district court, Court of Appeals and Colorado Supreme Court to determine potentially relevant cases to obtain.
12/21/2023	0.20	Receipt and analysis of documents from client pertaining to employees working on date of incident.
12/29/2023	0.20	Correspond with Ms. Castner regarding the status of the case.
01/02/2024	0.30	Receipt and analysis of claim notes pertaining to investigation.
01/02/2024	1.20	Examination of background search results by Best Buy and determine further investigation and follow up to conduct.
01/02/2024	0.80	Examination and analysis of internal investigation of plaintiff's history of lawsuits.
01/23/2024	0.20	Correspond with Ms. Castner regarding the status of the case.
01/23/2024	0.20	Receipt of documents evidencing service of process on Best Buy and confirm sufficiency of the same.
01/24/2024	0.50	Consider status of ongoing investigation and positive results and utilization of the same in defense of case.
02/02/2024	0.30	Finalize Answer to Plaintiff's Complaint.
02/02/2024	0.30	Consider scope of court order to attach to Best Buy's answer to complaint in support of its affirmative defenses.
02/09/2024	0.20	Receipt of delay prevention order from client and confirm status of the same on the court's docket.
02/20/2024	0.30	Confer with Plaintiff regarding claims and defenses and preparation of the case management order.
02/21/2024	1.00	Consider representations from Plaintiff during Rule 16 conferral and consider potential counterclaims and additional defenses and investigation.
02/26/2024	0.30	Confer with Ms. Morschen to plan strategy for case handling.
02/26/2024	0.20	Consider action to take in response to court's delay prevention order.
02/28/2024	0.80	Work on and expand initial case evaluation to clients.
03/10/2024	0.40	Finalize Best Buy's Rule 26 Initial Disclosures and Privilege Log.
03/10/2024	0.20	Consider plaintiff's identification of Best Buy in complaint and civil cover sheet and confirm accuracy thereof with client.

03/28/2024	0.30	Consider statements by plaintiff during scheduling conference and whether the same constitute admissions for which the transcript should be requested.
03/29/2024	0.30	Consideration of plaintiff's proposed additions to the case management order and determine further modifications to Defendant's statement.
04/22/2024	0.60	Analysis of video of plaintiff's interaction with Best Buy employees in consideration of scope of detention and protection by shopkeeper's act.
04/22/2024	0.20	Receive and consider mandates by Court in regard to case procedures.
04/23/2024	0.20	Consider whether substantive Rule 26 disclosures can be made at this time.
05/07/2024	0.30	Consider alternative avenues to identify and locate Best Buy employees who confronted the plaintiff.
05/07/2024	0.40	Consider scope of testimony and evidence necessary to support a motion for summary judgment.
05/08/2024	0.40	Analysis of plaintiff's current online presence on social media and YouTube.
05/08/2024	0.80	Receipt and analysis of additional motions for summary judgment and corresponding orders in cases initial by plaintiff in consideration of burden to which Judges holding plaintiff as a pro se litigant.
05/09/2024	1.00	Examination of elements of a claim for defamation and determine evidence necessary to establish the same to incorporate into a motion for summary judgment.
05/09/2024	0.80	Analysis of the elements of a civil assault claim necessary to establish a claim to use in motion for summary judgment on false imprisonment.
05/09/2024	1.30	Examination of case law to determine elements of false imprisonment necessary to establish a claim and to support motion for summary judgment on the issue.
05/09/2024	1.40	Begin preparing legal standard section for motion for summary judgment on each of plaintiff's claims for relief.
05/15/2024	0.20	Confer with plaintiff regarding amended case management order to reflect new trial.
05/28/2024	0.20	Consider correspondence from Khay regarding identification of former employees involved in the incident.
05/28/2024	0.60	Conference call and interview of Mahmoud Abu Shaweesh regarding his involvement and recollection of the alleged incident.
05/28/2024	0.50	Confer with Mr. Rusch regarding his recollection of Plaintiff and the alleged incident.
05/28/2024	0.30	Consider further investigation following employee interviews.
05/28/2024	0.20	Correspond with Khay regarding ongoing investigation.
05/29/2024	0.20	Correspond with Khay regarding ongoing investigation.
06/04/2024	0.20	Consider correspondence from clients regarding explanation of ongoing investigation efforts.
06/11/2024	0.30	Examination of Court docket to determine status of rulings on procedural and substantive issues necessary to move case forward.

06/13/2024	2.40	Analysis and consideration following original CMR and provided updated CMR to address investigation, case status and evaluation of liability and damages.
06/14/2024	0.20	Receive and consider court order regarding trial date and case management modifications.
06/20/2024	0.20	Confer with pro se Plaintiff Montgomery regarding amendments to the case management order.
07/15/2024	0.30	Assess impending deadlines for experts and dispositive motions in advance of hearing to continue trial and consider whether to comply with deadlines prior to conference.
07/16/2024	0.20	Correspond with Khay regarding case progress with discovery, dispositive motions and upcoming hearing with the court.
07/22/2024	1.80	Expand legal standard section of motion for summary judgment to address statutes and case law analysis for plaintiff's three claims for relief against Best Buy.
07/22/2024	1.00	Examination of State Court orders granting motions for summary judgment as to Mr. Montgomery's claims to determine Orders to include as exhibits to instant motion for summary judgment.
07/22/2024	0.50	Consider means of supporting undisputed facts section of motion and whether to rely on statements by plaintiff or to obtain an affidavit from the Best Buy employees.
07/22/2024	0.80	Modify undisputed facts section of motion for summary judgment to tie facts to details of plaintiff's body cam video.
07/22/2024	1.00	Modify and finalize motion for summary judgment in advance filing.
07/23/2024	1.50	Analysis of plaintiff's YouTube videos describing planned stings on retailers to identify video to identify in motion for summary judgment.
07/23/2024	1.00	Assess appellate court orders affirming district courts' dismissal of plaintiff's claims to incorporate the same into motion for summary judgment.
07/23/2024	0.40	Confer with Plaintiff regarding forthcoming motion to dismiss and plaintiff's planned motion to dismiss Best Buy's shopkeeper's privilege defense.
07/24/2024	0.40	Analysis of plaintiff's responses to written discovery and consider means of using in support of motion for summary judgment.
07/24/2024	0.80	Examination and analysis of Federal court orders regarding plaintiff's similar claims against large retailers.
08/01/2024	0.30	Consider plaintiff's motion to expand plaintiffs' deadline to respond to motion for summary judgment and submit his own motion and whether to respond to the same.
08/12/2024	0.30	Receipt of correspondence from Plaintiff regarding and proposing modification of the case management order to address expanded motions timelines and respond with compromise to Plaintiff’s proposal.
08/12/2024	0.20	Further conferral with Plaintiff regarding his alleged impediments to timely submitting a motion for summary judgment and response to Best Buy's motion.

08/12/2024	0.20	Consider correspondence from Khay regarding case status and advise pending MSJ and resulting issues and new trial date and amended case management order.
08/12/2024	0.20	Analysis of prior CMR and consider case activity requiring updated report.
08/12/2024	0.20	Ongoing conferral with Plaintiff regarding forthcoming and pending motions and details of amended CMO.
08/14/2024	0.50	Prepare updated CMR report to client.
08/14/2024	0.30	Confer with Mr. Montgomery regarding outstanding discovery requests from Best Buy and his basis for delaying and objecting to responses.
08/14/2024	0.40	Receive and consider call from plaintiff regarding forthcoming arguments in favor of his motion for summary judgement and alleged facts supporting his motion.
08/21/2024	0.20	Consider implications or Court order regarding plaintiff's alleged medical conditions necessitating expanded time to deal with lawsuit.
09/11/2024	0.20	Correspond with Khay regarding case status and mediation potential.
09/11/2024	0.30	Correspond with Sedgwick about our motion for summary judgment and settlement negotiation strategy.
09/12/2024	0.20	Correspond with Khay regarding pros and cons to mediation.
09/12/2024	0.20	Receive follow up correspondence from plaintiff confirming lack of interest in mediation and advise Khay of the same.
09/12/2024	0.20	Confer with plaintiff regarding ADR Order and mediation.
09/16/2024	0.10	Correspond with Khay regarding ADR Order and plaintiff's position on the same.
09/17/2024	0.20	Confer with Plaintiff regarding his motion for summary judgment and scope of response to our motion.
09/19/2024	0.30	Confer with plaintiff regarding his forthcoming motion for summary judgment including exhibits for which he wishes to confer.
09/20/2024	0.30	Confer with plaintiff regarding forthcoming motion and response and his explanation for filings and arguments made therein.
09/23/2024	1.90	Examination of plaintiff's 30-page response to motion for summary judgment and attached affidavits, exhibits and transcriptions in consideration of strategy for responding thereto.
09/23/2024	1.30	Examination of Plaintiff's motion for summary judgment to determine means of refocusing the issues.
09/23/2024	0.30	Consider plaintiff's conflicting responses to written discovery and self serving MSJ affidavit to use insupport of response and reply to pending MSJs.
09/23/2024	0.40	Consider facts incident recalled by Best Buy employees and consider having employees provide an affidavit detailing encounter.
09/26/2024	0.30	Correspond with Khay regarding status of mediation and motions for summary judgment.
09/26/2024	3.30	Examination of receipts of plaintiff's purchases and returns around the date in question and create chronology and map of purchases and returns throughout the Denver metro area and how to present the same in Best Buy’s defense.

09/27/2024	0.20	Exchange correspondence with Khay regarding investigation into plaintiff's activities on day of encounter and subsequent days.
09/27/2024	2.00	Examination of cases cited by plaintiff in his motion for summary judgment to determine scope of response to legal arguments.
09/27/2024	0.20	Correspond with Best Buy employees regarding the need for an affidavit to support motion for summary judgment.
09/30/2024	0.40	Analyze Plaintiff's assertions in his motion for summary judgment.
10/03/2024	0.40	Receipt and analysis of additional social media and online postings by Plaintiff documenting his plans to sue for alleged violations.
10/03/2024	0.20	Confer with Plaintiff regarding modification of briefing schedule for summary judgment motions.
10/03/2024	0.70	Conference call with clients to discuss case strategy.
10/03/2024	0.40	Analysis of Plaintiff's you tube video regarding stings in consideration of the use of the same in the dispositive briefing.
10/04/2024	0.20	Correspond with Mahmoud regarding basis for the interaction with Mr. Montgomery.
10/08/2024	0.40	Conference call with Shane to discuss additional details of encounter with Plaintiff in consideration of affidavit needs.
10/08/2024	0.50	Conference call with Mahmoud regarding pending motion for summary judgment and to obtain additional details regarding encounter with plaintiff.
10/08/2024	0.40	Consider plaintiff's misrepresentation of alleged undisputed facts an scope of rebuttal needed to include in affidavit.
10/08/2024	0.60	Work on affidavit to include in reply for motion for summary judgment.
10/08/2024	0.90	Receipt and analysis of additional appellate decisions in cases brought by Mr. Montgomery and relied upon by him in regard to motions.
10/09/2024	1.50	Examine plaintiff's undisputed facts set forth in his cross motion for summary judgment and outline admissions to plaintiff's facts and denials with documented evidence refuting Plaintiff's claims.
10/09/2024	0.20	Follow up with Mahmoud to obtain assistance with his affidavit.
10/10/2024	1.50	Work on and finalize Best Buy's response to Plaintiff's cross motion for summary judgment.
10/10/2024	1.70	Work on and finalize Best Buy's reply in support of motion for summary judgment.
10/10/2024	2.50	Work on response to plaintiff's alleged undisputed facts contained in his cross motion for summary judgment.
10/10/2024	1.00	Identify and work on Best Buy's undisputed facts for use in response to Plaintiff's cross motion for summary judgment.
10/10/2024	0.70	Determine means of distinguishing Plaintiff's nonbinding case law contained in his response to Best Buy's motion for summary judgment.
10/11/2024	0.20	Receive and consider correspondence from Plaintiff regarding criticism of MSJ response and reply.
10/11/2024	0.20	Consider further to conduct of plaintiff.
10/21/2024	0.20	Consideration correspondence from pro se plaintiff regarding pending and future motions and respond accordingly.

10/22/2024	0.20	Receipt and consideration of plaintiff's motion for extended time to submit a reply in support of his cross MSJ and consider whether to respond to the motion.
10/25/2024	0.30	Confer with plaintiff regarding his opposition to new facts raised in Defendant's response to cross motion for summary judgment and purported problems with reply in opposition.
10/25/2024	0.20	Consider correspondence from plaintiff regarding issues with MSJ briefing, extended pages and forthcoming motion to modify limitations on motion.
10/29/2024	0.10	Receive and consider court order regarding plaintiff's motion to exceed page limit.
10/30/2024	1.20	Receipt and examination of plaintiff's 30-page reply in support of his cross motion for summary judgment and accompanying affidavits and consider whether to file sur reply based on erroneous arguments.
10/31/2024	0.20	Correspond with Khay regarding the status of dispositive motions.
11/01/2024	0.30	Receive call from pro se plaintiff regarding discovery requests and inability to produce without hearing.
11/04/2024	0.50	Examination of Plaintiff's discovery responses and affidavits in consideration of issues to be addressed during plaintiff’s deposition.
11/05/2024	2.00	Analysis of plaintiff's deposition testimony and consider further investigation and discovery to propound and possible supplemental briefing on motions for summary judgment.
11/05/2024	0.40	Consider means of addressing and/or stopping plaintiff's alleged forthcoming lawsuits against Best Buy.
11/13/2024	0.30	Consider Plaintiff's purchase and return history for Black Friday 2023 and benefits of disclosing in current case.
11/19/2024	0.40	Receipt and analysis of Court Order granting Best Buy's MSJ and denying Plaintiff's Cross MSJ.
11/19/2024	0.10	Advise Best Buy of Court Orders on MSJs.
11/19/2024	0.20	Analysis of preliminary bill of costs to determine additional costs to include therein.
11/19/2024	0.20	Confer with Mr. Montgomery regarding forthcoming appeal of MSJ Orders.
11/25/2024	0.40	Analysis of case law and jury instructions regarding vexations and frivolous lawsuits and standard for proving the same.
11/27/2024	0.30	Strategize regarding overcoming impediments to service of notice of trespass.
11/27/2024	0.20	Consider scope of support for no trespass and whether to expand the same.
12/02/2024	0.20	Consider Plaintiff's forthcoming motion for reconsideration of the Judge's interpretation of the facts and law and viability of the same.
12/04/2024	0.20	Correspond with Khay regarding Plaintiff's motion for reconsideration of summary judgment orders.
12/04/2024	0.80	Examination of plaintiff's motion for reconsideration of order granting Best Buy's motion for summary judgment and denying plaintiff's motion and consider scope of response thereto.

12/04/2024	0.40	Examination of voluminous emails from Plaintiff attacking claim for costs and attorney's fees and arguing for his motion for reconsideration.
12/20/2024	0.40	Work on and finalize Best Buy's Response to Plaintiff's Motion for Reconsideration.
12/31/2024	0.30	Work on and finalize motion for attorney's fees, pursuant to order granting Summary Judgment.
12/31/2024	0.20	Correspond with Khay regarding plaintiff's post trial motions.
01/02/2025	0.70	Examination of plaintiff's reply in support of motion for reconsideration and consider whether further briefing is warranted via a sur reply.
01/06/2025	0.20	Consider advisement from plaintiff of intent to continue to purse reconsideration and whether we stop such efforts.
01/06/2025	0.20	Receipt and consideration of order denying plaintiff's motion for reconsideration of MSJ rulings.
01/07/2025	0.20	Consider Court order granting bill of costs and means of pursuing the same.
01/08/2025	0.20	Compare original and amended bill of costs orders to determine modifications made by the Court.
01/22/2025	0.50	Receipt and analysis of plaintiff's second motion for reconsideration and consider whether a legal basis exists to stop repeated motions for reconsideration after final judgement.
01/22/2025	0.50	Receipt and analysis of plaintiff's belated response to motion for attorney's fees and consider whether a response is necessary.
01/28/2025	0.20	Work on and finalize reply in support of motion for attorneys fees.
01/28/2025	0.30	Confer with plaintiff regarding pending and forthcoming motions and appeals.
02/07/2025	0.40	Correspond with Khay Harris to advise them about responding to Plaintiff's second motion for reconsideration and also to discuss the motion for attorney's fees.
02/07/2025	0.30	Work on map exhibit to dispositive motion.
02/07/2025	0.10	Finalize response to second motion for reconsideration.
02/07/2025	0.20	Confer with Mr. Montgomery regarding pending motions and Rule 121 conferral requirements.
02/14/2025	0.20	Analysis of plaintiff's reply in support of second motion for reconsideration.
02/18/2025	0.20	Receipt of Court order denying plaintiff's second motion for reconsideration and consider further options plaintiff may pursue.
Total	**76.9**	

Katie I. Salazar (Paralegal)

Date	**Time Spent**	**Task Performed**
12/14/2023	1.50	Analysis of initial communications with client and claim file materials for initial case assessment.

12/19/2023	0.50	Analysis of initial communications with client and claim file materials for initial case assessment.
12/19/2023	2.60	Investigation into Plaintiff Montgomery to include CBI and COCOURTS and ICCESS and Pacer and Bankruptcy Court and Westlaw and Instant Checkmate and Lien search and Social Media to gather information on Plaintiff.
12/22/2023	0.30	Analysis of all prior court documents in this case for relevance and deadlines for our client and defense obligations.
12/27/2023	6.30	Analysis and organization of any and all court proceedings the plaintiff has been involved in prior to this case for defense litigation purposes.
01/08/2024	0.40	Modify previous court proceeding document files to organize documents to prepare for our defense.
01/09/2024	0.60	Analyze case activity and progress to identify any upcoming defense obligations or deadlines.
01/17/2024	0.30	Analyze recent case activity and progress to identify any upcoming defense obligations or deadlines.
01/17/2024	0.10	Author communication to our client to determine if service has been made in order for our firm to file an answer.
01/24/2024	2.00	Analysis of plaintiffs you tube accounts and possible TikTok accounts with analysis of posted videos of plaintiff.
02/05/2024	0.60	Begin authoring defendants initial disclosure statement.
02/05/2024	0.50	Analysis of claim file documents to supplement defendants initial disclosure statement to include all individuals likely to have discoverable information and include details regarding knowledge of incident.
02/22/2024	0.10	Author communication to our client Lucy in order to obtain the policy information for disclosure purposes.
02/27/2024	0.20	Continue authoring defendants initial disclosure statement.
02/29/2024	0.20	Correspond with the court regarding the case management conference to advise of issues to be resolved among counsel with the court.
02/29/2024	0.20	Author communication to plaintiff to determine setting case management conference.
02/29/2024	0.10	Correspond with plaintiff regarding the upcoming case management conference to advise of issues to be resolved with the court.
02/29/2024	0.20	Author the Notice of Case Management Document.
03/05/2024	0.20	Obtain web ex information from Jefferson County website for upcoming case management conference.
03/05/2024	0.10	Complete the notice of case management document.
03/11/2024	0.40	Author defendants privilege documents for bates stamps for our privilege log disclosure.
03/11/2024	0.70	Author defendants initial privilege log document.
03/21/2024	0.30	Author communication to plaintiff to observe proposed case management order prior to filing.
03/27/2024	0.40	Analysis of case management conference that provided updated information for trial date and new case management conference date.
04/12/2024	0.80	Analysis of plaintiffs initial disclosure video to observe certain activities and words said for memorandum.

04/16/2024	0.40	Analysis of amended case management order to determine newest dates issued by the court.
04/24/2024	0.10	Analyze and evaluate disclosures plaintiff and defendant in order to prepare a production database to include all pertinent information regarding produced and disclosed documents.
04/24/2024	0.30	Communication with the court clerk in order to obtain pre-trial availability for our calendar and plaintiffs.
04/25/2024	0.10	Author communication with the plaintiff to provide information regarding the required in person for pre trial conference.
04/25/2024	0.10	Communication with the court on in person pre trial conference information.
04/25/2024	0.10	Prepare the notice of pre trial conference to notify the plaintiff and court of required attendance.
Total	**4.3**	

Glenn D. Germany

Date	**Time Spent**	**Task Performed**
01/24/2024	0.20	Engaged in email communication with claim rep regarding complaint filing and answer.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's lawsuit against Walmart and the appellate court decision regarding same to help craft answer to current complaint.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's lawsuits against law enforcement officers and the courts written decisions regarding the same to help author answer to current complaint.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's social media and online posts/videos to help craft answer to current complaint.
01/24/2024	1.30	Authored answer to plaintiff's complaint.
01/25/2024	1.20	Reviewed and analyzed court ruling in Plaintiff's current lawsuit against city police for unlawful detention at Walmart.
01/25/2024	1.20	Reviewed and analyzed court ruling in Plaintiff's lawsuit against Fort Collins city police for 4th Amendment violations at city park.
01/25/2024	1.20	Continued work authoring Answer to Plaintiff's Complaint.
02/05/2024	0.10	Made revisions to Answer.
02/06/2024	0.50	Reviewed and analyzed Plaintiff's court cases against Walmart to find similarities.
02/06/2024	0.20	Engaged in email communication with claim rep regarding proposed Answer.
02/08/2024	0.10	Finalized Answer before filing.
02/20/2024	0.20	Engaged in email communication with Plaintiff regarding case conferral as required by court.
02/20/2024	0.50	Considered and analyzed benefits of staying under CRCP 16.1 rules vs CRCP 16.

02/20/2024	0.50	Considered and analyzed claim file to determine what witnesses and information is needed for defense.
02/21/2024	1.00	Engaged in telephone communication with Plaintiff as required by court conferral conferences.
02/21/2024	0.10	Engaged in email communication with claim rep regarding discussions with Plaintiff and evidence needed for case.
02/26/2024	1.00	Reviewed and analyzed claim notes to help author case management report for claim rep's review.
02/26/2024	1.00	Reviewed and analyzed Plaintiff's filings and videos to help author case management report for claim rep's review.
02/26/2024	1.00	Considered Shopkeeper's Privilege, attorneys fees statute, and other statutes to help author case management report for claim rep's review.
02/27/2024	0.20	Received and analyzed email communications between Sedgwick and Best Buy store.
02/27/2024	0.10	Finalized notice for hearing setting to set Case Management Conference.
02/27/2024	0.50	Considered and analyzed Shopkeeper's Privilege and how that might affect our defense and provided analysis to claim rep regarding the same.
02/27/2024	0.50	Considered and analyzed Plaintiff's complaint and other court cases and how that might affect our defense and provided analysis to claim rep regarding the same.
02/27/2024	0.60	Authored case analysis to claim rep providing opinions on strategies, settlement possibilities, and available defenses.
03/05/2024	0.30	Authored initial disclosure statement.
03/05/2024	1.00	Reviewed and analyzed claim file for documents that should or should not be produced in initial disclosures.
03/19/2024	0.80	Authored proposed Case Management Order.
03/27/2024	0.80	Appeared at Case Management Conference.
03/27/2024	0.10	Engaged in email communication with client regarding summary of case management conference.
04/09/2024	0.80	Reviewed and analyzed claim file for documents that need to be disclosed pursuant to CRCP 26
04/09/2024	0.40	Reviewed and analyzed Plaintiff's inputs into proposed case management order.
04/12/2024	0.30	Engaged in communication with claim rep providing summary of Plaintiff's body cam footage.
04/12/2024	0.50	Reviewed and analyzed Plaintiff's body cam footage from the date of the incident.
04/16/2024	0.40	Appeared virtually at Case Management Conference.
04/16/2024	0.10	Finalized initial disclosure statement before serving.
04/25/2024	0.10	Received and analyzed email from claim rep regarding Plaintiff's body cam footage.
04/26/2024	0.20	Engaged in email communication with new claim rep regarding Plaintiff's body cam footage and the employees we need to find.
05/08/2024	0.20	Engaged in email communication with Plaintiff regarding trial dates and moving the same.

05/14/2024	0.40	Authored motion to continue trial date.
05/28/2024	0.10	Received and analyzed email from claim rep regarding locating potential witnesses and their need for depositions.
05/28/2024	0.30	Reviewed claim file, court filings, and communication with court to determine whether court has yet to rule on our motion to continue.
05/28/2024	0.50	Engaged in telephone communication with Best Buy employee who stopped Plaintiff outside store to get better picture of the incident.
05/28/2024	0.10	Engaged in email communication with Best Buy employees regarding Plaintiff's video.
05/29/2024	0.60	Reviewed and analyzed text messages from Best Buy manager regarding Montgomery's attempts to take items without showing receipt in November 2023 at multiple Best Buys and reviewed court cases to see if Montgomery has filed other lawsuits against other stores recently.
06/03/2024	0.70	Began work authoring written discovery to Plaintiff.
06/04/2024	0.10	Received and analyzed email from store manager regarding security reports and sharing amongst stores.
06/14/2024	0.10	Reviewed and analyzed court's order on our motion to continue trial.
06/18/2024	1.30	Reviewed and analyzed Plaintiff's lawsuits against a shopping mall and University of Denver to see if Plaintiff employed similar tactics and arguments.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's court of appeals documents to build a motion for summary judgment.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's district court documents to build a motion for summary judgment.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's other court documents to help draft discovery request to Plaintiff.
06/20/2024	0.20	Analyzed and considered what information we can get from Plaintiff in order to build argument for summary judgment motion.
06/21/2024	0.90	Continued work authoring written discovery to Plaintiff.
07/16/2024	1.30	Reviewed and analyzed Plaintiff's previous filings to help draft MSJ.
07/19/2024	3.00	Authored Motion for Summary Judgment.
07/23/2024	0.20	Continued making revisions to MSJ.
07/29/2024	0.20	Reviewed and analyzed Plaintiff's response to our first set of written discovery.
08/09/2024	0.20	Reviewed case file and considered current litigation position and what steps need to be taken moving forward in order to put client in best position.
Total	**36.6**	

Jamie L. Gress (Paralegal)

Date	**Time Spent**	**Task Performed**
05/15/2024	0.10	Correspondence to pro se plaintiff regarding motion to continue trial and reset.

05/28/2024	0.20	Communication to court clerk regarding pre trial conference and our motion to continue trial
06/20/2024	0.20	Correspondence to pro se plaintiff regarding Order regarding resetting Jury Trial and in person status conference for the same.
06/20/2024	0.20	Prepare Notice of Status Conference.
06/20/2024	0.20	Correspondence with pro se plaintiff regarding mandatory in person status conference to reset trial.
08/02/2024	0.20	Prepare notice of status conference
08/02/2024	0.10	Correspondence to pro se plaintiff regarding status conference to reset trial.
08/02/2024	0.20	Communication with court clerk regarding status conference to reset trial.
08/09/2024	0.20	Analyze case pleadings filed to date and our motion for summary judgment to determine future litigation needs.
Total	**1.6**	

Abigail L. Spohn (Paralegal)

Date	Time Spent	Task Performed
06/20/2024	1.00	Conduct background search to include driving history and criminal history and social media history and court history and current relevant liens in order to obtain pertinent information in regard to our plaintiff.
06/21/2024	0.30	Modify document for a written discovery request for William Montgomery to be filed with the court.
07/22/2024	0.30	Gather documents form trial court case 2020CV000076 from ICCES involving Montgomery and Walmart.
07/22/2024	1.50	Prepare exhibits to be served with motion of summary judgment.
07/23/2024	0.50	Further research and locate CO district court cases to potentially include in upcoming motion.
07/23/2024	1.00	Locate and update exhibits to be filed with Motion for Summary Judgment, as well as analyze and download William Montgomery Youtube video, relevant to this case.
07/29/2024	0.20	Analyze initial disclosure documents from both plaintiff and defendant and update production log.
08/02/2024	0.20	Conduct correspondence with plaintiff regarding upcoming status conference hearing.
08/09/2024	0.30	Analyze CMO in light of new trial dates to identify future litigation and discovery needs.
08/09/2024	0.30	Conduct correspondence with plaintiff regarding Motion for Summary Judgment as well as print and mail MSJ document and exhibits to him.
08/13/2024	0.10	Conduct correspondence with plaintiff regarding service of MSJ and his expected form of service for future needs.
08/15/2024	0.10	Conduct correspondence with pro se plaintiff regarding the court's order to his previously filed motion.
09/17/2024	0.10	Conduct correspondence with pro se plaintiff about his own document/

		motion production.
09/23/2024	0.50	Analyze and evaluate Plaintiff's Transcript of Bodycam Footage which was produced with his Cross MSJ and compare to audio to ensure the transcript is accurate.
10/02/2024	1.30	Prepare first supplemental disclosure documents to include Bates Stamps and update supplemental disclosure statement accordingly.
10/02/2024	0.50	Prepare first supplemental disclosure statement to represent documents and information being produced in first supplemental disclosures.
10/03/2024	1.70	Analyze YouTube video posted by Plaintiff and create a word for word transcript to potentially use in response to cross MSJ.
10/03/2024	0.20	Analyze and evaluate plaintiff's other open lawsuits for the purposes of comparing these similar lawsuits to this current one.
10/03/2024	0.20	Conduct correspondence with client in order to share a video link to crucial footage regarding the investigation.
10/03/2024	0.30	Finalize first supplemental disclosure statement and documents and send to legal assistant to be served.
10/03/2024	2.10	Analyze and evaluate all documents and information that have been produced by plaintiff and take notes one each specifically noting any discrepancies between his stated facts.
10/04/2024	1.00	Continue to analyze YouTube video regarding plaintiff discussing similar cases in order to finish transcribing and add in time stamps for future needs and litigation purposes.
10/04/2024	0.30	Prepare second supplemental disclosure statement for newly found documents in preparation for supplemental disclosure.
10/07/2024	1.20	Analyze and evaluate Plaintiff's claimed facts and determine whether they can be denied based on the video evidence we received from plaintiff.
10/09/2024	0.40	Begin background search on third witness to the incident to try and locate him or contact him for the purposes of gaining more information on the incident.
10/10/2024	0.30	Continue to prepare second supplemental disclosure statement by adding three individuals contact information as they have discoverable information on the incident since they were witnesses.
10/10/2024	0.40	Prepare and label exhibits to be attached to reply to plaintiff's response to our motion for summary judgment.
10/14/2024	0.10	Conduct correspondence with Pro se Plaintiff regarding Notice of Deposit filed with the court today as well as sending a link to the Exhibit mentioned in the Notice for his records.
10/14/2024	0.40	Prepare a notice of deposit in order to submit a video exhibit to the court that was mentioned in the response to plaintiff's cross MSJ as well as prepare flash drive to be sent to court.
10/21/2024	0.80	Analyze and evaluate state and federal e-filing systems in order to locate new cases that plaintiff is involved in and download filings to examine for the purposes of this litigation.
10/21/2024	0.30	Prepare notice of deposition of plaintiff William Montgomery.
10/29/2024	0.10	Conduct correspondence with plaintiff in order to send him the documents filed in court today.

10/29/2024	0.10	Conduct correspondence with plaintiff in order to send him the court's order from today on his earlier motion.
10/31/2024	0.30	Analyze and finalize 2nd supplemental disclosure document and attached documents and serve to plaintiff via email.
11/01/2024	0.20	Conduct correspondence with the court of clerks office in Jefferson County in order to obtain discovery dispute hearing dates.
11/04/2024	1.50	Prepare documents to be used as exhibits in the deposition of plaintiff as well as create binder and cover sheet for organization purposes of attorney's line of questioning.
11/04/2024	0.10	Conduct correspondence with court reporting group in order to confirm details and scheduling of deposition for tomorrow.
11/04/2024	0.10	Conduct correspondence with plaintiff in order to send over details about the zoom deposition to occur tomorrow.
11/04/2024	0.50	Prepare a lawsuit database with all pertinent information regarding plaintiff's previous lawsuits to be able to reference during plaintiff's deposition.
11/04/2024	0.30	Analyze and evaluate all recent discovery and disclosures from plaintiff and defendants in order to update production database to include all pertinent information regarding produced and disclosed documents.
11/05/2024	0.10	Locate and prepare a few more exhibits to add in plaintiff's deposition occurring now.
11/05/2024	0.30	Prepare and update 3rd set of written discovery document in order to be able to serve discovery during deposition.
11/05/2024	0.50	Analyze MSJ and Cross-MSJ for locations of specific statements made by plaintiff that contradict each other for use in depo.
11/07/2024	0.50	Gather and prepare documents used in plaintiff's deposition including finding emails sent by plaintiff that were used as exhibits in order to send to court reporter.
11/07/2024	0.10	Conduct correspondence with court reporter in order to send over all exhibits used in the deposition of plaintiff.
11/13/2024	0.40	Author third supplemental disclosure statement to include new documents being produced and associated Bates Stamps as well as prepare documents to be disclosed.
11/14/2024	0.10	Finalize and email defendant's third supplemental disclosures to pro se plaintiff via his preferred serving method.
11/14/2024	0.30	Author subpoena for plaintiffs brother in preparation for serving prior to deposition.
11/18/2024	0.10	Conduct correspondence with pro se plaintiff and plaintiff's brother regarding deposition taking place in two days.
11/19/2024	1.10	Begin to prepare a Bill of Costs after case was dismissed without prejudice in order to determine amount for attorney's fees.
11/21/2024	0.40	Continue to prepare a Bill of Costs after receiving further expense information regarding background and investigation costs.

11/25/2024	0.20	Analyze Colorado Courts E-Filing to determine lawsuits plaintiff filed over the weekend and download the ones not already sent regarding Best Buy.
12/31/2024	0.10	Correspond with William Montgomery about his reply brief in support of the motion for reconsideration.
02/28/2025	0.90	Prepare exhibits to be filed with Motion to Reconsider Order regarding Court Fees.
Total	**5.1**	

Stephanie E. Boutsicaris

Date	**Time Spent**	**Task Performed**
08/12/2024	0.50	Correspond with Plaintiff about his response to the motion for summary judgment and the issues with service of our motion for summary judgment.
08/12/2024	0.20	Correspond with Sedgwick about our pending motion for summary judgment.
08/13/2024	0.10	Correspond with Sedgwick about Plaintiff's request for an extension on his response brief for Best Buy's motion for summary judgment.
08/13/2024	0.20	Correspond with Plaintiff about his response to Best Buy's motion for summary judgment.
08/14/2024	0.20	Correspond with Plaintiff about his responses to written discovery.
08/15/2024	0.10	Analyze Plaintiff's responses to Best Buy's first set of written discovery requests.
08/15/2024	0.20	Correspond with Plaintiff about Best Buy's motion for summary judgment and Plaintiff's motion for extension of time.
09/11/2024	0.30	Correspond with Sedgwick about our motion for summary judgment and settlement negotiation strategy.
09/12/2024	0.20	Correspond with Sedgwick about mediation.
09/12/2024	0.20	Correspond with Plaintiff about mediation.
09/13/2024	0.10	Correspond with Sedgwick about mediation.
09/13/2024	0.30	Analyze Best Buy's motion for summary judgment to strategize about how to present the shopkeepers' privilege as a defense.
09/16/2024	0.10	Correspond with Sedgwick to discuss strategy for motions for summary judgment.
09/17/2024	0.20	Correspond with Plaintiff about the motion to exceed the page limit.
09/17/2024	0.10	Analyze whether to object to Plaintiff exceeding the page limit given his history of prior claims.
09/19/2024	0.10	Correspond with Plaintiff about his response brief to Best Buy's motion for summary judgment and his own cross-motion for summary judgment.
09/19/2024	0.30	Correspond with Plaintiff about Best Buy's position concerning his motion to submit video evidence.
09/20/2024	0.10	Correspond with Plaintiff about his exhibits for his response to our motion for summary judgment.

09/23/2024	1.00	Analyze Plaintiff's 32-page response to Best Buy's motion for summary judgment.
09/23/2024	0.10	Analyze Plaintiff's motion to exceed the page count for his response brief for Best Buy's motion for summary judgment.
09/23/2024	0.50	Analyze Plaintiff's 22-page cross-motion for summary judgment.
09/23/2024	0.10	Analyze Plaintiff's motion to submit video evidence.
09/23/2024	0.20	Analyze Plaintiff's affidavit in support of his response to Best Buy's motion for summary judgment.
09/25/2024	0.30	Strategize about additional information needed to respond to Plaintiff's motion for summary judgment and his response to Best Buy's motion for summary judgment.
09/26/2024	0.30	Correspond with Sedgwick about Plaintiff’s likely strategy in filing a motion for summary judgment.
09/26/2024	0.70	Correspond with Sedgwick about receipt evidence available to produce demonstrating the purchase Plaintiff made.
09/26/2024	0.10	Analyze receipts of Plaintiff's purchases to potentially produce.
09/27/2024	0.20	Analyze the internal summary of Plaintiff's receipt data showing repetitive purchases all over the greater Denver metro area in a small amount of time and consider how the same will fit into dispositive motion strategy.
09/27/2024	0.50	Correspond with Khay Harris about receipt data for Plaintiff's Best Buy purchases and how to interpret the same.
09/27/2024	0.10	Correspond with Best Buy employees about the need for affidavits from them to support our dispositive motions.
09/30/2024	0.40	Analyze Plaintiff’s assertions in his motion for summary judgment and assess rebuttal arguments.
10/02/2024	0.40	Strategize about how to argue the shopkeepers doctrine and present supporting legal authority in our reply brief for our motion for summary judgment.
10/02/2024	0.60	Strategize about summary judgment briefs and exhibits to include and utilizing legal doctrines that could rebut Plaintiff’s exhibits.
10/02/2024	0.10	Strategize about additional documents to disclose pursuant to Rule 26.
10/02/2024	0.10	Correspond with Mahmoud about information that could be helpful in responding to Plaintiff's motion for summary judgment.
10/03/2024	0.20	Correspond with Plaintiff about Defendant's motion for extension of time to file a reply brief.
10/03/2024	0.20	Correspond with Best Buy and Sedgwick about the YouTube videos by Plaintiff discussing his plans to frame stores for false imprisonment.
10/03/2024	0.20	Analyze dozens of Reddit posts and comments concerning Plaintiff's lawsuits and plans to frame stores with false imprisonment and consider additional discovery needed in relation to these posts.
10/03/2024	0.30	Strategize about responding to facts from Plaintiff's motion for summary judgment briefs that may be depicted in the videos of the incident.
10/03/2024	0.30	Strategize about how to incorporate new evidence into a reply brief for Best Buy's motion for summary judgment.

10/04/2024	0.20	Correspond with Mahmoud about his recollection of the subject incident.
10/04/2024	0.10	Strategize about additional information to include in supplemental Rule 26 disclosures in light of recent investigations.
10/04/2024	0.10	Analyze the Court's order granting the motion for extension of time to submit a reply brief for Defendants' motion for summary judgment.
10/07/2024	0.80	Analyze the pen camera video from the incident in order to identify excerpts to cite in summary judgment briefing.
10/07/2024	0.50	Analyze the YouTube video concerning Mr. Montgomery's motive in refusing to provide receipts in order to identify excerpts to cite in summary judgment briefing.
10/08/2024	0.20	Phone call with Shane to determine additional facts to support our summary judgments briefings.
10/08/2024	0.20	Phone calls to James concerning his recollection of the incident in order to use in summary judgment briefing.
10/08/2024	0.20	Phone calls with Mahmoud concerning his recollection of the incident in order to use in summary judgment briefing.
10/08/2024	3.50	Draft replies to Plaintiff's responses to our factual assertions in the reply brief for motion for summary judgment including an analysis of what is supported by reasonably reliable evidence.
10/08/2024	0.20	Consider factual information to include in a draft of an affidavit that will be executed and attached to summary judgment briefings.
10/08/2024	0.20	Analyze publicly available records and information for James Robinson in anticipation of contacting him to draft an affidavit.
10/09/2024	0.20	Correspond with Sedgwick about strategies for deterring Mr. Montgomery from future conduct that could result in liability or lawsuits for Best Buy.
10/09/2024	0.20	Correspond with Sedgwick about our conversation with Mahmoud and Shane and our attempts to locate James Robinson.
10/09/2024	0.20	Strategize about additional witness disclosures including James Robinson.
10/09/2024	3.50	Continue drafting the reply brief in support of motion for summary judgment by responding to Plaintiff's statement of additional facts and amending the introduction section to synchronize with these responses.
10/09/2024	0.20	Correspond with Sedgwick about obtaining information about the registers Plaintiff used for his in-store purchases in order to determine if it was consistent with his modus operandi of using back checkout counters to induce suspicion of shoplifting.
10/09/2024	0.30	Strategize about locating and interviewing former Best Buy employee James Robinson.
10/10/2024	9.20	Finish drafting the reply brief for the Motion for Summary Judgment by drafting the argument section and amending the factual responses based upon Mahmoud's affidavit and to synchronize with the factual responses in our response to the cross motion for summary judgment.
10/10/2024	0.30	Correspond with Mahmoud about executing an affidavit in support of our summary judgment briefings.
10/10/2024	0.20	Strategize about submitting a motion for extension of time for our response to Plaintiff's cross-motion for summary judgment.

10/10/2024	0.60	Strategize about arguments to assert in response to the cross-motion for summary judgment.
10/10/2024	0.30	Correspond with Plaintiff to confer on a motion for extension of time.
10/11/2024	0.10	Strategize about ensuring service requirements are met for the motion for summary judgment briefings given Plaintiff's prior complaints of late notice of motions.
10/11/2024	0.20	Strategize about what written discovery could besought from Mr. Montgomery.
10/11/2024	0.10	Correspond with Plaintiff about his deposition.
10/11/2024	0.10	Correspond with Plaintiff about his counterarguments to our allegations in the motion for summary judgment.
10/11/2024	0.20	Strategize about deposing Mr. Montgomery.
10/14/2024	0.10	Finalize the notice of deposit in order to submit additional video evidence into summary judgment briefings.
10/14/2024	0.10	Analyze the Court's order granting Plaintiff's motion to submit video evidence to the Court.
10/17/2024	0.10	Correspond with Plaintiff about his upcoming deposition.
10/18/2024	0.10	Correspond with Plaintiff about his upcoming deposition.
10/20/2024	0.20	Correspond with Plaintiff about the other lawsuits he is citing in his conferral for an extension on summary judgment briefing.
10/21/2024	0.50	Correspond with Plaintiff about his request for additional time to submit a reply brief to his motion for summary judgment.
10/21/2024	0.30	Correspond with Plaintiff about his upcoming deposition.
10/21/2024	0.30	Strategize about whether to oppose Plaintiff's request for additional time to file his reply brief for his motion for summary judgment.
10/22/2024	0.10	Analyze Plaintiff's motion for extension of time and consider the need to submit a response.
10/22/2024	0.10	Correspond with Plaintiff about the motion for extension of time to submit his reply brief for his motion for summary judgment.
10/25/2024	0.10	Correspond with Plaintiff about his request to exceed the page limit on his reply brief for the cross motion for summary judgment.
10/28/2024	0.30	Analyze Plaintiff's reply to his cross motion for summary judgment.
10/28/2024	0.90	Draft opposition in response to Plaintiff's motion to exceed the page count.
10/28/2024	0.30	Strategize about written discovery needed to rebut Plaintiff's affidavit allegations.
10/28/2024	0.20	Analyze the exhibits and affidavit submitted with Plaintiff's reply brief on summary judgment and consider the need for motions practice to address the same.
10/28/2024	0.30	Confer regarding Plaintiff's request to exceed the page limit on his reply brief to the motion for summary judgment.
10/28/2024	0.10	Analyze the Court's order granting Plaintiff's motion for extension of time to file a reply brief.
10/29/2024	0.60	Draft second set of written discovery requests.

10/29/2024	0.10	Correspond with Plaintiff about the order partially granting Plaintiff's motion to exceed the page count.
10/29/2024	1.50	Draft discovery conferral letter to Plaintiff concerning his deficient and evasive discovery in order to tee up a potential Rule 37 motion that could provide a back up plan if motion for summary judgment is unsuccessful.
10/29/2024	0.10	Analyze the Court's order partially granting Plaintiff's motion to exceed the page count.
10/29/2024	0.30	Strategize about questions to ask at Plaintiff's deposition rather than asking by way of interrogatory.
10/30/2024	0.10	Correspond with Plaintiff about his deficient discovery responses and the likelihood for the need to go to discovery dispute on the issues.
10/30/2024	0.10	Correspond with Plaintiff about his proffered motion to strike his previous reply brief.
10/31/2024	0.10	Strategize about using Plaintiff's statements about the Reddit comments in future Rule 26 disclosures.
10/31/2024	0.20	Correspond with Plaintiff about Best Buy's 2nd Supplemental Disclosures.
10/31/2024	0.20	Amend supplemental disclosure statement to include additional witnesses.
10/31/2024	0.40	Correspond with Khay Harris about the forthcoming disclosures and discovery expected from Plaintiff concerning authorized users and Plaintiff's second attempt at a reply brief for his motion for summary judgment.
10/31/2024	0.20	Correspond with Plaintiff about his deficient discovery responses and disclosures and the likelihood of a discovery dispute hearing.
11/01/2024	0.10	Correspond with Plaintiff about his reply brief for his cross motion for summary judgment.
11/01/2024	0.10	Analyze Plaintiff's motion to strike his previous reply brief for his cross motion for summary judgment.
11/01/2024	0.20	Analyze Plaintiff's amended reply to his motion for summary judgment.
11/01/2024	0.60	Strategize about Plaintiff’s bad faith and evasive discovery responses in light of the recent amended disclosures and discovery responses and consider what potential discovery motions.
11/01/2024	0.90	Correspond with Plaintiff about curing his deficient written discovery responses.
11/01/2024	0.20	Analyze Plaintiff's amended responses to the first set of written discovery and consider how they compare and contradict the previous responses.
11/01/2024	0.10	Analyze Plaintiff's responses to Best Buy's second set of written discovery.
11/01/2024	0.20	Analyze Plaintiff's untimely produced documentation of authorized users and Best Buy purchases.
11/01/2024	0.20	Analyze the Court's orders to determine the Court's discovery dispute procedure.
11/01/2024	0.40	Phone calls with Plaintiff about his deficient discovery requests.
11/01/2024	0.10	Correspond with Plaintiff about his reply brief for his cross motion for summary judgment.
11/02/2024	0.20	Strategize about how to address Plaintiff's evasive and contradictory responses to written discovery.

11/02/2024	0.30	Strategize whether a discovery dispute before Plaintiff's deposition is necessary.
11/03/2024	0.20	Strategize about Rule 37 remedies and the timing of requesting the same and how to utilize Plaintiff's YouTube video to show that he deliberately withheld information.
11/03/2024	0.70	Draft a third set of written discovery to serve upon Plaintiff.
11/04/2024	0.20	Consider whether Plaintiff complied with the Court's order to shorten his reply brief by just moving arguments to footnotes.
11/04/2024	0.20	Strategize about documents and materials to use at Plaintiff's deposition.
11/05/2024	5.20	Depose William Montgomery.
11/05/2024	0.20	Correspond with the court reporter to confirm the exhibit list used for the deposition of William Montgomery.
11/05/2024	1.20	Prepare for the deposition of William Montgomery by analyzing exhibits to be used and formulating lines of questioning.
11/05/2024	0.50	Amend 3rd set of written discovery to Plaintiff to take into account the information learned at deposition concerning other documentation available for production.
11/05/2024	0.40	Correspond with Sedgwick about the likelihood of Plaintiff filing a Complaint concerning additional incidents at Best Buy for November 2023.
11/05/2024	0.10	Correspond with Plaintiff about Best Buy's third set of written discovery requests to Plaintiff.
11/05/2024	0.10	Consider whether meta data will be helpful in determining whether Plaintiff edited the videos that were provided in Rule 26 disclosures.
11/13/2024	0.10	Finalize the draft of the Third Supplemental Disclosures.
11/13/2024	0.30	Correspond with Khay Harris about banning Plaintiff from Best Buy properties and receipt information for Black Friday 2023.
11/13/2024	0.10	Correspond with Plaintiff about producing David Montgomery for a deposition.
11/14/2024	0.20	Finalize deposition subpoena and waiver in order to confirm it is compliant with Rules 30 and 45.
11/14/2024	0.20	Correspond with Plaintiff and David Montgomery about deposing David Montgomery and obtaining a waiver of subpoena.
11/15/2024	0.10	Reformat the subpoena to appear for deposition at the request of David Montgomery.
11/15/2024	0.30	Correspond with David Montgomery about the subpoena duces tecum and waiver and appearing a deposition.
11/15/2024	0.10	Correspond with William Montgomery about the need for a subpoena waiver from David Montgomery to proceed with scheduling his deposition.
11/15/2024	0.20	Strategize about the need to hire a process server for the deposition subpoena for David Montgomery and consider the timing of the same to ensure cooperation from Plaintiff and David Montgomery.
11/17/2024	0.10	Correspond with William Montgomery about procuring a waiver of service for David Montgomery's deposition subpoena.

11/17/2024	0.10	Analyze the waiver of service for David Montgomery's deposition subpoena to confirm it was properly executed and complies with Rule 30 and Rule 45.
11/18/2024	0.20	Correspond with William Montgomery to confer on his motion to add punitive damages.
11/18/2024	0.20	Strategize about rebuttal arguments to assert against a motion to add punitive damages.
11/18/2024	0.10	Correspond with Plaintiff about deposing his brother.
11/19/2024	0.20	Strategize about prejudice arguments to assert to rebut Plaintiff’s motion to amend the Complaint.
11/19/2024	0.60	Correspond with Sedgwick and Best Buy about the Court's order dismissing Plaintiff's claims and the likelihood of an appeal.
11/19/2024	0.30	Strategize about information to elicit from David Montgomery that could provide a basis for motions practice.
11/19/2024	0.10	Correspond with David Montgomery about the cancellation of his deposition in light of the Court's dismissal of the Plaintiff’s claims.
11/19/2024	0.20	Correspond with William Montgomery about the Court's order on summary judgment and his intent to appeal the order.
11/19/2024	0.30	Analyze and consider the impact of the Court's order for motion for summary judgment and consider the odds of success upon appeal.
11/19/2024	0.10	Strategize about obtaining a Bill of Costs in light of the unlikelihood Best Buy will be able to recoup such costs.
11/20/2024	0.10	Correspond with Sedgwick and Best Buy about the likelihood of Plaintiff filing another lawsuit against Best Buy for 2023 incidents.
11/21/2024	0.10	Strategize about expenses to include in a Bill of Costs.
11/26/2024	0.10	Strategize about additional information to include in a Bill of Costs.
11/26/2024	0.20	Strategize about whether it would be appropriate to request attorney's fees given the Court's ruling on summary judgment.
11/27/2024	0.30	Amend draft of Bill of Costs to reflect additional costs that were recently discovered.
12/02/2024	0.10	Correspond with Plaintiff about the proposed bill of costs to meet the Court's conferral requirements.
12/02/2024	0.40	Correspond with Sedgwick and advise as to the procedure for Plaintiff submitting an appeal in light of Plaintiff stating that he would do so.
12/02/2024	0.20	Correspond with Plaintiff to confer about Plaintiff's motion to reconsider the Court's order of summary judgment dismissing all of Plaintiff's claims.
12/02/2024	0.20	Strategize about objecting to the motion to proceed in forma pauperis.
12/03/2024	0.30	Analyze Plaintiff's motion for reconsideration and consider rebuttal arguments to assert.
12/03/2024	0.20	Correspond with Plaintiff about his objections to the Bill of Costs to be filed with the Court.
12/03/2024	0.20	Amend the Bill of Costs to include a paragraph concerning conferral edits and noting that Plaintiff did not provide his position before the Bill of Costs was filed.
12/04/2024	1.10	Correspond with Khay Harris to advise Sedgwick concerning Plaintiff's motion for reconsideration and to advise regarding the Bill of Costs and a

		Motion for Attorney's including a discussion of the collectability of such monetary awards.
12/04/2024	0.50	Correspond with Plaintiff to confer in advance of filing a motion for sanctions and attorney's fees.
12/19/2024	5.80	Draft Best Buy's Response in Opposition to Plaintiff's Motion to Reconsider
12/23/2024	3.20	Analyze Plaintiff's 200-page deposition transcript and identify excerpts to potentially use in a motion for attorney's fees or other future motions.
12/24/2024	0.60	Analyze Plaintiff's YouTube video to identify excerpts and quotes to reference in a motion for attorney's fees.
12/24/2024	0.10	Correspond with Plaintiff about Best Buy's response to Plaintiff's Motion for Reconsideration.
12/30/2024	0.30	Correspond with Plaintiff about the case law cited in Best Buy's response to the motion for reconsideration.
12/30/2024	6.20	Draft the motion for attorney's fees at the request of Khay Harris.
12/31/2024	0.70	Finalize the motion for attorney's fees by including additional citations to quotes from Mr. Montgomery highlighting the sting he set up for Best Buy.
12/31/2024	0.30	Analyze Plaintiff's reply brief in support of his motion for reconsideration and consider what steps to take if the motion is granted.
12/31/2024	0.20	Draft a proposed order for the motion for attorney's fees.
12/31/2024	0.20	Correspond with Khay Harris to advise about the procedural posture of dispositive motions and the likelihood of Plaintiff appealing.
12/31/2024	0.60	Draft Rule 60 Notice to address legal authority citations.
12/31/2024	0.30	Analyze exhibits to be submitted with the Court to confirm that the correct emails and the correct deposition excerpts are submitted with Best Buy's response to the motion for reconsideration.
12/31/2024	0.10	Correspond with William Montgomery about his reply brief in support of the motion for reconsideration.
01/02/2025	0.20	Correspond with William Montgomery about the motion for attorney's fees and the Rule 60 notice filed with the Court.
01/02/2024	0.10	Correspond with Plaintiff on the motion for attorney's fees.
01/06/2025	0.30	Correspond with Plaintiff about the Court's order denying Plaintiff's motion for reconsideration and confer about Plaintiff's forthcoming second motion for reconsideration.
01/06/2025	0.20	Correspond with Khay Harris about the court's order rejecting Plaintiff's motion for reconsideration and the recently submitted motion for attorney's fees.
01/06/2025	0.10	Analyze the Court's order denying Plaintiff's motion for reconsideration.
01/06/2025	0.30	Strategize about whether Rule 121 imposes and deadlines and procedures on Plaintiff's ability to contest the bill of costs.
01/07/2025	0.20	Strategize about and anticipate Plaintiff contesting the Court's order on the bill of costs and how Best Buy will respond.
01/07/2025	0.10	Correspond with Plaintiff about the Court's order on Best Buy's bill of costs.
01/07/2025	0.10	Correspond with Khay Harris about the court's order on the bill of costs.

01/07/2025	0.10	Analyze the Court's order on the bill of costs.
01/08/2025	0.10	Correspond with Plaintiff about the Amended Order regarding Best Buy's bill of costs.
01/08/2025	0.10	Analyze the Court's amended order on Best Buy's bill of costs.
01/08/2025	0.20	Correspond with Khay Harris about the court's order on the bill of costs.
01/21/2025	0.10	Correspond with Plaintiff about his response to Best Buy's motion for attorney's fees and his second motion for reconsideration.
01/22/2025	0.30	Analyze and consider the impact of Plaintiff's response to the motion for attorney's fees.
01/22/2025	0.20	Analyze and consider the impact of Plaintiff's second motion for reconsideration.
01/23/2025	0.30	Correspond with Khay Harris about the ongoing motions practice from the Black Friday 2022 claim including the motion for attorney's fees and motion for reconsideration and the bill of costs granted by the Court.
01/23/2025	0.20	Strategize about how Best Buy should address the other similar lawsuits in its motion for attorney's fees.
01/28/2025	4.20	Draft Reply Brief in support of Defendant's Motion for Attorneys' Fees.
01/28/2025	0.30	Strategize about how to address the lack of a formal filing of Plaintiff's response to the motion for attorney's fees.
01/28/2025	0.30	Correspond with Plaintiff about the briefings for the Motion for Attorneys' Fees and the clerical errors therein.
01/28/2025	0.20	Analyze the Court docket and Plaintiff's other court filings to determine if there is a clerical error with Plaintiff's Response to the motion for attorney's fees that may require correction under Rule 60.
01/28/2025	0.20	Analyze the pleadings in the three new Best Buy lawsuits to determine if false imprisonment was similarly asserted and if that fact should be addressed in the briefing concerning attorney's fees.
02/05/2025	0.40	Correspond with Khay Harris to advise them about responding to Plaintiff's second motion for reconsideration and also to discuss the motion for attorney's fees.
02/07/2025	0.70	Draft Best Buy's Response in Opposition to Plaintiff's Second Motion for Reconsideration.
02/15/2025	0.20	Analyze and consider the impact of Plaintiff's reply to his second motion for reconsideration.
02/15/2025	0.10	Correspond with Plaintiff about his reply in support of his motion for reconsideration.
02/18/2025	0.10	Analyze the Court's order denying Plaintiff's second motion for reconsideration.
02/25/2025	0.10	Correspond with Khay Harris about Plaintiff's second motion for reconsideration.
02/28/2025	0.20	Correspond with Plaintiff about the motion to reconsider court fees for the Black Friday 2022 lawsuit appeal.
02/28/2025	1.80	Draft motion to reconsider the Court's Order regarding court fees.
02/28/2025	0.10	Draft proposed order for the motion to reconsider the Court's Order re Court Fees.
Total	**36.3**	

Mary B. Pucelik

Date	Time Spent	Task Performed
10/10/2024	7.20	Draft additional undisputed material facts and responsive arguments in Defendant's response to Plaintiff's cross motion for summary judgment.
Total	**7.2**	

2017 ECONOMIC SURVEY

DATE FILED
April 16, 2025 3:18 PM



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EXHIBIT B

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EXHIBIT B

SURVEY DETAILS

Purpose

The findings cited in this report are based on a study sponsored by the Colorado Bar Association (CBA). The purpose of this research was to collect updated information on the economics of law practice, including:

- professional demographics
- incomes and billing rates among those licensed to practice in Colorado
- other cash compensation benefits offered/received
- billing practices
- paralegal/legal assistant salaries and billing rates

The Findings section provides a detailed overview of survey results. The Appendices provide the complete set of results in more specificity.

Method

The survey sample of 25,253 included all emailable individuals in the CBA database identified by CBA as licensed attorneys in Colorado.

The 22-question survey was designed jointly by CBA and Readex, building off of prior economic surveys conducted by CBA in 2012 and 2010. Placement of the survey on a web page, distribution of the electronic survey invitations, and tabulation of the results were handled by Readex.

On July 10, 2017, Readex contacted all sample members via an email in the name of CBA's current president, asking for participation in the study via a unique link included in the email. As an incentive to participate, respondents were able to enter into a sweepstakes for a chance to win one of five $100 Visa gift cards.

The first survey question, "Did you practice law in Colorado in 2016?" acted as a qualifier for survey participation. In an effort to best represent the audience of interest, those who indicated "no" were thanked for their interest and terminated from the survey.

Shortly after the initial emails were sent, it was suggested by a survey participant that judges would not pass this qualifier as they do not practice law (rather, they are licensed to practice). Because judges were part of the audience of interest, the first survey question was changed to "Were you licensed to practice law in Colorado in 2016?" The 125 individuals that had been previously terminated from the survey were sent another email on July 11, explaining the change that was made and asking for their participation if they were licensed to practice law in Colorado in 2016.

SURVEY DETAILS *(continued)*

Response

The survey was closed for tabulation on July 24, 2017, with 1,694 total usable responses—a 6.7% response rate. To best represent the audience of interest, 87 respondents were terminated from the survey after indicating in question one they were not licensed to practice law in Colorado in 2016.

The margin of error for percentages based on 1,607 respondents who were licensed to practice law in Colorado in 2016 is ±2.4 percentage points at the 95% confidence level.

As with any research, the results should be interpreted with the potential of non-response bias in mind. It is unknown how those who responded to the survey may be different from those who did not respond. In general, the higher the response rate, the lower the probability of estimation errors due to non-response and thus, the more stable the results.

The response was tabulated and this report was prepared by Readex in accordance with accepted research standards and practices. Percentages may not add to 100 for single answer questions due to rounding and/or non-response.

EXECUTIVE SUMMARY

Results in this report are based on respondents who indicated they were licensed to practice law in Colorado in 2016. Compensation data is based on those who worked full time (at least 30 hours per week) in their primary position in 2016. The following summary provides a brief overview of the results discussed in detail throughout the report.

A majority of respondents (72%) were private practitioners in 2016. Fewer were public practitioners (22%).

72%	PRIVATE PRACTITIONERS	22%	PUBLIC PRACTITIONERS
24%	solo practitioner	7%	state government
18%	partner	7%	city/county government
17%	associate	3%	judge/magistrate/ALJ
8%	in-house counsel (for-profit org.)	2%	federal government
3%	of counsel	2%	in-house counsel (not-for-profit organization)
2%	contract attorney	1%	counsel with legal aid/legal services agency

Arbitrators/mediators (1%), those in academics (1%), and those who indicated their position/affiliation as something other than the listed options (6%) are not overtly identifiable as private or public, and are therefore excluded from the private/public segments throughout the report. They are included in the total (all respondents) results.

Private practitioners differ from public practitioners in a variety of ways—for example, they average more years practicing law, are more likely to be male, and tend to work for smaller firms/organizations.

	TOTAL	private	public
# OF YEARS PRACTICING LAW			
mean	18.7	19.6	15.8
median	16	17	13
GENDER			
male	56%	59%	50%
female	42%	38%	48%
no answer	2%	3%	2%
# OF ATTORNEYS AT ENTIRE FIRM/ORG			
mean	62.3	47.0	114.3
median	4	3	20

*A **median** is the value that lies at the middle of a distribution: that is, 50% of the values are above it and 50% are below. It represents the "typical" response, and is not influenced by extreme values.*

*A **mean** is the arithmetic average of a distribution (i.e., a set of values). Means are very much influenced by extremely large or extremely small values in the distribution.*

When comparing survey respondents to known demographics of the actual population of active Colorado attorneys,* respondents aligned closely with the larger population of interest. These resemblances provide confidence that survey results are representative of active Colorado attorneys.

County	survey respondents	active CO attorneys*
Denver	38%	43%
Arapahoe	11%	11%
Boulder	9%	8%
Jefferson	7%	10%
Larimer	6%	3%
El Paso	5%	6%
Douglas	4%	4%
Mesa	2%	1%
Adams	2%	3%
all other CO counties**	10%	11%
no answer	6%	

Gender	survey respondents	active CO attorneys*
male	56%	61%
female	42%	39%
no answer	2%	

**as provided by the Colorado Supreme Court Office of Attorney Registration to CBA in August 2017*

***counties with fewer than 2% of respondents*

EXECUTIVE SUMMARY

Income

Among those licensed to practice law in Colorado and who worked full time in their primary position in 2016, the median pre-tax income was $105,000. The spread of incomes was wide—while 14% earned less than $60,000, a similar proportion (15%) earned $200,000 or more.

As would be expected, income varies by position/affiliation:

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
All Full-Time Respondents	1,211	128,200	70,000	**105,000**	150,900
Private Practitioners	890	138,200	72,000	**110,000**	175,000
Solo Practitioner	253	113,600	57,300	**96,000**	150,000
Partner	252	208,200	115,000	**167,500**	250,000
Associate	232	89,000	63,500	**80,000**	110,000
In-House Counsel	105	148,600	100,000	**150,000**	185,500
Of Counsel	32	140,000	90,000	**144,000**	188,000
Contract Attorney	16	68,800	45,500	**55,900**	99,000
Public Practitioners	259	101,400	70,000	**95,000**	126,000
Judge/Magistrate/ALJ	31	139,500	120,000	**156,000**	160,000
City/County Government	78	102,100	71,800	**97,500**	125,300
State Government	87	86,700	62,000	**80,000**	107,000
Federal Government	24	112,000	92,000	**106,400**	146,000
In-House Counsel: Non-Profit	26	113,600	74,000	**105,500**	131,300
Counsel With Legal Aid/Legal Services Agency	13	60,000	45,500	**55,000**	74,500
Arbitrator/Mediator	3	-	-	-	-
Academic	6	101,200	73,800	**101,000**	130,000

Income also tends to…

- correlate positively with the number of years practicing law.
- correlate positively with the number of practicing attorneys at the firm/organization. However, there is a dip in median income for those at mid-sized firms/organizations (20 - 99 attorneys), which is more pronounced among public practitioners than private.
- vary by primary practice area.
- vary by geographic location (likely a function of many variables, such as urban versus rural populations and disparate costs of living).
- vary by gender. (Note, however, that a simple bivariate correlation is not sufficient to establish discrimination as other variables may be factors. For example, males average more years practicing law than females—a factor that correlates positively with income.)

INCOME NOTES:

- Percentiles (25th, 50th, and 75th) help to show the spread of incomes. 25% earn less than the 25th percentile, 50% earn less than the 50th percentile, and 75% earn less than the 75th percentile.
- **To ensure respondent confidentiality, income results based on fewer than 5 answering cases are suppressed.**

EXECUTIVE SUMMARY

Other Cash Compensation

About three in four respondents (73%) were eligible to receive at least one type of additional cash compensation (beyond their annual income) in 2016 for their primary position. The specific types of other cash compensation available to private and public practitioners varied, with private practitioners more likely than public practitioners to receive several of the listed types.

	TOTAL	private	public
continuing legal education (CLE) reimbursement	53%	54%	49%
CBA dues	51%	**55%**	40%
401(k) contributions from employer/firm	42%	43%	40%
dues for other professional organizations	38%	**42%**	27%
bonuses	33%	**41%**	11%
profit sharing	15%	**19%**	0%
education reimbursement (other than CLE)	9%	9%	7%
other	13%	11%	**19%**
AT LEAST ONE	73%	72%	**78%**

boldface denotes a statistically significant difference from the other segment

Because a minority of respondents were eligible to receive bonuses, profit sharing, or 401(k) contributions from their employers/firms in 2016, the median value reported for each was $0. However, some did receive substantial amounts from each of these benefits. Among those receiving each, the median reported values are as follows:

among those receiving each:	TOTAL	private	public
median bonuses ($)	10,000	10,000	2,500
median profit sharing ($)	25,000	25,000	*
median 401(k) contributions from employer/firm ($)	5,200	5,000	5,500

**fewer than five answering respondents*

Billing Practices

Private practitioners use a variety of billing practices. A majority billed at least some of their work via hourly rates in 2016. Smaller, but still significant proportions, billed at least some of their work via each of the other listed methods.

Public practitioners were most likely to have indicated their offices billed via a method other than those listed (54%). A quarter of public practitioners (25%) did not answer the question.

% who bill at least some of their work via each practice	TOTAL	private	public
hourly rate	61%	79%	12%
flat/fixed rate	32%	40%	9%
contingency	15%	20%	0%
unbundling/discrete task/limited scope representation	7%	10%	0%
other	21%	10%	54%
no answer	9%	3%	25%

EXECUTIVE SUMMARY

Billing Practices *(continued)*

The most common hourly billing rate among those who worked full time and billed at least some of their work via hourly rates in 2016 (a majority of whom were private practitioners) was $254, on average.

As would be expected, billing rates vary by position/affiliation:

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
ALL RESPONDENTS	785	254	200	**250**	300
PRIVATE PRACTITIONERS	729	260	200	**250**	300
Solo Practitioner	223	243	200	**250**	295
Partner	249	310	238	**295**	350
Associate	206	226	175	**205**	275
In-House Counsel: For Profit	6	155	70	**175**	213
Of Counsel	30	304	229	**300**	360
Contract Attorney	15	114	30	**75**	225
PUBLIC PRACTITIONERS	29	91	50	**95**	100
Judge/Magistrate/ALJ	1	-	-	**-**	-
City/County Government	6	74	46	**55**	111
State Government	17	87	83	**98**	100
Federal Government	1	-	-	**-**	-
In-House Counsel: Non-Profit	3	-	-	**-**	-
Counsel With Legal Aid/Legal Services Agency	1	-	-	**-**	-
OTHER					
Arbitrator/Mediator	3	-	-	**-**	-
Academic	1	-	-	**-**	-

Similar to income, billing rates tend to correlate positively with the number of years practicing law. They vary by the number of attorneys at their entire firm/organization, primary practice area, and by geographic location, as well, and males reported a higher median value than females.

FINDINGS: Respondent Profile

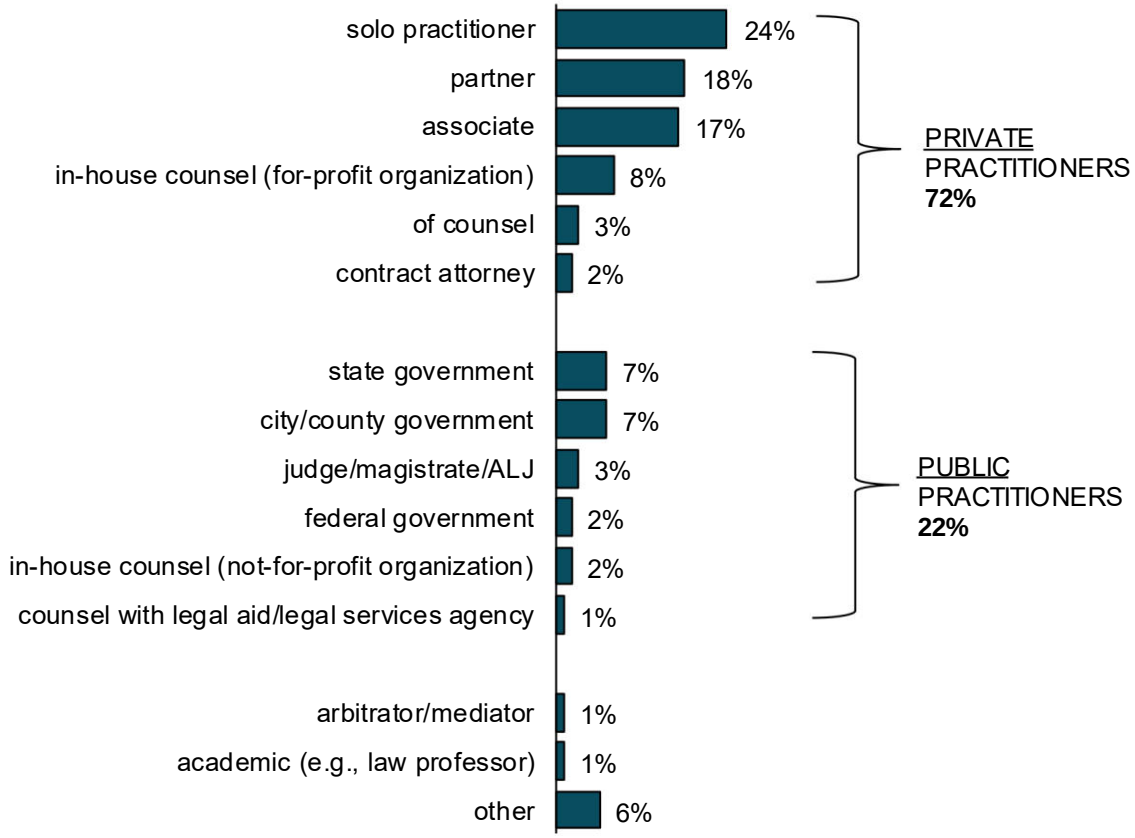
A majority of respondents (72%) were private practitioners in 2016; far fewer (22%) were public practitioners. See chart below for the list of positions/affiliations that are assumed to be private versus public for analysis in this report.

Arbitrators/mediators, academics, and those who indicated their position/affiliation as something other than the listed options are not overtly identifiable as private or public, and are therefore excluded from the private/public segments throughout the report. They are included in the total (all respondents) results.

Position/Affiliation

What best described your primary position/affiliation in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016



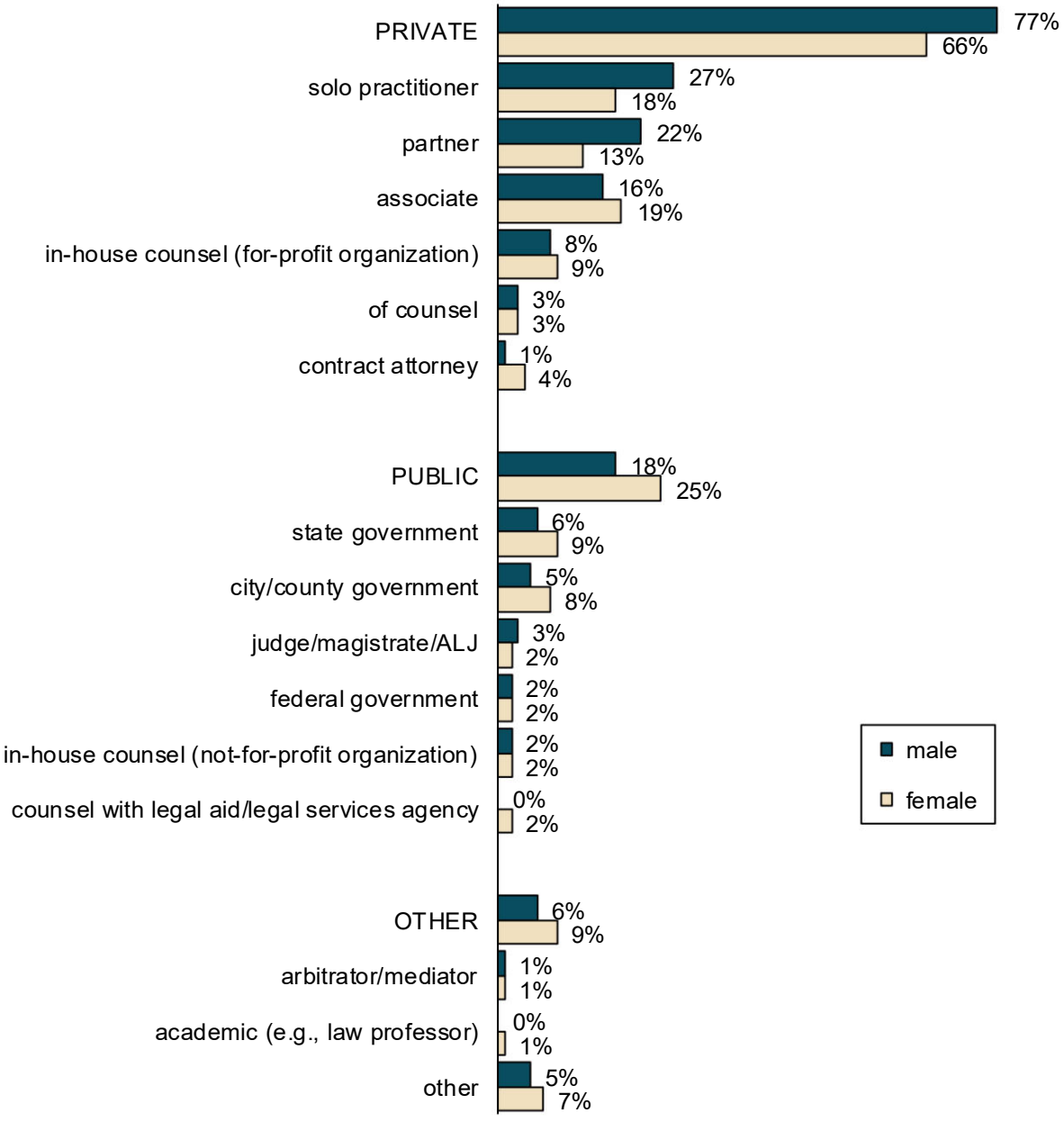
FINDINGS: Respondent Profile

Men were more likely than women to be private practitioners (77% versus 66%). In particular, they were more likely than women to be solo practitioners (27% versus 18%) and partners (22% versus 13%).

Position/Affiliation by Gender

What best described your primary position/affiliation in 2016?

base: respondents who were licensed to practice law in Colorado in 2016 in each segment



FINDINGS: Respondent Profile

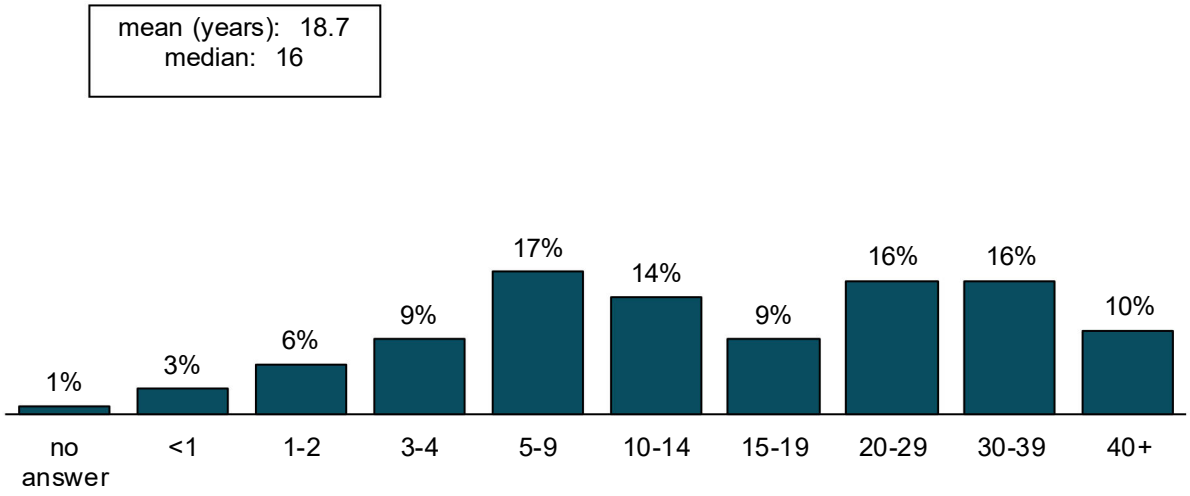
The typical (median) respondent has been practicing law for 16 years. While 42% have been practicing for at least 20 years, a much smaller proportion (18%) have been doing so for fewer than five years.

On average, private practitioners have more tenure practicing law than public practitioners, and males tend to have more experience than females.

Number of Years Practicing Law

For how many years have you been practicing law?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016; those in each segment



BY PRIVATE VERSUS PUBLIC PRACTITIONERS AND BY GENDER

	private	public	male	female
mean (years)	19.6	15.8	20.8	15.4
median	17	13	19	13

*A **median** is the value that lies at the middle of a distribution: that is, 50% of the values are above it and 50% are below. It represents the "typical" response, and is not influenced by extreme values.*

*A **mean** is the arithmetic average of a distribution (i.e., a set of values). Means are very much influenced by extremely large or extremely small values in the distribution.*

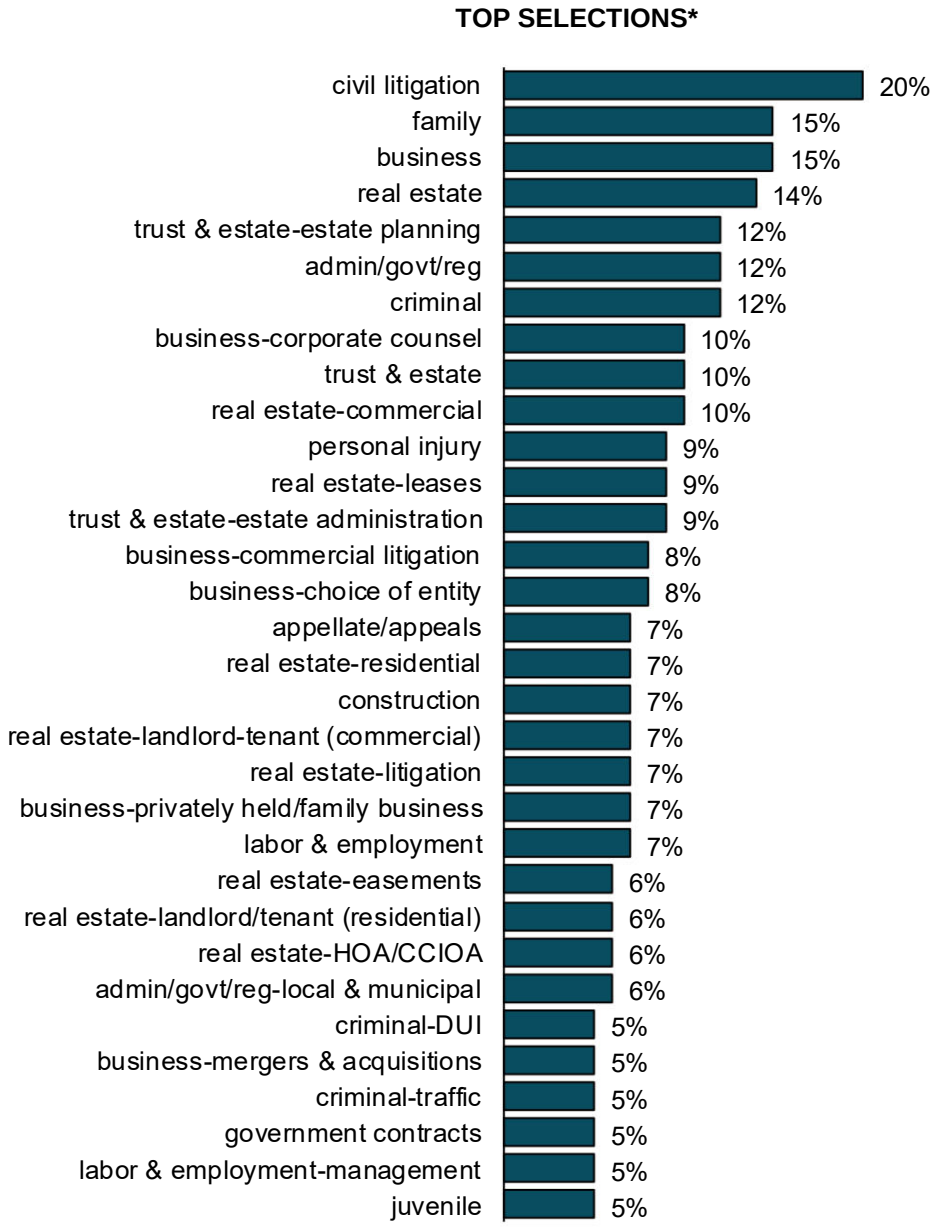
FINDINGS: Respondent Profile

Practice areas are widespread among respondents—no individual area was claimed by more than 20% as one in which they practiced for their primary position in 2016. Of 100 listed practice areas, 32 were selected by at least 5%.

Areas of Practice

In what areas did you practice for your primary position in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016 (multiple answers)



*practice areas selected by at least 5% of respondents

EXHIBIT B

FINDINGS: Respondent Profile

Primary practice areas were extremely diverse—only 15 of 100 listed practice areas were considered to be primary for at least 2% of respondents.

Primary Practice Area

What did you consider to be your primary practice area in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016



*practice areas selected by at least 2% of respondents

FINDINGS: Respondent Profile

Most respondents (91%) spent at least half of their time in their primary position in 2016 practicing in the area they consider to be their primary practice area. The typical respondent spent 83% of their time in their primary practice area.

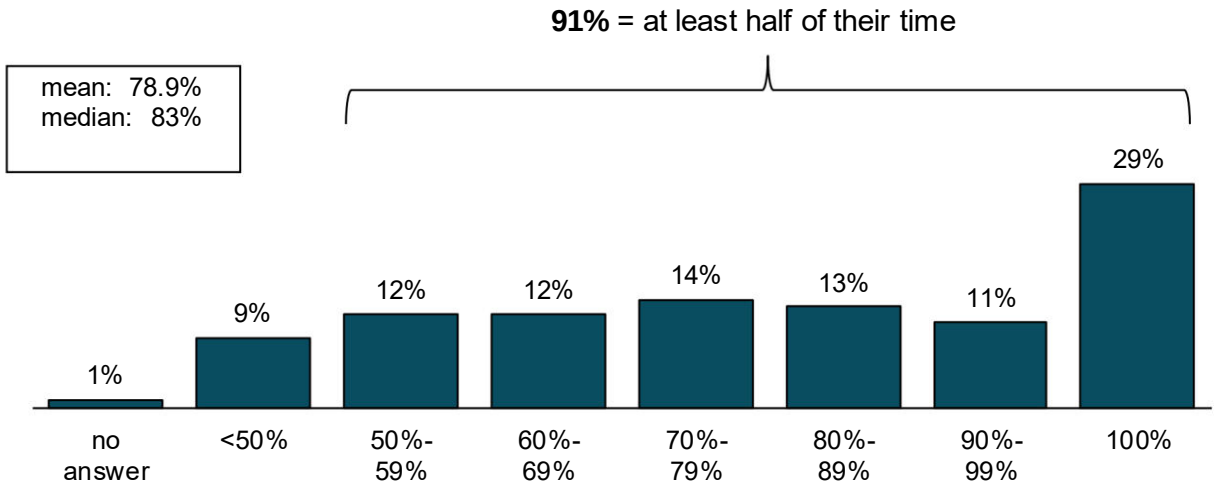
Public practitioners were much more likely than private practitioners to practice 100% of their time in their primary area (48% versus 22%, respectively).

Proportion of Time Spent in Primary Practice Area

What percentage of the time did you spend in your primary position practicing in the area you selected in question #9?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS

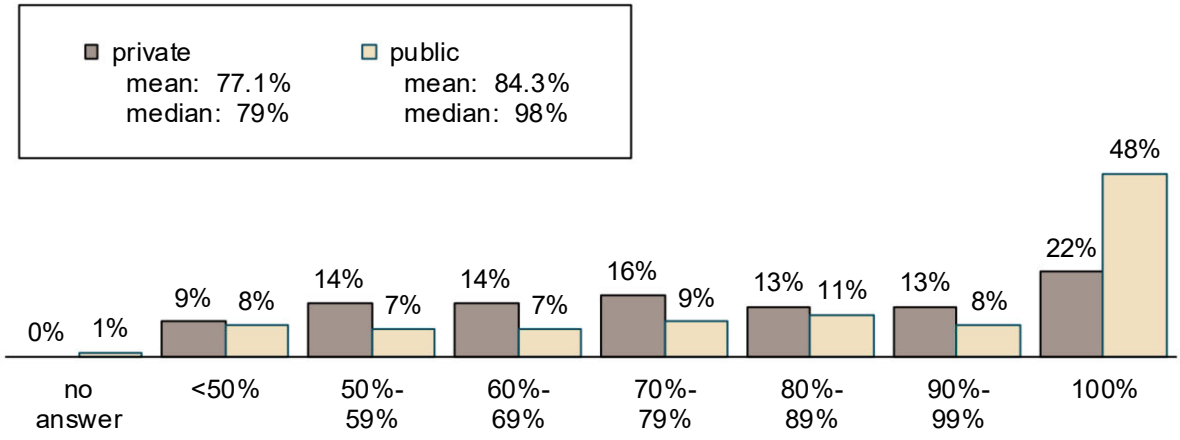


EXHIBIT B

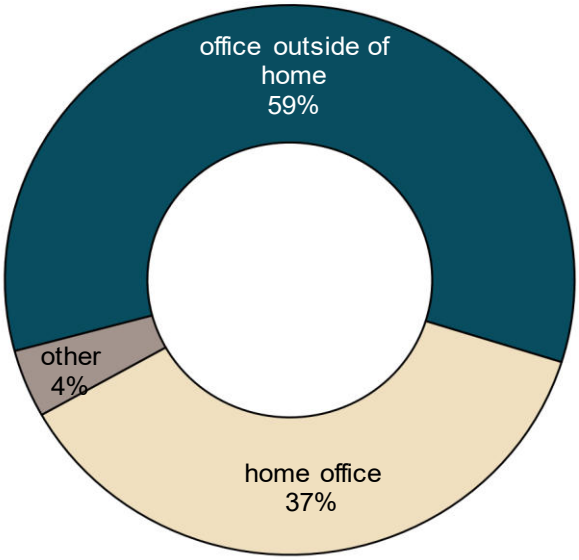
FINDINGS: Respondent Profile

Of the 24% of respondents who are solo practitioners, three-fifths (59%) primarily worked in offices outside of their homes in 2016.

Office Type For Solo Practitioners

In what type of office did you primarily work in 2016?

base: 379 respondents who were licensed to practice law in Colorado in 2016 and whose primary affiliation was solo practitioner



FINDINGS: Respondent Profile

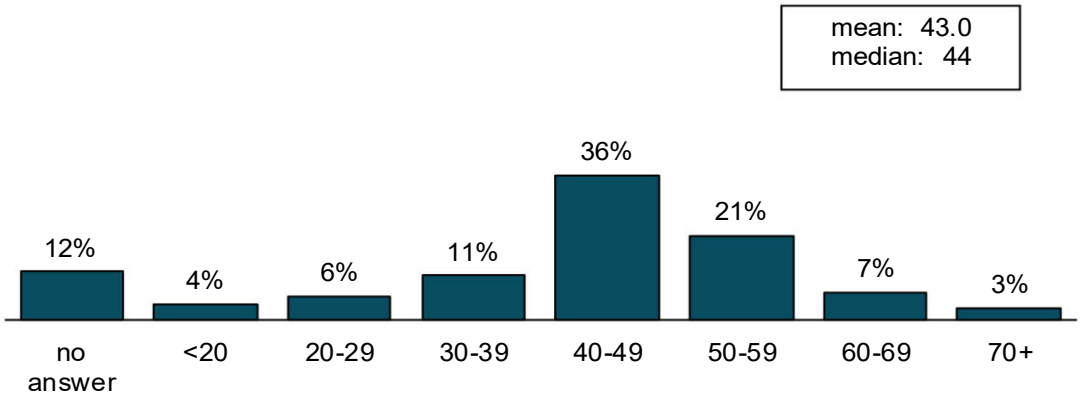
The typical answering respondent worked an average of 44 total hours per week in 2016 for their primary position, including billable and non-billable hours.

Total Average Hours Worked Per Week

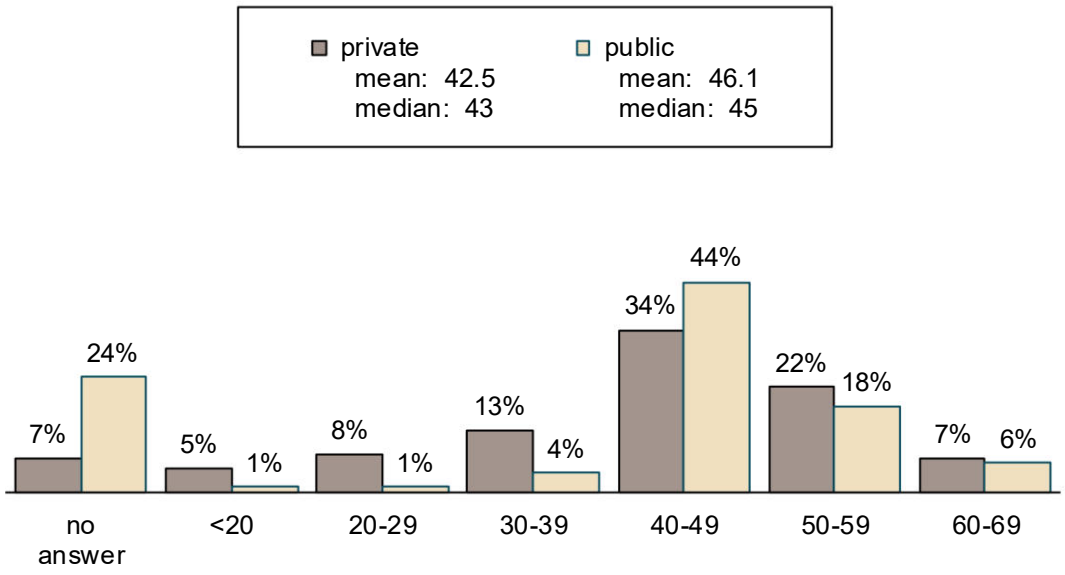
On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Respondent Profile

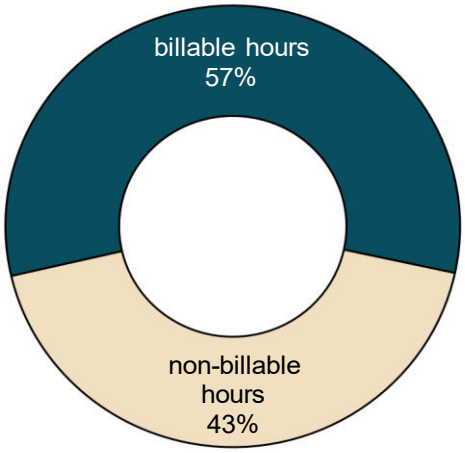
For the average respondent, 57% of their total hours worked in their primary position in 2016 were billable. Private practitioners averaged a higher percentage of billable hours than public practitioners (61% versus 45%).

Hours Worked: Billable and Non-Billable

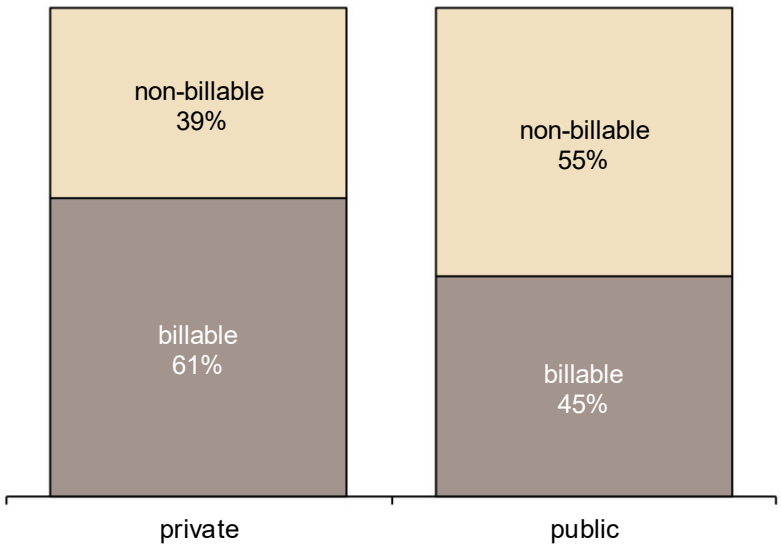
On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016 answering; those in each segment (fill-in answers)

ALL RESPONDENTS
(average)



PRIVATE AND PUBLIC PRACTITIONERS
(average)



FINDINGS: Respondent Profile

The typical answering respondent indicated there were four practicing attorneys at their entire firm/organization (including all locations) in 2016. The average report was much higher at 62.3, influenced by a handful of large reports.

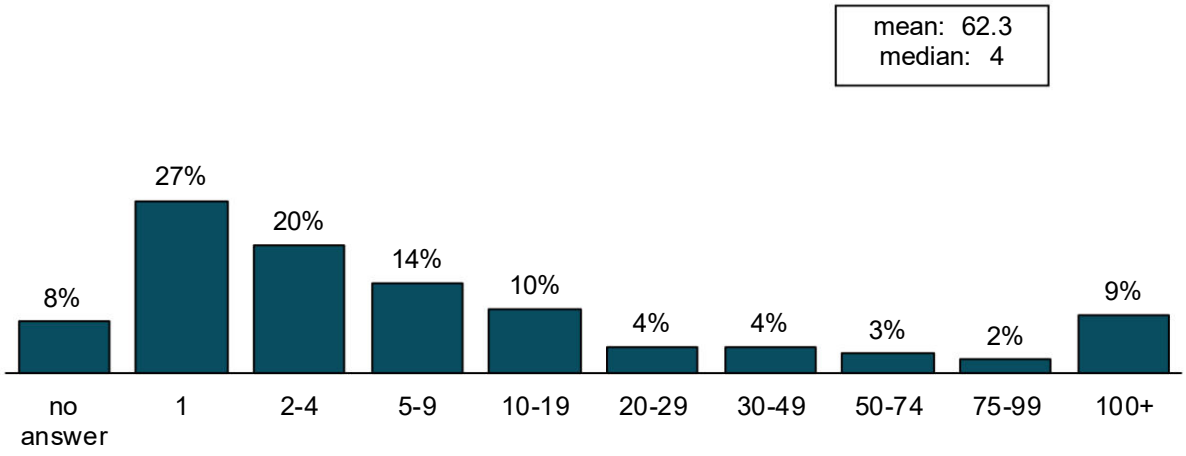
Public practitioners tend to work at larger firms/organizations (by number of practicing attorneys) than private practitioners.

Number of Attorneys in Entire Firm/Organization

Including yourself, how many attorneys practiced at your entire firm/organization (including all locations) in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS

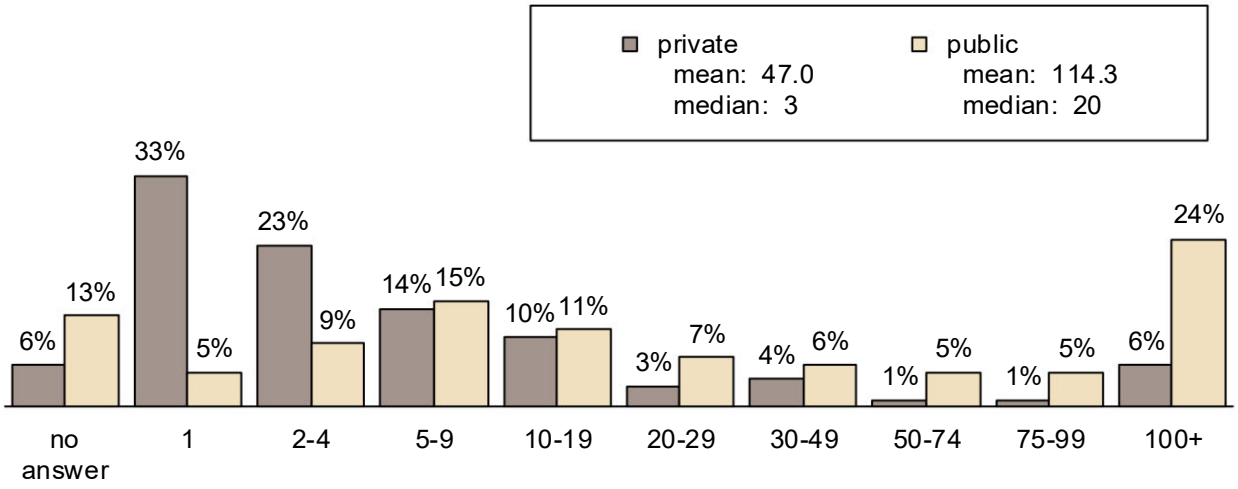


EXHIBIT B

FINDINGS: Respondent Profile

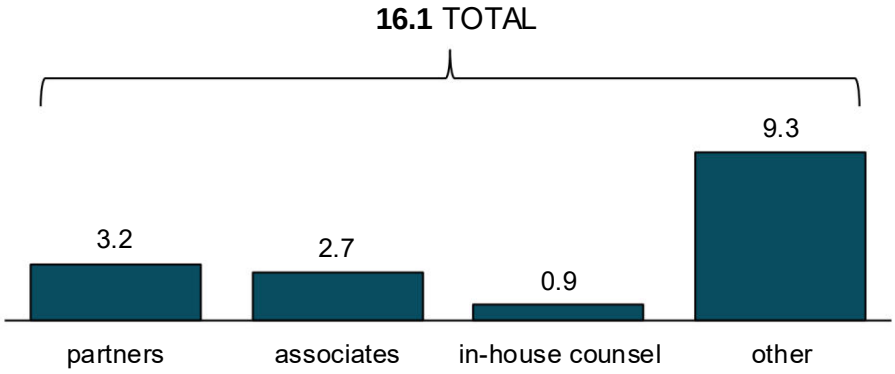
The average respondent answering worked at an office location in 2016 with about 16 practicing attorneys. This number increases to about 40 among public practitioners, and decreases to about 9 among private practitioners.

Number of Attorneys at Office Location: Mean Summary

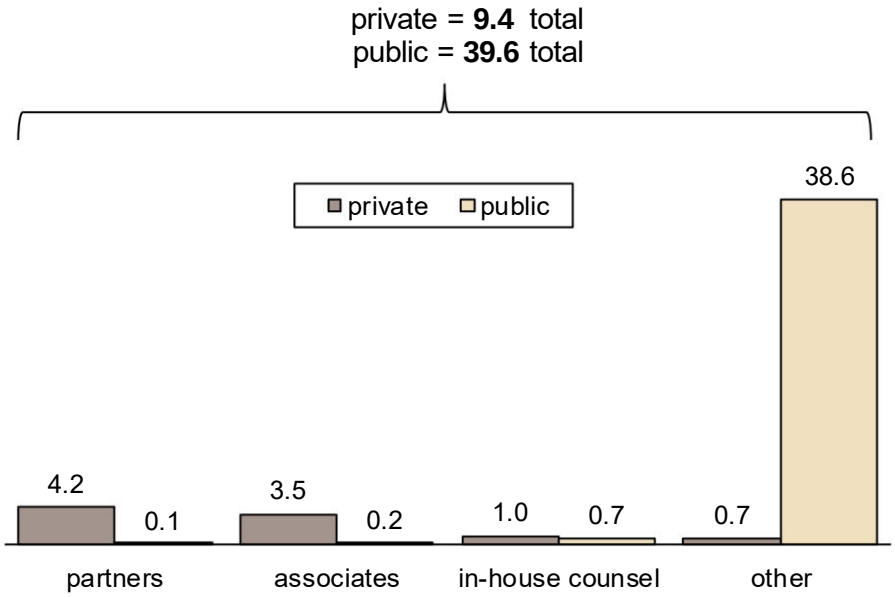
Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016 answering; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



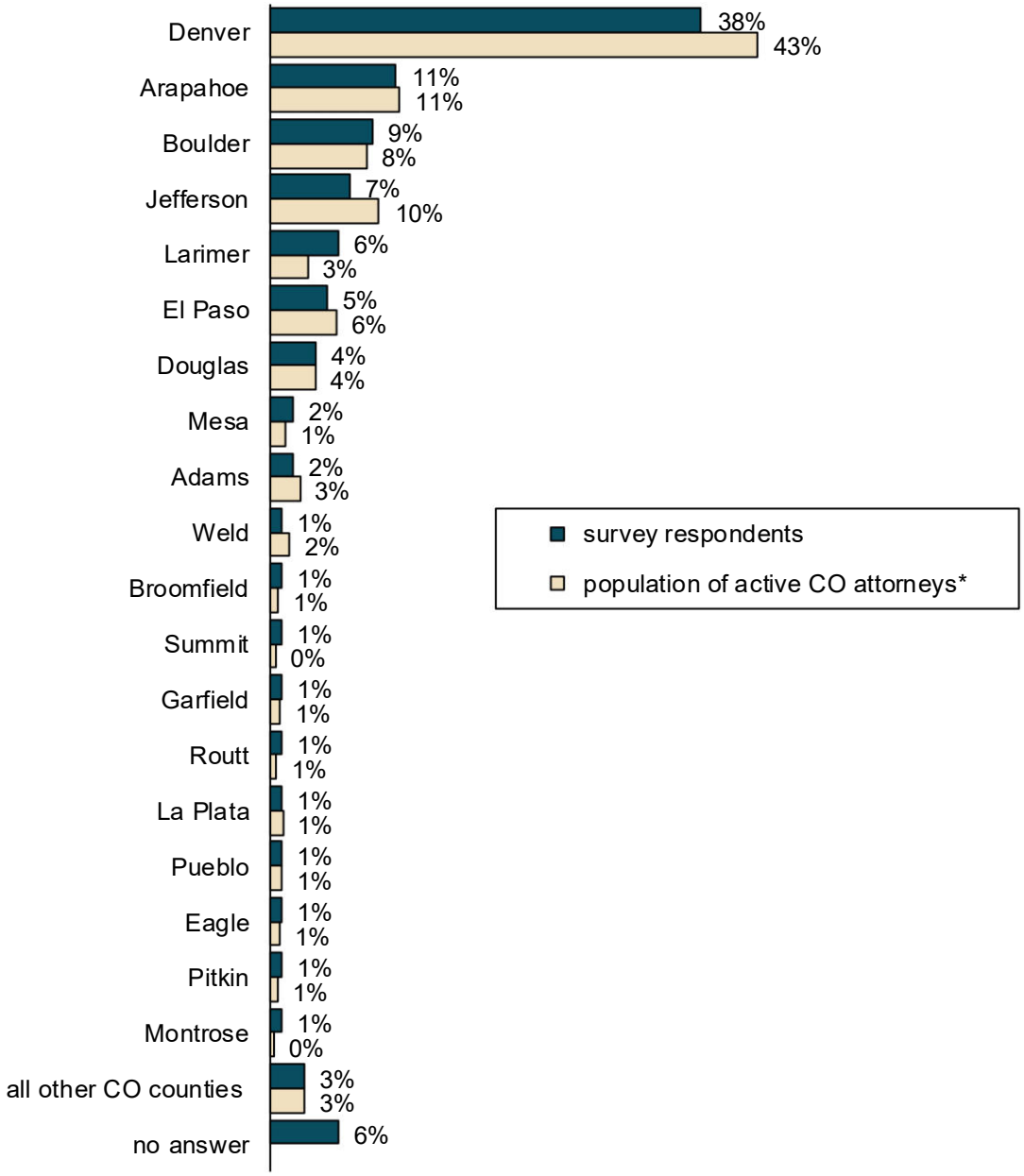
FINDINGS: Respondent Profile

The geographic distribution of survey respondents (based on their office location in 2016) is parallel to that of the actual population of active attorneys in Colorado (as provided by the Colorado Supreme Court Office of Attorney Registration to CBA in August 2017). Minor differences may be due to the 6% of survey respondents who did not answer the office location question.

Office Location

In what county is the office in which you worked in 2016?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016; all 20,683 active attorneys in Colorado as of 8/22/17



*as provided by the Colorado Supreme Court Office of Attorney Registration to CBA in August 2017

FINDINGS: Respondent Profile

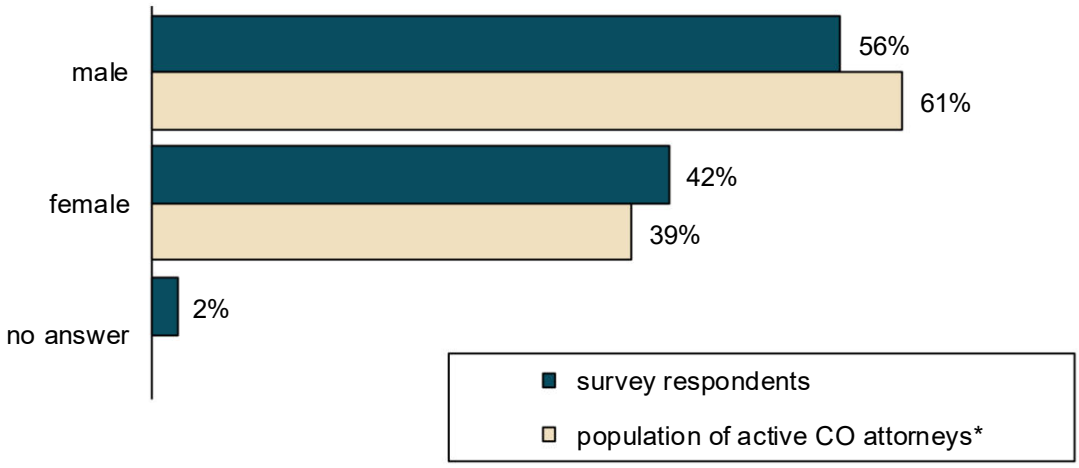
Like geographic distribution, the composition of respondents by gender (56% male, 42% female) is similar to that of the actual population of active attorneys in Colorado (as provided by the Colorado Supreme Court Office of Attorney Registration to CBA in August 2017).

Both of these resemblances (geographic distribution and gender) provide confidence that results are representative of the larger population of interest.

Gender

What is your gender?

base: 1,607 respondents who were licensed to practice law in Colorado in 2016; all 20,683 active attorneys in Colorado as of 8/22/17



*as provided by the Colorado Supreme Court Office of Attorney Registration to CBA in August 2017

FINDINGS: Income

The spread in annual pre-tax income was wide among those licensed to practice law in Colorado in 2016 and who worked full time (30 or more hours per week). While 14% earned less than $60,000 from their primary position, a similar proportion (15%) earned $200,000 or more. The typical respondent earned $105,000.

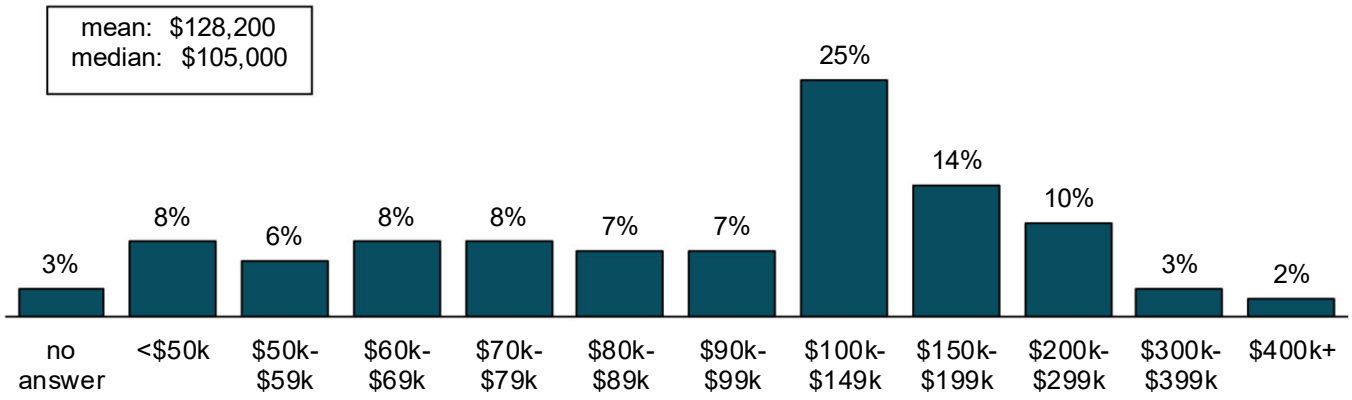
The median income among private practitioners was higher than that of public practitioners ($110,000 versus $95,000).

Income

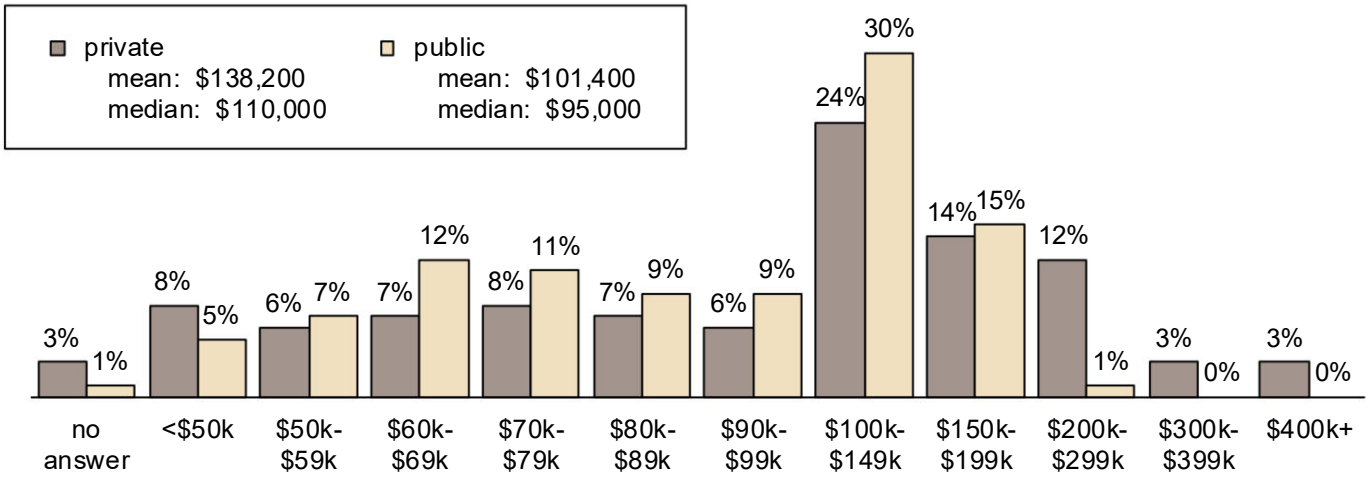
What was your annual pre-tax income from your primary position in 2016 (excluding bonuses, profit sharing, retirement benefits paid, and the monetary value of other benefits received)?

base: 1,244 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Income

Helping to account for the wide range of incomes, a number of factors show correlations with income.

The following pages (21 - 28) demonstrate the relationships between income and key single variables—position/affiliation, number of years practicing law, primary practice area, geographic location, number of attorneys at entire firm/organization, and gender—at the aggregate level (all full-time respondents) and among private versus public practitioners.

As would be expected, income varies by position/affiliation. Private practice partners reported the highest median income of $167,500. The widest spread in income is seen in this group, too—$135,000 separates the 25th and 75th percentiles. A more detailed analysis of income by various factors for each position/affiliation is provided in Appendix A.

Income by Position/Affiliation

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
PRIVATE PRACTITIONERS	890	138,200	72,000	**110,000**	175,000
Solo Practitioner	253	113,600	57,300	**96,000**	150,000
Partner	252	208,200	115,000	**167,500**	250,000
Associate	232	89,000	63,500	**80,000**	110,000
In-House Counsel: For Profit	105	148,600	100,000	**150,000**	185,500
Of Counsel	32	140,000	90,000	**144,000**	188,000
Contract Attorney	16	68,800	45,500	**55,900**	99,000
PUBLIC PRACTITIONERS	259	101,400	70,000	**95,000**	126,000
Judge/Magistrate/ALJ	31	139,500	120,000	**156,000**	160,000
City/County Government	78	102,100	71,800	**97,500**	125,300
State Government	87	86,700	62,000	**80,000**	107,000
Federal Government	24	112,000	92,000	**106,400**	146,000
In-House Counsel: Non-Profit	26	113,600	74,000	**105,500**	131,300
Counsel With Legal Aid/Legal Services Agency	13	60,000	45,500	**55,000**	74,500
OTHER					
Arbitrator/Mediator	3	-	-	-	-
Academic	6	101,200	73,800	**101,000**	130,000

INCOME NOTES:

- Percentiles (25th, 50th, and 75th) help to show the spread of incomes. 25% earn less than the 25th percentile, 50% earn less than the 50th percentile, and 75% earn less than the 75th percentile.
- **To ensure respondent confidentiality, income results based on fewer than 5 answering cases are suppressed.**

FINDINGS: Income

As would be expected, income tends to correlate positively with the number of years practicing law. The median income for those who have been practicing for 30-39 years ($150,000) was nearly three times that of the median income among those with less than 1 year of experience ($54,000). The median income dropped among those who've been practicing for at least 40 years, influenced by a handful of veterans providing lower reports.

The positive correlation between income and years in practice is seen among private and public practitioners alike.

Income by Number of Years Practicing Law

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
40+	98	163,200	83,500	**127,500**	240,000
30 - 39	185	175,700	96,500	**150,000**	220,000
20 - 29	184	171,400	100,600	**150,000**	190,000
10 - 19	285	126,800	85,500	**115,000**	150,000
5 - 9	217	98,100	70,000	**88,600**	120,000
3 - 4	121	77,500	58,600	**71,000**	91,800
1 - 2	83	64,300	50,000	**60,000**	75,000
<1	33	62,200	49,000	**54,000**	73,000
PRIVATE PRACTITIONERS	890	138,200	72,000	**110,000**	175,000
40+	80	170,400	82,800	**127,500**	250,000
30 - 39	154	184,300	95,000	**150,000**	238,300
20 - 29	131	189,600	105,000	**160,000**	205,000
10 - 19	206	133,800	85,000	**120,500**	175,000
5 - 9	151	101,900	72,000	**91,000**	129,000
3 - 4	89	80,800	60,000	**75,000**	95,000
1 - 2	51	69,500	52,000	**65,000**	85,000
<1	24	67,200	50,000	**58,500**	78,800
PUBLIC PRACTITIONERS	259	101,400	70,000	**95,000**	126,000
40+	12	143,600	101,000	**153,400**	165,000
30 - 39	25	134,700	108,200	**143,000**	159,500
20 - 29	43	132,600	102,500	**130,000**	158,000
10 - 19	67	107,100	88,000	**104,000**	122,000
5 - 9	55	85,600	69,000	**77,000**	98,000
3 - 4	26	69,400	56,000	**66,000**	80,000
1 - 2	22	56,800	48,300	**58,500**	65,500
<1	8	49,300	41,100	**49,000**	54,600

FINDINGS: Income

Income varies substantially by primary practice area (areas in which practitioners spend at least 50% of their time), with median incomes ranging from $55,000 (elder) to $210,000 (intellectual property).

It is important to note that data for many of the practice areas shown in the following tables are based on a small number of respondents and are considered statistically unstable.

Only the primary practice areas in which practitioners spend at least 50% of their time with at least five answering respondents are shown.

Income by Primary Practice Area in Which 50% or More of Time Is Spent

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
admin/gov/reg	39	95,200	71,000	**90,000**	111,000
admin/gov/reg-education/school	14	142,100	66,000	**127,000**	163,800
admin/gov/reg-local & municipal	24	159,800	91,000	**122,000**	154,800
admin/gov/reg-public utilities	6	91,500	37,500	**106,500**	129,700
admin/gov/reg-zoning/city planning	5	129,800	77,000	**95,000**	200,000
appellate/appeals	18	85,700	59,000	**84,600**	108,500
bankruptcy	8	99,800	79,800	**91,300**	126,300
business	30	107,600	65,000	**77,500**	123,100
business-commercial litigation	17	224,900	83,800	**175,000**	292,500
business-corporate counsel	44	142,800	100,000	**138,500**	180,900
business-financial institutions	6	167,700	111,500	**168,000**	219,500
business-mergers & acquisitions	7	171,600	135,000	**175,000**	200,000
business-nonprofit/tax exempt	7	102,100	40,000	**75,000**	150,000
business-privately held/family business	5	164,100	125,000	**150,000**	210,200
business-securities	6	200,200	173,800	**185,000**	219,500
civil litigation	75	129,700	69,000	**98,000**	150,000
collections	7	86,700	45,000	**77,000**	109,600
constitutional law/civil rights	7	80,600	72,000	**85,000**	99,500
construction	12	167,600	121,300	**136,400**	180,000
criminal	82	93,400	59,400	**74,500**	122,000
criminal-federal	7	158,300	125,000	**157,000**	162,500
elder	8	89,100	45,800	**55,000**	160,500
environmental	13	134,800	100,000	**150,000**	157,700
ethics & professional responsibility	8	119,700	95,800	**113,500**	157,800
family	126	113,200	55,000	**87,700**	136,800

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FINDINGS: Income

Income by Primary Practice Area in Which 50% or More of Time Is Spent *(continued)*

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
government contracts	8	100,100	73,000	**80,000**	116,000
health	13	154,700	93,100	**130,000**	227,000
immigration	18	72,900	40,000	**60,000**	104,600
insurance-defense	22	116,400	75,000	**111,000**	127,500
intellectual property	5	300,400	113,500	**210,000**	532,500
intellectual property-patents	11	161,400	98,000	**140,000**	215,000
juvenile	25	85,200	63,000	**90,000**	105,000
labor & employment	11	122,900	104,000	**120,000**	135,000
labor & employment-employee	11	122,200	57,200	**94,000**	200,000
labor & employment-management	14	175,500	87,700	**152,000**	208,000
medical malpractice	10	125,500	76,500	**102,500**	186,800
natural resources & energy-oil & gas	13	162,100	102,500	**155,000**	202,500
personal injury	43	163,300	72,000	**135,000**	230,000
product liability	6	108,300	87,500	**105,000**	127,500
real estate	35	147,600	80,000	**110,800**	185,000
real estate-commercial	14	156,000	86,000	**110,500**	221,300
real estate-foreclosure	6	104,600	81,900	**90,000**	142,500
real estate-HOA/CCIOA	5	202,800	80,500	**175,000**	339,000
real estate-special districts	5	110,000	70,000	**84,000**	162,900
tax	12	191,100	77,500	**125,000**	262,500
trusts & estate	14	109,900	60,000	**97,500**	146,300
trusts & estate-estate admin.	11	117,100	70,000	**90,000**	150,000
trusts & estate-estate planning	35	97,600	66,500	**96,000**	120,000
trusts & estate-litigation	7	164,200	90,000	**150,000**	222,000
water	24	121,300	81,300	**115,800**	168,800
workers' compensation	19	140,100	76,000	**96,000**	200,000

FINDINGS: Income

Income varies somewhat by geographic location, too. Differences are likely a function of many variables, such as urban versus rural populations and disparate costs of living.

Income by Geographic Location

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
Adams	25	116,300	71,000	**101,000**	120,500
Arapahoe	128	122,800	72,100	**107,900**	153,800
Boulder	113	123,100	73,500	**104,000**	160,000
Broomfield	7	125,600	72,000	**105,000**	160,000
Denver	481	136,900	72,000	**107,000**	159,500
Douglas	42	130,800	74,000	**122,000**	150,000
Eagle	6	101,900	78,000	**92,300**	131,300
El Paso	58	117,800	61,700	**95,000**	150,000
Elbert	0	-	-	-	-
Jefferson	80	121,100	78,900	**114,200**	150,000
Larimer	65	111,700	61,000	**90,000**	135,500
Mesa	28	115,500	60,000	**95,000**	129,900
Pitkin	9	114,800	60,000	**95,000**	155,000
Pueblo	7	120,800	65,300	**105,000**	155,000
Weld	19	105,200	50,000	**89,000**	132,000
all others east of the Continental Divide*	17	128,600	71,000	**100,000**	179,500
all others west of the Continental Divide*	53	114,500	60,000	**96,000**	150,000
PRIVATE PRACTITIONERS	890	138,200	72,000	**110,000**	175,000
Adams	13	134,000	76,500	**104,000**	151,500
Arapahoe	112	125,900	75,000	**112,200**	163,800
Boulder	94	130,200	78,800	**110,000**	180,000
Broomfield	6	136,500	72,000	**117,500**	190,000
Denver	333	152,400	72,000	**120,000**	185,000
Douglas	39	130,800	75,000	**120,000**	150,000
Eagle	5	107,900	86,000	**92,500**	137,500
El Paso	44	120,100	54,800	**89,500**	150,000
Elbert	0	-	-	-	-
Jefferson	64	125,000	80,500	**114,500**	150,000
Larimer	45	115,600	53,000	**90,000**	142,500
Mesa	25	122,100	60,000	**95,000**	135,000
Pitkin	8	121,000	60,000	**97,500**	165,000
Pueblo	4	-	-	-	-
Weld	10	124,900	53,800	**102,100**	176,900
all others east of the Continental Divide*	9	150,900	81,000	**100,000**	220,000
all others west of the Continental Divide*	31	129,300	60,000	**115,000**	160,000

*Refer to Appendix A, Tables 001-003 for data by individual county.

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FINDINGS: Income

Income by Geographic Location *(continued)*

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
PUBLIC PRACTITIONERS	259	101,400	70,000	**95,000**	126,000
Adams	11	91,300	70,000	**84,000**	120,000
Arapahoe	13	99,700	68,000	**88,000**	118,500
Boulder	13	87,000	63,500	**77,000**	103,800
Broomfield	0	-	-	**-**	-
Denver	119	103,700	75,000	**98,000**	131,000
Douglas	3	-	-	**-**	-
Eagle	1	-	-	**-**	-
El Paso	10	94,500	67,300	**90,500**	108,300
Elbert	0	-	-	**-**	-
Jefferson	13	102,300	67,000	**97,900**	132,500
Larimer	18	105,900	62,000	**97,500**	137,800
Mesa	3	-	-	**-**	-
Pitkin	0	-	-	**-**	-
Pueblo	2	-	-	**-**	-
Weld	7	100,600	72,500	**110,000**	132,000
all others east of the Continental Divide*	8	103,600	70,000	**108,500**	130,800
all others west of the Continental Divide*	19	100,000	64,000	**96,000**	145,000

*Refer to Appendix A, Tables 001-003 for data by individual county.

FINDINGS: Income

Median income tends to correlate positively with the number of practicing attorneys at the firm/organization. However, there is a dip in median income for those at mid-sized firms/organizations (20 - 99 attorneys), which is more pronounced among public practitioners than private.

Income by Number of Attorneys at Entire Firm/Organization

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
250+	72	173,900	80,300	**121,000**	160,000
100 - 249	53	146,000	86,100	**125,000**	152,900
50 - 99	49	109,100	69,500	**108,000**	140,000
20 - 49	106	129,100	75,000	**105,500**	172,500
10 - 19	127	142,400	81,000	**120,000**	159,000
5 - 9	182	139,500	75,000	**110,000**	161,100
2 - 4	259	121,500	65,000	**95,000**	150,000
1	277	110,800	59,000	**96,000**	141,000
PRIVATE PRACTITIONERS	890	138,200	72,000	**110,000**	175,000
250+	27	287,300	135,000	**200,000**	375,000
100 - 249	24	192,600	112,300	**150,000**	202,500
50 - 99	19	127,800	95,000	**125,000**	162,000
20 - 49	70	146,200	86,900	**122,500**	198,500
10 - 19	97	154,500	86,000	**130,000**	187,500
5 - 9	137	151,100	79,500	**120,000**	180,000
2 - 4	216	125,100	65,000	**95,000**	160,000
1	251	112,400	58,000	**96,000**	145,000
PUBLIC PRACTITIONERS	259	101,400	70,000	**95,000**	126,000
250+	41	103,000	75,000	**104,000**	132,000
100 - 249	29	107,500	82,500	**108,000**	131,000
50 - 99	22	97,800	67,800	**86,000**	134,300
20 - 49	34	96,900	68,500	**84,000**	107,800
10 - 19	25	109,800	80,500	**102,500**	135,000
5 - 9	37	101,800	64,800	**98,000**	131,000
2 - 4	27	104,300	71,000	**96,000**	125,000
1	15	95,100	70,000	**91,000**	122,900

FINDINGS: Income

There is a disparity in reported income by gender, especially in the private sector, with males earning more than females in 2016.

However, in viewing these results, it is important to remember that other variables may be contributing factors; a simple bivariate correlation is not sufficient to establish discrimination. For example, males average more years practicing law than females and are more likely to be in the private sector (and, specifically, are more likely to be partners)—all factors that correlate positively with income.

Income by Gender

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position answering (fill-in answers)

			percentile		
	n	mean	25th	50th (median)	75th
ALL RESPONDENTS	1,211	128,200	70,000	**105,000**	150,900
male	674	141,500	75,000	**116,100**	175,000
female	507	109,200	65,400	**95,000**	130,000
PRIVATE PRACTITIONERS	890	138,200	72,000	**110,000**	175,000
male	524	151,600	77,000	**121,600**	199,500
female	344	116,000	65,000	**99,500**	142,300
PUBLIC PRACTITIONERS	259	101,400	70,000	**95,000**	126,000
male	124	106,900	70,000	**98,000**	138,300
female	128	95,700	68,300	**94,500**	115,600

FINDINGS: Other Cash Compensation

About three in four respondents (73%) were eligible to receive at least one type of additional cash compensation (beyond their annual income) in 2016 for their primary position—most commonly CLE reimbursement (53%) and/or CBA dues (51%).

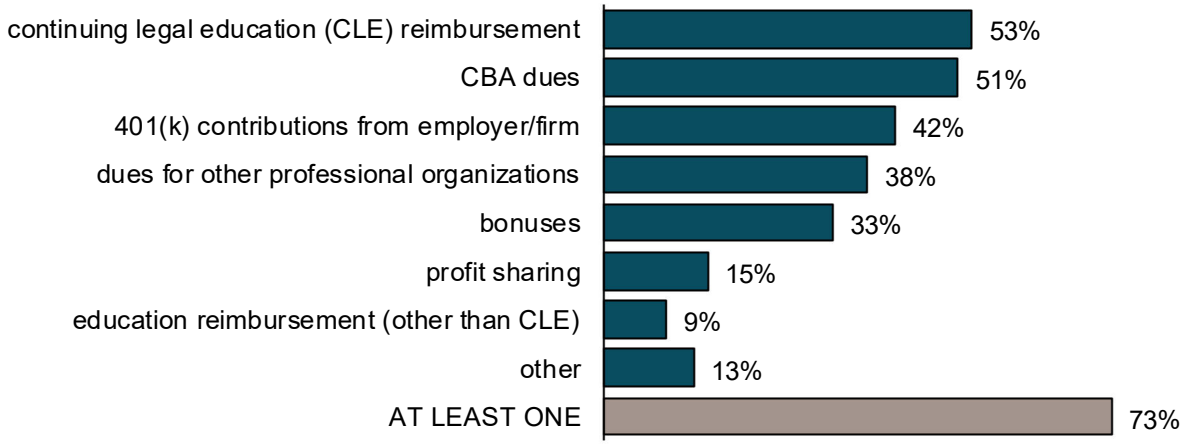
Private practitioners are much more likely than public practitioners to have been eligible for coverage of professional organization dues (including CBA dues), bonuses, and profit sharing. Public practitioners are more likely than private practitioners to be eligible, overall, for some type of cash compensation, especially types not listed.

Additional Cash Compensation Eligible to Receive

Whether or not you received any, what other types of additional cash compensation were you eligible to receive in 2016 beyond your annual income for your primary position?

base: 1,244 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position; those in each segment (multiple answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS

	private	public
continuing legal education (CLE) reimbursement	54%	49%
CBA dues	**55%**	40%
401(k) contributions from employer/firm	43%	40%
dues for other professional organizations	**42%**	27%
bonuses	**41%**	11%
profit sharing	**19%**	0%
education reimbursement (other than CLE)	9%	7%
other	11%	**19%**
AT LEAST ONE	72%	**78%**

boldface denotes a statistically significant difference from the other segment

FINDINGS: Other Cash Compensation

Because a minority of respondents (33%) were eligible to receive bonuses in 2016 for their primary position, the median reported value was $0. However, some did receive substantial bonuses beyond their incomes—9% received $20,000 or more. Among those who received bonuses (most of whom were private practitioners), the median value of the bonuses was $10,000.

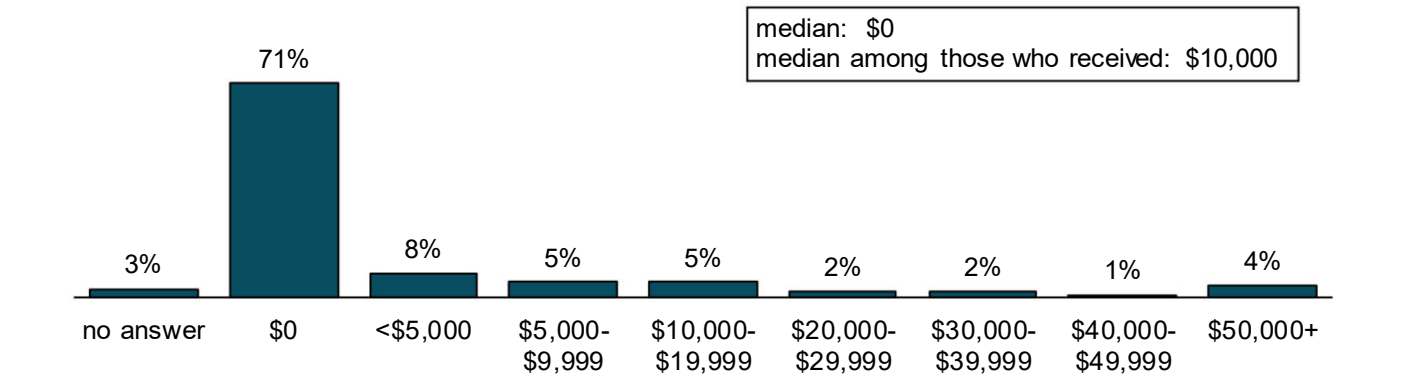
The median bonus received by private practitioners who received a bonus was four times that of public practitioners receiving one ($10,000 versus $2,500).

Bonuses

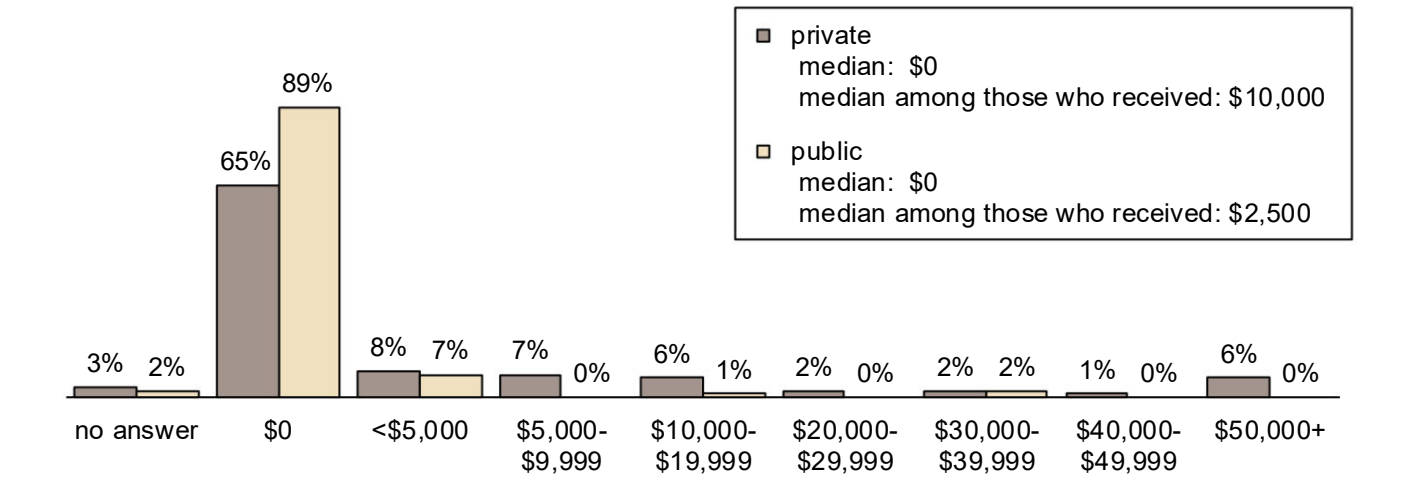
What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

base: 1,244 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Other Cash Compensation

Similar to bonuses, only a minority of respondents (15%) were eligible to receive profit sharing in 2016 for their primary position, so the median reported value was $0. However, some did receive substantial amounts of profit sharing—6% received $20,000 or more.

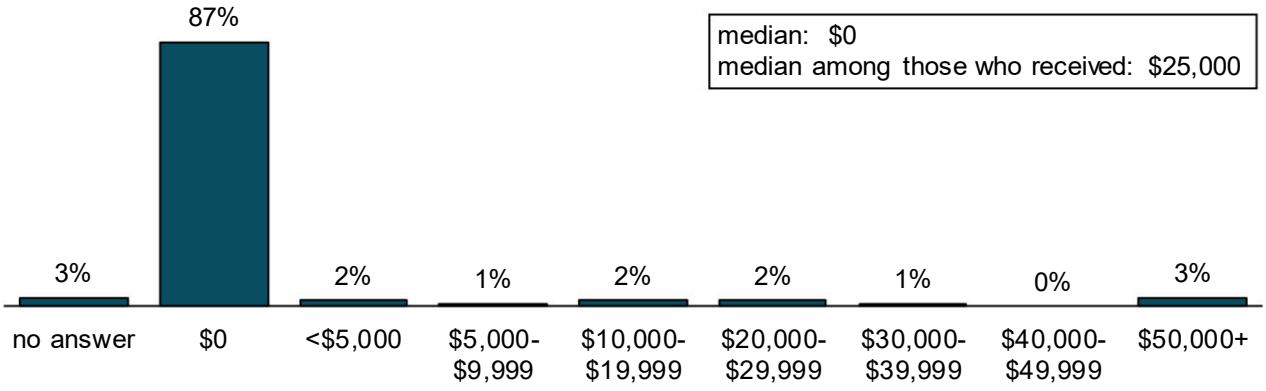
Among those who received profit sharing (virtually all of whom were private practitioners), the median value received was $25,000.

Profit Sharing

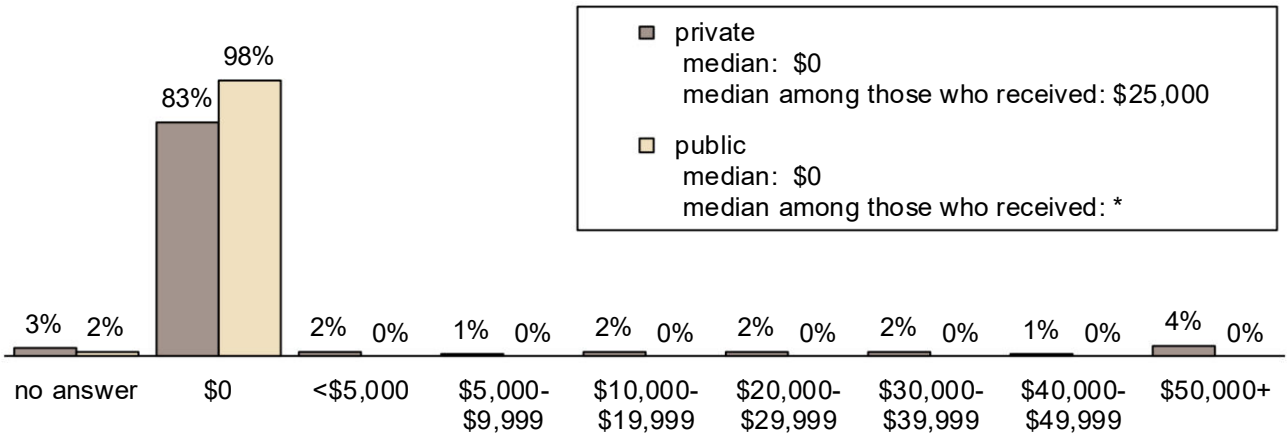
What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

base: 1,244 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



*fewer than five answering respondents

EXHIBIT B

FINDINGS: Other Cash Compensation

While 42% of respondents were eligible to receive 401(k) contributions from their employers/firms in 2016, only 35% reported actually having received an amount for this benefit (likely because they chose not to contribute themselves, and therefore did not receive an employer match).

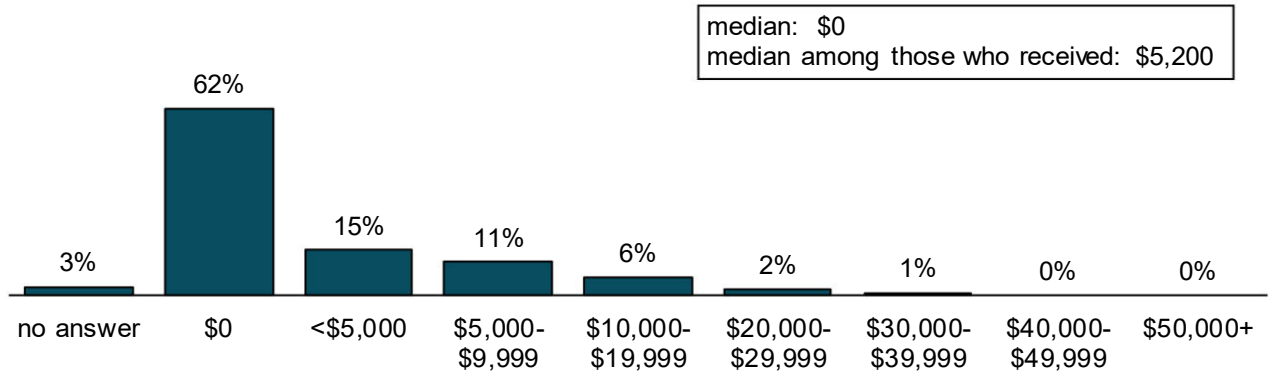
Among those who received 401(k) contributions from their employers/firms, the median values received by private and public practitioners were similar—$5,000 versus $5,500, respectively.

401(k) Contributions From Employer/Firm

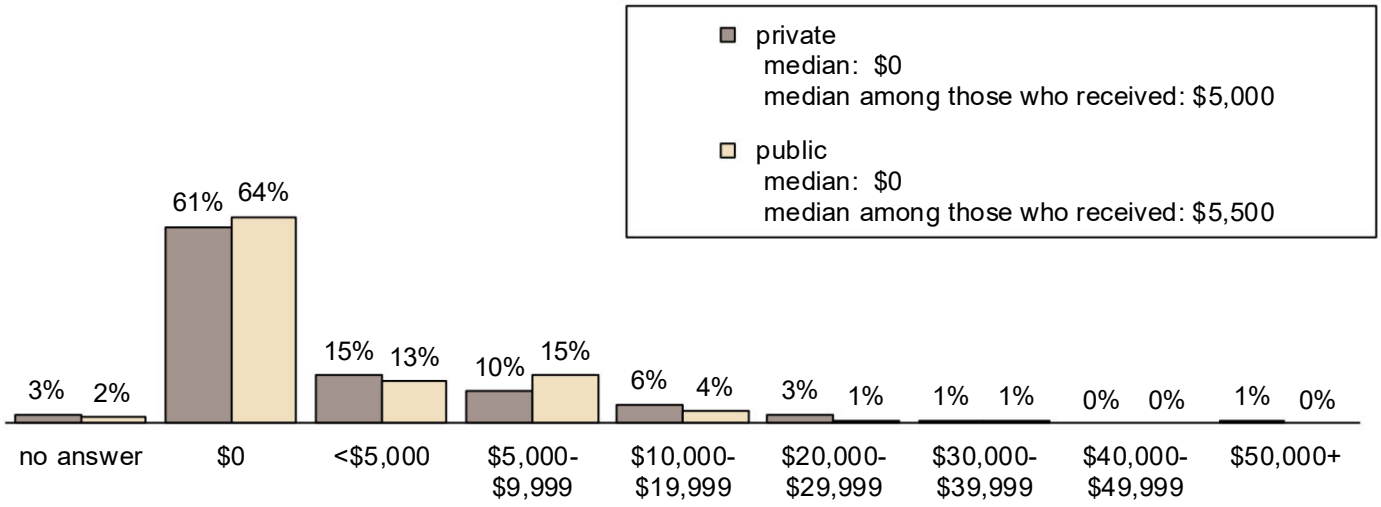
What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

base: 1,244 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position; those in each segment (fill-in answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Billing Practices

Private practitioners use a variety of billing practices. A majority (79%) billed at least some of their work via hourly rates in 2016. Smaller, but still significant proportions, billed at least some of their work via flat/fixed rates (40%), contingency billing (20%), and/or unbundling/discrete task/limited scope representation (10%).

Public practitioners were most likely to have indicated they billed via a method other than those listed (54%). A quarter (25%) did not answer the question.

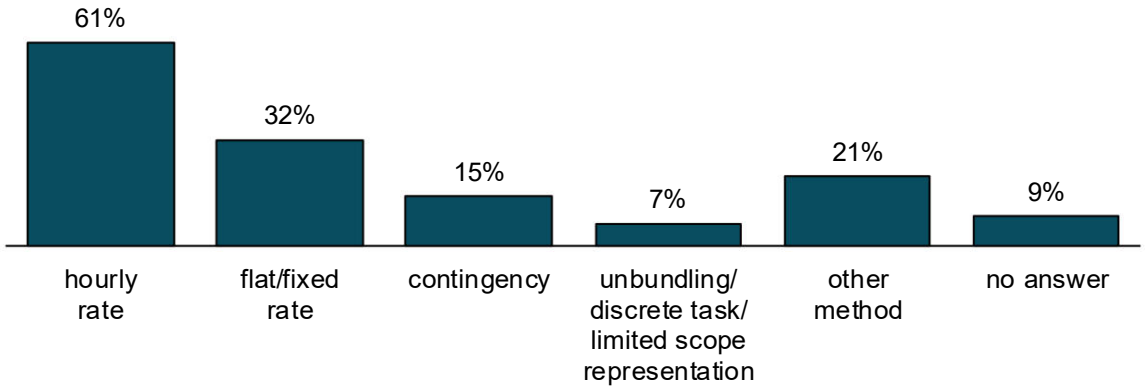
Billing Methods Used

Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

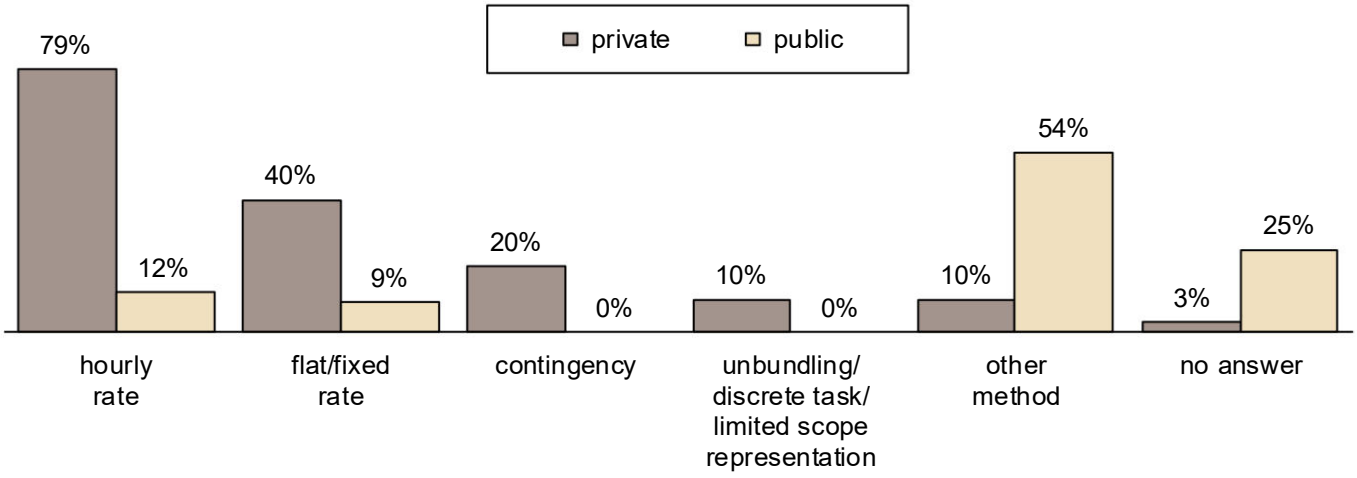
base: 1,607 respondents who were licensed to practice law in Colorado in 2016; those in each segment

% WHO BILL AT LEAST SOME OF THEIR WORK VIA EACH PRACTICE

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Billing Practices

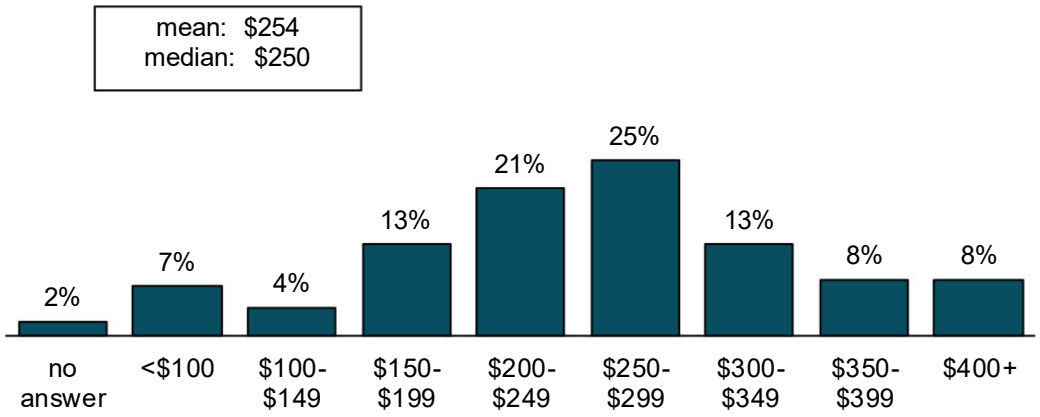
The most common hourly billing rate among those who worked full time and billed at least some of their work via hourly rates in 2016 (a majority of whom were private practitioners) was $254, on average.

As would be expected, billing rates vary by position/affiliation.

Most Common Hourly Billing Rate

What was your most common hourly billing rate in 2016 for your primary position?

base: 801 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position and billed at least some of their work via an hourly rate; those in each segment (fill-in answers)



BY POSITION/AFFILIATION

ALL RESPONDENTS	785	254	200	**250**	300
PRIVATE PRACTITIONERS	729	260	200	**250**	300
Solo Practitioner	223	243	200	**250**	295
Partner	249	310	238	**295**	350
Associate	206	226	175	**205**	275
In-House Counsel: For Profit	6	155	70	**175**	213
Of Counsel	30	304	229	**300**	360
Contract Attorney	15	114	30	**75**	225
PUBLIC PRACTITIONERS	29	91	50	**95**	100
Judge/Magistrate/ALJ	1	-	-	-	-
City/County Government	6	74	46	**55**	111
State Government	17	87	83	**98**	100
Federal Government	1	-	-	-	-
In-House Counsel: Non-Profit	3	-	-	-	-
Counsel With Legal Aid/Legal Services Agency	1	-	-	-	-
OTHER					
Arbitrator/Mediator	3	-	-	-	-
Academic	1	-	-	-	-

FINDINGS: Billing Practices

Similar to the relationships found between income and key variables, billing rates correlate positively with experience (number of years practicing law). They vary by the size of the firm/organization (number of attorneys) and by geographic location, and males reported a higher median value than females.

Most Common Hourly Billing Rate by Segments

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016, worked full time (30+ hours/week) in their primary position, and who billed at least some of their work via an hourly rate answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
# OF YEARS PRACTICING LAW					
40+	78	324	250	**300**	375
30 - 39	146	292	225	**275**	350
20 - 29	118	274	200	**275**	326
10 - 19	179	244	200	**250**	300
5 - 9	122	225	184	**225**	275
3 - 4	77	203	168	**200**	225
1 - 2	40	192	154	**193**	244
<1	21	162	88	**185**	200
# OF ATTORNEYS AT FIRM/ORGANIZATION					
250+	36	328	100	**288**	475
100 - 249	23	288	102	**300**	385
50 - 99	15	276	200	**250**	325
20 - 49	57	279	200	**275**	350
10 - 19	87	246	185	**225**	295
5 - 9	119	260	200	**250**	325
2 - 4	189	245	200	**250**	298
1	212	237	200	**250**	299
GEOGRAPHIC LOCATION					
Adams	9	190	75	**225**	270
Arapahoe	81	251	183	**250**	318
Boulder	82	254	194	**253**	300
Broomfield	7	321	225	**250**	300
Denver	308	257	185	**250**	315
Douglas	34	260	211	**250**	296
Eagle	6	267	215	**270**	300
El Paso	43	269	220	**250**	300
Elbert	0	-	-	**-**	-
Jefferson	52	263	221	**275**	304
Larimer	43	235	200	**225**	275
Mesa	24	228	200	**225**	265
Pitkin	7	303	250	**285**	375
Pueblo	3	-	-	**-**	-
Weld	10	179	94	**193**	246
all others east of the Continental Divide*	9	199	160	**200**	255
all others west of the Continental Divide*	32	213	156	**225**	250
GENDER					
male	464	271	200	**250**	300
female	305	225	175	**225**	275

*Refer to Appendix A, Tables 001-003 for data by individual county.

FINDINGS: Billing Practices

Billing rates vary substantially by primary practice area. Among those who worked full time and billed at least some of their work via hourly rates in 2016, the most common hourly billing rates ranged from $75 (juvenile) to $360 (business mergers & acquisitions) at the median.

It is important to note that data for many of the practice areas shown in the following tables are based on a small number of respondents and are considered statistically unstable.

Only the primary practice areas in which practitioners spend at least 50% of their time with at least five answering respondents are shown.

Most Common Hourly Billing Rate by Primary Practice Area in Which 50% or More of Time Is Spent

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016, worked full time (30+ hours/week) in their primary position, and who billed at least some of their work via an hourly rate answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
PRIMARY PRACTICE AREA					
admin/gov/reg	9	187	98	**100**	293
admin/gov/reg-education/school	5	219	113	**225**	323
admin/gov/reg-local & municipal	11	246	185	**210**	300
bankruptcy	7	288	250	**295**	325
business	29	285	238	**275**	300
business-commercial litigation	17	326	235	**295**	473
business-corporate counsel	8	241	125	**250**	319
business-mergers & acquisitions	5	341	245	**360**	428
business-privately held/family business	5	270	150	**325**	363
civil litigation	59	248	176	**225**	300
construction	12	258	179	**238**	319
criminal	35	229	90	**250**	300
elder	5	275	213	**300**	325
environmental	7	307	265	**275**	350
family	115	260	200	**250**	300
health	5	247	152	**280**	325
immigration	9	250	200	**250**	300
insurance-defense	22	178	158	**175**	189
intellectual property	5	463	270	**350**	713
intellectual property-patents	5	311	253	**285**	383
juvenile	15	85	75	**75**	75
labor & employment	6	276	241	**283**	306
labor & employment-employee	10	309	233	**313**	356
labor & employment-management	10	294	219	**295**	381
medical malpractice	9	189	153	**180**	225

continued on next page >>>

FINDINGS: Billing Practices

Most Common Hourly Billing Rate by Primary Practice Area in Which 50% or More of Time Is Spent *(continued)*

base (n): respondents in each segment who were licensed to practice law in Colorado in 2016, worked full time (30+ hours/week) in their primary position, and who billed at least some of their work via an hourly rate answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
PRIMARY PRACTICE AREA					
natural resources & energy-oil & gas	7	254	200	**245**	295
personal injury	17	271	238	**295**	338
real estate	27	276	225	**275**	300
real estate-commercial	11	312	195	**325**	450
real estate-foreclosure	5	221	215	**215**	230
real estate-HOA/CCIOA	5	288	250	**290**	325
tax	9	343	225	**260**	493
trusts & estate	15	262	200	**245**	325
trusts & estate-estate administration	11	263	225	**265**	325
trusts & estate-estate planning	32	255	200	**250**	300
trusts & estate-litigation	6	277	234	**263**	343
water	21	222	183	**230**	250
workers' compensation	10	153	139	**145**	178

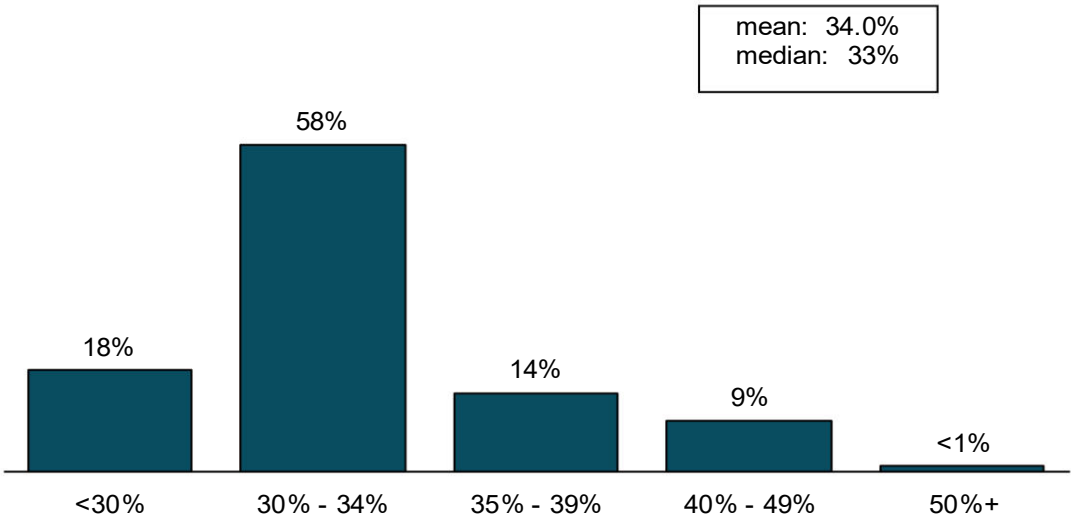
FINDINGS: Billing Practices

Among those who worked full time and billed at least some of their work via contingency billing in 2016, most common percent they charged their clients was 34%, on average.

Most Common Percent Charged Via Contingency Billing

For contingency billing, what was the most common percent you charged your clients in 2016 in your primary position?

base: 190 respondents who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position and billed at least some of their work via contingency billing



FINDINGS: Paralegals/Legal Assistants

Respondents were asked how their office location billed for the services of its paralegals/legal assistants in 2016 (allowing for multiple answers, as they may have used multiple methods). Among those whose office locations had paralegals/legal assistants in 2016, 77% of private practitioners indicated they billed for the services of these employees via hourly rates, 25% said they were included in attorney fees, and 10% billed for it via some other method.

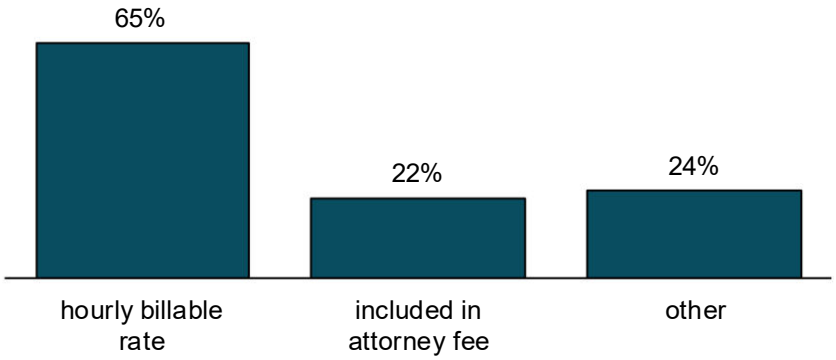
Most public practitioners who had paralegals/legal assistants in 2016 selected a method other than those listed (78%), many of whom specified that they do not bill for the services of these employees.

Billing Methods Used for Paralegal/Legal Assistant Services

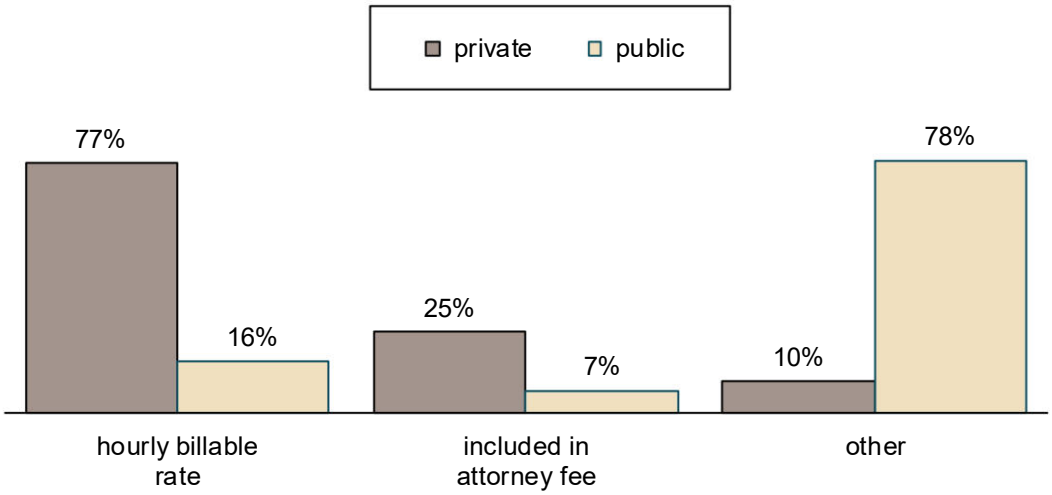
How did your office location bill for the services of its paralegals/legal assistants in 2016?

base: respondents in each segment who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/legal assistants answering (multiple answers)

ALL RESPONDENTS



PRIVATE AND PUBLIC PRACTITIONERS



FINDINGS: Paralegals/Legal Assistants

Respondents were asked to report the most common hourly billing rate in 2016 for their office location's paralegals/legal assistants at each of seven levels of experience (among those who had a paralegal/legal assistant in each). As would be expected, results correlated positively with years of experience, ranging from a median of $95 among paralegals/legal assistants with less than one year of experience to $125 for those with 15 or more years of experience.

Appendix B details hourly billing rates within each level of experience by geographic location and by the number of attorneys at the firm/organization.

Most Common Hourly Billing Rate for Paralegal/Legal Assistant Services

What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

base: respondents who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/legal assistant at each experience level in 2016 answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
YEARS OF EXPERIENCE					
20+	128	126	91	**125**	150
15 - 19	125	128	90	**125**	150
10 - 14	178	120	90	**120**	150
5 - 9	189	118	90	**115**	150
3 - 4	138	111	85	**108**	140
1 - 2	150	105	75	**100**	130
<1	112	99	75	**95**	125

FINDINGS: Paralegals/Legal Assistants

Respondents were also asked to report the most common annual base salary in 2016 for their office location's paralegals/legal assistants at each of seven levels of experience (among those who had a paralegal/legal assistant in each). Again, results correlated positively with years of experience, ranging from a median of $35,000 among paralegals/legal assistants with less than one year of experience to $65,000 for those with 20 or more years of experience.

Appendix B details annual base salary within each level of experience by geographic location and by the number of attorneys at the firm/organization.

Most Common Annual Base Salary for Paralegals/Legal Assistants

What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

base: respondents who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/legal assistant at each experience level in 2016 answering (fill-in answers)

			percentile ($)		
	n	mean ($)	25th	50th (median)	75th
YEARS OF EXPERIENCE					
20+	133	65,800	50,000	**65,000**	80,000
15 - 19	115	60,500	50,000	**62,400**	70,000
10 - 14	154	57,400	47,000	**58,000**	65,000
5 - 9	163	50,800	42,000	**50,000**	60,000
3 - 4	122	45,300	37,400	**45,000**	51,300
1 - 2	124	41,200	32,500	**40,000**	48,000
<1	95	36,700	30,000	**35,000**	41,600

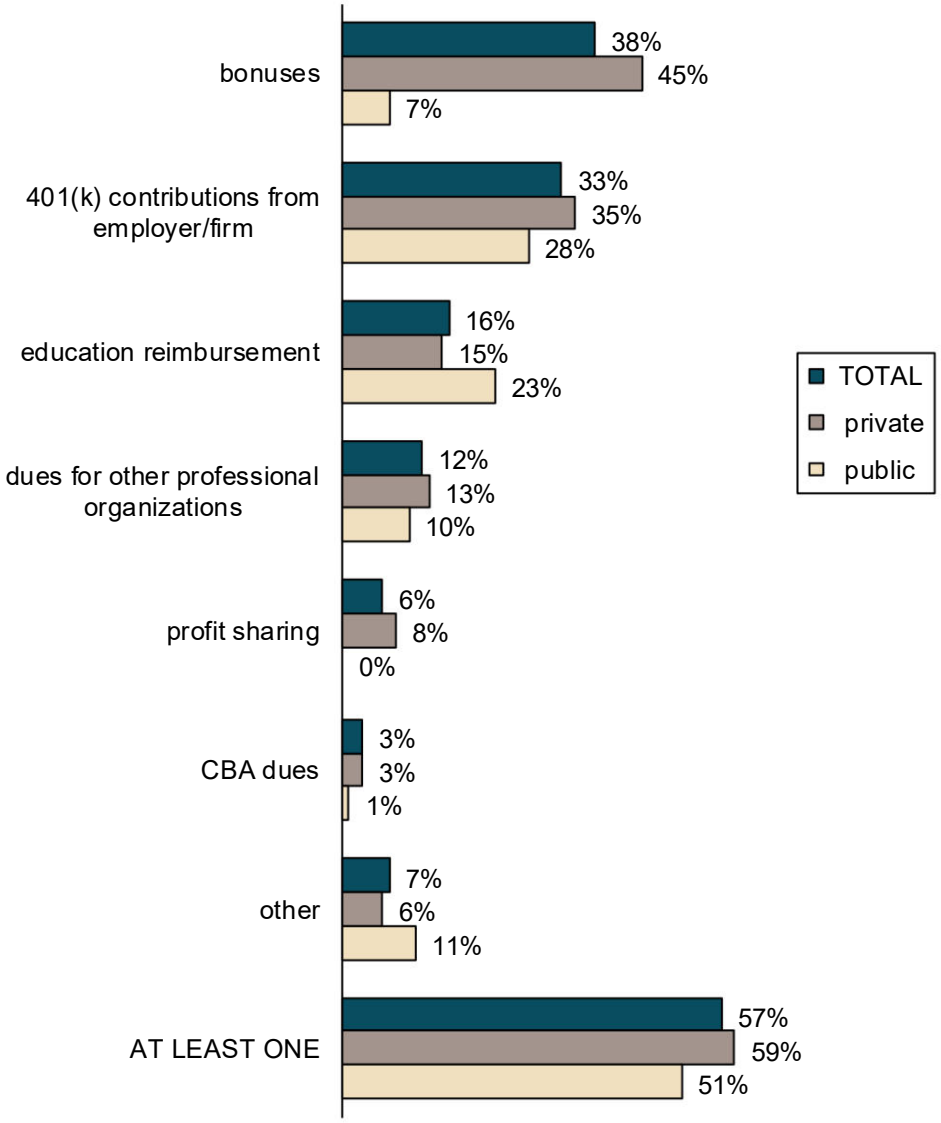
FINDINGS: Paralegals/Legal Assistants

Private and public practitioners were about equally as likely to have indicated the paralegals/legal assistants at their office location were eligible to receive at least one type of other cash compensation beyond their annual base salaries in 2016 (59% and 51%, respectively)—but the types of other cash compensation varied. The largest gap is seen with bonuses where 45% of private practitioners indicated their paralegals/legal assistants were eligible to receive bonuses compared with only 7% of those in a public setting.

Additional Cash Compensation Eligible to Receive

Whether or not they received any, what other types of additional cash compensation were paralegals/legal assistants at your office location eligible to receive in 2016 beyond their annual base salary?

base: 1,062 respondents who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/legal assistants; those in each segment (multiple answers)



APPENDIX A

INCOME AND BILLING RATE TABLES

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

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Private Practitioners
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012 State Government
013 Federal Government
014 In-House Counsel: Non-Profit
015 Counsel With Legal Aid/Legal Services Agency

016 Arbitrator/Mediator
017 Academic

Key to Tables

INCOME = annual pre-tax income from primary position in 2016 (excluding bonuses, profit sharing, retirement benefits paid, and the monetary value of other benefits received).

RESPONDENT INSTRUCTIONS: Please include only your regular salary/wages paid or (if self-employed) the amount you paid yourself as salary or draw. If you worked for only a portion of 2016, please annualize the figure. For example, if you worked 6 months and earned $35,000, enter $70,000.

BASE: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position

HOURLY BILLING RATE = most common hourly billing rate in 2016 for primary position.

BASE: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position and billed at least some of their work via an hourly rate

n = the number of respondents for basing the results

mean = arithmetic average

25th percentile = 25% earn less than the 25th percentile

50th (median) = the value that lies at the middle of a distribution; 50% of the values are above it and 50% are below. Unlike the mean, it is not influenced by extreme values.

75th percentile = 75% earn less than the 75th percentile

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 001 page 1

TOTAL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	1,211	$128,200	$70,000	$105,000	$150,900	785	$254	$200	$250	$300
# of Years Practicing Law										
40+	98	$163,200	$83,500	$127,500	$240,000	78	$324	$250	$300	$375
30 - 39	185	$175,700	$96,500	$150,000	$220,000	146	$292	$225	$275	$350
20 - 29	184	$171,400	$100,600	$150,000	$190,000	118	$274	$200	$275	$326
10 - 19	285	$126,800	$85,500	$115,000	$150,000	179	$244	$200	$250	$300
5 - 9	217	$98,100	$70,000	$88,600	$120,000	122	$225	$184	$225	$275
3 - 4	121	$77,500	$58,600	$71,000	$91,800	77	$203	$168	$200	$225
1 - 2	83	$64,300	$50,000	$60,000	$75,000	40	$192	$154	$193	$244
<1	33	$62,200	$49,000	$54,000	$73,000	21	$162	$88	$185	$200
Primary Practice Area (>= 50%)*										
admin/gov/reg	39	$95,200	$71,000	$90,000	$111,000	9	$187	$98	$100	$293
admin/gov/reg-education/school	14	$142,100	$66,000	$127,000	$163,800	5	$219	$113	$225	$323
admin/gov/reg-local & municipal	24	$159,800	$91,000	$122,000	$154,800	11	$246	$185	$210	$300
admin/gov/reg-public utilities	6	$91,500	$37,500	$106,500	$129,700	2	-	-	-	-
admin/gov/reg-zoning/city planning	5	$129,800	$77,000	$95,000	$200,000	3	-	-	-	-
alternative dispute resolution-mediation	2	-	-	-	-	2	-	-	-	-
appellate/appeals	18	$85,700	$59,000	$84,600	$108,500	4	-	-	-	-
bankruptcy	8	$99,800	$79,800	$91,300	$126,300	7	$288	$250	$295	$325
bankruptcy-debtor	4	-	-	-	-	3	-	-	-	-
business	30	$107,600	$65,000	$77,500	$123,100	29	$285	$238	$275	$300
business-commercial litigation	17	$224,900	$83,800	$175,000	$292,500	17	$326	$235	$295	$473
business-corporate counsel	44	$142,800	$100,000	$138,500	$180,900	8	$241	$125	$250	$319
business-financial institutions	6	$167,700	$111,500	$168,000	$219,500	0	-	-	-	-
business-mergers & acquisitions	7	$171,600	$135,000	$175,000	$200,000	5	$341	$245	$360	$428
business-nonprofit/tax exempt	7	$102,100	$40,000	$75,000	$150,000	4	-	-	-	-
business-privately held/family business	5	$164,100	$125,000	$150,000	$210,200	5	$270	$150	$325	$363
business-securities	6	$200,200	$173,800	$185,000	$219,500	3	-	-	-	-
business-securities litigation	1	-	-	-	-	1	-	-	-	-
civil litigation	75	$129,700	$69,000	$98,000	$150,000	59	$248	$176	$225	$300
collections	7	$86,700	$45,000	$77,000	$109,600	4	-	-	-	-
constitutional law/civil rights	7	$80,600	$72,000	$85,000	$99,500	1	-	-	-	-
construction	12	$167,600	$121,300	$136,400	$180,000	12	$258	$179	$238	$319
criminal	82	$93,400	$59,400	$74,500	$122,000	35	$229	$90	$250	$300
criminal-DUI	4	-	-	-	-	1	-	-	-	-
criminal-federal	7	$158,300	$125,000	$157,000	$162,500	3	-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 001 page 2

TOTAL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
disability-social security disability	4	-	-	-	-	0	-	-	-	-
elder	8	$89,100	$45,800	$55,000	$160,500	5	$275	$213	$300	$325
environmental	13	$134,800	$100,000	$150,000	$157,700	7	$307	$265	$275	$350
ethics & professional responsibility	8	$119,700	$95,800	$113,500	$157,800	3	-	-	-	-
family	126	$113,200	$55,000	$87,700	$136,800	115	$260	$200	$250	$300
government contracts	8	$100,100	$73,000	$80,000	$116,000	3	-	-	-	-
health	13	$154,700	$93,100	$130,000	$227,000	5	$247	$152	$280	$325
immigration	18	$72,900	$40,000	$60,000	$104,600	9	$250	$200	$250	$300
insurance-plaintiff	3	-	-	-	-	2	-	-	-	-
insurance-defense	22	$116,400	$75,000	$111,000	$127,500	22	$178	$158	$175	$189
intellectual property	5	$300,400	$113,500	$210,000	$532,500	5	$463	$270	$350	$713
intellectual property-patents	11	$161,400	$98,000	$140,000	$215,000	5	$311	$253	$285	$383
juvenile	25	$85,200	$63,000	$90,000	$105,000	15	$85	$75	$75	$75
labor & employment	11	$122,900	$104,000	$120,000	$135,000	6	$276	$241	$283	$306
labor & employment-employee	11	$122,200	$57,200	$94,000	$200,000	10	$309	$233	$313	$356
labor & employment-management	14	$175,500	$87,700	$152,000	$208,000	10	$294	$219	$295	$381
medical malpractice	10	$125,500	$76,500	$102,500	$186,800	9	$189	$153	$180	$225
natural resources & energy	4	-	-	-	-	4	-	-	-	-
natural resources & energy-oil & gas	13	$162,100	$102,500	$155,000	$202,500	7	$254	$200	$245	$295
personal injury	43	$163,300	$72,000	$135,000	$230,000	17	$271	$238	$295	$338
product liability	6	$108,300	$87,500	$105,000	$127,500	3	-	-	-	-
real estate	35	$147,600	$80,000	$110,800	$185,000	27	$276	$225	$275	$300
real estate-commercial	14	$156,000	$86,000	$110,500	$221,300	11	$312	$195	$325	$450
real estate-foreclosure	6	$104,600	$81,900	$90,000	$142,500	5	$221	$215	$215	$230
real estate-HOA/CCIOA	5	$202,800	$80,500	$175,000	$339,000	5	$288	$250	$290	$325
real estate-special districts	5	$110,000	$70,000	$84,000	$162,900	4	-	-	-	-
tax	12	$191,100	$77,500	$125,000	$262,500	9	$343	$225	$260	$493
transportation	3	-	-	-	-	3	-	-	-	-
trusts & estate	14	$109,900	$60,000	$97,500	$146,300	15	$262	$200	$245	$325
trusts & estate-estate administration	11	$117,100	$70,000	$90,000	$150,000	11	$263	$225	$265	$325
trusts & estate-estate planning	35	$97,600	$66,500	$96,000	$120,000	32	$255	$200	$250	$300
trusts & estate-litigation	7	$164,200	$90,000	$150,000	$222,000	6	$277	$234	$263	$343
water	24	$121,300	$81,300	$115,800	$168,800	21	$222	$183	$230	$250
workers' compensation	19	$140,100	$76,000	$96,000	$200,000	10	$153	$139	$145	$178

**Practice areas with fewer than five respondents who spend at least 50% of their time in that area are not displayed.*

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 001 page 3

TOTAL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Geographic Location										
Denver	481	$136,900	$72,000	$107,000	$159,500	308	$257	$185	$250	$315
Adams, Arapahoe, Douglas, Elbert, and Jefferson	275	$123,000	$75,000	$110,000	$150,000	176	$253	$200	$250	$300
Boulder and Broomfield	120	$123,300	$72,000	$104,500	$160,000	89	$259	$200	$250	$300
Eagle and Pitkin	15	$109,600	$65,000	$92,500	$135,000	13	$286	$238	$275	$368
El Paso	58	$117,800	$61,700	$95,000	$150,000	43	$269	$220	$250	$300
Larimer and Weld	84	$110,300	$60,000	$90,000	$134,300	53	$225	$195	$225	$275
Mesa	28	$115,500	$60,000	$95,000	$129,900	24	$228	$200	$225	$265
Pueblo	7	$120,800	$65,300	$105,000	$155,000	3	-	-	-	-
all others east of the Continental Divide	17	$128,600	$71,000	$100,000	$179,500	9	$199	$160	$200	$255
all others west of the Continental Divide	53	$114,500	$60,000	$96,000	$150,000	32	$213	$156	$225	$250
County										
Adams	25	$116,300	$71,000	$101,000	$120,500	9	$190	$75	$225	$270
Alamosa	2	-	-	-	-	0	-	-	-	-
Arapahoe	128	$122,800	$72,100	$107,900	$153,800	81	$251	$183	$250	$318
Archuleta	2	-	-	-	-	1	-	-	-	-
Baca		-	-	-	-		-	-	-	-
Bent		-	-	-	-		-	-	-	-
Boulder	113	$123,100	$73,500	$104,000	$160,000	82	$254	$194	$253	$300
Broomfield	7	$125,600	$72,000	$105,000	$160,000	7	$321	$225	$250	$300
Chaffee	2	-	-	-	-	1	-	-	-	-
Cheyenne		-	-	-	-		-	-	-	-
Clear Creek	1	-	-	-	-	0	-	-	-	-
Conejos		-	-	-	-		-	-	-	-
Costilla		-	-	-	-		-	-	-	-
Crowley		-	-	-	-		-	-	-	-
Custer		-	-	-	-		-	-	-	-
Delta	2	-	-	-	-	2	-	-	-	-
Denver	481	$136,900	$72,000	$107,000	$159,500	308	$257	$185	$250	$315
Dolores		-	-	-	-		-	-	-	-
Douglas	42	$130,800	$74,000	$122,000	$150,000	34	$260	$211	$250	$296
Eagle	6	$101,900	$78,000	$92,300	$131,300	6	$267	$215	$270	$300
El Paso	58	$117,800	$61,700	$95,000	$150,000	43	$269	$220	$250	$300
Elbert		-	-	-	-		-	-	-	-
Fremont	1	-	-	-	-	1	-	-	-	-
Garfield	8	$103,400	$51,800	$70,000	$156,300	5	$243	$133	$200	$375
Gilpin		-	-	-	-		-	-	-	-
Grand	1	-	-	-	-	1	-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 001 page 4

TOTAL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Gunnison	2	-	-	-	-	1	-	-	-	-
Hinsdale		-	-	-	-		-	-	-	-
Huerfano		-	-	-	-		-	-	-	-
Jackson		-	-	-	-		-	-	-	-
Jefferson	80	$121,100	$78,900	$114,200	$150,000	52	$263	$221	$275	$304
Kiowa		-	-	-	-		-	-	-	-
Kit Carson	1	-	-	-	-	1	-	-	-	-
La Plata	8	$111,800	$60,000	$86,000	$157,800	5	$150	$76	$175	$213
Lake		-	-	-	-		-	-	-	-
Larimer	65	$111,700	$61,000	$90,000	$135,500	43	$235	$200	$225	$275
Las Animas	1	-	-	-	-	0	-	-	-	-
Lincoln		-	-	-	-		-	-	-	-
Logan	3	-	-	-	-	3	-	-	-	-
Mesa	28	$115,500	$60,000	$95,000	$129,900	24	$228	$200	$225	$265
Mineral		-	-	-	-		-	-	-	-
Moffat	1	-	-	-	-	0	-	-	-	-
Montezuma		-	-	-	-		-	-	-	-
Montrose	9	$96,300	$68,000	$96,000	$117,500	4	-	-	-	-
Morgan	3	-	-	-	-	1	-	-	-	-
Otero	2	-	-	-	-	0	-	-	-	-
Ouray	1	-	-	-	-	1	-	-	-	-
Park		-	-	-	-		-	-	-	-
Phillips		-	-	-	-		-	-	-	-
Pitkin	9	$114,800	$60,000	$95,000	$155,000	7	$303	$250	$285	$375
Prowers		-	-	-	-		-	-	-	-
Pueblo	7	$120,800	$65,300	$105,000	$155,000	3	-	-	-	-
Rio Blanco		-	-	-	-		-	-	-	-
Rio Grande	1	-	-	-	-	2	-	-	-	-
Routt	8	$141,300	$107,300	$137,500	$189,000	5	$246	$195	$245	$298
Saguache		-	-	-	-		-	-	-	-
San Juan		-	-	-	-		-	-	-	-
San Miguel	1	-	-	-	-	1	-	-	-	-
Sedgwick		-	-	-	-		-	-	-	-
Summit	10	$101,800	$59,000	$70,900	$117,500	6	$250	$238	$250	$263
Teller		-	-	-	-		-	-	-	-
Washington		-	-	-	-		-	-	-	-
Weld	19	$105,200	$50,000	$89,000	$132,000	10	$179	$94	$193	$246
Yuma		-	-	-	-		-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 001 page 5

TOTAL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
# of Attorneys at Organization										
250+	72	$173,900	$80,300	$121,000	$160,000	36	$328	$100	$288	$475
100 - 249	53	$146,000	$86,100	$125,000	$152,900	23	$288	$102	$300	$385
50 - 99	49	$109,100	$69,500	$108,000	$140,000	15	$276	$200	$250	$325
20 - 49	106	$129,100	$75,000	$105,500	$172,500	57	$279	$200	$275	$350
10 - 19	127	$142,400	$81,000	$120,000	$159,000	87	$246	$185	$225	$295
5 - 9	182	$139,500	$75,000	$110,000	$161,100	119	$260	$200	$250	$325
2 - 4	259	$121,500	$65,000	$95,000	$150,000	189	$245	$200	$250	$298
1	277	$110,800	$59,000	$96,000	$141,000	212	$237	$200	$250	$299
Gender										
male	674	$141,500	$75,000	$116,100	$175,000	464	$271	$200	$250	$300
female	507	$109,200	$65,400	$95,000	$130,000	305	$225	$175	$225	$275

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 002 page 1

PRIVATE PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	890	$138,200	$72,000	$110,000	$175,000	729	$260	$200	$250	$300
# of Years Practicing Law										
40+	80	$170,400	$82,800	$127,500	$250,000	73	$323	$250	$300	$375
30 - 39	154	$184,300	$95,000	$150,000	$238,300	140	$294	$225	$275	$350
20 - 29	131	$189,600	$105,000	$160,000	$205,000	110	$284	$224	$275	$345
10 - 19	206	$133,800	$85,000	$120,500	$175,000	164	$252	$203	$250	$300
5 - 9	151	$101,900	$72,000	$91,000	$129,000	109	$231	$193	$225	$275
3 - 4	89	$80,800	$60,000	$75,000	$95,000	75	$204	$175	$200	$225
1 - 2	51	$69,500	$52,000	$65,000	$85,000	35	$202	$165	$200	$250
<1	24	$67,200	$50,000	$58,500	$78,800	19	$172	$150	$195	$200
Primary Practice Area (>= 50%)*										
admin/gov/reg	6	$100,800	$48,800	$87,500	$151,300	4	-	-	-	-
admin/gov/reg-education/school	5	$213,000	$120,000	$150,000	$337,500	4	-	-	-	-
admin/gov/reg-local & municipal	10	$222,500	$93,800	$117,500	$243,800	11	$246	$185	$210	$300
admin/gov/reg-public utilities	3	-	-	-	-	2	-	-	-	-
admin/gov/reg-zoning/city planning	2	-	-	-	-	1	-	-	-	-
alternative dispute resolution-mediation	1	-	-	-	-	1	-	-	-	-
appellate/appeals	4	-	-	-	-	3	-	-	-	-
bankruptcy	8	$99,800	$79,800	$91,300	$126,300	7	$288	$250	$295	$325
bankruptcy-debtor	4	-	-	-	-	3	-	-	-	-
business	28	$110,600	$65,000	$77,500	$134,400	28	$283	$231	$275	$300
business-commercial litigation	17	$224,900	$83,800	$175,000	$292,500	17	$326	$235	$295	$473
business-corporate counsel	42	$142,300	$98,800	$138,500	$178,300	8	$241	$125	$250	$319
business-financial institutions	6	$167,700	$111,500	$168,000	$219,500		-	-	-	-
business-mergers & acquisitions	7	$171,600	$135,000	$175,000	$200,000	5	$341	$245	$360	$428
business-nonprofit/tax exempt	3	-	-	-	-	3	-	-	-	-
business-privately held/family business	5	$164,100	$125,000	$150,000	$210,200	5	$270	$150	$325	$363
business-securities	5	$182,200	$172,500	$180,000	$193,000	2	-	-	-	-
business-securities litigation		-	-	-	-		-	-	-	-
civil litigation	58	$142,300	$70,600	$107,500	$152,500	57	$251	$181	$225	$300
collections	7	$86,700	$45,000	$77,000	$109,600	4	-	-	-	-
constitutional law/civil rights	2	-	-	-	-		-	-	-	-
construction	12	$167,600	$121,300	$136,400	$180,000	12	$258	$179	$238	$319
criminal	35	$104,000	$54,000	$100,000	$132,000	33	$238	$137	$250	$300
criminal-DUI	3	-	-	-	-	1	-	-	-	-
criminal-federal	3	-	-	-	-	2	-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 002 page 2

PRIVATE PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
disability-social security disability	3	-	-	-	-		-	-	-	-
elder	5	$107,400	$31,500	$54,000	$210,000	5	$275	$213	$300	$325
environmental	6	$152,700	$86,800	$152,500	$203,000	5	$315	$225	$275	$425
ethics & professional responsibility	3	-	-	-	-	2	-	-	-	-
family	111	$115,300	$55,000	$90,000	$140,000	110	$260	$200	$250	$300
government contracts	2	-	-	-	-	1	-	-	-	-
health	8	$149,500	$102,800	$121,500	$232,300	4	-	-	-	-
immigration	14	$78,800	$40,000	$60,000	$118,900	9	$250	$200	$250	$300
insurance-plaintiff	3	-	-	-	-	2	-	-	-	-
insurance-defense	21	$116,700	$75,000	$112,000	$130,000	21	$174	$155	$175	$185
intellectual property	5	$300,400	$113,500	$210,000	$532,500	5	$463	$270	$350	$713
intellectual property-patents	8	$172,100	$96,300	$170,000	$227,800	4	-	-	-	-
juvenile	14	$90,100	$69,000	$96,000	$107,800	13	$82	$75	$75	$75
labor & employment	6	$132,700	$100,000	$127,500	$175,800	6	$276	$241	$283	$306
labor & employment-employee	10	$125,100	$54,900	$82,500	$212,500	10	$309	$233	$313	$356
labor & employment-management	10	$205,500	$118,900	$190,000	$249,000	9	$315	$225	$300	$388
medical malpractice	10	$125,500	$76,500	$102,500	$186,800	9	$189	$153	$180	$225
natural resources & energy	4	-	-	-	-	4	-	-	-	-
natural resources & energy-oil & gas	11	$177,300	$140,000	$166,000	$210,000	6	$263	$219	$260	$306
personal injury	43	$163,300	$72,000	$135,000	$230,000	17	$271	$238	$295	$338
product liability	5	$112,000	$90,000	$110,000	$135,000	2	-	-	-	-
real estate	34	$147,600	$78,800	$110,400	$185,300	27	$276	$225	$275	$300
real estate-commercial	13	$160,700	$84,000	$121,000	$222,500	11	$312	$195	$325	$450
real estate-foreclosure	5	$111,000	$87,500	$90,000	$145,000	5	$221	$215	$215	$230
real estate-HOA/CCIOA	5	$202,800	$80,500	$175,000	$339,000	5	$288	$250	$290	$325
real estate-special districts	4	-	-	-	-	4	-	-	-	-
tax	7	$230,000	$75,000	$130,000	$280,000	6	$418	$250	$373	$566
transportation	2	-	-	-	-	2	-	-	-	-
trusts & estate	14	$109,900	$60,000	$97,500	$146,300	14	$259	$198	$235	$331
trusts & estate-estate administration	9	$119,800	$65,000	$74,000	$152,500	9	$248	$223	$240	$278
trusts & estate-estate planning	34	$97,100	$66,100	$95,500	$120,000	32	$255	$200	$250	$300
trusts & estate-litigation	6	$165,000	$69,600	$135,000	$266,500	6	$277	$234	$263	$343
water	20	$129,100	$86,300	$133,300	$178,800	20	$228	$188	$235	$250
workers' compensation	15	$153,100	$75,000	$107,000	$230,000	9	$159	$140	$150	$180

**Practice areas with fewer than five respondents who spend at least 50% of their time in that area are not displayed.*

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 002 page 3

PRIVATE PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Geographic Location										
Denver	333	$152,400	$72,000	$120,000	$185,000	276	$269	$200	$250	$325
Adams, Arapahoe, Douglas, Elbert, and Jefferson	228	$127,000	$77,300	$111,700	$153,800	169	$257	$200	$250	$300
Boulder and Broomfield	100	$130,600	$76,300	$110,000	$178,800	84	$263	$200	$253	$300
Eagle and Pitkin	13	$116,000	$70,000	$95,000	$142,500	12	$298	$250	$275	$371
El Paso	44	$120,100	$54,800	$89,500	$150,000	40	$270	$220	$250	$311
Larimer and Weld	55	$117,300	$55,000	$90,000	$140,000	52	$225	$193	$225	$275
Mesa	25	$122,100	$60,000	$95,000	$135,000	24	$228	$200	$225	$265
Pueblo	4	-	-	-	-	3	-	-	-	-
all others east of the Continental Divide	9	$150,900	$81,000	$100,000	$220,000	8	$216	$181	$200	$260
all others west of the Continental Divide	31	$129,300	$60,000	$115,000	$160,000	28	$227	$175	$235	$250
County										
Adams	13	$134,000	$76,500	$104,000	$151,500	8	$208	$106	$225	$280
Alamosa		-	-	-	-		-	-	-	-
Arapahoe	112	$125,900	$75,000	$112,200	$163,800	78	$252	$184	$238	$306
Archuleta	1	-	-	-	-	1	-	-	-	-
Baca		-	-	-	-		-	-	-	-
Bent		-	-	-	-		-	-	-	-
Boulder	94	$130,200	$78,800	$110,000	$180,000	78	$257	$199	$253	$300
Broomfield	6	$136,500	$72,000	$117,500	$190,000	6	$342	$225	$268	$416
Chaffee	1	-	-	-	-	1	-	-	-	-
Cheyenne		-	-	-	-		-	-	-	-
Clear Creek		-	-	-	-		-	-	-	-
Conejos		-	-	-	-		-	-	-	-
Costilla		-	-	-	-		-	-	-	-
Crowley		-	-	-	-		-	-	-	-
Custer		-	-	-	-		-	-	-	-
Delta	1	-	-	-	-	1	-	-	-	-
Denver	333	$152,400	$72,000	$120,000	$185,000	276	$269	$200	$250	$325
Dolores		-	-	-	-		-	-	-	-
Douglas	39	$130,800	$75,000	$120,000	$150,000	34	$260	$211	$250	$296
Eagle	5	$107,900	$86,000	$92,500	$137,500	6	$267	$215	$270	$300
El Paso	44	$120,100	$54,800	$89,500	$150,000	40	$270	$220	$250	$311
Elbert		-	-	-	-		-	-	-	-
Fremont	1	-	-	-	-	1	-	-	-	-
Garfield	5	$120,000	$55,000	$80,000	$205,000	4	-	-	-	-
Gilpin		-	-	-	-		-	-	-	-
Grand	1	-	-	-	-	1	-	-	-	-

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2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 002 page 4

PRIVATE PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Gunnison	1	-	-	-	-	1	-	-	-	-
Hinsdale		-	-	-	-		-	-	-	-
Huerfano		-	-	-	-		-	-	-	-
Jackson		-	-	-	-		-	-	-	-
Jefferson	64	$125,000	$80,500	$114,500	$150,000	49	$269	$225	$275	$315
Kiowa		-	-	-	-		-	-	-	-
Kit Carson	1	-	-	-	-	1	-	-	-	-
La Plata	5	$108,400	$60,000	$76,000	$173,000	4	-	-	-	-
Lake		-	-	-	-		-	-	-	-
Larimer	45	$115,600	$53,000	$90,000	$142,500	42	$236	$200	$225	$275
Las Animas	1	-	-	-	-		-	-	-	-
Lincoln		-	-	-	-		-	-	-	-
Logan	3	-	-	-	-	3	-	-	-	-
Mesa	25	$122,100	$60,000	$95,000	$135,000	24	$228	$200	$225	$265
Mineral		-	-	-	-		-	-	-	-
Moffat		-	-	-	-		-	-	-	-
Montezuma		-	-	-	-		-	-	-	-
Montrose	4	-	-	-	-	4	-	-	-	-
Morgan	1	-	-	-	-		-	-	-	-
Otero		-	-	-	-		-	-	-	-
Ouray		-	-	-	-		-	-	-	-
Park		-	-	-	-		-	-	-	-
Phillips		-	-	-	-		-	-	-	-
Pitkin	8	$121,000	$60,000	$97,500	$165,000	6	$328	$250	$323	$394
Prowers		-	-	-	-		-	-	-	-
Pueblo	4	-	-	-	-	3	-	-	-	-
Rio Blanco		-	-	-	-		-	-	-	-
Rio Grande	1	-	-	-	-	2	-	-	-	-
Routt	5	$151,400	$88,500	$150,000	$215,000	5	$246	$195	$245	$298
Saguache		-	-	-	-		-	-	-	-
San Juan		-	-	-	-		-	-	-	-
San Miguel	1	-	-	-	-	1	-	-	-	-
Sedgwick		-	-	-	-		-	-	-	-
Summit	7	$114,000	$60,000	$72,800	$185,000	6	$250	$238	$250	$263
Teller		-	-	-	-		-	-	-	-
Washington		-	-	-	-		-	-	-	-
Weld	10	$124,900	$53,800	$102,100	$176,900	10	$179	$94	$193	$246
Yuma		-	-	-	-		-	-	-	-

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Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 002 page 5

PRIVATE PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
# of Attorneys at Organization										
250+	27	$287,300	$135,000	$200,000	$375,000	25	$412	$280	$405	$525
100 - 249	24	$192,600	$112,300	$150,000	$202,500	17	$359	$268	$350	$488
50 - 99	19	$127,800	$95,000	$125,000	$162,000	12	$258	$196	$228	$318
20 - 49	70	$146,200	$86,900	$122,500	$198,500	55	$286	$200	$275	$350
10 - 19	97	$154,500	$86,000	$130,000	$187,500	82	$253	$190	$240	$295
5 - 9	137	$151,100	$79,500	$120,000	$180,000	113	$263	$200	$250	$325
2 - 4	216	$125,100	$65,000	$95,000	$160,000	176	$246	$200	$250	$299
1	251	$112,400	$58,000	$96,000	$145,000	206	$238	$200	$250	$296
Gender										
male	524	$151,600	$77,000	$121,600	$199,500	438	$276	$210	$258	$321
female	344	$116,000	$65,000	$99,500	$142,300	275	$232	$175	$225	$275

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 003 page 1

PUBLIC PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	259	$101,400	$70,000	$95,000	$126,000	29	$91	$50	$95	$100
# of Years Practicing Law										
40+	12	$143,600	$101,000	$153,400	$165,000	0	-	-	-	-
30 - 39	25	$134,700	$108,200	$143,000	$159,500	2	-	-	-	-
20 - 29	43	$132,600	$102,500	$130,000	$158,000	5	$72	$51	$60	$99
10 - 19	67	$107,100	$88,000	$104,000	$122,000	10	$95	$87	$99	$100
5 - 9	55	$85,600	$69,000	$77,000	$98,000	7	$105	$45	$100	$108
3 - 4	26	$69,400	$56,000	$66,000	$80,000	2	-	-	-	-
1 - 2	22	$56,800	$48,300	$58,500	$65,500	2	-	-	-	-
<1	8	$49,300	$41,100	$49,000	$54,600	1	-	-	-	-
Primary Practice Area (>= 50%)*										
admin/gov/reg	32	$94,400	$71,300	$95,000	$110,800	5	$88	$70	$100	$100
admin/gov/reg-education/school	6	$75,300	$57,100	$65,000	$104,000	1	-	-	-	-
admin/gov/reg-local & municipal	14	$115,100	$75,400	$127,000	$145,000		-	-	-	-
admin/gov/reg-public utilities	2	-	-	-	-		-	-	-	-
admin/gov/reg-zoning/city planning	3	-	-	-	-	2	-	-	-	-
alternative dispute resolution-mediation		-	-	-	-		-	-	-	-
appellate/appeals	12	$90,400	$68,000	$85,600	$106,100	1	-	-	-	-
bankruptcy		-	-	-	-		-	-	-	-
bankruptcy-debtor		-	-	-	-		-	-	-	-
business		-	-	-	-		-	-	-	-
business-commercial litigation		-	-	-	-		-	-	-	-
business-corporate counsel	2	-	-	-	-		-	-	-	-
business-financial institutions		-	-	-	-		-	-	-	-
business-mergers & acquisitions		-	-	-	-		-	-	-	-
business-nonprofit/tax exempt	3	-	-	-	-		-	-	-	-
business-privately held/family business		-	-	-	-		-	-	-	-
business-securities		-	-	-	-		-	-	-	-
business-securities litigation	1	-	-	-	-	1	-	-	-	-
civil litigation	14	$91,500	$48,500	$80,500	$139,800	1	-	-	-	-
collections		-	-	-	-		-	-	-	-
constitutional law/civil rights	4	-	-	-	-	1	-	-	-	-
construction		-	-	-	-		-	-	-	-
criminal	44	$87,300	$62,000	$70,000	$110,000	1	-	-	-	-
criminal-DUI		-	-	-	-		-	-	-	-
criminal-federal	3	-	-	-	-	1	-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 003 page 2

PUBLIC PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
disability-social security disability	1	-	-	-	-	0	-	-	-	-
elder	2	-	-	-	-	0	-	-	-	-
environmental	6	$122,000	$92,800	$132,200	$152,600	1	-	-	-	-
ethics & professional responsibility	3	-	-	-	-	0	-	-	-	-
family	9	$89,600	$42,300	$88,000	$132,000	0	-	-	-	-
government contracts	6	$83,000	$69,000	$78,000	$94,000	2	-	-	-	-
health	5	$163,000	$80,500	$150,000	$252,000	1	-	-	-	-
immigration	4	-	-	-	-		-	-	-	-
insurance-plaintiff		-	-	-	-		-	-	-	-
insurance-defense		-	-	-	-		-	-	-	-
intellectual property		-	-	-	-		-	-	-	-
intellectual property-patents	2	-	-	-	-		-	-	-	-
juvenile	9	$86,200	$68,000	$90,000	$103,500	2	-	-	-	-
labor & employment	5	$111,200	$86,500	$118,000	$132,500		-	-	-	-
labor & employment-employee		-	-	-	-		-	-	-	-
labor & employment-management	4	-	-	-	-	1	-	-	-	-
medical malpractice		-	-	-	-		-	-	-	-
natural resources & energy		-	-	-	-		-	-	-	-
natural resources & energy-oil & gas		-	-	-	-		-	-	-	-
personal injury		-	-	-	-		-	-	-	-
product liability		-	-	-	-		-	-	-	-
real estate	1	-	-	-	-		-	-	-	-
real estate-commercial		-	-	-	-		-	-	-	-
real estate-foreclosure	1	-	-	-	-		-	-	-	-
real estate-HOA/CCIOA		-	-	-	-		-	-	-	-
real estate-special districts	1	-	-	-	-		-	-	-	-
tax	3	-	-	-	-	1	-	-	-	-
transportation	1	-	-	-	-	1	-	-	-	-
trusts & estate		-	-	-	-		-	-	-	-
trusts & estate-estate administration		-	-	-	-		-	-	-	-
trusts & estate-estate planning		-	-	-	-		-	-	-	-
trusts & estate-litigation	1	-	-	-	-		-	-	-	-
water	3	-	-	-	-	1	-	-	-	-
workers' compensation	4	-	-	-	-	1	-	-	-	-

**Practice areas with fewer than five respondents who spend at least 50% of their time in that area are not displayed.*

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 003 page 3

PUBLIC PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Geographic Location										
Denver	119	$103,700	$75,000	$98,000	$131,000	19	$97	$90	$99	$100
Adams, Arapahoe, Douglas, Elbert, and Jefferson	40	$100,600	$67,500	$96,500	$126,300	4	-	-	-	-
Boulder and Broomfield	13	$87,000	$63,500	$77,000	$103,800	1	-	-	-	-
Eagle and Pitkin	1	-	-	-	-		-	-	-	-
El Paso	10	$94,500	$67,300	$90,500	$108,300		-	-	-	-
Larimer and Weld	25	$104,400	$64,000	$98,000	$134,000	0	-	-	-	-
Mesa	3	-	-	-	-		-	-	-	-
Pueblo	2	-	-	-	-		-	-	-	-
all others east of the Continental Divide	8	$103,600	$70,000	$108,500	$130,800	1	-	-	-	-
all others west of the Continental Divide	19	$100,000	$64,000	$96,000	$145,000	3	-	-	-	-
County										
Adams	11	$91,300	$70,000	$84,000	$120,000	1	-	-	-	-
Alamosa	2	-	-	-	-		-	-	-	-
Arapahoe	13	$99,700	$68,000	$88,000	$118,500	1	-	-	-	-
Archuleta	1	-	-	-	-		-	-	-	-
Baca		-	-	-	-		-	-	-	-
Bent		-	-	-	-		-	-	-	-
Boulder	13	$87,000	$63,500	$77,000	$103,800	1	-	-	-	-
Broomfield		-	-	-	-		-	-	-	-
Chaffee	1	-	-	-	-		-	-	-	-
Cheyenne		-	-	-	-		-	-	-	-
Clear Creek	1	-	-	-	-		-	-	-	-
Conejos		-	-	-	-		-	-	-	-
Costilla		-	-	-	-		-	-	-	-
Crowley		-	-	-	-		-	-	-	-
Custer		-	-	-	-		-	-	-	-
Delta	1	-	-	-	-	1	-	-	-	-
Denver	119	$103,700	$75,000	$98,000	$131,000	19	$97	$90	$99	$100
Dolores		-	-	-	-		-	-	-	-
Douglas	3	-	-	-	-		-	-	-	-
Eagle	1	-	-	-	-		-	-	-	-
El Paso	10	$94,500	$67,300	$90,500	$108,300		-	-	-	-
Elbert		-	-	-	-		-	-	-	-
Fremont		-	-	-	-		-	-	-	-
Garfield	2	-	-	-	-		-	-	-	-
Gilpin		-	-	-	-		-	-	-	-
Grand		-	-	-	-		-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 003 page 4

PUBLIC PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Gunnison	1	-	-	-	-		-	-	-	-
Hinsdale		-	-	-	-		-	-	-	-
Huerfano		-	-	-	-		-	-	-	-
Jackson		-	-	-	-		-	-	-	-
Jefferson	13	$102,300	$67,000	$97,900	$132,500	2	-	-	-	-
Kiowa		-	-	-	-		-	-	-	-
Kit Carson		-	-	-	-		-	-	-	-
La Plata	3	-	-	-	-	1	-	-	-	-
Lake		-	-	-	-		-	-	-	-
Larimer	18	$105,900	$62,000	$97,500	$137,800	0	-	-	-	-
Las Animas		-	-	-	-		-	-	-	-
Lincoln		-	-	-	-		-	-	-	-
Logan		-	-	-	-		-	-	-	-
Mesa	3	-	-	-	-		-	-	-	-
Mineral		-	-	-	-		-	-	-	-
Moffat	1	-	-	-	-		-	-	-	-
Montezuma		-	-	-	-		-	-	-	-
Montrose	4	-	-	-	-		-	-	-	-
Morgan	2	-	-	-	-	1	-	-	-	-
Otero	2	-	-	-	-		-	-	-	-
Ouray	1	-	-	-	-	1	-	-	-	-
Park		-	-	-	-		-	-	-	-
Phillips		-	-	-	-		-	-	-	-
Pitkin		-	-	-	-		-	-	-	-
Prowers		-	-	-	-		-	-	-	-
Pueblo	2	-	-	-	-		-	-	-	-
Rio Blanco		-	-	-	-		-	-	-	-
Rio Grande		-	-	-	-		-	-	-	-
Routt	3	-	-	-	-	0	-	-	-	-
Saguache		-	-	-	-		-	-	-	-
San Juan		-	-	-	-		-	-	-	-
San Miguel		-	-	-	-		-	-	-	-
Sedgwick		-	-	-	-		-	-	-	-
Summit	2	-	-	-	-		-	-	-	-
Teller		-	-	-	-		-	-	-	-
Washington		-	-	-	-		-	-	-	-
Weld	7	$100,600	$72,500	$110,000	$132,000	0	-	-	-	-
Yuma		-	-	-	-		-	-	-	-

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 003 page 5

PUBLIC PRACTITIONERS

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
# of Attorneys at Organization										
250+	41	$103,000	$75,000	$104,000	$132,000	10	$96	$94	$99	$100
100 - 249	29	$107,500	$82,500	$108,000	$131,000	6	$85	$68	$95	$101
50 - 99	22	$97,800	$67,800	$86,000	$134,300		-	-	-	-
20 - 49	34	$96,900	$68,500	$84,000	$107,800	2	-	-	-	-
10 - 19	25	$109,800	$80,500	$102,500	$135,000	3	-	-	-	-
5 - 9	37	$101,800	$64,800	$98,000	$131,000	2	-	-	-	-
2 - 4	27	$104,300	$71,000	$96,000	$125,000	3	-	-	-	-
1	15	$95,100	$70,000	$91,000	$122,900	1	-	-	-	-
Gender										
male	124	$106,900	$70,000	$98,000	$138,300	13	$107	$68	$95	$100
female	128	$95,700	$68,300	$94,500	$115,600	16	$78	$49	$93	$100

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 004 page 1

SOLO PRACTITIONER

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	253	$113,600	$57,300	$96,000	$150,000	223	$243	$200	$250	$295
# of Years Practicing Law										
30+	106	$124,300	$61,800	$100,000	$175,000	99	$254	$200	$250	$300
20 - 29	44	$127,900	$74,000	$108,800	$175,000	41	$251	$200	$250	$300
10 - 19	59	$111,400	$58,000	$100,000	$145,000	50	$229	$200	$250	$278
5 - 9	30	$75,100	$39,000	$55,300	$88,800	23	$224	$200	$225	$275
<5	13	$65,400	$32,000	$65,000	$100,000	9	$193	$105	$150	$225
1 - 4	10	$72,000	$36,000	$67,500	$115,000	7	$198	$85	$150	$250
<1	3	-	-	-	-	2	-	-	-	-
Geographic Location										
Denver	68	$127,100	$60,000	$94,000	$165,000	57	$237	$200	$250	$300
Adams, Arapahoe, Douglas, Elbert, and Jefferson	66	$96,100	$45,000	$91,000	$126,300	57	$259	$225	$250	$300
Boulder and Broomfield	30	$113,400	$71,500	$99,000	$163,800	28	$238	$203	$250	$293
Eagle and Pitkin	5	$146,000	$76,000	$125,000	$226,500	6	$290	$244	$270	$319
El Paso	24	$103,900	$46,300	$84,500	$143,800	24	$255	$200	$250	$278
Larimer and Weld	16	$92,600	$34,700	$80,500	$116,300	13	$213	$190	$200	$250
Mesa	11	$126,000	$62,400	$95,000	$200,000	10	$247	$219	$238	$280
Pueblo	3	-	-	-	-	2	-	-	-	-
all others east of the Continental Divide	6	$191,800	$99,000	$200,000	$258,800	5	$233	$200	$200	$283
all others west of the Continental Divide	12	$111,300	$60,000	$103,000	$147,500	11	$200	$150	$200	$250
# of Attorneys at Organization										
100+		-	-	-	-		-	-	-	-
20 - 99		-	-	-	-		-	-	-	-
5 - 19	1	-	-	-	-		-	-	-	-
2 - 4	21	$127,100	$71,000	$100,000	$177,500	19	$245	$225	$250	$280
1	225	$112,100	$55,000	$95,000	$147,500	198	$242	$200	$250	$300
Gender										
male	164	$122,300	$60,000	$100,000	$173,800	145	$259	$225	$250	$300
female	81	$93,500	$50,000	$89,000	$120,000	71	$209	$150	$225	$265

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 004 page 2

SOLO PRACTITIONER

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Office Type										
home office	73	$91,000	$45,000	$80,000	$122,500	61	$218	$150	$225	$275
office outside of home	169	$121,100	$60,000	$100,000	$165,000	152	$249	$203	$250	$295

NOTE: results not shown if fewer than 5 valid values

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Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 005 page 1

PARTNER

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	252	$208,200	$115,000	$167,500	$250,000	249	$310	$238	$295	$350
# of Years Practicing Law										
30+	101	$242,100	$131,000	$200,000	$300,000	101	$354	$270	$350	$438
20 - 29	51	$253,800	$120,000	$190,000	$275,000	53	$305	$223	$290	$350
10 - 19	74	$158,500	$94,400	$142,500	$200,800	74	$272	$225	$250	$305
5 - 9	21	$118,600	$78,000	$105,000	$149,500	18	$233	$208	$235	$275
<5	2	-	-	-	-		-	-	-	-
1 - 4	2	-	-	-	-		-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	97	$248,200	$127,500	$195,200	$270,000	94	$340	$233	$325	$415
Adams, Arapahoe, Douglas, Elbert, and Jefferson	59	$182,600	$104,000	$150,000	$220,000	58	$289	$223	$288	$350
Boulder and Broomfield	30	$183,700	$119,600	$172,500	$248,500	29	$312	$263	$300	$350
Eagle and Pitkin	2	-	-	-	-	2	-	-	-	-
El Paso	8	$227,800	$128,800	$176,000	$360,000	8	$323	$229	$348	$391
Larimer and Weld	20	$161,900	$76,300	$135,000	$247,500	21	$251	$225	$250	$283
Mesa	8	$150,000	$68,800	$112,500	$144,900	8	$249	$229	$245	$265
Pueblo	1	-	-	-	-	1	-	-	-	-
all others east of the Continental Divide	1	-	-	-	-	2	-	-	-	-
all others west of the Continental Divide	14	$151,300	$75,200	$137,500	$196,300	14	$261	$211	$248	$296
# of Attorneys at Organization										
100+	20	$405,900	$201,300	$300,000	$612,500	20	$512	$454	$488	$594
20 - 99	27	$205,000	$145,000	$198,000	$250,000	29	$335	$270	$325	$400
5 - 19	97	$219,300	$122,500	$175,000	$258,600	94	$297	$225	$285	$350
2 - 4	94	$156,500	$80,000	$130,000	$200,000	92	$273	$225	$275	$344
1	0	-	-	-	-	1	-	-	-	-
Gender										
male	167	$223,700	$125,000	$189,000	$250,000	166	$321	$250	$300	$375
female	78	$171,700	$85,000	$130,000	$201,300	76	$279	$200	$265	$329

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 006 page 1

ASSOCIATE

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	232	$89,000	$63,500	$80,000	$110,000	206	$226	$175	$205	$275
# of Years Practicing Law										
30+	3	-	-	-	-	3	-	-	-	-
20 - 29	7	$129,000	$100,000	$135,000	$166,000	7	$279	$240	$275	$350
10 - 19	25	$108,300	$80,000	$105,000	$123,500	22	$250	$190	$260	$300
5 - 9	73	$102,900	$79,300	$92,800	$120,000	63	$242	$190	$235	$285
<5	124	$74,200	$56,100	$70,000	$86,500	111	$205	$175	$200	$225
1 - 4	109	$73,900	$56,400	$70,000	$85,000	97	$206	$175	$200	$225
<1	15	$76,500	$54,000	$65,000	$93,000	14	$202	$175	$195	$223
Geographic Location										
Denver	105	$95,500	$70,000	$85,000	$113,400	94	$230	$175	$225	$275
Adams, Arapahoe, Douglas, Elbert, and Jefferson	52	$85,700	$70,000	$81,000	$105,300	42	$216	$189	$200	$246
Boulder and Broomfield	25	$90,700	$65,000	$72,000	$97,600	24	$229	$175	$200	$250
Eagle and Pitkin	3	-	-	-	-	3	-	-	-	-
El Paso	9	$65,900	$55,500	$61,000	$73,000	7	$256	$220	$275	$315
Larimer and Weld	15	$72,300	$50,000	$80,000	$96,000	17	$211	$178	$200	$243
Mesa	5	$72,000	$50,000	$60,000	$100,000	5	$186	$170	$185	$203
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	1	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	4	-	-	-	-	3	-	-	-	-
# of Attorneys at Organization										
100+	14	$124,900	$111,500	$132,500	$141,500	15	$263	$235	$285	$300
20 - 99	38	$95,300	$70,800	$91,300	$111,500	32	$233	$195	$213	$275
5 - 19	94	$87,500	$69,100	$80,000	$105,300	83	$219	$175	$200	$250
2 - 4	66	$72,000	$55,000	$64,000	$81,300	58	$211	$175	$200	$250
1		-	-	-	-		-	-	-	-
Gender										
male	122	$92,000	$65,000	$83,500	$110,500	107	$229	$180	$215	$275
female	107	$85,900	$60,000	$80,000	$106,300	97	$221	$175	$200	$268

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 007 page 1

IN-HOUSE COUNSEL: FOR PROFIT

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	105	$148,600	$100,000	$150,000	$185,500	6	$155	$70	$175	$213
# of Years Practicing Law										
30+	13	$180,300	$110,000	$185,000	$250,000	1	-	-	-	-
20 - 29	22	$195,500	$151,000	$187,000	$228,300	2	-	-	-	-
10 - 19	31	$148,200	$121,000	$155,000	$179,000	1	-	-	-	-
5 - 9	22	$121,400	$91,200	$112,900	$156,000	1	-	-	-	-
<5	17	$99,600	$77,500	$91,000	$106,500	1	-	-	-	-
1 - 4	14	$106,900	$85,000	$94,000	$116,000	1	-	-	-	-
<1	3	-	-	-	-		-	-	-	-
Geographic Location										
Denver	33	$150,600	$104,000	$155,000	$182,500	3	-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	40	$142,800	$96,300	$134,500	$178,300	2	-	-	-	-
Boulder and Broomfield	12	$133,600	$99,500	$118,500	$163,100		-	-	-	-
Eagle and Pitkin	2	-	-	-	-	0	-	-	-	-
El Paso	2	-	-	-	-		-	-	-	-
Larimer and Weld	4	-	-	-	-	1	-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	1	-	-	-	-		-	-	-	-
all others west of the Continental Divide	1	-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	11	$143,900	$100,000	$150,000	$160,000	1	-	-	-	-
20 - 99	18	$160,800	$111,700	$168,000	$191,500	1	-	-	-	-
5 - 19	25	$168,500	$136,400	$156,000	$212,500	2	-	-	-	-
2 - 4	29	$147,900	$89,300	$130,000	$200,000	1	-	-	-	-
1	19	$123,700	$95,000	$125,000	$160,000	0	-	-	-	-
Gender										
male	52	$159,800	$106,300	$150,000	$213,800	3	-	-	-	-
female	49	$136,000	$94,000	$127,000	$175,000	3	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 008 page 1

OF COUNSEL

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	32	$140,000	$90,000	$144,000	$188,000	30	$304	$229	$300	$360
# of Years Practicing Law										
30+	9	$159,700	$75,000	$150,000	$246,000	7	$321	$240	$300	$395
20 - 29	7	$152,800	$130,000	$155,000	$189,500	7	$351	$300	$345	$375
10 - 19	12	$133,100	$109,100	$136,500	$150,000	12	$288	$208	$313	$358
5 - 9	2	-	-	-	-	2	-	-	-	-
<5	2	-	-	-	-	2	-	-	-	-
1 - 4	2	-	-	-	-	2	-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	18	$132,000	$67,500	$146,500	$189,100	17	$312	$225	$340	$368
Adams, Arapahoe, Douglas, Elbert, and Jefferson	8	$166,200	$115,600	$157,500	$215,000	7	$281	$215	$300	$350
Boulder and Broomfield	3	-	-	-	-	3	-	-	-	-
Eagle and Pitkin	1	-	-	-	-	1	-	-	-	-
El Paso	1	-	-	-	-	1	-	-	-	-
Larimer and Weld		-	-	-	-		-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide		-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	5	$177,800	$152,500	$189,000	$197,500	5	$397	$345	$360	$468
20 - 99	5	$111,600	$76,500	$125,000	$140,000	4	-	-	-	-
5 - 19	14	$127,900	$83,800	$122,500	$155,000	13	$265	$213	$250	$328
2 - 4	4	-	-	-	-	4	-	-	-	-
1	2	-	-	-	-	2	-	-	-	-
Gender										
male	15	$145,700	$80,000	$150,000	$205,000	13	$338	$250	$350	$388
female	17	$134,900	$95,000	$143,000	$179,500	17	$278	$228	$285	$348

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 009 page 1

CONTRACT ATTORNEY

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	16	$68,800	$45,500	$55,900	$99,000	15	$114	$30	$75	$225
# of Years Practicing Law										
30+	2	-	-	-	-	2	-	-	-	-
20 - 29		-	-	-	-		-	-	-	-
10 - 19	5	$72,000	$52,500	$70,000	$92,500	5	$107	$30	$75	$200
5 - 9	3	-	-	-	-	2	-	-	-	-
<5	6	$40,500	$34,500	$43,500	$48,500	6	$95	$25	$35	$225
1 - 4	3	-	-	-	-	3	-	-	-	-
<1	3	-	-	-	-	3	-	-	-	-
Geographic Location										
Denver	12	$54,400	$41,300	$49,000	$67,500	11	$96	$27	$35	$225
Adams, Arapahoe, Douglas, Elbert, and Jefferson	3	-	-	-	-	3	-	-	-	-
Boulder and Broomfield		-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso		-	-	-	-		-	-	-	-
Larimer and Weld		-	-	-	-		-	-	-	-
Mesa	1	-	-	-	-	1	-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide		-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	1	-	-	-	-	1	-	-	-	-
20 - 99	1	-	-	-	-	1	-	-	-	-
5 - 19	3	-	-	-	-	3	-	-	-	-
2 - 4	2	-	-	-	-	2	-	-	-	-
1	5	$78,500	$52,700	$70,000	$108,500	5	$99	$48	$75	$163
Gender										
male	4	-	-	-	-	4	-	-	-	-
female	12	$66,400	$45,500	$62,700	$99,000	11	$110	$30	$75	$225

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 010 page 1

JUDGE/MAGISTRATE/ALJ

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	31	$139,500	$120,000	$156,000	$160,000	1	-	-	-	-
# of Years Practicing Law										
30+	14	$145,600	$121,500	$158,500	$161,300		-	-	-	-
20 - 29	10	$141,200	$114,000	$154,000	$162,300	1	-	-	-	-
10 - 19	7	$124,700	$102,000	$125,000	$139,000	0	-	-	-	-
5 - 9		-	-	-	-		-	-	-	-
<5		-	-	-	-		-	-	-	-
1 - 4		-	-	-	-		-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	12	$146,600	$113,800	$158,500	$168,800		-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	4	-	-	-	-	1	-	-	-	-
Boulder and Broomfield	2	-	-	-	-		-	-	-	-
Eagle and Pitkin	1	-	-	-	-		-	-	-	-
El Paso	2	-	-	-	-		-	-	-	-
Larimer and Weld	3	-	-	-	-	0	-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	2	-	-	-	-		-	-	-	-
all others west of the Continental Divide	3	-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	10	$143,600	$120,000	$156,000	$161,300		-	-	-	-
20 - 99	6	$120,200	$93,000	$106,000	$166,800		-	-	-	-
5 - 19	8	$143,400	$128,300	$157,500	$159,000	1	-	-	-	-
2 - 4	3	-	-	-	-		-	-	-	-
1		-	-	-	-		-	-	-	-
Gender										
male	18	$144,800	$121,500	$158,500	$165,000	0	-	-	-	-
female	12	$130,200	$106,300	$126,000	$157,300	1	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 011 page 1

CITY/COUNTY GOVERNMENT

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	78	$102,100	$71,800	$97,500	$125,300	6	$74	$46	$55	$111
# of Years Practicing Law										
30+	11	$122,400	$98,000	$124,000	$145,000	2	-	-	-	-
20 - 29	17	$131,900	$97,500	$132,000	$154,000	1	-	-	-	-
10 - 19	26	$103,200	$90,000	$101,500	$118,500	3	-	-	-	-
5 - 9	11	$74,800	$66,000	$70,000	$77,000		-	-	-	-
<5	13	$67,000	$60,000	$65,000	$71,500		-	-	-	-
1 - 4	12	$66,700	$60,000	$65,000	$71,000		-	-	-	-
<1	1	-	-	-	-		-	-	-	-
Geographic Location										
Denver	18	$109,300	$81,800	$107,000	$146,300	1	-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	16	$106,900	$75,000	$99,000	$125,500	3	-	-	-	-
Boulder and Broomfield	3	-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso	5	$81,000	$66,500	$68,000	$102,000		-	-	-	-
Larimer and Weld	14	$108,400	$70,900	$99,500	$137,800		-	-	-	-
Mesa	2	-	-	-	-		-	-	-	-
Pueblo	2	-	-	-	-		-	-	-	-
all others east of the Continental Divide	4	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	10	$100,200	$70,000	$98,000	$119,500	1	-	-	-	-
# of Attorneys at Organization										
100+	11	$116,300	$85,000	$125,000	$150,000	1	-	-	-	-
20 - 99	15	$86,800	$68,000	$80,000	$100,100	2	-	-	-	-
5 - 19	29	$111,500	$83,300	$101,000	$133,000	1	-	-	-	-
2 - 4	9	$99,300	$72,000	$96,000	$122,000	0	-	-	-	-
1	6	$85,900	$58,800	$71,300	$113,500	1	-	-	-	-
Gender										
male	31	$103,600	$71,000	$97,900	$127,000	2	-	-	-	-
female	43	$100,500	$70,000	$96,000	$120,000	4	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 012 page 1

STATE GOVERNMENT

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	87	$86,700	$62,000	$80,000	$107,000	17	$87	$83	$98	$100
# of Years Practicing Law										
30+	5	$139,400	$98,100	$135,000	$183,000		-	-	-	-
20 - 29	10	$131,200	$109,300	$117,500	$133,800	3	-	-	-	-
10 - 19	23	$102,000	$84,000	$95,000	$110,000	6	$96	$90	$99	$100
5 - 9	20	$77,700	$70,500	$78,000	$83,300	6	$81	$43	$98	$102
<5	29	$56,300	$46,800	$56,100	$65,500	2	-	-	-	-
1 - 4	22	$59,500	$53,000	$61,500	$67,000	1	-	-	-	-
<1	7	$46,200	$40,500	$48,000	$50,000	1	-	-	-	-
Geographic Location										
Denver	59	$94,500	$72,000	$84,000	$110,000	16	$90	$90	$99	$100
Adams, Arapahoe, Douglas, Elbert, and Jefferson	10	$68,300	$46,800	$67,000	$81,500		-	-	-	-
Boulder and Broomfield	4	-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso	1	-	-	-	-		-	-	-	-
Larimer and Weld	5	$81,800	$44,600	$62,000	$129,000		-	-	-	-
Mesa	1	-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	1	-	-	-	-		-	-	-	-
all others west of the Continental Divide	3	-	-	-	-	1	-	-	-	-
# of Attorneys at Organization										
100+	39	$89,400	$72,000	$85,000	$110,000	14	$93	$90	$99	$100
20 - 99	25	$97,500	$64,000	$83,000	$120,500	0	-	-	-	-
5 - 19	13	$73,400	$58,500	$64,000	$80,500	2	-	-	-	-
2 - 4	2	-	-	-	-		-	-	-	-
1		-	-	-	-		-	-	-	-
Gender										
male	41	$89,500	$58,500	$74,000	$112,100	8	$87	$79	$97	$100
female	44	$84,500	$67,000	$84,000	$106,800	9	$88	$70	$100	$101

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 013 page 1

FEDERAL GOVERNMENT

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	24	$112,000	$92,000	$106,400	$146,000	1	-	-	-	-
# of Years Practicing Law										
30+	2	-	-	-	-		-	-	-	-
20 - 29	4	-	-	-	-		-	-	-	-
10 - 19	5	$120,200	$102,000	$105,800	$145,500	1	-	-	-	-
5 - 9	10	$101,200	$88,000	$101,000	$115,800		-	-	-	-
<5	3	-	-	-	-	0	-	-	-	-
1 - 4	3	-	-	-	-	0	-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	16	$116,600	$93,500	$105,500	$150,000		-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	3	-	-	-	-		-	-	-	-
Boulder and Broomfield		-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso		-	-	-	-		-	-	-	-
Larimer and Weld		-	-	-	-		-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide	1	-	-	-	-	1	-	-	-	-
# of Attorneys at Organization										
100+	9	$115,700	$92,000	$114,400	$139,500	1	-	-	-	-
20 - 99	7	$112,400	$76,000	$107,000	$160,000		-	-	-	-
5 - 19	1	-	-	-	-		-	-	-	-
2 - 4		-	-	-	-		-	-	-	-
1		-	-	-	-		-	-	-	-
Gender										
male	15	$123,700	$104,000	$120,000	$150,000	1	-	-	-	-
female	9	$92,600	$65,000	$98,000	$109,200		-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 014 page 1

IN-HOUSE COUNSEL: NON-PROFIT

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	26	$113,600	$74,000	$105,500	$131,300	3	-	-	-	-
# of Years Practicing Law										
30+	3	-	-	-	-		-	-	-	-
20 - 29	1	-	-	-	-		-	-	-	-
10 - 19	4	-	-	-	-		-	-	-	-
5 - 9	11	$101,700	$69,000	$105,000	$122,900	1	-	-	-	-
<5	6	$79,000	$57,500	$83,000	$98,500	2	-	-	-	-
1 - 4	6	$79,000	$57,500	$83,000	$98,500	2	-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	9	$96,200	$65,500	$106,000	$114,000	1	-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	6	$125,000	$73,000	$129,500	$159,900		-	-	-	-
Boulder and Broomfield	3	-	-	-	-	1	-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso	2	-	-	-	-		-	-	-	-
Larimer and Weld	2	-	-	-	-		-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide		-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+		-	-	-	-		-	-	-	-
20 - 99		-	-	-	-		-	-	-	-
5 - 19	8	$116,800	$76,300	$110,500	$141,400		-	-	-	-
2 - 4	11	$111,200	$60,000	$100,000	$135,000	3	-	-	-	-
1	7	$113,800	$91,000	$106,000	$124,000		-	-	-	-
Gender										
male	15	$111,000	$71,000	$98,000	$135,000	2	-	-	-	-
female	11	$117,100	$91,000	$110,000	$124,000	1	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 015 page 1

COUNSEL WITH LEGAL AID/LEGAL SERVICES AGENCY

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	13	$60,000	$45,500	$55,000	$74,500	1	-	-	-	-
# of Years Practicing Law										
30+	2	-	-	-	-		-	-	-	-
20 - 29	1	-	-	-	-		-	-	-	-
10 - 19	2	-	-	-	-		-	-	-	-
5 - 9	3	-	-	-	-	0	-	-	-	-
<5	5	$46,600	$41,000	$46,000	$52,500	1	-	-	-	-
1 - 4	5	$46,600	$41,000	$46,000	$52,500	1	-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	5	$60,200	$45,500	$55,000	$77,500	1	-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	1	-	-	-	-		-	-	-	-
Boulder and Broomfield	1	-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso		-	-	-	-		-	-	-	-
Larimer and Weld	1	-	-	-	-	0	-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	1	-	-	-	-		-	-	-	-
all others west of the Continental Divide	2	-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	1	-	-	-	-		-	-	-	-
20 - 99	3	-	-	-	-		-	-	-	-
5 - 19	3	-	-	-	-	1	-	-	-	-
2 - 4	2	-	-	-	-	0	-	-	-	-
1	2	-	-	-	-		-	-	-	-
Gender										
male	4	-	-	-	-	0	-	-	-	-
female	9	$59,400	$45,500	$55,000	$74,500	1	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 016 page 1

ARBITRATOR/MEDIATOR

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	3	-	-	-	-	3	-	-	-	-
# of Years Practicing Law										
30+	3	-	-	-	-	3	-	-	-	-
20 - 29		-	-	-	-		-	-	-	-
10 - 19		-	-	-	-		-	-	-	-
5 - 9		-	-	-	-		-	-	-	-
<5		-	-	-	-		-	-	-	-
1 - 4		-	-	-	-		-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver		-	-	-	-		-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	1	-	-	-	-	1	-	-	-	-
Boulder and Broomfield		-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso	2	-	-	-	-	2	-	-	-	-
Larimer and Weld		-	-	-	-		-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide		-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+		-	-	-	-		-	-	-	-
20 - 99		-	-	-	-		-	-	-	-
5 - 19		-	-	-	-		-	-	-	-
2 - 4		-	-	-	-		-	-	-	-
1	3	-	-	-	-	3	-	-	-	-
Gender										
male	2	-	-	-	-	2	-	-	-	-
female	1	-	-	-	-	1	-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Income and Billing Rate Tables

TABLE 017 page 1

ACADEMIC

	INCOME [full time]					HOURLY BILLING RATE [full time who bill hourly]				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total Full Time	6	$101,200	$73,800	$101,000	$130,000	1	-	-	-	-
# of Years Practicing Law										
30+		-	-	-	-		-	-	-	-
20 - 29	2	-	-	-	-		-	-	-	-
10 - 19	2	-	-	-	-	1	-	-	-	-
5 - 9	1	-	-	-	-		-	-	-	-
<5	1	-	-	-	-		-	-	-	-
1 - 4	1	-	-	-	-		-	-	-	-
<1		-	-	-	-		-	-	-	-
Geographic Location										
Denver	3	-	-	-	-	1	-	-	-	-
Adams, Arapahoe, Douglas, Elbert, and Jefferson	0	-	-	-	-		-	-	-	-
Boulder and Broomfield	2	-	-	-	-		-	-	-	-
Eagle and Pitkin		-	-	-	-		-	-	-	-
El Paso		-	-	-	-		-	-	-	-
Larimer and Weld		-	-	-	-		-	-	-	-
Mesa		-	-	-	-		-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide		-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+		-	-	-	-		-	-	-	-
20 - 99	4	-	-	-	-	1	-	-	-	-
5 - 19	1	-	-	-	-		-	-	-	-
2 - 4		-	-	-	-		-	-	-	-
1	0	-	-	-	-		-	-	-	-
Gender										
male	2	-	-	-	-	1	-	-	-	-
female	4	-	-	-	-		-	-	-	-

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

APPENDIX B

SALARY AND BILLING RATE TABLES: PARALEGALS / LEGAL ASSISTANTS

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

Index To Tables

001 20+ Years of Experience
002 15 - 19 Years of Experience
003 10 - 14 Years of Experience
004 5 - 9 Years of Experience
005 3 - 4 Years of Experience
006 1 - 2 Years of Experience
007 <1 Year of Experience

Key to Tables

MOST COMMON ANNUAL BASE SALARY = most common annual base salary of paralegals/legal assistants at the respondent's office location in 2016.

RESPONDENT INSTRUCTIONS: Please include only regular salaries/wages paid. EXCLUDE overtime, bonuses, profit sharing, retirement benefits paid, education reimbursement, dues for other professional organizations, and the monetary value of other benefits received. If paid hourly wages, please convert to an annualized full time base salary. For example, if paid $25 per hour, multiply $25 by 2,080 hours to report an average annual base salary of $52,000.

BASE: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/legal assistant at each experience level in 2016 answering

MOST COMMON HOURLY BILLING RATE = most common hourly billing rate in 2016 for paralegals/legal assistants at the respondent's office location.

BASE: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/legal assistant at each experience level in 2016 answering

n = the number of respondents for basing the results

mean = arithmetic average

25th percentile = 25% earn less than the 25th percentile

50th (median) = the value that lies at the middle of a distribution; 50% of the values are above it and 50% are below. Unlike the mean, it is not influenced by extreme values.

75th percentile = 75% earn less than the 75th percentile

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Colorado Bar Association

2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 001 page 1

PARALEGALS/LEGAL ASSISTANTS: 20+ Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	133	$65,800	$50,000	$65,000	$80,000	128	$126	$91	$125	$150
Geographic Location										
Denver	50	$73,800	$60,000	$68,800	$80,000	50	$128	$90	$125	$150
Adams, Arapahoe, Douglas, Elbert, and Jefferson	31	$66,400	$55,000	$65,000	$80,000	35	$126	$100	$125	$150
Boulder and Broomfield	6	$68,300	$58,800	$70,000	$76,300	7	$136	$125	$125	$150
Eagle and Pitkin	1	-	-	-	-	1	-	-	-	-
El Paso	9	$52,800	$43,500	$50,000	$65,000	10	$132	$116	$125	$158
Larimer and Weld	10	$50,300	$47,500	$50,000	$54,800	12	$90	$75	$95	$100
Mesa	6	$50,400	$41,500	$47,000	$56,700	4	-	-	-	-
Pueblo	1	-	-	-	-	1	-	-	-	-
all others east of the Continental Divide	3	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	7	$53,100	$36,000	$43,000	$80,000	2	-	-	-	-
# of Attorneys at Organization										
100+	13	$73,400	$60,000	$70,000	$87,500	10	$146	$73	$165	$205
50 - 99	6	$85,400	$60,000	$77,500	$102,800	5	$116	$95	$125	$133
20 - 49	14	$72,000	$65,000	$72,500	$76,300	12	$132	$113	$125	$175
10 - 19	16	$72,600	$55,000	$65,000	$80,000	19	$135	$100	$135	$150
5 - 9	19	$69,500	$55,000	$70,000	$82,000	19	$135	$120	$125	$170
2 - 4	36	$63,400	$46,300	$61,000	$75,000	32	$113	$90	$115	$143
1	21	$48,700	$41,000	$50,000	$58,000	22	$117	$90	$118	$150

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 002 page 1

PARALEGALS/LEGAL ASSISTANTS: 15 - 19 Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	115	$60,500	$50,000	$62,400	$70,000	125	$128	$90	$125	$150
Geographic Location										
Denver	47	$62,300	$55,000	$63,000	$70,000	50	$130	$90	$125	$171
Adams, Arapahoe, Douglas, Elbert, and Jefferson	29	$66,300	$55,000	$70,000	$75,000	31	$129	$100	$125	$150
Boulder and Broomfield	7	$63,600	$60,000	$65,000	$70,000	12	$153	$128	$155	$175
Eagle and Pitkin	1	-	-	-	-	1	-	-	-	-
El Paso	8	$51,800	$46,300	$51,000	$60,600	8	$134	$114	$125	$175
Larimer and Weld	7	$52,700	$45,000	$50,000	$65,000	9	$103	$73	$100	$125
Mesa	2	-	-	-	-	2	-	-	-	-
Pueblo	2	-	-	-	-	2	-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide	6	$44,200	$34,500	$39,000	$55,800	8	$107	$83	$95	$143
# of Attorneys at Organization										
100+	12	$64,500	$56,300	$62,700	$72,500	10	$144	$73	$120	$231
50 - 99	8	$63,300	$45,100	$67,500	$80,000	6	$111	$86	$113	$131
20 - 49	12	$68,100	$60,000	$70,000	$71,500	18	$153	$124	$153	$180
10 - 19	21	$65,800	$55,000	$65,000	$72,500	28	$128	$91	$125	$150
5 - 9	20	$63,700	$61,300	$65,000	$70,000	24	$131	$111	$125	$158
2 - 4	18	$56,700	$43,400	$52,500	$71,300	22	$116	$89	$120	$150
1	22	$49,000	$41,500	$50,000	$56,300	12	$110	$83	$115	$125

NOTE: results not shown if fewer than 5 valid values

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2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 003 page 1

PARALEGALS/LEGAL ASSISTANTS: 10 - 14 Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	154	$57,400	$47,000	$58,000	$65,000	178	$120	$90	$120	$150
Geographic Location										
Denver	50	$62,700	$55,000	$60,000	$70,000	63	$118	$85	$100	$160
Adams, Arapahoe, Douglas, Elbert, and Jefferson	37	$58,000	$46,500	$60,000	$67,500	43	$125	$100	$125	$150
Boulder and Broomfield	15	$58,000	$45,000	$60,000	$65,000	17	$139	$125	$135	$150
Eagle and Pitkin	3	-	-	-	-	2	-	-	-	-
El Paso	11	$53,500	$50,000	$55,000	$60,000	13	$124	$95	$125	$155
Larimer and Weld	21	$47,900	$42,000	$50,000	$50,500	19	$107	$100	$120	$125
Mesa	6	$42,100	$36,300	$41,800	$48,000	6	$99	$90	$95	$106
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	1	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	5	$57,000	$47,500	$60,000	$65,000	7	$92	$75	$90	$120
# of Attorneys at Organization										
100+	12	$60,100	$51,300	$60,000	$68,100	10	$123	$73	$123	$181
50 - 99	8	$57,700	$40,300	$65,000	$73,800	7	$106	$95	$100	$125
20 - 49	13	$60,100	$52,500	$61,000	$67,500	20	$141	$121	$128	$173
10 - 19	23	$61,600	$55,000	$60,000	$65,000	38	$117	$89	$110	$150
5 - 9	48	$58,700	$50,000	$60,000	$65,000	48	$128	$100	$125	$150
2 - 4	29	$55,400	$45,000	$48,000	$62,500	33	$109	$75	$110	$128
1	18	$48,600	$34,100	$47,000	$60,000	17	$108	$90	$100	$123

NOTE: results not shown if fewer than 5 valid values

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2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 004 page 1

PARALEGALS/LEGAL ASSISTANTS: 5 - 9 Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	163	$50,800	$42,000	$50,000	$60,000	189	$118	$90	$115	$150
Geographic Location										
Denver	56	$53,700	$45,000	$52,500	$60,000	62	$117	$83	$108	$150
Adams, Arapahoe, Douglas, Elbert, and Jefferson	49	$48,800	$40,800	$50,000	$56,800	57	$127	$100	$125	$150
Boulder and Broomfield	14	$48,200	$36,800	$47,500	$60,000	25	$121	$93	$125	$150
Eagle and Pitkin	1	-	-	-	-	2	-	-	-	-
El Paso	5	$48,200	$40,000	$52,000	$54,500	8	$128	$100	$130	$154
Larimer and Weld	17	$47,400	$40,000	$45,000	$53,000	15	$88	$60	$100	$110
Mesa	7	$48,800	$39,500	$50,000	$55,000	6	$81	$61	$78	$114
Pueblo	2	-	-	-	-	1	-	-	-	-
all others east of the Continental Divide		-	-	-	-		-	-	-	-
all others west of the Continental Divide	5	$49,200	$43,900	$48,000	$55,000	6	$113	$98	$123	$128
# of Attorneys at Organization										
100+	18	$55,500	$48,800	$57,500	$65,000	13	$138	$70	$125	$195
50 - 99	8	$54,100	$41,400	$55,000	$67,500	7	$99	$90	$100	$110
20 - 49	15	$55,000	$45,000	$60,000	$60,000	21	$131	$105	$125	$175
10 - 19	24	$53,800	$50,000	$53,800	$57,900	34	$119	$94	$123	$150
5 - 9	37	$50,900	$41,500	$50,000	$55,000	42	$128	$100	$125	$150
2 - 4	42	$47,600	$40,000	$45,000	$55,000	48	$108	$81	$110	$125
1	17	$43,300	$34,300	$41,600	$50,000	16	$100	$78	$92	$125

NOTE: results not shown if fewer than 5 valid values

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2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 005 page 1

PARALEGALS/LEGAL ASSISTANTS: 3 - 4 Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	122	$45,300	$37,400	$45,000	$51,300	138	$111	$85	$108	$140
Geographic Location										
Denver	45	$47,800	$39,000	$48,000	$55,000	51	$107	$75	$100	$135
Adams, Arapahoe, Douglas, Elbert, and Jefferson	41	$44,900	$38,700	$45,000	$50,000	51	$119	$100	$125	$145
Boulder and Broomfield	10	$45,000	$36,900	$45,000	$55,000	12	$128	$101	$123	$148
Eagle and Pitkin	1	-	-	-	-	2	-	-	-	-
El Paso	4	-	-	-	-	5	$128	$90	$150	$155
Larimer and Weld	6	$35,300	$30,000	$33,000	$41,500	10	$79	$56	$88	$100
Mesa	3	-	-	-	-	3	-	-	-	-
Pueblo		-	-	-	-		-	-	-	-
all others east of the Continental Divide	2	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	4	-	-	-	-		-	-	-	-
# of Attorneys at Organization										
100+	11	$53,400	$50,000	$52,000	$58,200	7	$98	$65	$75	$175
50 - 99	6	$46,300	$36,900	$42,500	$57,500	3	-	-	-	-
20 - 49	11	$49,400	$45,000	$45,000	$55,000	19	$125	$100	$120	$175
10 - 19	19	$45,800	$40,000	$45,000	$51,000	29	$121	$90	$120	$150
5 - 9	32	$46,800	$40,000	$46,900	$51,500	33	$120	$100	$125	$150
2 - 4	31	$41,500	$35,000	$40,000	$49,000	27	$101	$75	$100	$125
1	11	$37,800	$27,000	$36,000	$50,000	12	$79	$45	$85	$115

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 006 page 1

PARALEGALS/LEGAL ASSISTANTS: 1 - 2 Years of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	124	$41,200	$32,500	$40,000	$48,000	150	$105	$75	$100	$130
Geographic Location										
Denver	40	$44,800	$36,500	$42,000	$52,000	51	$99	$75	$90	$130
Adams, Arapahoe, Douglas, Elbert, and Jefferson	36	$38,200	$31,500	$40,000	$44,500	44	$119	$100	$125	$135
Boulder and Broomfield	11	$42,400	$35,000	$45,000	$48,000	19	$120	$90	$100	$150
Eagle and Pitkin	2	-	-	-	-	1	-	-	-	-
El Paso	5	$33,900	$28,000	$35,000	$39,300	8	$104	$75	$95	$150
Larimer and Weld	11	$38,800	$32,000	$39,000	$45,000	13	$78	$70	$75	$95
Mesa	4	-	-	-	-	4	-	-	-	-
Pueblo	1	-	-	-	-	1	-	-	-	-
all others east of the Continental Divide	2	-	-	-	-	1	-	-	-	-
all others west of the Continental Divide	4	-	-	-	-	3	-	-	-	-
# of Attorneys at Organization										
100+	11	$51,700	$44,000	$50,000	$60,000	7	$81	$65	$75	$110
50 - 99	5	$52,900	$41,300	$50,000	$66,000	3	-	-	-	-
20 - 49	11	$42,000	$39,000	$41,000	$50,000	13	$125	$83	$110	$175
10 - 19	20	$40,700	$33,100	$40,000	$45,000	28	$112	$80	$123	$135
5 - 9	31	$40,300	$32,000	$40,000	$45,000	36	$115	$91	$100	$149
2 - 4	33	$38,200	$30,000	$38,000	$45,500	38	$103	$75	$100	$130
1	12	$36,700	$28,800	$35,000	$40,400	17	$83	$63	$75	$100

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Salary and Billing Rate Tables: Paralegals/Legal Assistants

TABLE 007 page 1

PARALEGALS/LEGAL ASSISTANTS: <1 Year of Experience

	MOST COMMON ANNUAL BASE SALARY					MOST COMMON HOURLY BILLING RATE				
	n	mean	25th percentile	50th percentile (median)	75th percentile	n	mean	25th percentile	50th percentile (median)	75th percentile
Total	95	$36,700	$30,000	$35,000	$41,600	112	$99	$75	$95	$125
Geographic Location										
Denver	34	$39,300	$30,000	$36,200	$45,800	43	$96	$75	$90	$120
Adams, Arapahoe, Douglas, Elbert, and Jefferson	33	$36,200	$30,000	$35,000	$40,000	33	$120	$98	$125	$128
Boulder and Broomfield	8	$32,500	$30,300	$33,500	$35,000	12	$98	$78	$90	$119
Eagle and Pitkin	1	-	-	-	-	2	-	-	-	-
El Paso	6	$29,900	$20,400	$30,000	$39,600	6	$83	$58	$75	$99
Larimer and Weld	3	-	-	-	-	8	$69	$38	$75	$94
Mesa	1	-	-	-	-	1	-	-	-	-
Pueblo		-	-	-	-	1	-	-	-	-
all others east of the Continental Divide	1	-	-	-	-	2	-	-	-	-
all others west of the Continental Divide	4	-	-	-	-	3	-	-	-	-
# of Attorneys at Organization										
100+	7	$47,300	$42,000	$48,000	$60,000	4	-	-	-	-
50 - 99	2	-	-	-	-	2	-	-	-	-
20 - 49	9	$38,900	$32,500	$40,000	$47,500	14	$119	$86	$100	$175
10 - 19	15	$34,900	$30,000	$35,000	$40,000	20	$112	$91	$118	$125
5 - 9	14	$38,600	$33,500	$36,500	$39,600	23	$114	$85	$110	$135
2 - 4	24	$34,600	$30,000	$35,700	$41,200	29	$86	$68	$75	$108
1	21	$33,900	$26,000	$30,000	$37,500	13	$73	$50	$60	$98

NOTE: results not shown if fewer than 5 valid values

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EXHIBIT B

APPENDIX C

CROSS-TABULATED DATA TABLES

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

DATA TABLES
Index to Tables

Table	Title
Data Interpretation	
000	Key to Tables
001	Proportion Who Were Licensed to Practice Law in Colorado in 2016
002	Primary Position/Affiliation
003	Primary Position/Affiliation: Detailed
004	Office Type
005	Hours Worked: Mean Summary
006	Hours Worked: Average Billable Hours Per Week
007	Hours Worked: Average Non-Billable Hours Per Week
008	Hours Worked: Total Average Hours Per Week
009	Number of Years Practicing Law
010	Office Location: County
011	Gender
012	Areas of Practice
013	Primary Practice Area
014	Primary Practice Area: 50%+ of Time Spent in Primary Practice Area
015	Proportion of Time Spent in Primary Practice Area
016	Income
017	Additional Cash Compensation Eligible to Receive
018	Bonuses
019	Bonuses [Based on Those Who Received]
020	Profit Sharing
021	Profit Sharing [Based on Those Who Received]
022	401(k) Contributions From Employer/Firm
023	401(k) Contributions From Employer/Firm [Based on Those Who Received]
024	Proportion of Work Billed Via: Mean Summary
025	Proportion of Work Billed Via: Hourly Rate
026	Proportion of Work Billed Via: Flat/Fixed Rate
027	Proportion of Work Billed Via: Contingency
028	Proportion of Work Billed Via: Unbundling/Discrete Task/Limited Scope Representation
029	Proportion of Work Billed Via: Other Method
030	Most Common Hourly Billing Rate
031	Most Common Percent Charged Via Contingency Billing
032	Number of Attorneys at Office Location: Mean Summary
033	Number of Attorneys at Office Location: Partners
034	Number of Attorneys at Office Location: Associates
035	Number of Attorneys at Office Location: In-House Counsel
036	Number of Attorneys at Office Location: Other Lawyers
037	Number of Attorneys at Office Location: Total Attorneys

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

DATA TABLES
Index to Tables

Table	Title
038	Number of Attorneys in Entire Firm/Organization
039	Paralegals/Legal Assistants: Methods of Billing for Services
040	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: Less than 1
041	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 1 - 2
042	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 3 - 4
043	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 5 - 9
044	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 10 - 14
045	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 15 - 19
046	Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 20 or More
047	Paralegals/Legal Assistants: Base Salary by Years of Experience: Less than 1
048	Paralegals/Legal Assistants: Base Salary by Years of Experience: 1 - 2
049	Paralegals/Legal Assistants: Base Salary by Years of Experience: 3 - 4
050	Paralegals/Legal Assistants: Base Salary by Years of Experience: 5 - 9
051	Paralegals/Legal Assistants: Base Salary by Years of Experience: 10 - 14
052	Paralegals/Legal Assistants: Base Salary by Years of Experience: 15 - 19
053	Paralegals/Legal Assistants: Base Salary by Years of Experience: 20 or More
054	Paralegals/Legal Assistants: Additional Cash Compensation Eligible to Receive

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DATA TABLES
Data Interpretation

In addition to percentages, three summary statistics may be presented in this report for numeric variables.

A **mean** is the arithmetic average of a distribution (i.e., a set of values). Because it is arithmetically calculated, it can be multiplied by the population represented to present a total volume estimate. For example, if 100 survey respondents (representing 10,000 people in the population) reported mean expenditures of $100 each, total expenditures for that population are estimated as 10,000 x $100 = $1,000,000. Means are very much influenced by extremely large or extremely small values in the distribution (e.g., one millionaire can substantially raise an estimate of average income).

Means for grouped data are calculated using the midpoint of each range. The lowest-valued group is represented by its largest value; the highest-valued group by its lowest.

The **standard error** measures the variability associated with the survey's estimate of a population mean. The standard error is analogous to the margin of error associated with percentages: that is, 95% of the time we expect the true (unknown) population mean to be within plus-or-minus two standard errors of the mean calculated from the sample. A standard error that is large in proportion to the mean indicates a high level of statistical instability; trending and projections against such estimates should be undertaken cautiously.

A **median** is the value that lies at the middle of a distribution: that is, 50% of the values are above it and 50% are below. It represents the "typical" response, and is not influenced by extreme values. For most distributions, the median will be either roughly equal to, or significantly smaller than the mean.

Medians for grouped data are calculated by locating the group which contains the 50th percentile, then interpolating between the lower and upper bounds to estimate the precise value. Only the values listed *above* the statistics on a data table are used in the calculations.

Tables may have **statistical significance testing** enabled, comparing means and proportions between selected columns. Z-scores for differences are calculated where both tabulation bases are ≥ 30, assuming the statistics are derived from sufficiently large unweighted probability samples drawn from much larger independent populations. Differences found significant at the 95% confidence level are reported by appearance of one or more letters under the result, indicating from which tested column(s) to the left that statistic differs (if any).

When assumptions are met, significance testing accounts for the effect of sampling error on comparisons; if all assumptions are not met, the reader is advised to use test results cautiously. Effects of other potential sources of imprecision (nonresponse bias, item reliability, respondent error, etc.) are not similarly quantifiable, and may be of greater magnitude than sampling error.

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 000 page 1

Key to Tables

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
base: those who were licensed to practice law in Colorado in 2016	1607	1146	348	428	320	380	124	71	151	900	668
margin of error at 95% confidence (percentage points):	±2.4	±2.8	±5.1	±4.6	±5.3	±4.9	±8.5	±11.2	±7.7	±3.2	±3.7

The margin of error for results based on fewer than 30 responses cannot be meaningfully calculated and the results are considered statistically unstable.

Segment	Description
TOTAL	all respondents
POSITION/AFFILIATION	those indicating their primary position/affiliation in 2016 as:
private	solo practitioner, partner, associate, in-house counsel (for-profit organization), of counsel, or contract attorney
public	judge/magistrate/ALJ, city/county government, state government, federal government, in-house counsel (not-for-profit organization), or counsel with legal aid/legal services agency
# OF ATTORNEYS AT ORGANIZATION	those indicating the number of attorneys that practiced at their entire firm/organization (including themselves and all locations) in 2016 as:
1	1
2 - 4	2 - 4
5 - 19	5 - 19
20 - 49	20 - 49
50 -99	50 - 99
100+	100 or more
GENDER	those indicating their gender as:
male	male
female	female

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 001 page 1

Proportion Who Were Licensed to Practice Law in Colorado in 2016

1. Were you licensed to practice law in Colorado in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: all respondents	1694 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
yes	1607 95%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
no	87 5%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
no answer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 002 page 1

Primary Position/Affiliation

2. What best described your primary position/affiliation in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
solo practitioner	379 24%	379 33%	0 0% b	336 79%	28 9% d	1 0% de	0 0% de	0 0% de	0 0% de	241 27%	122 18% j
partner	291 18%	291 25%	0 0% b	1 0%	110 34% d	112 29% d	25 20% def	6 8% defg	22 15% def	194 22%	90 13% j
associate	269 17%	269 23%	0 0% b	0 0%	82 26% d	108 28% d	30 24% d	13 18% d	16 11% defg	142 16%	124 19%
in-house counsel (for-profit organization)	131 8%	131 11%	0 0% b	25 6%	36 11% d	32 8%	15 12% d	5 7%	15 10%	69 8%	58 9%
state government	114 7%	0 0%	114 33% b	0 0%	3 1% d	22 6% de	22 18% def	9 13% def	40 26% defh	54 6%	57 9%
city/county government	105 7%	0 0%	105 30% b	7 2%	12 4%	36 9% de	11 9% de	14 20% defg	15 10% deh	46 5%	55 8% j
judge/magistrate/ALJ	46 3%	0 0%	46 13% b	0 0%	4 1% d	15 4% de	7 6% de	1 1% d	12 8% de	29 3%	16 2%
of counsel	42 3%	42 4%	0 0% b	2 0%	7 2% d	19 5% de	4 3% d	1 1%	6 4% d	23 3%	19 3%
federal government	34 2%	0 0%	34 10% b	1 0%	0 0%	1 0%	4 3% def	5 7% def	15 10% defg	20 2%	14 2%
in-house counsel (not-for-profit organization)	34 2%	0 0%	34 10% b	9 2%	12 4%	11 3%	1 1%	1 1%	0 0% ef	20 2%	14 2%
contract attorney	34 2%	34 3%	0 0% b	11 3%	3 1%	4 1%	1 1%	1 1%	5 3%	6 1%	28 4% j
counsel with legal aid/legal services agency	15 1%	0 0%	15 4% b	2 0%	2 1%	3 1%	1 1%	4 6% defg	1 1% h	4 0%	11 2% j
arbitrator/mediator	10 1%	0 0%	0 0%	10 2%	0 0% d	0 0% d	0 0%	0 0%	0 0%	6 1%	4 1%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 002 page 2

Primary Position/Affiliation

2. What best described your primary position/affiliation in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
academic (e.g., law professor)	9 1%	0 0%	0 0%	2 0%	0 0%	1 0%	1 1%	3 4% def	0 0% h	3 0%	6 1%
other	94 6%	0 0%	0 0%	22 5%	21 7%	15 4%	2 2% e	8 11% dfg	4 3% h	43 5%	50 7% j
no answer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 003 page 1

Primary Position/Affiliation: Detailed

2. What best described your primary position/affiliation in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
solo practitioner: [by number of attorneys in entire firm]	379 24%	379 33%	0 0% b	336 79%	28 9% d	1 0% de	0 0% de	0 0% de	0 0% de	241 27%	122 18% j
100+	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
50 - 99	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
20 - 49	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
10 - 19	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
5 - 9	1 0%	1 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%
2 - 4	28 2%	28 2%	0 0% b	0 0%	28 9% d	0 0% e	0 0% e	0 0% e	0 0% e	23 3%	4 1% j
1	336 21%	336 29%	0 0% b	336 79%	0 0% d	0 0% d	0 0% d	0 0% d	0 0% d	210 23%	114 17% j
unknown	14 1%	14 1%	0 0% b	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	8 1%	3 0%
partner: [by number of attorneys in entire firm]	291 18%	291 25%	0 0% b	1 0%	110 34% d	112 29% d	25 20% def	6 8% defg	22 15% def	194 22%	90 13% j
100+	22 1%	22 2%	0 0% b	0 0%	0 0%	0 0%	0 0%	0 0%	22 15% defgh	18 2%	4 1% j
50 - 99	6 0%	6 1%	0 0%	0 0%	0 0%	0 0%	0 0%	6 8% defg	0 0% h	5 1%	1 0%
20 - 49	25 2%	25 2%	0 0% b	0 0%	0 0%	0 0%	25 20% def	0 0% g	0 0% g	17 2%	7 1%
10 - 19	39 2%	39 3%	0 0% b	0 0%	0 0%	39 10% de	0 0% f	0 0% f	0 0% f	26 3%	13 2%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 003 page 2

Primary Position/Affiliation: Detailed

2. What best described your primary position/affiliation in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
5 - 9	73 5%	73 6%	0 0% b	0 0%	0 0%	73 19% de	0 0% f	0 0% f	0 0% f	46 5%	26 4%
2 - 4	110 7%	110 10%	0 0% b	0 0%	110 34% d	0 0% e	0 0% e	0 0% e	0 0% e	69 8%	37 6%
1	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
unknown	15 1%	15 1%	0 0% b	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	12 1%	2 0% j
associate: [by number of attorneys in entire firm]	269 17%	269 23%	0 0% b	0 0%	82 26% d	108 28% d	30 24% d	13 18% d	16 11% defg	142 16%	124 19%
100+	16 1%	16 1%	0 0% b	0 0%	0 0%	0 0%	0 0%	0 0%	16 11% defgh	13 1%	2 0% j
50 - 99	13 1%	13 1%	0 0% b	0 0%	0 0%	0 0%	0 0%	13 18% defg	0 0% h	8 1%	5 1%
20 - 49	30 2%	30 3%	0 0% b	0 0%	0 0%	0 0%	30 24% def	0 0% g	0 0% g	13 1%	17 3%
10 - 19	45 3%	45 4%	0 0% b	0 0%	0 0%	45 12% de	0 0% f	0 0% f	0 0% f	25 3%	20 3%
5 - 9	63 4%	63 5%	0 0% b	0 0%	0 0%	63 17% de	0 0% f	0 0% f	0 0% f	34 4%	29 4%
2 - 4	82 5%	82 7%	0 0% b	0 0%	82 26% d	0 0% e	0 0% e	0 0% e	0 0% e	39 4%	42 6%
1	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
unknown	20 1%	20 2%	0 0% b	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	10 1%	9 1%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 003 page 3

Primary Position/Affiliation: Detailed

2. What best described your primary position/affiliation in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
in-house counsel (for-profit organization)	131 8%	131 11%	0 0% b	25 6%	36 11% d	32 8%	15 12% d	5 7%	15 10%	69 8%	58 9%
state government	114 7%	0 0%	114 33% b	0 0%	3 1% d	22 6% de	22 18% def	9 13% def	40 26% defh	54 6%	57 9%
city/county government	105 7%	0 0%	105 30% b	7 2%	12 4%	36 9% de	11 9% de	14 20% defg	15 10% deh	46 5%	55 8% j
judge/magistrate/ALJ	46 3%	0 0%	46 13% b	0 0%	4 1% d	15 4% de	7 6% de	1 1% d	12 8% de	29 3%	16 2%
of counsel	42 3%	42 4%	0 0% b	2 0%	7 2% d	19 5% de	4 3% d	1 1%	6 4% d	23 3%	19 3%
federal government	34 2%	0 0%	34 10% b	1 0%	0 0%	1 0%	4 3% def	5 7% def	15 10% defg	20 2%	14 2%
in-house counsel (not-for-profit organization)	34 2%	0 0%	34 10% b	9 2%	12 4%	11 3%	1 1%	1 1%	0 0% ef	20 2%	14 2%
contract attorney	34 2%	34 3%	0 0% b	11 3%	3 1%	4 1%	1 1%	1 1%	5 3%	6 1%	28 4% j
counsel with legal aid/legal services agency	15 1%	0 0%	15 4% b	2 0%	2 1%	3 1%	1 1%	4 6% defg	1 1% h	4 0%	11 2% j
arbitrator/mediator	10 1%	0 0%	0 0%	10 2%	0 0% d	0 0% d	0 0%	0 0%	0 0%	6 1%	4 1%
academic (e.g., law professor)	9 1%	0 0%	0 0%	2 0%	0 0%	1 0%	1 1%	3 4% def	0 0% h	3 0%	6 1%
other	94 6%	0 0%	0 0%	22 5%	21 7%	15 4%	2 2% e	8 11% dfg	4 3% h	43 5%	50 7% j
no answer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 004 page 1

Office Type

3. In what type of office did you primarily work in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and whose primary affiliation was solo practitioner	379 100%	379 100%		336 100%	28 100%	1 100%				241 100%	122 100%
office outside of home	224 59%	224 59%		193 57%	21 75%	1 100%				152 63%	63 52% j
home office	140 37%	140 37%		129 38%	7 25%	0 0%				83 34%	52 43%
other	14 4%	14 4%		13 4%	0 0%	0 0%				6 2%	7 6%
no answer	1 0%	1 0%		1 0%	0 0%	0 0%				0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 005 page 1

Hours Worked: Mean Summary

4. On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
MEAN SUMMARY											
base: those who were licensed to practice law in Colorado in 2016 answering (fill-in answers)											
average billable hours per week	24.6	25.9	20.6 b	20.2	25.9 d	26.7 d	25.2 d	25.3	26.6 d	25.0	23.9
average non-billable hours per week	18.5	16.6	25.5 b	16.6	18.7 d	18.9	21.5 d	22.0	20.2	18.1	18.8
TOTAL average hours per week	43.0	42.5	46.1 b	36.8	44.7 d	45.6 d	46.7 d	47.3 efg	46.9 dh	43.2	42.7

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 006 page 1

Hours Worked: Average Billable Hours Per Week

4. On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
AVERAGE BILLABLE HOURS PER WEEK											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
50 or more	78 5%	57 5%	17 5%	11 3%	17 5%	19 5%	7 6%	5 7% d	10 7% d	44 5%	31 5%
40 - 49	215 13%	125 11%	74 21% b	20 5%	41 13% d	63 17% d	19 15% d	15 21% d	36 24% de	112 12%	97 15%
30 - 39	361 22%	313 27%	37 11% b	82 19%	78 24%	104 27% d	32 26%	11 15% f	32 21%	198 22%	155 23%
20 - 29	320 20%	303 26%	8 2% b	109 25%	86 27%	70 18% de	21 17% de	2 3% defg	14 9% def	208 23%	106 16% j
10 - 19	152 9%	140 12%	3 1% b	90 21%	34 11% d	18 5% de	3 2% de	2 3% de	3 2% de	85 9%	63 9%
1 - 9	65 4%	54 5%	3 1% b	48 11%	5 2% d	5 1% d	1 1% d	1 1% d	2 1% d	37 4%	27 4%
none	220 14%	72 6%	124 36% b	29 7%	33 10%	58 15% d	27 22% de	18 25% def	35 23% def	103 11%	110 16% j
mean:	24.6	25.9	20.6 b	20.2	25.9 d	26.7 d	25.2 d	25.3	26.6 d	25.0	23.9
standard error:	0.42	0.43	1.27	0.68	0.85	0.87	1.65	2.91	1.61	0.56	0.67
median:	25	25	23	20	25	30	30	32	34	25	25
no answer	196 12%	82 7%	82 24% b	39 9%	26 8%	43 11%	14 11%	17 24% defg	19 13% h	113 13%	79 12%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 007 page 1

Hours Worked: Average Non-Billable Hours Per Week

4. On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
AVERAGE NON-BILLABLE HOURS PER WEEK											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
50 or more	98 6%	41 4%	51 15% b	10 2%	20 6% d	30 8% d	9 7% d	6 8% d	18 12% de	50 6%	44 7%
40 - 49	137 9%	52 5%	68 20% b	21 5%	20 6%	31 8%	21 17% def	12 17% def	18 12% de	65 7%	69 10% j
30 - 39	92 6%	76 7%	10 3% b	37 9%	25 8%	14 4% de	5 4%	2 3%	5 3% d	48 5%	40 6%
20 - 29	254 16%	238 21%	11 3% b	91 21%	55 17%	65 17%	18 15%	4 6% def	15 10% def	170 19%	81 12% j
10 - 19	434 27%	381 33%	33 9% b	128 30%	116 36%	96 25% e	28 23% e	12 17% de	28 19% de	239 27%	181 27%
1 - 9	252 16%	207 18%	33 9% b	73 17%	34 11% d	68 18% e	20 16%	6 8% f	29 19% eh	137 15%	112 17%
none	144 9%	69 6%	60 17% b	29 7%	24 8%	33 9%	9 7%	12 17% defg	19 13% d	78 9%	62 9%
mean:	18.5	16.6	25.5 b	16.6	18.7 d	18.9	21.5 d	22.0	20.2	18.1	18.8
standard error:	0.42	0.40	1.34	0.66	0.85	0.90	1.67	2.86	1.63	0.54	0.68
median:	15	15	25	15	15	15	16	14	15	15	15
no answer	196 12%	82 7%	82 24% b	39 9%	26 8%	43 11%	14 11%	17 24% defg	19 13% h	113 13%	79 12%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 008 page 1

Hours Worked: Total Average Hours Per Week

4. On average, how many billable and non-billable hours did you work per week in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
TOTAL AVERAGE HOURS PER WEEK											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
70 or more	45 3%	32 3%	10 3%	8 2%	12 4%	11 3%	3 2%	4 6%	5 3%	25 3%	17 3%
60 - 69	111 7%	80 7%	22 6%	25 6%	21 7%	31 8%	14 11% d	5 7%	9 6%	64 7%	42 6%
50 - 59	332 21%	257 22%	63 18%	59 14%	86 27% d	94 25% d	28 23% d	14 20%	38 25% d	176 20%	146 22%
40 - 49	581 36%	395 34%	153 44% b	123 29%	109 34%	141 37% d	53 43% d	27 38%	68 45% de	328 36%	243 36%
30 - 39	175 11%	154 13%	13 4% b	72 17%	40 13%	38 10% d	10 8% d	2 3% de	7 5% def	104 12%	69 10%
20 - 29	96 6%	88 8%	3 1% b	48 11%	20 6% d	16 4% d	2 2% de	1 1% d	4 3% d	52 6%	40 6%
less than 20	71 4%	58 5%	2 1% b	54 13%	6 2% d	6 2% d	0 0% d	1 1% d	1 1% d	38 4%	32 5%
mean:	43.0	42.5	46.1 b	36.8	44.7 d	45.6 d	46.7 d	47.3 efg	46.9 dh	43.2	42.7
standard error:	0.36	0.43	0.59	0.83	0.73	0.65	0.92	1.58	0.97	0.50	0.55
median:	44	43	45	40	45	45	45	45	45	44	43
no answer	196 12%	82 7%	82 24% b	39 9%	26 8%	43 11%	14 11%	17 24% defg	19 13% h	113 13%	79 12%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 009 page 1

Number of Years Practicing Law

5. For how many years have you been practicing law?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
40 or more	157 10%	123 11%	17 5% b	72 17%	30 9% d	20 5% de	8 6% d	2 3% d	10 7% d	140 16%	11 2% j
30 - 39	252 16%	203 18%	36 10% b	106 25%	41 13% d	48 13% d	15 12% d	2 3% defg	20 13% dh	167 19%	74 11% j
20 - 29	263 16%	187 16%	56 16%	72 17%	48 15%	71 19%	22 18%	12 17%	23 15%	130 14%	126 19% j
15 - 19	150 9%	101 9%	44 13% b	32 7%	27 8%	39 10%	12 10%	10 14%	21 14% d	71 8%	75 11% j
10 - 14	218 14%	153 13%	51 15%	56 13%	50 16%	54 14%	14 11%	10 14%	19 13%	103 11%	110 16% j
5 - 9	267 17%	182 16%	66 19%	58 14%	42 13%	72 19% de	23 19%	17 24% de	31 21% de	132 15%	132 20% j
3 - 4	152 9%	106 9%	38 11%	22 5%	41 13% d	38 10% d	13 10% d	9 13% d	18 12% d	81 9%	69 10%
1 - 2	97 6%	58 5%	28 8% b	4 1%	29 9% d	32 8% d	9 7% d	6 8% d	3 2% efgh	53 6%	43 6%
less than 1	42 3%	28 2%	10 3%	4 1%	12 4% d	4 1% e	6 5% df	3 4% df	5 3% d	19 2%	23 3%
mean:	18.7	19.6	15.8 b	23.9	17.1 d	16.9 d	16.6 d	13.1 defg	17.3 dh	20.8	15.4 j
standard error:	0.32	0.39	0.62	0.62	0.72	0.61	1.12	1.17	0.98	0.46	0.42
median:	16	17	13	25	14	14	14	10	15	19	13
no answer	9 1%	5 0%	2 1%	2 0%	0 0%	2 1%	2 2% e	0 0%	1 1%	4 0%	5 1%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 010 page 1

Office Location: County

6. In what county is the office in which you worked in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
Denver	603 38%	406 35%	157 45% b	111 26%	103 32%	138 36% d	61 49% def	36 51% def	101 67% defgh	351 39%	251 38%
Arapahoe	171 11%	146 13%	18 5% b	47 11%	33 10%	43 11%	17 14%	13 18%	5 3% defgh	99 11%	71 11%
Boulder	142 9%	118 10%	14 4% b	43 10%	36 11%	34 9%	11 9%	2 3% de	5 3% def	77 9%	63 9%
Jefferson	110 7%	81 7%	21 6%	41 10%	23 7%	27 7%	2 2% def	5 7% g	8 5%	57 6%	53 8%
Larimer	99 6%	70 6%	23 7%	33 8%	22 7%	28 7%	8 6%	2 3%	1 1% defg	62 7%	37 6%
El Paso	84 5%	64 6%	14 4%	41 10%	18 6% d	12 3% d	1 1% de	5 7% g	4 3% d	48 5%	36 5%
Douglas	61 4%	54 5%	5 1% b	21 5%	5 2% d	23 6% e	7 6% e	1 1%	1 1% dfg	29 3%	32 5%
Mesa	34 2%	27 2%	7 2%	10 2%	10 3%	9 2%	2 2%	0 0%	1 1%	24 3%	10 1%
Adams	30 2%	14 1%	15 4% b	10 2%	7 2%	3 1%	1 1%	2 3%	4 3%	16 2%	12 2%
Weld	23 1%	13 1%	8 2%	5 1%	5 2%	7 2%	3 2%	0 0%	0 0%	12 1%	11 2%
Broomfield	14 1%	11 1%	1 0%	0 0%	4 1% d	6 2% d	1 1%	1 1% d	0 0%	8 1%	6 1%
Summit	14 1%	8 1%	4 1%	4 1%	8 3%	1 0% e	1 1%	0 0%	0 0%	8 1%	6 1%
Garfield	13 1%	9 1%	3 1%	2 0%	6 2%	4 1%	1 1%	0 0%	0 0%	8 1%	5 1%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 010 page 2

Office Location: County

6. In what county is the office in which you worked in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
Routt	12 1%	7 1%	5 1%	1 0%	6 2% d	4 1%	0 0%	0 0%	0 0%	9 1%	3 0%
La Plata	11 1%	7 1%	4 1%	5 1%	3 1%	1 0%	0 0%	0 0%	1 1%	4 0%	7 1%
Pueblo	11 1%	5 0%	3 1%	5 1%	2 1%	2 1%	0 0%	0 0%	1 1%	4 0%	7 1%
Eagle	10 1%	7 1%	2 1%	5 1%	0 0%	3 1%	2 2% e	0 0%	0 0%	6 1%	4 1%
Pitkin	10 1%	9 1%	0 0%	3 1%	3 1%	3 1%	0 0%	0 0%	0 0%	4 0%	6 1%
Montrose	9 1%	4 0%	4 1%	1 0%	5 2% d	1 0%	0 0%	0 0%	0 0%	4 0%	5 1%
Gunnison	4 0%	2 0%	1 0%	3 1%	0 0%	1 0%	0 0%	0 0%	0 0%	3 0%	1 0%
Morgan	4 0%	1 0%	3 1% b	1 0%	2 1%	1 0%	0 0%	0 0%	0 0%	3 0%	1 0%
Alamosa	3 0%	0 0%	2 1% b	0 0%	1 0%	2 1%	0 0%	0 0%	0 0%	1 0%	2 0%
Archuleta	3 0%	2 0%	1 0%	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	1 0%
Fremont	3 0%	1 0%	2 1%	1 0%	0 0%	0 0%	0 0%	1 1% ef	1 1%	2 0%	1 0%
Grand	3 0%	2 0%	0 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	1 0%
Logan	3 0%	3 0%	0 0%	2 0%	1 0%	0 0%	0 0%	0 0%	0 0%	3 0%	0 0%
Chaffee	2 0%	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 1%	1 0%	1 0%
Delta	2 0%	1 0%	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	1 0%	1 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 010 page 3

Office Location: County

6. In what county is the office in which you worked in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
Las Animas	2 0%	1 0%	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	1 0%
Otero	2 0%	0 0%	2 1% b	0 0%	1 0%	1 0%	0 0%	0 0%	0 0%	2 0%	0 0%
Rio Grande	2 0%	2 0%	0 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	2 0%	0 0%
San Miguel	2 0%	2 0%	0 0%	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	1 0%
Clear Creek	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
Dolores	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
Elbert	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
Gilpin	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
Kit Carson	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
Lake	1 0%	0 0%	1 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 0%	0 0%
Moffat	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	1 0%
Ouray	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
Baca	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Bent	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Cheyenne	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Conejos	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 010 page 4

Office Location: County

6. In what county is the office in which you worked in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
Costilla	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Crowley	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Custer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Hinsdale	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Huerfano	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Jackson	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Kiowa	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Lincoln	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Mineral	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Montezuma	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Park	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Phillips	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Prowers	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Rio Blanco	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Saguache	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
San Juan	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Sedgwick	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Teller	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 010 page 5

Office Location: County

6. In what county is the office in which you worked in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
Washington	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
Yuma	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
no answer	103 6%	64 6%	22 6%	20 5%	14 4%	24 6%	6 5%	3 4%	15 10% de	43 5%	28 4%

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 011 page 1

Gender

7. What is your gender?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
male	900 56%	675 59%	173 50% b	255 60%	181 57%	208 55%	66 53%	38 54%	85 56%	900 100%	0 0% j
female	668 42%	441 38%	167 48% b	161 38%	129 40%	167 44%	57 46%	32 45%	63 42%	0 0%	668 100% j
no answer	39 2%	30 3%	8 2%	12 3%	10 3%	5 1%	1 1%	1 1%	3 2%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 012 page 1

Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
civil litigation	323 20%	248 22%	63 18%	65 15%	67 21% d	96 25% d	24 19%	13 18%	38 25% d	217 24%	98 15% j
family	245 15%	198 17%	33 9% b	90 21%	67 21%	50 13% de	9 7% de	4 6% de	9 6% def	118 13%	120 18% j
business	238 15%	219 19%	13 4% b	88 21%	66 21%	43 11% de	18 15%	3 4% deg	8 5% defg	167 19%	66 10% j
real estate	227 14%	192 17%	24 7% b	69 16%	52 16%	59 16%	18 15%	3 4% defg	15 10%	161 18%	61 9% j
trust & estate-estate planning	198 12%	189 16%	1 0% b	99 23%	57 18%	27 7% de	5 4% de	0 0% def	3 2% def	114 13%	79 12%
admin/govt/reg	196 12%	72 6%	112 32% b	28 7%	35 11% d	49 13% d	22 18% d	10 14% d	38 25% def	114 13%	76 11%
criminal	196 12%	95 8%	92 26% b	49 11%	32 10%	45 12%	17 14%	16 23% def	20 13%	120 13%	71 11%
business-corporate counsel	166 10%	153 13%	10 3% b	55 13%	46 14%	38 10%	14 11%	1 1% defg	10 7% de	102 11%	60 9%
trust & estate	164 10%	153 13%	5 1% b	78 18%	47 15%	22 6% de	5 4% de	2 3% de	4 3% de	96 11%	62 9%
real estate-commercial	158 10%	144 13%	12 3% b	45 11%	37 12%	44 12%	16 13%	2 3% defg	9 6% g	110 12%	42 6% j
personal injury	151 9%	141 12%	9 3% b	36 8%	39 12%	46 12%	8 6%	10 14%	4 3% defh	112 12%	34 5% j
real estate-leases	146 9%	130 11%	14 4% b	44 10%	39 12%	37 10%	14 11%	2 3% deg	3 2% defg	96 11%	47 7% j
trust & estate-estate administration	141 9%	136 12%	0 0% b	63 15%	42 13%	22 6% de	6 5% de	0 0% def	2 1% def	84 9%	51 8%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
business-commercial litigation	131 8%	122 11%	4 1% b	28 7%	39 12% d	38 10%	9 7%	2 3% e	10 7%	101 11%	28 4% j
business-choice of entity	127 8%	123 11%	3 1% b	51 12%	34 11%	28 7% d	9 7%	0 0% defg	1 1% defg	95 11%	27 4% j
appellate/appeals	120 7%	72 6%	40 11% b	21 5%	19 6%	31 8%	11 9%	9 13% de	26 17% defg	69 8%	48 7%
real estate-residential	112 7%	106 9%	4 1% b	39 9%	34 11%	27 7%	6 5%	2 3% e	1 1% defg	80 9%	29 4% j
construction	111 7%	91 8%	17 5%	20 5%	18 6%	50 13% de	7 6% f	2 3% f	10 7% f	82 9%	27 4% j
real estate-landlord-tenant (commercial)	111 7%	100 9%	8 2% b	34 8%	25 8%	33 9%	9 7%	2 3%	4 3% def	78 9%	29 4% j
real estate-litigation	109 7%	95 8%	10 3% b	22 5%	26 8%	34 9% d	7 6%	4 6%	10 7%	85 9%	23 3% j
business-privately held/family business	108 7%	106 9%	0 0% b	44 10%	30 9%	23 6% d	7 6%	1 1% de	1 1% defg	76 8%	28 4% j
labor & employment	108 7%	70 6%	33 9% b	19 4%	32 10% d	27 7%	10 8%	5 7%	10 7%	61 7%	44 7%
real estate-easements	102 6%	85 7%	15 4% b	24 6%	27 8%	34 9%	8 6%	1 1% ef	4 3% ef	71 8%	29 4% j
real estate-landlord/tenant (residential)	97 6%	85 7%	8 2% b	29 7%	29 9%	20 5% e	8 6%	4 6%	2 1% defg	72 8%	22 3% j
real estate-HOA/CCIOA	91 6%	81 7%	6 2% b	25 6%	26 8%	26 7%	6 5%	2 3%	4 3% e	66 7%	22 3% j
admin/govt/reg-local & municipal	90 6%	36 3%	51 15% b	11 3%	20 6% d	34 9% d	5 4%	4 6%	11 7% d	51 6%	35 5%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
criminal-DUI	88 5%	60 5%	22 6%	32 7%	20 6%	14 4% d	4 3%	4 6%	7 5%	61 7%	25 4% j
business-mergers & acquisitions	87 5%	82 7%	3 1% b	20 5%	25 8%	23 6%	13 10% d	0 0% efg	3 2% eg	66 7%	20 3% j
criminal-traffic	85 5%	54 5%	28 8% b	29 7%	19 6%	17 4%	6 5%	4 6%	4 3%	59 7%	25 4% j
government contracts	84 5%	24 2%	56 16% b	14 3%	12 4%	34 9% de	4 3% f	2 3%	14 9% deg	48 5%	33 5%
labor & employment-management	84 5%	58 5%	22 6%	14 3%	20 6%	21 6%	6 5%	4 6%	14 9% d	55 6%	26 4% j
juvenile	76 5%	40 3%	30 9% b	29 7%	14 4%	18 5%	7 6%	2 3%	5 3%	27 3%	48 7% j
tax	70 4%	52 5%	12 3%	17 4%	19 6%	9 2% e	9 7% f	0 0% eg	11 7% fh	43 5%	22 3%
insurance-defense	69 4%	64 6%	3 1% b	2 0%	12 4% d	32 8% de	2 2% f	6 8% dg	5 3% df	37 4%	32 5%
trust & estate-litigation	69 4%	62 5%	3 1% b	18 4%	22 7%	20 5%	2 2% e	2 3%	3 2% e	40 4%	28 4%
real estate-liens	67 4%	63 5%	4 1% b	20 5%	19 6%	19 5%	6 5%	1 1%	2 1% ef	54 6%	11 2% j
business-nonprofit/tax-exempt	66 4%	49 4%	12 3%	26 6%	18 6%	16 4%	2 2% d	1 1%	3 2% d	40 4%	24 4%
elder	66 4%	51 4%	11 3%	28 7%	19 6%	7 2% de	5 4%	1 1%	3 2% d	32 4%	31 5%
labor & employment-employee	66 4%	54 5%	10 3%	15 4%	24 8% d	17 4%	5 4%	1 1%	2 1% e	36 4%	29 4%

Columns tested at 95% significance level: bc defghi jk

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
intellectual property-trademark	65 4%	59 5%	5 1% b	19 4%	20 6%	11 3% e	10 8% f	2 3%	3 2% eg	44 5%	21 3%
collections	63 4%	51 4%	10 3%	18 4%	22 7%	11 3% e	3 2%	1 1%	4 3%	45 5%	16 2% j
constitutional law/civil rights	63 4%	27 2%	31 9% b	6 1%	10 3%	25 7% de	3 2%	4 6% d	13 9% deg	33 4%	27 4%
environmental	63 4%	34 3%	23 7% b	11 3%	9 3%	18 5%	3 2%	2 3%	13 9% deg	44 5%	17 3% j
health	62 4%	41 4%	18 5%	12 3%	13 4%	13 3%	5 4%	3 4%	11 7% d	32 4%	29 4%
construction-mechanic's liens	61 4%	55 5%	6 2% b	14 3%	17 5%	18 5%	7 6%	1 1%	3 2%	44 5%	15 2% j
water	61 4%	44 4%	14 4%	10 2%	17 5% d	22 6% d	4 3%	1 1%	4 3%	36 4%	23 3%
natural resources & energy-oil & gas	57 4%	45 4%	7 2%	12 3%	9 3%	17 4%	4 3%	0 0%	11 7% deh	35 4%	21 3%
intellectual property	55 3%	47 4%	6 2% b	15 4%	10 3%	10 3%	9 7% f	1 1%	8 5%	35 4%	20 3%
real estate-foreclosure	53 3%	46 4%	4 1% b	16 4%	14 4%	13 3%	3 2%	5 7%	1 1% eh	38 4%	14 2% j
admin/govt/reg-zoning/city planning	52 3%	22 2%	27 8% b	9 2%	14 4%	17 4%	7 6% d	0 0% g	3 2%	34 4%	18 3%
workers' compensation	52 3%	35 3%	16 5%	11 3%	12 4%	12 3%	7 6%	1 1%	4 3%	32 4%	19 3%
business-UCC/secured transactions	48 3%	45 4%	1 0% b	9 2%	13 4%	15 4%	6 5%	0 0%	4 3%	39 4%	9 1% j

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
insurance-plaintiff	47 3%	43 4%	2 1% b	11 3%	12 4%	12 3%	4 3%	4 6%	1 1% h	38 4%	8 1% j
intellectual property-copyright	46 3%	40 3%	5 1% b	14 3%	10 3%	7 2%	10 8% def	2 3%	3 2% g	30 3%	16 2%
alternative dispute resolution-mediation	43 3%	28 2%	6 2%	19 4%	7 2%	7 2% d	5 4%	1 1%	3 2%	33 4%	10 1% j
ethics & professional responsibility	42 3%	26 2%	12 3%	5 1%	6 2%	10 3%	5 4% d	2 3%	12 8% def	30 3%	10 1% j
bankruptcy-creditor	40 2%	36 3%	2 1% b	11 3%	13 4%	9 2%	1 1%	3 4%	3 2%	30 3%	10 1% j
intellectual property-patents	40 2%	32 3%	7 2%	10 2%	8 3%	8 2%	7 6% f	0 0% g	5 3%	27 3%	13 2%
admin/govt/reg-public utilities	39 2%	16 1%	21 6% b	6 1%	7 2%	14 4% d	4 3%	1 1%	4 3%	25 3%	12 2%
business-financial institutions	39 2%	36 3%	1 0% b	7 2%	10 3%	9 2%	6 5% d	1 1%	5 3%	30 3%	8 1% j
business-securities	38 2%	32 3%	5 1%	9 2%	8 3%	9 2%	5 4%	0 0%	5 3%	28 3%	9 1% j
disability-ADA	38 2%	13 1%	22 6% b	5 1%	7 2%	13 3% d	3 2%	1 1%	6 4% d	21 2%	17 3%
bankruptcy	36 2%	31 3%	4 1%	10 2%	5 2%	8 2%	0 0%	2 3%	9 6% defg	32 4%	2 0% j
cannabis	36 2%	29 3%	7 2%	11 3%	9 3%	6 2%	4 3%	0 0%	4 3%	26 3%	7 1% j
admin/govt/reg-education/school	35 2%	12 1%	18 5% b	5 1%	7 2%	12 3% d	5 4% d	1 1%	2 1%	24 3%	10 1%

Columns tested at 95% significance level: bc defghi jk

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
communications/technology	33 2%	26 2%	7 2%	7 2%	6 2%	9 2%	4 3%	2 3%	5 3%	21 2%	12 2%
natural resources & energy	33 2%	21 2%	10 3%	5 1%	6 2%	11 3%	3 2%	0 0%	6 4% d	25 3%	8 1% j
real estate-eminent domain	32 2%	16 1%	15 4% b	5 1%	4 1%	11 3%	3 2%	2 3%	6 4% d	24 3%	7 1% j
real estate-special districts	32 2%	24 2%	8 2%	4 1%	6 2%	18 5% de	3 2%	0 0%	1 1% f	23 3%	9 1%
alternative dispute resolution-arbitration	31 2%	21 2%	4 1%	13 3%	5 2%	6 2%	2 2%	2 3%	2 1%	22 2%	9 1%
medical malpractice	31 2%	27 2%	3 1%	4 1%	6 2%	13 3% d	2 2%	2 3%	1 1%	20 2%	11 2%
immigration	30 2%	23 2%	6 2%	9 2%	9 3%	7 2%	0 0%	1 1%	3 2%	13 1%	17 3%
international	29 2%	25 2%	1 0% b	10 2%	6 2%	6 2%	2 2%	0 0%	5 3%	20 2%	9 1%
admin/govt/reg-liquor licensing	28 2%	7 1%	20 6% b	0 0%	4 1% d	17 4% de	2 2% d	0 0%	4 3% d	18 2%	10 1%
product liability	26 2%	24 2%	1 0% b	4 1%	6 2%	8 2%	2 2%	4 6% d	0 0% h	21 2%	4 1% j
property tax	26 2%	13 1%	12 3% b	4 1%	2 1%	11 3% de	4 3% e	1 1%	3 2%	17 2%	9 1%
agricultural & rural	25 2%	17 1%	6 2%	6 1%	9 3%	6 2%	2 2%	0 0%	1 1%	16 2%	8 1%
criminal-federal	25 2%	16 1%	7 2%	8 2%	5 2%	2 1%	0 0%	3 4% fg	5 3% fg	18 2%	7 1%
transportation	24 1%	11 1%	13 4% b	1 0%	3 1%	8 2% d	0 0%	2 3% d	8 5% deg	19 2%	5 1% j

Columns tested at 95% significance level: bc defghi jk

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
bankruptcy-debtor	23 1%	22 2%	1 0% b	10 2%	5 2%	4 1%	0 0%	1 1%	2 1%	17 2%	6 1%
alternative dispute resolution	21 1%	12 1%	4 1%	11 3%	6 2%	1 0% de	0 0%	1 1%	2 1%	15 2%	5 1%
natural resources & energy-mining	21 1%	15 1%	5 1%	4 1%	1 0%	7 2%	3 2% e	0 0%	5 3% de	15 2%	5 1%
malpractice	20 1%	18 2%	0 0% b	2 0%	4 1%	6 2%	1 1%	1 1%	3 2%	17 2%	3 0% j
class action	19 1%	16 1%	2 1%	2 0%	2 1%	4 1%	3 2% d	3 4% def	5 3% de	11 1%	7 1%
disability	18 1%	8 1%	8 2% b	1 0%	4 1%	5 1%	2 2%	0 0%	5 3% d	9 1%	9 1%
labor & employment-ERISA	17 1%	14 1%	3 1%	2 0%	5 2%	4 1%	1 1%	3 4% df	2 1%	12 1%	4 1%
business-franchises	16 1%	15 1%	1 0%	7 2%	1 0%	6 2%	1 1%	1 1%	0 0%	9 1%	7 1%
business-securities litigation	16 1%	11 1%	5 1%	4 1%	1 0%	3 1%	2 2%	0 0%	4 3% e	11 1%	5 1%
family-CFI/CLR/PRE	16 1%	13 1%	1 0%	8 2%	3 1%	1 0% d	2 2%	0 0%	0 0%	8 1%	7 1%
labor & employment-employee benefits	16 1%	9 1%	7 2%	1 0%	4 1%	6 2% d	2 2%	1 1%	2 1%	8 1%	7 1%
disability-social security disability	15 1%	11 1%	4 1%	5 1%	5 2%	2 1%	0 0%	1 1%	1 1%	7 1%	7 1%
animal	14 1%	5 0%	9 3% b	2 0%	3 1%	7 2%	1 1%	0 0%	1 1%	9 1%	5 1%

Columns tested at 95% significance level: bc defghi jk

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Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
elder-social security benefits	14 1%	10 1%	4 1%	8 2%	1 0%	0 0% d	0 0%	2 3% ef	2 1% f	4 0%	8 1%
entertainment/sports/gaming	12 1%	11 1%	1 0%	6 1%	1 0%	2 1%	2 2%	0 0%	1 1%	7 1%	4 1%
Indian Law	12 1%	5 0%	7 2% b	3 1%	2 1%	3 1%	1 1%	0 0%	1 1%	5 1%	6 1%
aviation	9 1%	8 1%	1 0%	2 0%	1 0%	5 1%	0 0%	0 0%	1 1%	8 1%	1 0%
business-antitrust	9 1%	8 1%	1 0%	0 0%	2 1%	3 1%	0 0%	0 0%	4 3% d	7 1%	2 0%
military & veterans	9 1%	4 0%	2 1%	3 1%	1 0%	1 0%	1 1%	0 0%	2 1%	6 1%	2 0%
collaborative	8 0%	6 1%	1 0%	2 0%	6 2%	0 0% e	0 0%	0 0%	0 0%	5 1%	3 0%
ski	7 0%	5 0%	1 0%	1 0%	3 1%	1 0%	1 1%	1 1%	0 0%	6 1%	1 0%
other	136 8%	53 5%	50 14% b	29 7%	22 7%	24 6%	11 9%	8 11%	17 11%	66 7%	68 10% j
NET: ADMIN/GOVT/REG	288 18%	117 10%	152 44% b	46 11%	49 15%	84 22% de	34 27% de	11 15%	43 28% deh	169 19%	108 16%
NET: ALTERNATIVE DISPUTE RESOLUTION	70 4%	45 4%	13 4%	31 7%	11 3% d	11 3% d	6 5%	3 4%	6 4%	52 6%	17 3% j
NET: BANKRUPTCY	74 5%	65 6%	6 2% b	25 6%	18 6%	12 3%	1 1% de	5 7% g	11 7% fg	55 6%	17 3% j
NET: BUSINESS	461 29%	411 36%	33 9% b	151 35%	113 35%	103 27% de	36 29%	7 10% defg	32 21% deh	314 35%	137 21% j
NET: CONSTRUCTION	133 8%	112 10%	18 5% b	27 6%	24 8%	55 14% de	9 7% f	3 4% f	11 7% f	97 11%	34 5% j

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 012 page 9

Areas of Practice

8. In what areas did you practice for your primary position in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (multiple answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
NET: CRIMINAL	223 14%	108 9%	102 29% b	56 13%	38 12%	48 13%	18 15%	20 28% defg	25 17% h	140 16%	77 12% j
NET: DISABILITY	64 4%	30 3%	30 9% b	11 3%	14 4%	19 5%	5 4%	2 3%	9 6% d	32 4%	31 5%
NET: ELDER	71 4%	54 5%	13 4%	29 7%	20 6%	7 2% de	5 4%	2 3%	5 3%	35 4%	33 5%
NET: FAMILY	249 15%	201 18%	33 9% b	94 22%	67 21%	50 13% de	9 7% de	4 6% de	9 6% def	121 13%	121 18% j
NET: INSURANCE	105 7%	98 9%	4 1% b	12 3%	20 6% d	41 11% de	6 5% f	9 13% dg	6 4% fh	66 7%	38 6%
NET: INTELLECTUAL PROPERTY	103 6%	86 8%	15 4% b	30 7%	24 8%	19 5%	13 10% f	3 4%	11 7%	67 7%	36 5%
NET: LABOR & EMPLOYMENT	200 12%	146 13%	46 13%	38 9%	53 17% d	53 14% d	17 14%	8 11%	21 14%	118 13%	78 12%
NET: NATURAL RESOURCES & ENERGY	80 5%	59 5%	15 4%	17 4%	13 4%	25 7%	6 5%	0 0% f	13 9% deh	54 6%	25 4% j
NET: REAL ESTATE	410 26%	345 30%	50 14% b	115 27%	91 28%	115 30%	28 23%	10 14% def	31 21% f	278 31%	123 18% j
NET: REAL ESTATE-LANDLORD/TENANT	148 9%	131 11%	11 3% b	46 11%	37 12%	36 9%	13 10%	5 7%	4 3% defg	105 12%	39 6% j
NET: TRUST & ESTATE	275 17%	255 22%	8 2% b	134 31%	74 23% d	41 11% de	7 6% de	3 4% de	6 4% def	163 18%	105 16%
indicated at least one	1601 100%	1144 100%	347 100%	428 100%	319 100%	380 100%	124 100%	71 100%	151 100%	899 100%	664 99%
no answer	6 0%	2 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	4 1%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 1

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
family	170 11%	145 13%	16 5% b	59 14%	48 15%	37 10% e	7 6% de	4 6% e	3 2% def	69 8%	95 14% j
criminal	111 7%	39 3%	68 20% b	23 5%	13 4%	26 7%	11 9% e	14 20% defg	12 8% h	66 7%	43 6%
civil litigation	106 7%	85 7%	17 5%	18 4%	16 5%	27 7%	11 9% d	8 11% de	16 11% de	76 8%	29 4% j
personal injury	59 4%	58 5%	1 0% b	18 4%	18 6%	16 4%	1 1% e	3 4%	0 0% defh	44 5%	14 2% j
admin/govt/reg	57 4%	8 1%	45 13% b	4 1%	10 3% d	17 4% d	11 9% de	1 1% g	10 7% d	27 3%	30 4%
real estate	57 4%	54 5%	1 0% b	19 4%	9 3%	19 5%	4 3%	1 1%	2 1% f	35 4%	19 3%
trust & estate-estate planning	57 4%	56 5%	0 0% b	36 8%	9 3% d	7 2% d	2 2% d	0 0% d	1 1% d	29 3%	26 4%
business	55 3%	52 5%	1 0% b	24 6%	16 5%	10 3% d	3 2%	0 0% d	1 1% de	36 4%	18 3%
business-corporate counsel	55 3%	53 5%	2 1% b	20 5%	14 4%	9 2%	5 4%	1 1%	5 3%	27 3%	27 4%
admin/govt/reg-local & municipal	36 2%	15 1%	20 6% b	5 1%	9 3%	15 4% d	2 2%	1 1%	3 2%	21 2%	14 2%
juvenile	33 2%	18 2%	13 4% b	16 4%	6 2%	5 1% d	2 2%	0 0%	4 3%	7 1%	26 4% j
water	32 2%	26 2%	4 1%	6 1%	9 3%	15 4% d	1 1%	0 0%	1 1% f	18 2%	14 2%
trust & estate	30 2%	27 2%	0 0% b	11 3%	11 3%	5 1%	1 1%	0 0%	0 0% de	14 2%	15 2%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 2

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
business-commercial litigation	29 2%	29 3%	0 0% b	5 1%	9 3%	9 2%	3 2%	0 0%	3 2%	23 3%	6 1% j
insurance-defense	25 2%	24 2%	0 0% b	0 0%	5 2% d	13 3% d	0 0% f	2 3% d	1 1%	10 1%	15 2%
workers' compensation	24 1%	18 2%	6 2%	5 1%	5 2%	3 1%	4 3% f	1 1%	3 2%	16 2%	8 1%
health	23 1%	15 1%	8 2%	5 1%	4 1%	3 1%	4 3% f	1 1%	5 3% f	10 1%	12 2%
appellate/appeals	22 1%	7 1%	12 3% b	3 1%	2 1%	0 0%	2 2% f	7 10% defg	6 4% def	10 1%	11 2%
labor & employment	22 1%	11 1%	10 3% b	2 0%	4 1%	5 1%	3 2% d	2 3% d	3 2%	7 1%	13 2% j
immigration	19 1%	15 1%	4 1%	5 1%	6 2%	6 2%	0 0%	1 1%	1 1%	7 1%	12 2%
real estate-commercial	19 1%	18 2%	0 0% b	4 1%	4 1%	4 1%	3 2%	0 0%	2 1%	10 1%	9 1%
construction	18 1%	18 2%	0 0% b	3 1%	1 0%	10 3% de	1 1%	0 0%	1 1%	12 1%	6 1%
tax	17 1%	11 1%	3 1%	3 1%	4 1%	4 1%	1 1%	0 0%	4 3%	13 1%	4 1%
environmental	16 1%	6 1%	8 2% b	1 0%	4 1%	1 0%	1 1%	2 3% df	4 3% df	13 1%	3 0%
intellectual property-patents	16 1%	11 1%	4 1%	5 1%	2 1%	3 1%	2 2%	0 0%	2 1%	13 1%	3 0%
labor & employment-employee	16 1%	14 1%	1 0%	1 0%	6 2% d	6 2% d	2 2%	1 1%	0 0%	10 1%	6 1%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 3

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
labor & employment-management	16 1%	12 1%	4 1%	2 0%	2 1%	4 1%	0 0%	1 1%	4 3% d	11 1%	5 1%
government contracts	15 1%	4 0%	11 3% b	3 1%	1 0%	7 2%	0 0%	1 1%	1 1%	8 1%	6 1%
natural resources & energy-oil & gas	15 1%	13 1%	0 0% b	4 1%	3 1%	4 1%	0 0%	0 0%	1 1%	8 1%	6 1%
admin/govt/reg-education/school	14 1%	5 0%	6 2% b	2 0%	3 1%	6 2%	2 2%	0 0%	1 1%	10 1%	4 1%
trust & estate-estate administration	14 1%	12 1%	0 0%	5 1%	5 2%	3 1%	0 0%	0 0%	0 0%	8 1%	5 1%
medical malpractice	13 1%	13 1%	0 0% b	2 0%	1 0%	8 2% de	0 0%	1 1%	0 0%	7 1%	6 1%
business-privately held/family business	12 1%	11 1%	0 0%	4 1%	3 1%	3 1%	1 1%	0 0%	0 0%	8 1%	4 1%
collections	12 1%	12 1%	0 0%	4 1%	6 2%	1 0% e	1 1%	0 0%	0 0%	8 1%	4 1%
business-mergers & acquisitions	11 1%	11 1%	0 0%	1 0%	4 1%	1 0%	3 2% df	0 0%	1 1%	9 1%	2 0%
elder	11 1%	7 1%	2 1%	7 2%	1 0%	0 0% d	1 1%	0 0%	0 0%	5 1%	6 1%
bankruptcy-debtor	10 1%	10 1%	0 0%	5 1%	2 1%	1 0%	0 0%	0 0%	1 1%	8 1%	2 0%
bankruptcy	9 1%	9 1%	0 0%	5 1%	2 1%	2 1%	0 0%	0 0%	0 0%	8 1%	1 0%
business-nonprofit/tax-exempt	9 1%	3 0%	4 1% b	6 1%	2 1%	1 0%	0 0%	0 0%	0 0%	6 1%	3 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 4

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
constitutional law/civil rights	9 1%	3 0%	5 1% b	1 0%	0 0%	4 1%	1 1%	1 1% e	2 1% e	3 0%	5 1%
criminal-federal	9 1%	5 0%	3 1%	3 1%	0 0%	0 0%	0 0%	2 3% ef	4 3% ef	6 1%	3 0%
trust & estate-litigation	9 1%	8 1%	1 0%	3 1%	1 0%	2 1%	0 0%	0 0%	2 1%	5 1%	4 1%
admin/govt/reg-public utilities	8 0%	4 0%	3 1%	2 0%	0 0%	3 1%	1 1%	0 0%	1 1%	3 0%	4 1%
admin/govt/reg-zoning/city planning	8 0%	2 0%	5 1% b	1 0%	2 1%	1 0%	2 2%	0 0%	1 1%	4 0%	4 1%
ethics & professional responsibility	8 0%	3 0%	3 1%	1 0%	0 0%	2 1%	3 2% de	1 1% e	1 1%	4 0%	4 1%
intellectual property	8 0%	8 1%	0 0%	1 0%	1 0%	2 1%	2 2%	0 0%	2 1%	4 0%	4 1%
real estate-litigation	8 0%	7 1%	0 0%	1 0%	1 0%	2 1%	0 0%	1 1%	2 1%	7 1%	1 0%
alternative dispute resolution-mediation	7 0%	1 0%	0 0%	7 2%	0 0% d	0 0% d	0 0%	0 0%	0 0%	3 0%	4 1%
business-financial institutions	7 0%	7 1%	0 0%	1 0%	3 1%	0 0%	2 2% f	0 0%	1 1%	4 0%	3 0%
business-securities	7 0%	5 0%	1 0%	1 0%	0 0%	2 1%	2 2% e	0 0%	1 1%	4 0%	3 0%
product liability	7 0%	6 1%	0 0%	2 0%	0 0%	1 0%	2 2% e	2 3% def	0 0% h	5 1%	1 0%
real estate-HOA/CCIOA	7 0%	6 1%	0 0%	2 0%	1 0%	3 1%	0 0%	0 0%	0 0%	5 1%	2 0%
disability-social security disability	6 0%	5 0%	1 0%	3 1%	2 1%	0 0%	0 0%	0 0%	1 1%	2 0%	3 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 5

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
insurance-plaintiff	6 0%	6 1%	0 0%	0 0%	2 1%	2 1%	0 0%	1 1% d	1 1%	5 1%	0 0%
real estate-foreclosure	6 0%	5 0%	1 0%	1 0%	1 0%	3 1%	1 1%	0 0%	0 0%	2 0%	4 1%
transportation	6 0%	3 0%	3 1%	1 0%	0 0%	1 0%	0 0%	1 1% e	3 2% def	5 1%	1 0%
business-securities litigation	5 0%	2 0%	3 1%	0 0%	0 0%	0 0%	0 0%	0 0%	3 2% def	2 0%	3 0%
criminal-DUI	5 0%	3 0%	1 0%	1 0%	1 0%	3 1%	0 0%	0 0%	0 0%	4 0%	0 0%
entertainment/sports/gaming	5 0%	5 0%	0 0%	5 1%	0 0%	0 0% d	0 0%	0 0%	0 0%	3 0%	1 0%
intellectual property-trademark	5 0%	5 0%	0 0%	1 0%	2 1%	0 0%	1 1%	1 1% f	0 0%	1 0%	4 1%
natural resources & energy	5 0%	5 0%	0 0%	0 0%	0 0%	2 1%	1 1%	0 0%	1 1%	5 1%	0 0%
real estate-landlord/tenant (residential)	5 0%	2 0%	1 0%	1 0%	1 0%	2 1%	0 0%	1 1%	0 0%	3 0%	2 0%
real estate-special districts	5 0%	4 0%	1 0%	0 0%	0 0%	4 1% d	0 0%	0 0%	1 1%	1 0%	4 1%
alternative dispute resolution-arbitration	4 0%	1 0%	1 0%	2 0%	1 0%	0 0%	0 0%	0 0%	0 0%	3 0%	1 0%
bankruptcy-creditor	4 0%	4 0%	0 0%	2 0%	0 0%	0 0%	0 0%	1 1% ef	1 1%	3 0%	1 0%
communications/technology	4 0%	3 0%	1 0%	1 0%	0 0%	0 0%	0 0%	1 1% ef	2 1% ef	3 0%	1 0%
real estate-residential	4 0%	4 0%	0 0%	1 0%	2 1%	1 0%	0 0%	0 0%	0 0%	3 0%	1 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 6

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
business-franchises	3 0%	3 0%	0 0%	2 0%	0 0%	0 0%	0 0%	1 1% ef	0 0%	1 0%	2 0%
cannabis	3 0%	3 0%	0 0%	1 0%	1 0%	0 0%	1 1%	0 0%	0 0%	1 0%	1 0%
international	3 0%	2 0%	1 0%	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	1 0%
real estate-leases	3 0%	3 0%	0 0%	0 0%	0 0%	2 1%	0 0%	0 0%	0 0%	0 0%	3 0% j
alternative dispute resolution	2 0%	1 0%	0 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	2 0%	0 0%
aviation	2 0%	2 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	1 1%	2 0%	0 0%
business-UCC/secured transactions	2 0%	2 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	1 1%	2 0%	0 0%
construction-mechanic's liens	2 0%	2 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	1 1%	2 0%	0 0%
criminal-traffic	2 0%	1 0%	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	0 0%
elder-social security benefits	2 0%	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	2 0%
labor & employment-employee benefits	2 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	2 1% def	0 0%	2 0%
military & veterans	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 1%	2 0%	0 0%
natural resources & energy-mining	2 0%	2 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	0 0%
real estate-eminent domain	2 0%	1 0%	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	1 0%	1 0%
real estate-landlord-tenant (commercial)	2 0%	2 0%	0 0%	0 0%	1 0%	1 0%	0 0%	0 0%	0 0%	1 0%	1 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 7

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
business-choice of entity	1 0%	1 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
class action	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	0 0%	0 0%	1 0%
collaborative	1 0%	1 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
family-CFI/CLR/PRE	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
Indian Law	1 0%	0 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
property tax	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	0 0%	0 0%	1 0%
admin/govt/reg-liquor licensing	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
agricultural & rural	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
animal	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
business-antitrust	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
disability	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
disability-ADA	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
intellectual property-copyright	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
labor & employment-ERISA	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
malpractice	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
real estate-easements	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
real estate-liens	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 8

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
ski	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
other	76 5%	19 2%	31 9% b	14 3%	12 4%	13 3%	6 5%	4 6%	6 4%	35 4%	40 6%
ADMIN/GOVT/REG	123 8%	34 3%	79 23% b	14 3%	24 8% d	42 11% d	18 15% de	2 3% fg	16 11% dh	65 7%	56 8%
ALTERNATIVE DISPUTE RESOLUTION	13 1%	3 0%	1 0%	11 3%	1 0% d	0 0% d	0 0%	0 0%	0 0% d	8 1%	5 1%
BANKRUPTCY	23 1%	23 2%	0 0% b	12 3%	4 1%	3 1% d	0 0%	1 1%	2 1%	19 2%	4 1% j
BUSINESS	196 12%	179 16%	11 3% b	64 15%	52 16%	36 9% de	19 15%	2 3% deg	16 11% h	123 14%	71 11%
CONSTRUCTION	20 1%	20 2%	0 0% b	3 1%	1 0%	10 3% de	2 2%	0 0%	2 1%	14 2%	6 1%
CRIMINAL	127 8%	48 4%	73 21% b	28 7%	14 4%	30 8%	11 9%	16 23% defg	16 11% eh	78 9%	46 7%
DISABILITY	6 0%	5 0%	1 0%	3 1%	2 1%	0 0%	0 0%	0 0%	1 1%	2 0%	3 0%
ELDER	13 1%	9 1%	2 1%	8 2%	1 0%	0 0% d	1 1%	0 0%	1 1%	5 1%	8 1%
FAMILY	171 11%	146 13%	16 5% b	60 14%	48 15%	37 10% e	7 6% de	4 6% e	3 2% def	70 8%	95 14% j
INSURANCE	31 2%	30 3%	0 0% b	0 0%	7 2% d	15 4% d	0 0% f	3 4% dg	2 1% d	15 2%	15 2%
INTELLECTUAL PROPERTY	29 2%	24 2%	4 1%	7 2%	5 2%	5 1%	5 4%	1 1%	4 3%	18 2%	11 2%
LABOR & EMPLOYMENT	56 3%	39 3%	15 4%	5 1%	12 4% d	15 4% d	5 4% d	4 6% d	9 6% d	28 3%	26 4%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 013 page 9

Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
NATURAL RESOURCES & ENERGY	22 1%	20 2%	0 0% b	4 1%	3 1%	7 2%	1 1%	0 0%	2 1%	15 2%	6 1%
REAL ESTATE	118 7%	106 9%	5 1% b	30 7%	20 6%	41 11% e	8 6%	3 4%	8 5% f	68 8%	47 7%
REAL ESTATE-LANDLORD/TENANT	7 0%	4 0%	1 0%	1 0%	2 1%	3 1%	0 0%	1 1%	0 0%	4 0%	3 0%
TRUST & ESTATE	110 7%	103 9%	1 0% b	55 13%	26 8% d	17 4% de	3 2% de	0 0% de	3 2% de	56 6%	50 7%
no answer	29 2%	17 1%	7 2%	7 2%	3 1%	3 1%	1 1%	0 0%	5 3% f	13 1%	12 2%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 1

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
family	160 10%	138 12%	13 4% b	54 13%	46 14%	35 9% e	7 6% de	3 4% de	3 2% def	63 7%	93 14% j
criminal	105 7%	38 3%	63 18% b	22 5%	12 4%	22 6%	11 9% e	14 20% defg	12 8% h	60 7%	43 6%
civil litigation	96 6%	76 7%	16 5%	15 4%	15 5%	24 6%	10 8% d	8 11% de	14 9% d	67 7%	28 4% j
personal injury	57 4%	56 5%	1 0% b	18 4%	18 6%	14 4%	1 1% e	3 4%	0 0% defh	42 5%	14 2% j
admin/govt/reg	52 3%	8 1%	42 12% b	3 1%	7 2%	16 4% d	11 9% def	1 1% g	10 7% de	24 3%	28 4%
business-corporate counsel	50 3%	48 4%	2 1% b	19 4%	12 4%	7 2% d	5 4%	1 1%	5 3%	23 3%	26 4%
real estate	50 3%	49 4%	1 0% b	17 4%	9 3%	15 4%	4 3%	1 1%	2 1%	31 3%	17 3%
trust & estate-estate planning	48 3%	47 4%	0 0% b	31 7%	7 2% d	6 2% d	2 2% d	0 0% d	1 1% d	21 2%	25 4%
business	47 3%	45 4%	0 0% b	21 5%	14 4%	9 2%	3 2%	0 0%	0 0% de	30 3%	16 2%
juvenile	31 2%	16 1%	13 4% b	15 4%	5 2%	5 1% d	2 2%	0 0%	4 3%	5 1%	26 4% j
water	30 2%	25 2%	3 1%	6 1%	7 2%	15 4% d	1 1%	0 0%	1 1% f	17 2%	13 2%
admin/govt/reg-local & municipal	29 2%	13 1%	16 5% b	4 1%	8 3%	12 3% d	1 1%	0 0%	3 2%	16 2%	12 2%
trust & estate	28 2%	26 2%	0 0% b	10 2%	11 3%	5 1%	1 1%	0 0%	0 0% e	14 2%	13 2%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 2

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
business-commercial litigation	25 2%	25 2%	0 0% b	4 1%	7 2%	8 2%	3 2%	0 0%	3 2%	20 2%	5 1% j
insurance-defense	24 1%	23 2%	0 0% b	0 0%	5 2% d	13 3% d	0 0% f	2 3% d	1 1%	9 1%	15 2% j
workers' compensation	24 1%	18 2%	6 2%	5 1%	5 2%	3 1%	4 3% f	1 1%	3 2%	16 2%	8 1%
health	23 1%	15 1%	8 2%	5 1%	4 1%	3 1%	4 3% f	1 1%	5 3% f	10 1%	12 2%
appellate/appeals	22 1%	7 1%	12 3% b	3 1%	2 1%	0 0%	2 2% f	7 10% defg	6 4% def	10 1%	11 2%
immigration	19 1%	15 1%	4 1%	5 1%	6 2%	6 2%	0 0%	1 1%	1 1%	7 1%	12 2%
labor & employment	19 1%	9 1%	9 3% b	2 0%	2 1%	4 1%	3 2% d	2 3% d	3 2%	6 1%	12 2% j
real estate-commercial	18 1%	17 1%	0 0% b	3 1%	4 1%	4 1%	3 2%	0 0%	2 1%	9 1%	9 1%
environmental	16 1%	6 1%	8 2% b	1 0%	4 1%	1 0%	1 1%	2 3% df	4 3% df	13 1%	3 0%
tax	16 1%	10 1%	3 1%	3 1%	4 1%	3 1%	1 1%	0 0%	4 3%	12 1%	4 1%
construction	15 1%	15 1%	0 0% b	2 0%	0 0%	9 2% de	1 1%	0 0%	1 1%	10 1%	5 1%
intellectual property-patents	15 1%	10 1%	4 1%	4 1%	2 1%	3 1%	2 2%	0 0%	2 1%	12 1%	3 0%
labor & employment-employee	15 1%	13 1%	1 0%	1 0%	5 2% d	6 2% d	2 2%	1 1%	0 0%	9 1%	6 1%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 3

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
labor & employment-management	15 1%	11 1%	4 1%	2 0%	2 1%	3 1%	0 0%	1 1%	4 3% d	10 1%	5 1%
natural resources & energy-oil & gas	15 1%	13 1%	0 0% b	4 1%	3 1%	4 1%	0 0%	0 0%	1 1%	8 1%	6 1%
admin/govt/reg-education/school	14 1%	5 0%	6 2% b	2 0%	3 1%	6 2%	2 2%	0 0%	1 1%	10 1%	4 1%
government contracts	13 1%	4 0%	9 3% b	3 1%	1 0%	6 2%	0 0%	1 1%	0 0%	8 1%	4 1%
collections	12 1%	12 1%	0 0%	4 1%	6 2%	1 0% e	1 1%	0 0%	0 0%	8 1%	4 1%
medical malpractice	12 1%	12 1%	0 0%	2 0%	1 0%	7 2%	0 0%	1 1%	0 0%	7 1%	5 1%
elder	11 1%	7 1%	2 1%	7 2%	1 0%	0 0% d	1 1%	0 0%	0 0%	5 1%	6 1%
trust & estate-estate administration	11 1%	9 1%	0 0%	3 1%	4 1%	3 1%	0 0%	0 0%	0 0%	5 1%	5 1%
bankruptcy	9 1%	9 1%	0 0%	5 1%	2 1%	2 1%	0 0%	0 0%	0 0%	8 1%	1 0%
bankruptcy-debtor	9 1%	9 1%	0 0%	4 1%	2 1%	1 0%	0 0%	0 0%	1 1%	7 1%	2 0%
business-privately held/family business	9 1%	8 1%	0 0%	4 1%	2 1%	2 1%	0 0%	0 0%	0 0%	6 1%	3 0%
constitutional law/civil rights	9 1%	3 0%	5 1% b	1 0%	0 0%	4 1%	1 1%	1 1% e	2 1% e	3 0%	5 1%
business-nonprofit/tax-exempt	8 0%	3 0%	3 1%	5 1%	2 1%	1 0%	0 0%	0 0%	0 0%	5 1%	3 0%
criminal-federal	8 0%	4 0%	3 1%	2 0%	0 0%	0 0%	0 0%	2 3% def	4 3% def	6 1%	2 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 4

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
ethics & professional responsibility	8 0%	3 0%	3 1%	1 0%	0 0%	2 1%	3 2% de	1 1% e	1 1%	4 0%	4 1%
intellectual property	8 0%	8 1%	0 0%	1 0%	1 0%	2 1%	2 2%	0 0%	2 1%	4 0%	4 1%
trust & estate-litigation	8 0%	7 1%	1 0%	2 0%	1 0%	2 1%	0 0%	0 0%	2 1%	5 1%	3 0%
business-financial institutions	7 0%	7 1%	0 0%	1 0%	3 1%	0 0%	2 2% f	0 0%	1 1%	4 0%	3 0%
business-mergers & acquisitions	7 0%	7 1%	0 0%	1 0%	2 1%	0 0%	2 2% f	0 0%	1 1%	5 1%	2 0%
business-securities	7 0%	5 0%	1 0%	1 0%	0 0%	2 1%	2 2% e	0 0%	1 1%	4 0%	3 0%
admin/govt/reg-public utilities	6 0%	3 0%	2 1%	1 0%	0 0%	2 1%	1 1%	0 0%	1 1%	2 0%	3 0%
admin/govt/reg-zoning/city planning	6 0%	2 0%	4 1% b	0 0%	2 1%	0 0%	2 2% df	0 0%	1 1%	3 0%	3 0%
alternative dispute resolution-mediation	6 0%	1 0%	0 0%	6 1%	0 0% d	0 0% d	0 0%	0 0%	0 0%	3 0%	3 0%
disability-social security disability	6 0%	5 0%	1 0%	3 1%	2 1%	0 0%	0 0%	0 0%	1 1%	2 0%	3 0%
product liability	6 0%	5 0%	0 0%	2 0%	0 0%	1 0%	1 1%	2 3% def	0 0% h	5 1%	0 0%
real estate-foreclosure	6 0%	5 0%	1 0%	1 0%	1 0%	3 1%	1 1%	0 0%	0 0%	2 0%	4 1%
real estate-HOA/CCIOA	6 0%	6 1%	0 0%	2 0%	1 0%	3 1%	0 0%	0 0%	0 0%	4 0%	2 0%
business-securities litigation	5 0%	2 0%	3 1%	0 0%	0 0%	0 0%	0 0%	0 0%	3 2% def	2 0%	3 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 5

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
criminal-DUI	5 0%	3 0%	1 0%	1 0%	1 0%	3 1%	0 0%	0 0%	0 0%	4 0%	0 0%
insurance-plaintiff	5 0%	5 0%	0 0%	0 0%	1 0%	2 1%	0 0%	1 1% d	1 1%	4 0%	0 0%
natural resources & energy	5 0%	5 0%	0 0%	0 0%	0 0%	2 1%	1 1%	0 0%	1 1%	5 1%	0 0%
real estate-special districts	5 0%	4 0%	1 0%	0 0%	0 0%	4 1% d	0 0%	0 0%	1 1%	1 0%	4 1%
transportation	5 0%	3 0%	2 1%	1 0%	0 0%	1 0%	0 0%	1 1% e	2 1% e	4 0%	1 0%
alternative dispute resolution-arbitration	4 0%	1 0%	1 0%	2 0%	1 0%	0 0%	0 0%	0 0%	0 0%	3 0%	1 0%
communications/technology	4 0%	3 0%	1 0%	1 0%	0 0%	0 0%	0 0%	1 1% ef	2 1% ef	3 0%	1 0%
entertainment/sports/gaming	4 0%	4 0%	0 0%	4 1%	0 0%	0 0%	0 0%	0 0%	0 0%	2 0%	1 0%
intellectual property-trademark	4 0%	4 0%	0 0%	0 0%	2 1%	0 0%	1 1%	1 1% df	0 0%	0 0%	4 1% j
real estate-litigation	4 0%	4 0%	0 0%	1 0%	0 0%	1 0%	0 0%	0 0%	1 1%	4 0%	0 0%
bankruptcy-creditor	3 0%	3 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 1% ef	1 1%	2 0%	1 0%
cannabis	3 0%	3 0%	0 0%	1 0%	1 0%	0 0%	1 1%	0 0%	0 0%	1 0%	1 0%
real estate-landlord/tenant (residential)	3 0%	1 0%	0 0%	0 0%	0 0%	2 1%	0 0%	1 1% de	0 0%	2 0%	1 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 6

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
real estate-leases	3 0%	3 0%	0 0%	0 0%	0 0%	2 1%	0 0%	0 0%	0 0%	0 0%	3 0% j
real estate-residential	3 0%	3 0%	0 0%	0 0%	2 1%	1 0%	0 0%	0 0%	0 0%	2 0%	1 0%
alternative dispute resolution	2 0%	1 0%	0 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	2 0%	0 0%
business-franchises	2 0%	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 1% ef	0 0%	0 0%	2 0%
criminal-traffic	2 0%	1 0%	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	0 0%
international	2 0%	2 0%	0 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 0%	1 0%
labor & employment-employee benefits	2 0%	2 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	2 1% def	0 0%	2 0%
military & veterans	2 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 1%	2 0%	0 0%
natural resources & energy-mining	2 0%	2 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	2 0%	0 0%
real estate-eminent domain	2 0%	1 0%	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	1 0%	1 0%
aviation	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 1%	1 0%	0 0%
business-choice of entity	1 0%	1 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%
business-UCC/secured transactions	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 1%	1 0%	0 0%
class action	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	0 0%	0 0%	1 0%
collaborative	1 0%	1 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 7

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
elder-social security benefits	1 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
Indian Law	1 0%	0 0%	1 0%	0 0%	1 0%	0 0%	0 0%	0 0%	0 0%	0 0%	1 0%
property tax	1 0%	1 0%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%	0 0%	0 0%	1 0%
real estate-landlord-tenant (commercial)	1 0%	1 0%	0 0%	0 0%	0 0%	1 0%	0 0%	0 0%	0 0%	1 0%	0 0%
admin/govt/reg-liquor licensing	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
agricultural & rural	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
animal	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
business-antitrust	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
construction-mechanic's liens	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
disability	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
disability-ADA	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
family-CFI/CLR/PRE	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
intellectual property-copyright	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
labor & employment-ERISA	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
malpractice	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
real estate-easements	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
real estate-liens	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 8

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	# OF ATTORNEYS AT ORGANIZATION 2 - 4	# OF ATTORNEYS AT ORGANIZATION 5 - 19	# OF ATTORNEYS AT ORGANIZATION 20 - 49	# OF ATTORNEYS AT ORGANIZATION 50 -99	# OF ATTORNEYS AT ORGANIZATION 100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
ski	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
other	65 4%	17 1%	28 8% b	11 3%	10 3%	12 3%	6 5%	3 4%	6 4%	29 3%	35 5% j
ADMIN/GOVT/REG	107 7%	31 3%	70 20% b	10 2%	20 6% d	36 9% d	17 14% de	1 1% fg	16 11% dh	55 6%	50 7%
ALTERNATIVE DISPUTE RESOLUTION	12 1%	3 0%	1 0%	10 2%	1 0% d	0 0% d	0 0%	0 0%	0 0%	8 1%	4 1%
BANKRUPTCY	21 1%	21 2%	0 0% b	10 2%	4 1%	3 1%	0 0%	1 1%	2 1%	17 2%	4 1% j
BUSINESS	169 11%	154 13%	9 3% b	57 13%	43 13%	29 8% de	17 14% f	2 3% deg	15 10%	101 11%	66 10%
CONSTRUCTION	15 1%	15 1%	0 0% b	2 0%	0 0%	9 2% de	1 1%	0 0%	1 1%	10 1%	5 1%
CRIMINAL	120 7%	46 4%	68 20% b	26 6%	13 4%	26 7%	11 9% e	16 23% defg	16 11% eh	72 8%	45 7%
DISABILITY	6 0%	5 0%	1 0%	3 1%	2 1%	0 0%	0 0%	0 0%	1 1%	2 0%	3 0%
ELDER	12 1%	8 1%	2 1%	8 2%	1 0%	0 0% d	1 1%	0 0%	0 0%	5 1%	7 1%
FAMILY	160 10%	138 12%	13 4% b	54 13%	46 14%	35 9% e	7 6% de	3 4% de	3 2% def	63 7%	93 14% j
INSURANCE	29 2%	28 2%	0 0% b	0 0%	6 2% d	15 4% d	0 0% f	3 4% dg	2 1% d	13 1%	15 2%
INTELLECTUAL PROPERTY	27 2%	22 2%	4 1%	5 1%	5 2%	5 1%	5 4% d	1 1%	4 3%	16 2%	11 2%
LABOR & EMPLOYMENT	51 3%	35 3%	14 4%	5 1%	9 3%	13 3% d	5 4% d	4 6% d	9 6% d	25 3%	25 4%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 014 page 9

Primary Practice Area: 50%+ of Time Spent in Primary Practice Area

9. What did you consider to be your primary practice area in 2016?

	TOTAL	POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
		private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
NATURAL RESOURCES & ENERGY	22 1%	20 2%	0 0% b	4 1%	3 1%	7 2%	1 1%	0 0%	2 1%	15 2%	6 1%
REAL ESTATE	101 6%	94 8%	4 1% b	25 6%	17 5%	36 9% e	8 6%	2 3%	7 5%	57 6%	42 6%
REAL ESTATE-LANDLORD/TENANT	4 0%	2 0%	0 0%	0 0%	0 0%	3 1%	0 0%	1 1% de	0 0%	3 0%	1 0%
TRUST & ESTATE	95 6%	89 8%	1 0% b	46 11%	23 7%	16 4% d	3 2% d	0 0% de	3 2% de	45 5%	46 7%
did not spend 50%+ of time in primary practice area	144 9%	101 9%	29 8%	47 11%	33 10%	38 10%	6 5% d	3 4%	8 5% d	103 11%	37 6% j
no answer	32 2%	17 1%	8 2%	8 2%	3 1%	3 1%	1 1%	1 1%	5 3% f	15 2%	13 2%

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 015 page 1

Proportion of Time Spent in Primary Practice Area

10. What percentage of the time did you spend in your primary position practicing in the area you selected in question #9?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	470 29%	253 22%	166 48% b	94 22%	70 22%	112 29% de	48 39% de	29 41% de	54 36% de	212 24%	251 38% j
90% - 99%	179 11%	147 13%	29 8% b	47 11%	38 12%	45 12%	12 10%	10 14%	15 10%	86 10%	88 13% j
80% - 89%	208 13%	152 13%	39 11%	53 12%	45 14%	44 12%	22 18%	9 13%	23 15%	113 13%	85 13%
70% - 79%	219 14%	178 16%	32 9% b	64 15%	45 14%	54 14%	14 11%	8 11%	22 15%	129 14%	86 13%
60% - 69%	187 12%	156 14%	25 7% b	59 14%	44 14%	40 11%	10 8%	6 8%	16 11%	122 14%	62 9% j
50% - 59%	189 12%	155 14%	26 7% b	61 14%	44 14%	47 12%	12 10%	5 7%	13 9%	130 14%	54 8% j
40% - 49%	70 4%	54 5%	14 4%	21 5%	18 6%	20 5%	4 3%	2 3%	4 3%	49 5%	19 3% j
30% - 39%	42 3%	32 3%	7 2%	15 4%	8 3%	12 3%	1 1%	1 1%	2 1%	34 4%	7 1% j
20% - 29%	17 1%	10 1%	5 1%	5 1%	6 2%	4 1%	1 1%	0 0%	1 1%	12 1%	5 1%
less than 20%	15 1%	5 0%	3 1%	6 1%	1 0%	2 1%	0 0%	0 0%	1 1%	8 1%	6 1%
mean:	78.9%	77.1%	84.3% b	75.5%	76.3%	78.7% d	83.9% def	85.8% def	82.6% def	75.5%	83.7% j
standard error:	0.51%	0.58%	1.11%	1.02%	1.14%	1.06%	1.63%	2.08%	1.52%	0.70%	0.74%
median:	83%	79%	98%	77%	79%	82%	89%	94%	87%	77%	91%
no answer	11 1%	4 0%	2 1%	3 1%	1 0%	0 0%	0 0%	1 1% f	0 0%	5 1%	5 1%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 016 page 1

Income

11. What was your annual pre-tax income from your primary position in 2016 (excluding bonuses, profit sharing, retirement benefits paid, and the monetary value of other benefits received)?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (fill-in answers)	1244 100%	918 100%	261 100%	287 100%	268 100%	315 100%	108 100%	52 100%	127 100%	697 100%	517 100%
$400,000 or more	25 2%	25 3%	0 0% b	2 1%	4 1%	9 3% d	0 0%	0 0%	8 6% deg	21 3%	3 1% j
$300,000 - $399,999	34 3%	32 3%	1 0% b	7 2%	8 3%	10 3%	4 4%	0 0%	3 2%	23 3%	9 2%
$200,000 - $299,999	119 10%	113 12%	3 1% b	29 10%	29 11%	30 10%	14 13%	0 0% defg	10 8% h	92 13%	23 4% j
$150,000 - $199,999	169 14%	127 14%	38 15%	28 10%	31 12%	47 15%	14 13%	11 21% d	26 20% de	103 15%	63 12%
$100,000 - $149,999	307 25%	216 24%	77 30% b	68 24%	51 19%	87 28% e	29 27%	16 31%	36 28% e	155 22%	142 27% j
$90,000 - $99,999	90 7%	59 6%	24 9%	24 8%	18 7%	25 8%	7 6%	3 6%	5 4%	50 7%	39 8%
$80,000 - $89,999	90 7%	60 7%	24 9%	17 6%	18 7%	21 7%	9 8%	5 10%	14 11%	41 6%	46 9% j
$70,000 - $79,999	100 8%	69 8%	29 11%	15 5%	28 10% d	30 10% d	9 8%	2 4%	10 8%	55 8%	43 8%
$60,000 - $69,999	99 8%	60 7%	31 12% b	18 6%	27 10%	22 7%	10 9%	7 13%	7 6%	48 7%	50 10%
$50,000 - $59,999	78 6%	51 6%	19 7%	18 6%	27 10%	15 5% e	5 5%	4 8%	2 2% deh	35 5%	41 8% j
less than $50,000	100 8%	78 8%	13 5%	51 18%	18 7% d	13 4% d	5 5% d	1 2% d	4 3% d	51 7%	48 9%
n:	1211	890	259	277	259	309	106	49	125	674	507
mean (thousands):	$128.2	$138.2	$101.4 b	$110.8	$121.5	$140.7 de	$129.1 d	$109.1 fg	$162.1 degh	$141.5	$109.2 j
standard error:	$2.8	$3.7	$2.6	$4.5	$5.6	$6.2	$7.0	$5.8	$13.7	$4.2	$3.4
75th percentile:	$150.9	$175.0	$126.0	$141.0	$150.0	$159.0	$172.5	$140.0	$156.5	$175.0	$130.0
50th percentile (median):	$105.0	$110.0	$95.0	$96.0	$95.0	$110.0	$105.5	$108.0	$122.0	$116.1	$95.0
25th percentile:	$70.0	$72.0	$70.0	$59.0	$65.0	$77.5	$75.0	$69.5	$85.0	$75.0	$65.4

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 016 page 2

Income

11. What was your annual pre-tax income from your primary position in 2016 (excluding bonuses, profit sharing, retirement benefits paid, and the monetary value of other benefits received)?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (fill-in answers)	1244	918	261	287	268	315	108	52	127	697	517
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
no answer	33	28	2	10	9	6	2	3	2	23	10
	3%	3%	1% b	3%	3%	2%	2%	6%	2%	3%	2%

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 017 page 1

Additional Cash Compensation Eligible to Receive

12. Whether or not you received any, what other types of additional cash compensation were you eligible to receive in 2016 beyond your annual income for your primary position?

		POSITION/AFFILIATION		# OF ATTORNEYS AT ORGANIZATION						GENDER	
	TOTAL	private	public	1	2 - 4	5 - 19	20 - 49	50 -99	100+	male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (multiple answers)	1244 100%	918 100%	261 100%	287 100%	268 100%	315 100%	108 100%	52 100%	127 100%	697 100%	517 100%
continuing legal education (CLE) reimbursement	656 53%	498 54%	129 49%	67 23%	156 58% d	218 69% de	72 67% d	31 60% d	72 57% df	356 51%	287 56%
CBA dues	635 51%	506 55%	104 40% b	72 25%	150 56% d	217 69% de	70 65% d	29 56% d	50 39% defgh	342 49%	277 54%
401(k) contributions from employer/firm	523 42%	391 43%	105 40%	47 16%	108 40% d	189 60% de	65 60% de	29 56% de	49 39% dfgh	294 42%	223 43%
dues for other professional organizations	478 38%	388 42%	71 27% b	57 20%	116 43% d	172 55% de	47 44% df	25 48% d	35 28% efgh	265 38%	201 39%
bonuses	411 33%	372 41%	29 11% b	35 12%	108 40% d	137 43% d	44 41% d	20 38% d	38 30% def	236 34%	171 33%
profit sharing	181 15%	177 19%	1 0% b	16 6%	48 18% d	72 23% d	16 15% d	8 15% d	14 11% df	115 16%	61 12% j
education reimbursement (other than CLE)	108 9%	83 9%	19 7%	17 6%	22 8%	38 12% d	14 13% d	6 12%	6 5% fg	65 9%	41 8%
other	156 13%	99 11%	50 19% b	30 10%	23 9%	48 15% e	12 11%	7 13%	25 20% de	87 12%	67 13%
indicated at least one	906 73%	657 72%	204 78% b	105 37%	215 80% d	281 89% de	94 87% d	46 88% d	96 76% dfg	491 70%	393 76% j
none	306 25%	237 26%	52 20%	165 57%	44 16% d	32 10% de	13 12% d	5 10% d	29 23% dfgh	182 26%	117 23%
no answer	32 3%	24 3%	5 2%	17 6%	9 3%	2 1% de	1 1% d	1 2%	2 2%	24 3%	7 1% j

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 018 page 1

Bonuses

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
BONUSES IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (fill-in answers)	1244 100%	918 100%	261 100%	287 100%	268 100%	315 100%	108 100%	52 100%	127 100%	697 100%	517 100%
$50,000 or more	54 4%	53 6%	0 0% b	3 1%	11 4% d	20 6% d	11 10% de	3 6% d	4 3% g	39 6%	15 3% j
$40,000 - $49,999	11 1%	11 1%	0 0%	1 0%	3 1%	6 2%	0 0%	0 0%	1 1%	4 1%	7 1%
$30,000 - $39,999	22 2%	18 2%	4 2%	1 0%	6 2% d	9 3% d	3 3% d	0 0%	2 2%	15 2%	7 1%
$20,000 - $29,999	21 2%	21 2%	0 0% b	3 1%	6 2%	6 2%	3 3%	0 0%	2 2%	15 2%	6 1%
$10,000 - $19,999	56 5%	52 6%	3 1% b	5 2%	18 7% d	17 5% d	4 4%	2 4%	6 5%	28 4%	27 5%
$5,000 - $9,999	63 5%	62 7%	0 0% b	4 1%	18 7% d	20 6% d	7 6% d	5 10% d	2 2% efh	35 5%	28 5%
less than $5,000	100 8%	77 8%	18 7%	2 1%	25 9% d	38 12% d	7 6% d	9 17% dg	10 8% d	48 7%	51 10%
$0	883 71%	598 65%	231 89% b	251 87%	170 63% d	197 63% d	72 67% d	32 62% d	98 77% defh	487 70%	369 71%
n:	1210	892	256	270	257	313	107	51	125	671	510
mean (thousands):	$7.6	$9.9	$0.8 b	$1.8	$10.4 d	$11.3 d	$9.5 d	$7.1	$6.0	$10.0	$4.9 j
standard error:	$0.9	$1.2	$0.3	$0.7	$2.6	$2.2	$2.1	$3.3	$2.3	$1.5	$0.7
75th percentile:	$1.0	$4.0	$0.0	$0.0	$4.0	$4.8	$5.0	$2.5	$0.0	$1.5	$1.0
50th percentile (median):	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
25th percentile:	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
no answer	34 3%	26 3%	5 2%	17 6%	11 4%	2 1% de	1 1% d	1 2%	2 2%	26 4%	7 1% j

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 019 page 1

Bonuses [Based on Those Who Received]

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
BONUSES IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position, and who received this compensation (fill-in answers)	327 100%	294 100%	25 100%	19 100%	87 100%	116 100%	35 100%	19 100%	27 100%	184 100%	141 100%
$50,000 or more	54 17%	53 18%	0 0%	3 16%	11 13%	20 17%	11 31% e	3 16%	4 15%	39 21%	15 11% j
$40,000 - $49,999	11 3%	11 4%	0 0%	1 5%	3 3%	6 5%	0 0%	0 0%	1 4%	4 2%	7 5%
$30,000 - $39,999	22 7%	18 6%	4 16%	1 5%	6 7%	9 8%	3 9%	0 0%	2 7%	15 8%	7 5%
$20,000 - $29,999	21 6%	21 7%	0 0%	3 16%	6 7%	6 5%	3 9%	0 0%	2 7%	15 8%	6 4%
$10,000 - $19,999	56 17%	52 18%	3 12%	5 26%	18 21%	17 15%	4 11%	2 11%	6 22%	28 15%	27 19%
$5,000 - $9,999	63 19%	62 21%	0 0%	4 21%	18 21%	20 17%	7 20%	5 26%	2 7%	35 19%	28 20%
less than $5,000	100 31%	77 26%	18 72%	2 11%	25 29%	38 33%	7 20%	9 47%	10 37%	48 26%	51 36%
$0	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
n:	327	294	25	19	87	116	35	19	27	184	141
mean (thousands):	$28.1	$30.1	$7.7	$25.7	$30.9	$30.4	$29.1	$19.1	$27.6	$36.3	$17.6 j
standard error:	$3.0	$3.3	$2.2	$7.5	$7.3	$5.6	$5.1	$8.3	$9.8	$5.0	$2.4
75th percentile:	$30.0	$30.0	$10.0	$30.0	$25.0	$35.0	$50.0	$10.0	$30.0	$35.8	$19.0
50th percentile (median):	$10.0	$10.0	$2.5	$10.0	$10.0	$9.6	$18.0	$5.0	$10.0	$10.0	$6.5
25th percentile:	$3.0	$4.0	$1.1	$6.0	$3.0	$3.0	$5.0	$2.0	$1.5	$4.1	$2.3
no answer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 020 page 1

Profit Sharing

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
PROFIT SHARING IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (fill-in answers)	1244 100%	918 100%	261 100%	287 100%	268 100%	315 100%	108 100%	52 100%	127 100%	697 100%	517 100%
$50,000 or more	39 3%	39 4%	0 0% b	5 2%	14 5% d	14 4%	3 3%	1 2%	1 1% e	25 4%	12 2%
$40,000 - $49,999	6 0%	6 1%	0 0%	0 0%	4 1% d	0 0% e	1 1%	0 0%	0 0%	3 0%	3 1%
$30,000 - $39,999	14 1%	14 2%	0 0% b	1 0%	4 1%	4 1%	1 1%	0 0%	3 2%	7 1%	6 1%
$20,000 - $29,999	19 2%	19 2%	0 0% b	1 0%	5 2%	8 3% d	4 4% d	0 0%	1 1%	8 1%	10 2%
$10,000 - $19,999	20 2%	19 2%	0 0% b	2 1%	5 2%	9 3% d	2 2%	1 2%	1 1%	12 2%	8 2%
$5,000 - $9,999	12 1%	11 1%	1 0%	0 0%	2 1%	5 2% d	0 0%	2 4% dg	3 2% d	8 1%	4 1%
less than $5,000	22 2%	21 2%	0 0% b	0 0%	4 1% d	15 5% de	0 0% f	2 4% dg	1 1% f	16 2%	5 1%
$0	1078 87%	763 83%	255 98% b	261 91%	219 82% d	258 82% d	96 89%	45 87%	115 91% ef	592 85%	462 89% j
n:	1210	892	256	270	257	313	107	51	125	671	510
mean (thousands):	$5.2	$7.0	$0.0 b	$1.6	$6.6 d	$9.8 d	$4.9	$1.7 ef	$2.8 f	$5.8	$4.3
standard error:	$0.8	$1.1	$0.0	$0.6	$1.5	$2.5	$1.9	$1.0	$1.7	$1.1	$1.1
75th percentile:	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
50th percentile (median):	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
25th percentile:	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
no answer	34 3%	26 3%	5 2%	17 6%	11 4%	2 1% de	1 1% d	1 2%	2 2%	26 4%	7 1% j

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 021 page 1

Profit Sharing [Based on Those Who Received]

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
PROFIT SHARING IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position, and who received this compensation (fill-in answers)	132 100%	129 100%	1 100%	9 100%	38 100%	55 100%	11 100%	6 100%	10 100%	79 100%	48 100%
$50,000 or more	39 30%	39 30%		5 56%	14 37%	14 25%	3 27%	1 17%	1 10%	25 32%	12 25%
$40,000 - $49,999	6 5%	6 5%		0 0%	4 11%	0 0% e	1 9%	0 0%	0 0%	3 4%	3 6%
$30,000 - $39,999	14 11%	14 11%		1 11%	4 11%	4 7%	1 9%	0 0%	3 30%	7 9%	6 13%
$20,000 - $29,999	19 14%	19 15%		1 11%	5 13%	8 15%	4 36%	0 0%	1 10%	8 10%	10 21%
$10,000 - $19,999	20 15%	19 15%		2 22%	5 13%	9 16%	2 18%	1 17%	1 10%	12 15%	8 17%
$5,000 - $9,999	12 9%	11 9%		0 0%	2 5%	5 9%	0 0%	2 33%	3 30%	8 10%	4 8%
less than $5,000	22 17%	21 16%		0 0%	4 11%	15 27% e	0 0%	2 33%	1 10%	16 20%	5 10%
$0	0 0%	0 0%		0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
n:	132	129		9	38	55	11	6	10	79	48
mean (thousands):	$47.6	$48.5		$48.5	$44.3	$55.5	$47.4	$14.1	$35.4	$49.2	$46.0
standard error:	$6.0	$6.2		$9.9	$7.3	$12.7	$13.3	$7.5	$18.8	$8.2	$9.7
75th percentile:	$50.8	$52.0		$72.5	$54.8	$50.0	$80.0	$24.5	$32.3	$60.0	$49.8
50th percentile (median):	$25.0	$25.0		$50.0	$34.5	$15.0	$28.0	$6.5	$19.5	$20.0	$25.0
25th percentile:	$8.7	$9.5		$21.1	$14.5	$3.9	$20.0	$3.5	$5.0	$5.0	$15.0
no answer	0 0%	0 0%		0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 022 page 1

401(k) Contributions From Employer/Firm

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
401(K) CONTRIBUTIONS FROM EMPLOYER/FIRM IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position (fill-in answers)	1244 100%	918 100%	261 100%	287 100%	268 100%	315 100%	108 100%	52 100%	127 100%	697 100%	517 100%
$50,000 or more	6 0%	6 1%	0 0%	1 0%	1 0%	2 1%	0 0%	0 0%	2 2%	4 1%	2 0%
$40,000 - $49,999	2 0%	2 0%	0 0%	0 0%	0 0%	1 0%	1 1%	0 0%	0 0%	2 0%	0 0%
$30,000 - $39,999	12 1%	10 1%	2 1%	2 1%	2 1%	6 2%	1 1%	0 0%	1 1%	9 1%	3 1%
$20,000 - $29,999	30 2%	25 3%	3 1%	6 2%	8 3%	9 3%	3 3%	0 0%	4 3%	24 3%	6 1% j
$10,000 - $19,999	71 6%	56 6%	11 4%	8 3%	20 7% d	22 7% d	3 3%	4 8%	11 9% d	48 7%	22 4%
$5,000 - $9,999	139 11%	92 10%	40 15% b	9 3%	25 9% d	48 15% de	22 20% de	10 19% de	12 9% dg	73 10%	62 12%
less than $5,000	182 15%	138 15%	33 13%	13 5%	39 15% d	77 24% de	20 19% d	10 19% d	10 8% fgh	92 13%	89 17%
$0	768 62%	563 61%	167 64%	231 80%	162 60% d	148 47% de	57 53% d	27 52% d	85 67% dfg	419 60%	326 63%
n:	1210	892	256	270	257	313	107	51	125	671	510
mean (thousands):	$3.1	$3.4	$2.4 b	$1.7	$3.3 d	$4.3 d	$3.6 d	$2.6 f	$3.8 d	$3.7	$2.5 j
standard error:	$0.2	$0.2	$0.3	$0.4	$0.4	$0.5	$0.6	$0.5	$0.8	$0.3	$0.2
75th percentile:	$3.6	$3.7	$3.5	$0.0	$3.5	$5.0	$5.0	$5.0	$4.3	$4.2	$3.0
50th percentile (median):	$0.0	$0.0	$0.0	$0.0	$0.0	$0.8	$0.0	$0.0	$0.0	$0.0	$0.0
25th percentile:	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0
no answer	34 3%	26 3%	5 2%	17 6%	11 4%	2 1% de	1 1% d	1 2%	2 2%	26 4%	7 1% j

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 023 page 1

401(k) Contributions From Employer/Firm [Based on Those Who Received]

13. What total value (if any) did you receive for each of these from your employer/firm in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
401(K) CONTRIBUTIONS FROM EMPLOYER/FIRM IN 2016 FOR PRIMARY POSITION											
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position, and who received this compensation (fill-in answers)	442 100%	329 100%	89 100%	39 100%	95 100%	165 100%	50 100%	24 100%	40 100%	252 100%	184 100%
$50,000 or more	6 1%	6 2%	0 0%	1 3%	1 1%	2 1%	0 0%	0 0%	2 5%	4 2%	2 1%
$40,000 - $49,999	2 0%	2 1%	0 0%	0 0%	0 0%	1 1%	1 2%	0 0%	0 0%	2 1%	0 0%
$30,000 - $39,999	12 3%	10 3%	2 2%	2 5%	2 2%	6 4%	1 2%	0 0%	1 3%	9 4%	3 2%
$20,000 - $29,999	30 7%	25 8%	3 3%	6 15%	8 8%	9 5% d	3 6%	0 0%	4 10%	24 10%	6 3% j
$10,000 - $19,999	71 16%	56 17%	11 12%	8 21%	20 21%	22 13%	3 6% de	4 17%	11 28% fg	48 19%	22 12% j
$5,000 - $9,999	139 31%	92 28%	40 45% b	9 23%	25 26%	48 29%	22 44% def	10 42%	12 30%	73 29%	62 34%
less than $5,000	182 41%	138 42%	33 37%	13 33%	39 41%	77 47%	20 40%	10 42%	10 25% f	92 37%	89 48% j
$0	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
n:	442	329	89	39	95	165	50	24	40	252	184
mean (thousands):	$8.6	$9.2	$6.9 b	$11.5	$8.9	$8.2	$7.7	$5.5	$11.7	$9.9	$6.9 j
standard error:	$0.4	$0.5	$0.6	$1.8	$0.9	$0.7	$1.1	$0.7	$1.8	$0.6	$0.6
75th percentile:	$10.0	$10.3	$8.0	$18.0	$12.0	$9.6	$8.0	$8.0	$14.3	$12.0	$7.9
50th percentile (median):	$5.2	$5.0	$5.5	$6.8	$5.5	$5.0	$5.4	$5.0	$8.0	$6.1	$5.0
25th percentile:	$3.0	$3.0	$3.0	$2.9	$3.0	$3.0	$3.5	$3.2	$4.6	$3.5	$2.9
no answer	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 024 page 1

Proportion of Work Billed Via: Mean Summary

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
MEAN SUMMARY											
base: those who were licensed to practice law in Colorado in 2016 answering (fill-in answers)											
hourly rate	52.9%	63.0%	15.2% b	54.6%	57.7%	55.5%	48.0% e	23.6% defg	49.1% eh	53.9%	52.4%
flat/fixed rate	15.2%	16.3%	11.5% b	23.8%	16.2% d	12.5% d	10.2% de	10.0% de	5.1% def	14.9%	15.3%
contingency	8.1%	10.5%	0.1% b	9.3%	10.7%	9.0%	3.4% def	13.6%	0.4% defh	10.4%	4.8% j
unbundling/discrete task/limited scope representation	1.0%	1.2%	0.4% b	2.0%	1.1%	0.5% de	1.3%	0.0% def	0.0% def	0.9%	1.2%
other method	22.8%	9.1%	72.8% b	10.4%	14.3%	22.4% de	37.2% def	52.8% def	45.3% def	20.0%	26.3% j
TOTAL =	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 025 page 1

Proportion of Work Billed Via: Hourly Rate

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
HOURLY RATE											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	430 27%	371 32%	39 11% b	112 26%	78 24%	110 29%	30 24%	8 11% defg	55 36% degh	253 28%	174 26%
75% - 99%	293 18%	281 25%	0 0% b	89 21%	83 26%	67 18% e	24 19%	3 4% defg	14 9% defg	160 18%	123 18%
50% - 74%	102 6%	98 9%	1 0% b	37 9%	28 9%	29 8%	3 2% def	1 1% de	1 1% def	69 8%	31 5% j
25% - 49%	58 4%	56 5%	0 0% b	25 6%	15 5%	8 2% d	2 2%	3 4%	0 0% deh	35 4%	21 3%
1% - 24%	91 6%	86 8%	3 1% b	43 10%	17 5% d	21 6% d	4 3% d	3 4%	1 1% def	56 6%	34 5%
none	492 31%	224 20%	218 63% b	103 24%	81 25%	110 29%	50 40% def	35 49% def	68 45% def	265 29%	210 31%
mean:	52.9%	63.0%	15.2% b	54.6%	57.7%	55.5%	48.0% e	23.6% defg	49.1% eh	53.9%	52.4%
standard error:	1.16%	1.23%	2.21%	2.10%	2.43%	2.41%	4.36%	5.49%	4.17%	1.52%	1.86%
median:	70%	85%	0%	70%	80%	75%	70%	0%	50%	70%	75%
no answer	141 9%	30 3%	87 25% b	19 4%	18 6%	35 9% d	11 9%	18 25% defg	12 8% h	62 7%	75 11% j

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 026 page 1

Proportion of Work Billed Via: Flat/Fixed Rate

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
FLAT/FIXED RATE											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	87 5%	53 5%	28 8% b	33 8%	19 6%	18 5%	5 4%	3 4%	4 3% d	52 6%	32 5%
75% - 99%	76 5%	71 6%	2 1% b	39 9%	13 4% d	15 4% d	4 3% d	2 3%	2 1% d	36 4%	39 6%
50% - 74%	50 3%	49 4%	0 0% b	22 5%	16 5%	8 2% de	1 1% de	0 0%	1 1% de	29 3%	19 3%
25% - 49%	59 4%	56 5%	0 0% b	30 7%	12 4%	10 3% d	2 2% d	1 1%	0 0% def	36 4%	19 3%
1% - 24%	237 15%	228 20%	1 0% b	75 18%	73 23%	50 13% e	18 15%	4 6% de	9 6% defg	137 15%	92 14%
none	957 60%	659 58%	230 66% b	210 49%	169 53%	244 64% de	83 67% de	43 61%	123 81% defgh	548 61%	392 59%
mean:	15.2%	16.3%	11.5% b	23.8%	16.2% d	12.5% d	10.2% de	10.0% de	5.1% def	14.9%	15.3%
standard error:	0.79%	0.90%	1.97%	1.76%	1.73%	1.53%	2.41%	3.83%	1.71%	1.04%	1.26%
median:	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
no answer	141 9%	30 3%	87 25% b	19 4%	18 6%	35 9% d	11 9%	18 25% defg	12 8% h	62 7%	75 11% j

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 027 page 1

Proportion of Work Billed Via: Contingency

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
CONTINGENCY											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	65 4%	65 6%	0 0% b	22 5%	17 5%	17 4%	2 2%	4 6%	0 0% defh	45 5%	17 3% j
75% - 99%	30 2%	29 3%	0 0% b	11 3%	7 2%	7 2%	1 1%	3 4%	0 0% dh	24 3%	6 1% j
50% - 74%	16 1%	16 1%	0 0% b	4 1%	6 2%	3 1%	0 0%	1 1%	0 0%	13 1%	2 0% j
25% - 49%	30 2%	28 2%	1 0% b	8 2%	9 3%	11 3%	1 1%	0 0%	0 0% ef	25 3%	5 1% j
1% - 24%	93 6%	89 8%	0 0% b	18 4%	25 8% d	31 8% d	9 7%	0 0% efg	6 4%	59 7%	32 5%
none	1232 77%	889 78%	260 75%	346 81%	238 74% d	276 73% d	100 81%	45 63% dg	133 88% defh	672 75%	531 79% j
mean:	8.1%	10.5%	0.1% b	9.3%	10.7%	9.0%	3.4% def	13.6%	0.4% defh	10.4%	4.8% j
standard error:	0.64%	0.83%	0.11%	1.32%	1.58%	1.37%	1.50%	4.51%	0.20%	0.94%	0.80%
median:	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
no answer	141 9%	30 3%	87 25% b	19 4%	18 6%	35 9% d	11 9%	18 25% defg	12 8% h	62 7%	75 11% j

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 028 page 1

Proportion of Work Billed Via: Unbundling/Discrete Task/Limited Scope Representation

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
UNBUNDLING/DISCRETE TASK/LIMITED SCOPE REPRESENTATION											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	3 0%	1 0%	1 0%	2 0%	0 0%	0 0%	1 1%	0 0%	0 0%	1 0%	2 0%
75% - 99%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
50% - 74%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
25% - 49%	9 1%	9 1%	0 0%	7 2%	1 0%	0 0% d	1 1%	0 0%	0 0%	5 1%	4 1%
1% - 24%	101 6%	99 9%	0 0% b	41 10%	33 10%	19 5% de	3 2% de	0 0% de	1 1% def	52 6%	44 7%
none	1353 84%	1007 88%	260 75% b	359 84%	268 84%	326 86%	108 87%	53 75% fg	138 91% deh	780 87%	543 81% j
mean:	1.0%	1.2%	0.4% b	2.0%	1.1%	0.5% de	1.3%	0.0% def	0.0% def	0.9%	1.2%
standard error:	0.15%	0.15%	0.38%	0.43%	0.21%	0.14%	0.92%	0.00%	0.04%	0.17%	0.28%
median:	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
no answer	141 9%	30 3%	87 25% b	19 4%	18 6%	35 9% d	11 9%	18 25% defg	12 8% h	62 7%	75 11% j

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 029 page 1

Proportion of Work Billed Via: Other Method

14. Approximately what percentage of your work in your primary position was billed using each of the following practices in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
OTHER METHOD											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100%	324 20%	93 8%	189 54% b	39 9%	41 13%	74 19% de	42 34% def	28 39% def	63 42% def	163 18%	151 23% j
75% - 99%	4 0%	3 0%	1 0%	1 0%	1 0%	2 1%	0 0%	0 0%	0 0%	1 0%	3 0%
50% - 74%	6 0%	6 1%	0 0%	3 1%	0 0%	2 1%	0 0%	0 0%	0 0%	4 0%	1 0%
25% - 49%	4 0%	4 0%	0 0%	2 0%	2 1%	0 0%	0 0%	0 0%	0 0%	1 0%	3 0%
1% - 24%	19 1%	17 1%	0 0% b	6 1%	7 2%	5 1%	0 0%	0 0%	0 0%	11 1%	8 1%
none	1109 69%	993 87%	71 20% b	358 84%	251 78%	262 69% de	71 57% def	25 35% defg	76 50% defh	658 73%	427 64% j
mean:	22.8%	9.1%	72.8% b	10.4%	14.3%	22.4% de	37.2% def	52.8% def	45.3% def	20.0%	26.3% j
standard error:	1.09%	0.84%	2.76%	1.47%	1.99%	2.23%	4.57%	6.92%	4.24%	1.37%	1.80%
median:	0%	0%	100%	0%	0%	0%	0%	100%	0%	0%	0%
no answer	141 9%	30 3%	87 25% b	19 4%	18 6%	35 9% d	11 9%	18 25% defg	12 8% h	62 7%	75 11% j

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 030 page 1

Most Common Hourly Billing Rate

15. What was your most common hourly billing rate in 2016 for your primary position?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position and billed at least some of their work via an hourly rate (fill-in answers)	801 100%	734 100%	40 100%	215 100%	191 100%	207 100%	60 100%	15 100%	63 100%	471 100%	314 100%
$400 or more	61 8%	59 8%	0 0%	6 3%	5 3%	15 7% de	8 13% de	2 13%	20 32% defg	47 10%	11 4% j
$350 - $399	63 8%	62 8%	0 0%	10 5%	19 10% d	17 8%	9 15% d	1 7%	4 6%	45 10%	18 6%
$300 - $349	105 13%	99 13%	0 0% b	37 17%	23 12%	24 12%	8 13%	1 7%	6 10%	70 15%	33 11%
$250 - $299	198 25%	186 25%	2 5% b	64 30%	57 30%	47 23%	12 20%	4 27%	5 8% def	124 26%	65 21%
$200 - $249	166 21%	162 22%	0 0% b	50 23%	42 22%	48 23%	8 13%	4 27%	5 8% def	95 20%	70 22%
$150 - $199	105 13%	104 14%	0 0% b	18 8%	26 14%	44 21% de	6 10% f	3 20%	1 2% efg	51 11%	54 17% j
$100 - $149	31 4%	22 3%	9 23% b	6 3%	6 3%	4 2%	3 5%	0 0%	8 13% def	11 2%	20 6% j
less than $100	56 7%	35 5%	18 45% b	21 10%	11 6%	7 3% d	3 5%	0 0%	10 16% efg	21 4%	34 11% j
mean:	$254	$260	$91 b	$237	$245	$254 d	$279 d	$276	$312 d	$271	$225 j
standard error:	$3.73	$3.73	$10.28	$5.76	$5.64	$6.41	$14.44	$24.78	$25.49	$4.74	$5.82
75th percentile:	$300	$300	$100	$299	$298	$301	$350	$325	$475	$300	$275
50th percentile (median):	$250	$250	$95	$250	$250	$245	$275	$250	$300	$250	$225
25th percentile:	$200	$200	$50	$200	$200	$194	$200	$200	$100	$200	$175
no answer	16 2%	5 1%	11 28% b	3 1%	2 1%	1 0%	3 5% f	0 0%	4 6% def	7 1%	9 3%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 031 page 1

Most Common Percent Charged Via Contingency Billing

16. For contingency billing, what was the most common percent you charged your clients in 2016 in your primary position?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 and worked full time (30+ hours/week) in their primary position and billed at least some of their work via contingency billing	190 100%	185 100%	1 100%	48 100%	50 100%	59 100%	11 100%	7 100%	5 100%	138 100%	49 100%
60% or more	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
50% - 59%	1 1%	1 1%	0 0%	0 0%	1 2%	0 0%	0 0%	0 0%	0 0%	1 1%	0 0%
40% - 49%	17 9%	16 9%	1 100%	2 4%	3 6%	9 15%	1 9%	2 29%	0 0%	10 7%	7 14%
35% - 39%	26 14%	26 14%	0 0%	5 10%	4 8%	11 19%	1 9%	3 43%	2 40%	19 14%	6 12%
30% - 34%	110 58%	108 58%	0 0%	24 50%	35 70% d	32 54%	7 64%	1 14%	1 20%	82 59%	26 53%
less than 30%	35 18%	34 18%	0 0%	17 35%	7 14% d	6 10% d	2 18%	1 14%	2 40%	26 19%	9 18%
mean:	34.0%	33.9%	45.0%	32.6%	33.7%	35.1% d	33.6%	37.9%	33.5%	33.8%	34.5%
standard error:	0.32%	0.32%		0.49%	0.65%	0.63%	1.28%	2.14%	1.70%	0.36%	0.70%
median:	33%	33%	50%	31%	33%	34%	32%	37%	35%	33%	33%
no answer	1 1%	0 0%	0 0%	0 0%	0 0%	1 2%	0 0%	0 0%	0 0%	0 0%	1 2%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 032 page 1

Number of Attorneys at Office Location: Mean Summary

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
MEAN SUMMARY											
base: those who were licensed to practice law in Colorado in 2016 answering (fill-in answers)											
partners	3.2	4.2	0.1 b	0.8	1.4 d	2.6 de	5.8 def	5.9 def	9.8 defg	3.6	2.7
associates	2.7	3.5	0.2 b	0.0	0.7 d	2.7 de	5.4 def	8.3 def	8.2 def	3.0	2.3
in-house counsel	0.9	1.0	0.7	0.1	0.4 d	0.8 de	2.6 def	2.0	2.2 de	0.9	0.9
other lawyers (e.g., government, of-counsel, judges, law professors/academic, etc.)	9.3	0.7	38.6 b	0.1	0.3 d	1.9 de	7.6 def	35.3 defg	59.3 defgh	8.2	11.0
TOTAL attorneys	16.1	9.4	39.6 b	1.0	2.8 d	8.0 de	21.4 def	51.5 defg	79.5 defgh	15.6	16.9

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 033 page 1

Number of Attorneys at Office Location: Partners

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
PARTNERS											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
10 or more	105 7%	101 9%	1 0% b	0 0%	0 0%	10 3% de	35 28% def	15 21% def	32 21% def	66 7%	36 5%
5 - 9	95 6%	92 8%	0 0% b	0 0%	0 0%	71 19% de	4 3% def	2 3% def	8 5% def	54 6%	40 6%
4	46 3%	45 4%	0 0% b	0 0%	4 1% d	36 9% de	0 0% f	0 0% f	2 1% df	33 4%	13 2% j
3	74 5%	74 6%	0 0% b	0 0%	28 9% d	41 11% d	2 2% def	0 0% ef	1 1% ef	46 5%	25 4%
2	187 12%	184 16%	0 0% b	0 0%	110 34% d	61 16% de	9 7% def	0 0% efg	1 1% efg	111 12%	74 11%
1	435 27%	407 36%	5 1% b	312 73%	85 27% d	29 8% de	3 2% def	0 0% def	2 1% def	253 28%	170 25%
none	505 31%	153 13%	307 88% b	65 15%	73 23% d	118 31% de	66 53% def	49 69% defg	99 66% defg	250 28%	241 36% j
mean:	3.2	4.2	0.1 b	0.8	1.4 d	2.6 de	5.8 def	5.9 def	9.8 defg	3.6	2.7
standard error:	0.23	0.31	0.05	0.02	0.06	0.14	0.81	1.39	1.78	0.34	0.31
median:	1	1	0	1	1	2	0	0	0	1	1
no answer	160 10%	90 8%	35 10%	51 12%	20 6% d	14 4% d	5 4% d	5 7%	6 4% d	87 10%	69 10%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 034 page 1

Number of Attorneys at Office Location: Associates

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	POSITION/AFFILIATION public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	GENDER female
	a	b	c	d	e	f	g	h	i	j	k
ASSOCIATES											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
10 or more	101 6%	96 8%	2 1% b	0 0%	0 0%	11 3% de	31 25% def	20 28% def	30 20% def	62 7%	37 6%
5 - 9	117 7%	111 10%	3 1% b	0 0%	0 0%	74 19% de	21 17% de	1 1% defg	8 5% defg	71 8%	45 7%
4	39 2%	37 3%	1 0% b	0 0%	1 0%	28 7% de	4 3% de	0 0% f	3 2% df	24 3%	15 2%
3	67 4%	66 6%	0 0% b	0 0%	11 3% d	49 13% de	1 1% f	0 0% f	3 2% df	38 4%	28 4%
2	93 6%	88 8%	0 0% b	0 0%	39 12% d	47 12% d	2 2% def	0 0% ef	1 1% ef	49 5%	43 6%
1	139 9%	128 11%	2 1% b	3 1%	96 30% d	30 8% de	2 2% ef	0 0% ef	2 1% ef	82 9%	56 8%
none	891 55%	530 46%	305 88% b	374 87%	153 48% d	127 33% de	58 47% df	45 63% defg	98 65% defg	487 54%	375 56%
mean:	2.7	3.5	0.2 b	0.0	0.7 d	2.7 de	5.4 def	8.3 def	8.2 def	3.0	2.3
standard error:	0.20	0.27	0.09	0.00	0.05	0.15	0.65	1.74	1.48	0.29	0.27
median:	0	0	0	0	0	2	1	0	0	0	0
no answer	160 10%	90 8%	35 10%	51 12%	20 6% d	14 4% d	5 4% d	5 7%	6 4% d	87 10%	69 10%

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 035 page 1

Number of Attorneys at Office Location: In-House Counsel

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
IN-HOUSE COUNSEL											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
10 or more	27 2%	23 2%	3 1%	0 0%	0 0%	3 1%	9 7% def	2 3% de	10 7% def	16 2%	10 1%
5 - 9	45 3%	32 3%	12 3%	0 0%	0 0%	26 7% de	11 9% de	3 4% de	3 2% defg	12 1%	31 5% j
4	14 1%	10 1%	3 1%	0 0%	10 3% d	3 1% e	0 0% e	0 0%	1 1%	7 1%	6 1%
3	24 1%	19 2%	4 1%	0 0%	9 3% d	8 2% d	3 2% d	0 0%	3 2% d	15 2%	9 1%
2	44 3%	34 3%	9 3%	0 0%	24 8% d	13 3% de	4 3% d	1 1% d	0 0% efg	27 3%	15 2%
1	88 5%	64 6%	15 4%	39 9%	14 4% d	23 6%	1 1% df	2 3%	4 3% d	45 5%	41 6%
none	1205 75%	874 76%	267 77%	338 79%	243 76%	290 76%	91 73%	58 82%	124 82%	691 77%	487 73%
mean:	0.9	1.0	0.7	0.1	0.4 d	0.8 de	2.6 def	2.0	2.2 de	0.9	0.9
standard error:	0.12	0.15	0.19	0.02	0.06	0.11	0.66	1.27	0.81	0.18	0.16
median:	0	0	0	0	0	0	0	0	0	0	0
no answer	160 10%	90 8%	35 10%	51 12%	20 6% d	14 4% d	5 4% d	5 7%	6 4% d	87 10%	69 10%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 036 page 1

Number of Attorneys at Office Location: Other Lawyers

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
OTHER LAWYERS (E.G., GOVERNMENT, OF-COUNSEL, JUDGES, LAW PROFESSORS/ACADEMIC, ETC.)											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
10 or more	196 12%	21 2%	162 47% b	0 0%	0 0%	20 5% de	37 30% def	39 55% defg	81 54% defg	102 11%	90 13%
5 - 9	70 4%	20 2%	46 13% b	0 0%	0 0%	42 11% de	6 5% def	3 4% de	13 9% de	35 4%	31 5%
4	26 2%	9 1%	14 4% b	0 0%	5 2% d	14 4% d	1 1%	2 3% d	3 2% d	15 2%	11 2%
3	23 1%	10 1%	11 3% b	0 0%	5 2% d	6 2% d	6 5% def	2 3% d	1 1% g	9 1%	13 2%
2	46 3%	32 3%	12 3%	0 0%	12 4% d	22 6% d	4 3% d	3 4% d	3 2% d	24 3%	22 3%
1	101 6%	73 6%	17 5%	23 5%	27 8%	35 9% d	5 4%	1 1% ef	6 4% f	56 6%	43 6%
none	985 61%	891 78%	51 15% b	354 83%	251 78%	227 60% de	60 48% def	16 23% defg	38 25% defg	572 64%	389 58% j
mean:	9.3	0.7	38.6 b	0.1	0.3 d	1.9 de	7.6 def	35.3 defg	59.3 defgh	8.2	11.0
standard error:	0.93	0.10	3.84	0.01	0.04	0.19	1.01	4.17	7.61	1.13	1.64
median:	0	0	10	0	0	0	0	29	15	0	0
no answer	160 10%	90 8%	35 10%	51 12%	20 6% d	14 4% d	5 4% d	5 7%	6 4% d	87 10%	69 10%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 037 page 1

Number of Attorneys at Office Location: Total Attorneys

17. Including yourself, how many of your firm's/organization's attorneys practiced at your office location in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
TOTAL ATTORNEYS											
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
20 or more	249 15%	109 10%	127 36% b	0 0%	0 0%	0 0%	70 56% def	53 75% defg	99 66% def	139 15%	105 16%
10 - 19	170 11%	126 11%	40 11%	0 0%	0 0%	109 29% de	22 18% def	2 3% defg	22 15% defh	98 11%	70 10%
5 - 9	248 15%	175 15%	62 18%	0 0%	0 0%	209 55% de	15 12% def	5 7% def	7 5% defg	124 14%	120 18% j
4	104 6%	81 7%	18 5%	0 0%	78 24% d	15 4% de	2 2% de	2 3% de	4 3% de	61 7%	41 6%
3	121 8%	96 8%	17 5% b	0 0%	90 28% d	15 4% de	6 5% de	1 1% de	3 2% de	68 8%	48 7%
2	135 8%	109 10%	18 5% b	0 0%	117 37% d	8 2% de	2 2% de	2 3% de	2 1% de	74 8%	58 9%
1	420 26%	360 31%	31 9% b	377 88%	15 5% d	10 3% d	2 2% d	1 1% d	8 5% d	249 28%	157 24%
mean:	16.1	9.4	39.6 b	1.0	2.8 d	8.0 de	21.4 def	51.5 defg	79.5 defgh	15.6	16.9
standard error:	1.00	0.60	3.84	0.00	0.05	0.20	1.12	3.56	7.35	1.27	1.68
median:	4	3	11	1	3	7	22	60	40	4	4
no answer	160 10%	90 8%	35 10%	51 12%	20 6% d	14 4% d	5 4% d	5 7%	6 4% d	87 10%	69 10%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 038 page 1

Number of Attorneys in Entire Firm/Organization

18. Including yourself, how many attorneys practiced at your entire firm/organization (including all locations) in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+	GENDER male	female
	a	b	c	d	e	f	g	h	i	j	k
base: those who were licensed to practice law in Colorado in 2016 (fill-in answers)	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%	900 100%	668 100%
100 or more	151 9%	64 6%	83 24% b	0 0%	0 0%	0 0%	0 0%	0 0%	151 100% defgh	85 9%	63 9%
75 - 99	29 2%	10 1%	16 5% b	0 0%	0 0%	0 0%	0 0%	29 41% defg	0 0% h	14 2%	14 2%
50 - 74	42 3%	16 1%	18 5% b	0 0%	0 0%	0 0%	0 0%	42 59% defg	0 0% h	24 3%	18 3%
30 - 49	65 4%	42 4%	21 6%	0 0%	0 0%	0 0%	65 52% def	0 0% g	0 0% g	37 4%	28 4%
20 - 29	59 4%	33 3%	25 7% b	0 0%	0 0%	0 0%	59 48% def	0 0% g	0 0% g	29 3%	29 4%
10 - 19	156 10%	113 10%	37 11%	0 0%	0 0%	156 41% de	0 0% f	0 0% f	0 0% f	90 10%	64 10%
5 - 9	224 14%	163 14%	51 15%	0 0%	0 0%	224 59% de	0 0% f	0 0% f	0 0% f	118 13%	103 15%
2 - 4	320 20%	266 23%	33 9% b	0 0%	320 100% d	0 0% e	0 0% e	0 0% e	0 0% e	181 20%	129 19%
1	428 27%	375 33%	19 5% b	428 100%	0 0% d	0 0% d	0 0% d	0 0% d	0 0% d	255 28%	161 24%
mean:	62.3	47.0	114.3 b	1.0	2.9 d	9.3 de	29.6 def	68.9 defg	519.3 defgh	77.8	42.4 j
standard error:	8.77	10.42	15.68	0.00	0.05	0.19	0.75	1.67	76.16	14.97	5.37
median:	4	3	20	1	3	8	30	70	250	4	5
no answer	133 8%	64 6%	45 13% b	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	67 7%	59 9%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 039 page 1

Paralegals/Legal Assistants: Methods of Billing for Services

19. How did your office location bill for the services of its paralegals/legal assistants in 2016?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
base: those who were licensed to practice law in Colorado in 2016	1607 100%	1146 100%	348 100%	428 100%	320 100%	380 100%	124 100%	71 100%	151 100%
did not have paralegals/legal assistants	511 32%	304 27%	143 41% b	241 56%	83 26% d	46 12% de	31 25% df	18 25% df	30 20% df
no answer	34 2%	12 1%	22 6% b	1 0%	5 2% d	12 3% d	2 2%	3 4% d	6 4% d
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants answering (multiple answers)	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
hourly billable rate	689 65%	638 77%	30 16% b	114 61%	170 73% d	218 68%	58 64%	18 36% defg	65 57% efh
included in attorney fee	229 22%	209 25%	12 7% b	68 37%	61 26% d	68 21% d	9 10% def	8 16% d	6 5% defh
other	250 24%	82 10%	143 78% b	22 12%	27 12%	80 25% de	27 30% de	31 62% defg	48 42% defh
indicated at least one	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 040 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: Less than 1

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
LESS THAN 1									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	429 40%	366 44%	46 25% b	79 42%	102 44%	145 45%	33 36%	15 30% f	38 33% f
no answer	521 49%	360 43%	133 73% b	94 51%	101 44%	134 42%	44 48%	33 66% efg	73 63% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	112 100%	104 100%	4 100%	13 100%	29 100%	43 100%	14 100%	2 100%	4 100%
$200 or more	2 2%	2 2%		0 0%	1 3%	1 2%	0 0%		
$150 - $199	12 11%	12 12%		1 8%	0 0%	6 14%	5 36%		
$100 - $149	39 35%	38 37%		2 15%	8 28%	21 49%	4 29%		
$50 - $99	51 46%	46 44%		8 62%	16 55%	14 33%	5 36%		
less than $50	8 7%	6 6%		2 15%	4 14%	1 2%	0 0%		
mean:	$99	$101		$73	$86	$113	$119		
standard error:	$3.56	$3.68		$9.99	$6.93	$4.87	$11.26		
75th percentile:	$125	$125		$98	$108	$125	$175		
50th percentile (median):	$95	$98		$60	$75	$115	$100		
25th percentile:	$75	$75		$50	$68	$89	$86		

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 041 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 1 - 2

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
1 - 2									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	386 36%	333 40%	36 20% b	73 39%	93 40%	130 40%	27 30%	14 28%	33 29% ef
no answer	526 50%	359 43%	141 77% b	96 52%	101 44%	128 40% d	51 56% ef	33 66% ef	75 65% def
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	150 100%	138 100%	6 100%	17 100%	38 100%	64 100%	13 100%	3 100%	7 100%
$200 or more	1 1%	1 1%	0 0%	0 0%	0 0%	1 2%	0 0%		0 0%
$150 - $199	23 15%	22 16%	0 0%	1 6%	5 13%	11 17%	5 38%		0 0%
$100 - $149	62 41%	59 43%	0 0%	5 29%	17 45%	31 48%	3 23%		2 29%
$50 - $99	57 38%	51 37%	4 67%	10 59%	14 37%	19 30%	5 38%		4 57%
less than $50	7 5%	5 4%	2 33%	1 6%	2 5%	2 3%	0 0%		1 14%
mean:	$105	$107	$58	$83	$103	$113	$125		$81
standard error:	$3.11	$3.20	$10.05	$7.62	$6.02	$4.49	$12.51		$12.70
75th percentile:	$130	$130	$77	$100	$130	$135	$175		$110
50th percentile (median):	$100	$100	$68	$75	$100	$108	$110		$75
25th percentile:	$75	$75	$29	$63	$75	$86	$83		$65

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 042 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 3 - 4

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
3 - 4									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	380 36%	326 39%	35 19% b	73 39%	100 43%	120 37%	28 31% e	12 24% de	31 27% def
no answer	544 51%	373 45%	143 78% b	101 54%	105 45%	140 43% d	44 48%	35 70% defg	77 67% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	138 100%	131 100%	5 100%	12 100%	27 100%	62 100%	19 100%	3 100%	7 100%
$200 or more	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%		0 0%
$150 - $199	29 21%	28 21%	0 0%	0 0%	3 11%	17 27%	6 32%		2 29%
$100 - $149	62 45%	61 47%	0 0%	4 33%	13 48%	30 48%	9 47%		0 0%
$50 - $99	39 28%	36 27%	3 60%	4 33%	9 33%	14 23%	4 21%		4 57%
less than $50	8 6%	6 5%	2 40%	4 33%	2 7%	1 2%	0 0%		1 14%
mean:	$111	$113	$57	$79	$101	$120	$125		$98
standard error:	$3.16	$3.15	$11.35	$10.33	$6.10	$4.19	$8.75		$22.07
75th percentile:	$140	$140	$80	$115	$125	$150	$175		$175
50th percentile (median):	$108	$110	$65	$85	$100	$123	$120		$75
25th percentile:	$85	$90	$30	$45	$75	$98	$100		$65

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 043 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 5 - 9

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
5 - 9									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	341 32%	288 35%	33 18% b	68 37%	86 37%	113 35%	25 27%	9 18% def	25 22% def
no answer	532 50%	359 43%	146 80% b	102 55%	98 42% d	133 41% d	45 49%	34 68% efg	77 67% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	189 100%	183 100%	4 100%	16 100%	48 100%	76 100%	21 100%	7 100%	13 100%
$200 or more	6 3%	6 3%		1 6%	0 0%	2 3%	0 0%	0 0%	3 23%
$150 - $199	43 23%	42 23%		2 13%	7 15%	23 30% e	8 38%	0 0%	3 23%
$100 - $149	82 43%	81 44%		4 25%	25 52%	34 45%	9 43%	4 57%	1 8%
$50 - $99	51 27%	48 26%		6 38%	14 29%	17 22%	4 19%	3 43%	4 31%
less than $50	7 4%	6 3%		3 19%	2 4%	0 0%	0 0%	0 0%	2 15%
mean:	$118	$119		$100	$108	$124 e	$131	$99	$138
standard error:	$3.01	$3.04		$12.87	$4.69	$4.04	$7.53	$5.92	$23.38
75th percentile:	$150	$150		$125	$125	$150	$175	$110	$195
50th percentile (median):	$115	$120		$92	$110	$125	$125	$100	$125
25th percentile:	$90	$90		$78	$81	$100	$105	$90	$70

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 044 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 10 - 14

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
10 - 14									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	341 32%	290 35%	34 19% b	73 39%	96 41%	95 30% de	25 27% e	8 16% def	28 24% de
no answer	543 51%	369 44%	145 79% b	96 52%	103 44%	141 44%	46 51%	35 70% defg	77 67% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	178 100%	171 100%	4 100%	17 100%	33 100%	86 100%	20 100%	7 100%	10 100%
$200 or more	5 3%	5 3%		1 6%	0 0%	1 1%	2 10%	0 0%	1 10%
$150 - $199	45 25%	43 25%		1 6%	6 18%	28 33%	6 30%	0 0%	4 40%
$100 - $149	73 41%	72 42%		8 47%	14 42%	36 42%	10 50%	4 57%	0 0%
$50 - $99	54 30%	51 30%		7 41%	13 39%	21 24%	2 10%	3 43%	4 40%
less than $50	1 1%	0 0%		0 0%	0 0%	0 0%	0 0%	0 0%	1 10%
mean:	$120	$120		$108	$109	$123 e	$141	$106	$123
standard error:	$2.61	$2.61		$7.56	$5.41	$3.46	$7.83	$5.50	$19.27
75th percentile:	$150	$150		$123	$128	$150	$173	$125	$181
50th percentile (median):	$120	$120		$100	$110	$125	$128	$100	$123
25th percentile:	$90	$90		$90	$75	$99	$121	$95	$73

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 045 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 15 - 19

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
15 - 19									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	371 35%	325 39%	31 17% b	70 38%	104 45%	119 37%	27 30% e	7 14% defg	27 23% def
no answer	566 53%	390 47%	145 79% b	104 56%	106 46% d	151 47%	46 51%	37 74% defg	78 68% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	125 100%	115 100%	7 100%	12 100%	22 100%	52 100%	18 100%	6 100%	10 100%
$200 or more	5 4%	5 4%	0 0%	0 0%	0 0%	1 2%	1 6%	0 0%	3 30%
$150 - $199	41 33%	40 35%	0 0%	2 17%	6 27%	20 38%	9 50%	1 17%	2 20%
$100 - $149	45 36%	44 38%	1 14%	6 50%	8 36%	20 38%	6 33%	3 50%	0 0%
$50 - $99	31 25%	25 22%	4 57%	3 25%	8 36%	10 19%	2 11%	2 33%	4 40%
less than $50	3 2%	1 1%	2 29%	1 8%	0 0%	1 2%	0 0%	0 0%	1 10%
mean:	$128	$132	$67	$110	$116	$129	$153	$111	$144
standard error:	$4.03	$4.03	$11.03	$10.57	$7.12	$5.25	$11.25	$11.21	$27.87
75th percentile:	$150	$150	$90	$125	$150	$150	$180	$131	$231
50th percentile (median):	$125	$125	$75	$115	$120	$125	$153	$113	$120
25th percentile:	$90	$100	$30	$83	$89	$100	$124	$86	$73

Columns tested at 95% significance level: bc defghi jk

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Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 046 page 1

Paralegals/Legal Assistants: Hourly Billing Rate by Years of Experience: 20 or More

20. What was the most common hourly billing rate in 2016 for paralegals/legal assistants at your office location by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
20 OR MORE									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	375 35%	326 39%	32 17% b	68 37%	90 39%	134 42%	33 36%	9 18% defg	26 23% defg
no answer	559 53%	386 47%	145 79% b	96 52%	110 47%	150 47%	46 51%	36 72% defg	79 69% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	128 100%	118 100%	6 100%	22 100%	32 100%	38 100%	12 100%	5 100%	10 100%
$200 or more	6 5%	6 5%	0 0%	0 0%	0 0%	1 3%	1 8%	0 0%	3 30%
$150 - $199	36 28%	34 29%	0 0%	8 36%	6 19%	14 37%	3 25%	0 0%	3 30%
$100 - $149	52 41%	51 43%	1 17%	8 36%	14 44%	17 45%	6 50%	4 80%	0 0%
$50 - $99	32 25%	27 23%	3 50%	6 27%	12 38%	6 16% e	1 8%	1 20%	3 30%
less than $50	2 2%	0 0%	2 33%	0 0%	0 0%	0 0%	1 8%	0 0%	1 10%
mean:	$126	$129	$71	$117	$113	$135 e	$132	$116	$146
standard error:	$3.61	$3.61	$16.68	$6.74	$5.40	$5.61	$14.11	$9.14	$25.08
75th percentile:	$150	$150	$98	$150	$143	$155	$175	$133	$205
50th percentile (median):	$125	$125	$70	$118	$115	$125	$125	$125	$165
25th percentile:	$91	$100	$30	$90	$90	$108	$113	$95	$73

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 047 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: Less than 1

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
LESS THAN 1									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	429 40%	366 44%	46 25% b	79 42%	102 44%	145 45%	33 36%	15 30% f	38 33% f
no answer	538 51%	385 46%	127 69% b	86 46%	106 46%	148 46%	49 54%	33 66% def	70 61% def
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	95 100%	79 100%	10 100%	21 100%	24 100%	29 100%	9 100%	2 100%	7 100%
$80,000 or more	2 2%	2 3%	0 0%	1 5%	0 0%	1 3%	0 0%		0 0%
$70,000 - $79,999	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%		0 0%
$60,000 - $69,999	2 2%	0 0%	2 20%	0 0%	0 0%	0 0%	0 0%		2 29%
$50,000 - $59,999	8 8%	6 8%	1 10%	1 5%	0 0%	2 7%	2 22%		1 14%
$40,000 - $49,999	20 21%	16 20%	3 30%	3 14%	7 29%	4 14%	3 33%		3 43%
$30,000 - $39,999	43 45%	37 47%	3 30%	8 38%	12 50%	18 62%	3 33%		0 0%
less than $30,000	20 21%	18 23%	1 10%	8 38%	5 21%	4 14%	1 11%		1 14%
mean (thousands): standard error:	$36.7 $1.2	$36.0 $1.3	$42.5 $4.1	$33.9 $3.1	$34.6 $1.5	$36.7 $2.1	$38.9 $2.9		$47.3 $4.7
75th percentile: 50th percentile (median): 25th percentile:	$41.6 $35.0 $30.0	$40.0 $35.0 $30.0	$52.5 $42.0 $33.2	$37.5 $30.0 $26.0	$41.2 $35.7 $30.0	$39.8 $35.0 $30.0	$47.5 $40.0 $32.5		$60.0 $48.0 $42.0

NOTE: results not shown if fewer than five answering respondents

Columns tested at 95% significance level: bc defghi jk

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2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 048 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 1 - 2

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
1 - 2									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	386 36%	333 40%	36 20% b	73 39%	93 40%	130 40%	27 30%	14 28%	33 29% ef
no answer	552 52%	402 48%	125 68% b	101 54%	106 46%	141 44% d	53 58% ef	31 62% ef	71 62% ef
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	124 100%	95 100%	22 100%	12 100%	33 100%	51 100%	11 100%	5 100%	11 100%
$80,000 or more	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
$70,000 - $79,999	3 2%	2 2%	1 5%	0 0%	0 0%	2 4%	0 0%	1 20%	0 0%
$60,000 - $69,999	5 4%	2 2%	3 14%	1 8%	1 3%	0 0%	0 0%	0 0%	3 27%
$50,000 - $59,999	21 17%	13 14%	8 36%	0 0%	5 15%	6 12%	3 27%	3 60%	3 27%
$40,000 - $49,999	43 35%	34 36%	7 32%	4 33%	8 24%	21 41%	5 45%	0 0%	5 45%
$30,000 - $39,999	39 31%	32 34%	2 9%	4 33%	13 39%	19 37%	2 18%	1 20%	0 0%
less than $30,000	13 10%	12 13%	1 5%	3 25%	6 18%	3 6%	1 9%	0 0%	0 0%
mean (thousands):	$41.2	$39.8	$48.7	$36.7	$38.2	$40.5	$42.0	$52.9	$51.7
standard error:	$1.0	$1.0	$2.5	$2.8	$1.7	$1.5	$2.5	$6.8	$2.4
75th percentile:	$48.0	$45.0	$55.0	$40.4	$45.5	$45.0	$50.0	$66.0	$60.0
50th percentile (median):	$40.0	$40.0	$50.0	$35.0	$38.0	$40.0	$41.0	$50.0	$50.0
25th percentile:	$32.5	$32.0	$41.8	$28.8	$30.0	$32.5	$39.0	$41.3	$44.0

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 049 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 3 - 4

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
3 - 4									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	380 36%	326 39%	35 19% b	73 39%	100 43%	120 37%	28 31% e	12 24% de	31 27% def
no answer	560 53%	405 49%	129 70% b	102 55%	101 44% d	151 47%	52 57% e	32 64% ef	73 63% ef
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	122 100%	99 100%	19 100%	11 100%	31 100%	51 100%	11 100%	6 100%	11 100%
$80,000 or more	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
$70,000 - $79,999	1 1%	1 1%	0 0%	0 0%	0 0%	1 2%	0 0%	0 0%	0 0%
$60,000 - $69,999	10 8%	6 6%	4 21%	1 9%	1 3%	3 6%	2 18%	1 17%	2 18%
$50,000 - $59,999	36 30%	28 28%	7 37%	2 18%	6 19%	17 33%	3 27%	1 17%	7 64%
$40,000 - $49,999	41 34%	32 32%	6 32%	1 9%	10 32%	20 39%	5 45%	2 33%	2 18%
$30,000 - $39,999	30 25%	28 28%	2 11%	4 36%	13 42%	10 20% e	1 9%	2 33%	0 0%
less than $30,000	4 3%	4 4%	0 0%	3 27%	1 3%	0 0%	0 0%	0 0%	0 0%
mean (thousands):	$45.3	$44.1	$51.4	$37.8	$41.5	$46.4 e	$49.4	$46.3	$53.4
standard error:	$0.9	$1.0	$1.9	$3.5	$1.6	$1.2	$2.5	$4.7	$1.7
75th percentile:	$51.3	$50.0	$58.2	$50.0	$49.0	$51.0	$55.0	$57.5	$58.2
50th percentile (median):	$45.0	$45.0	$52.0	$36.0	$40.0	$46.0	$45.0	$42.5	$52.0
25th percentile:	$37.4	$36.0	$46.0	$27.0	$35.0	$40.0	$45.0	$36.9	$50.0

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 050 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 5 - 9

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
5 - 9									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	341 32%	288 35%	33 18% b	68 37%	86 37%	113 35%	25 27%	9 18% def	25 22% def
no answer	558 53%	405 49%	129 70% b	101 54%	104 45%	148 46%	51 56%	33 66% ef	72 63% ef
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	163 100%	137 100%	21 100%	17 100%	42 100%	61 100%	15 100%	8 100%	18 100%
$80,000 or more	4 2%	4 3%	0 0%	0 0%	2 5%	2 3%	0 0%	0 0%	0 0%
$70,000 - $79,999	10 6%	10 7%	0 0%	1 6%	2 5%	2 3%	1 7%	2 25%	2 11%
$60,000 - $69,999	31 19%	22 16%	8 38%	2 12%	4 10%	8 13%	7 47%	2 25%	7 39%
$50,000 - $59,999	44 27%	39 28%	4 19%	1 6%	5 12%	29 48% e	3 20%	1 13%	5 28%
$40,000 - $49,999	52 32%	42 31%	8 38%	6 35%	20 48%	17 28% e	4 27%	2 25%	2 11%
$30,000 - $39,999	19 12%	17 12%	1 5%	5 29%	8 19%	3 5% e	0 0%	1 13%	2 11%
less than $30,000	3 2%	3 2%	0 0%	2 12%	1 2%	0 0%	0 0%	0 0%	0 0%
mean (thousands):	$50.8	$50.7	$51.9	$43.3	$47.6	$52.1	$55.0	$54.1	$55.5
standard error:	$0.9	$1.1	$2.0	$3.3	$2.1	$1.3	$2.2	$4.5	$2.8
75th percentile:	$60.0	$60.0	$60.0	$50.0	$55.0	$56.5	$60.0	$67.5	$65.0
50th percentile (median):	$50.0	$50.0	$52.0	$41.6	$45.0	$52.0	$60.0	$55.0	$57.5
25th percentile:	$42.0	$42.0	$45.0	$34.3	$40.0	$45.0	$45.0	$41.4	$48.8

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 051 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 10 - 14

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
10 - 14									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	341 32%	290 35%	34 19% b	73 39%	96 41%	95 30% de	25 27% e	8 16% def	28 24% de
no answer	567 53%	409 49%	130 71% b	95 51%	107 46%	156 48%	53 58%	34 68% def	75 65% def
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	154 100%	131 100%	19 100%	18 100%	29 100%	71 100%	13 100%	8 100%	12 100%
$80,000 or more	7 5%	7 5%	0 0%	0 0%	2 7%	5 7%	0 0%	0 0%	0 0%
$70,000 - $79,999	23 15%	19 15%	3 16%	4 22%	0 0%	9 13%	3 23%	3 38%	3 25%
$60,000 - $69,999	46 30%	36 27%	10 53%	0 0%	7 24%	27 38%	6 46%	2 25%	4 33%
$50,000 - $59,999	35 23%	31 24%	4 21%	5 28%	5 17%	17 24%	2 15%	0 0%	5 42%
$40,000 - $49,999	32 21%	28 21%	2 11%	3 17%	14 48%	10 14%	2 15%	2 25%	0 0%
$30,000 - $39,999	10 6%	9 7%	0 0%	5 28%	1 3%	3 4%	0 0%	1 13%	0 0%
less than $30,000	1 1%	1 1%	0 0%	1 6%	0 0%	0 0%	0 0%	0 0%	0 0%
mean (thousands): standard error:	$57.4 $1.3	$57.4 $1.4	$59.5 $2.1	$48.6 $4.0	$55.4 $4.0	$59.6 $1.7	$60.1 $2.8	$57.7 $6.3	$60.1 $2.4
75th percentile: 50th percentile (median): 25th percentile:	$65.0 $58.0 $47.0	$65.0 $55.0 $47.0	$65.0 $60.0 $51.0	$60.0 $47.0 $34.1	$62.5 $48.0 $45.0	$65.0 $60.0 $50.0	$67.5 $61.0 $52.5	$73.8 $65.0 $40.3	$68.1 $60.0 $51.3

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 052 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 15 - 19

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
15 - 19									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	371 35%	325 39%	31 17% b	70 38%	104 45%	119 37%	27 30% e	7 14% defg	27 23% def
no answer	576 54%	411 50%	137 75% b	94 51%	110 47%	162 50%	52 57%	35 70% def	76 66% def
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	115 100%	94 100%	15 100%	22 100%	18 100%	41 100%	12 100%	8 100%	12 100%
$80,000 or more	13 11%	11 12%	1 7%	0 0%	2 11%	4 10%	2 17%	3 38%	2 17%
$70,000 - $79,999	24 21%	19 20%	4 27%	1 5%	4 22%	12 29%	5 42%	1 13%	1 8%
$60,000 - $69,999	31 27%	24 26%	6 40%	4 18%	1 6%	15 37%	3 25%	1 13%	6 50%
$50,000 - $59,999	26 23%	23 24%	3 20%	7 32%	6 33%	7 17%	2 17%	1 13%	2 17%
$40,000 - $49,999	13 11%	10 11%	1 7%	6 27%	3 17%	2 5%	0 0%	1 13%	1 8%
$30,000 - $39,999	8 7%	7 7%	0 0%	4 18%	2 11%	1 2%	0 0%	1 13%	0 0%
less than $30,000	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%	0 0%
mean (thousands): standard error:	$60.5 $1.3	$60.4 $1.5	$63.1 $2.6	$49.0 $2.3	$56.7 $3.9	$64.8 $1.8	$68.1 $2.9	$63.3 $6.4	$64.5 $3.8
75th percentile: 50th percentile (median): 25th percentile:	$70.0 $62.4 $50.0	$70.0 $61.2 $50.0	$70.0 $65.0 $55.0	$56.3 $50.0 $41.5	$71.3 $52.5 $43.4	$70.0 $65.0 $57.5	$71.5 $70.0 $60.0	$80.0 $67.5 $45.1	$72.5 $62.7 $56.3

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 053 page 1

Paralegals/Legal Assistants: Base Salary by Years of Experience: 20 or More

21. What was the most common annual base salary of paralegals/legal assistants at your office location in 2016 by years of experience?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
20 OR MORE									
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
did not have a paralegal/legal assistant at this experience level in 2016	375 35%	326 39%	32 17% b	68 37%	90 39%	134 42%	33 36%	9 18% defg	26 23% defg
no answer	554 52%	398 48%	128 70% b	97 52%	106 46%	153 48%	44 48%	35 70% defg	76 66% defg
base: those who were licensed to practice law in Colorado in 2016 and whose office location had a paralegal/ legal assistant at this experience level in 2016 answering (fill-in answers)	133 100%	106 100%	23 100%	21 100%	36 100%	35 100%	14 100%	6 100%	13 100%
$80,000 or more	34 26%	27 25%	6 26%	1 5%	8 22%	12 34%	3 21%	3 50%	5 38%
$70,000 - $79,999	21 16%	17 16%	4 17%	1 5%	5 14%	4 11%	6 43%	1 17%	3 23%
$60,000 - $69,999	28 21%	20 19%	5 22%	3 14%	9 25%	6 17%	5 36%	1 17%	3 23%
$50,000 - $59,999	28 21%	24 23%	4 17%	7 33%	5 14%	12 34% e	0 0%	0 0%	2 15%
$40,000 - $49,999	16 12%	13 12%	3 13%	5 24%	7 19%	1 3% e	0 0%	1 17%	0 0%
$30,000 - $39,999	3 2%	3 3%	0 0%	1 5%	2 6%	0 0%	0 0%	0 0%	0 0%
less than $30,000	3 2%	2 2%	1 4%	3 14%	0 0%	0 0%	0 0%	0 0%	0 0%
mean (thousands):	$65.8	$65.2	$67.6	$48.7	$63.4	$70.9	$72.0	$85.4	$73.4
standard error:	$1.9	$2.0	$5.5	$3.5	$3.2	$3.7	$2.2	$16.9	$4.6
75th percentile:	$80.0	$80.0	$80.0	$58.0	$75.0	$80.0	$76.3	$102.8	$87.5
50th percentile (median):	$65.0	$65.0	$62.4	$50.0	$61.0	$65.0	$72.5	$77.5	$70.0
25th percentile:	$50.0	$50.0	$50.0	$41.0	$46.3	$55.0	$65.0	$60.0	$60.0

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

Colorado Bar Association

2017 Economics of Law Practice Survey: Cross-tabulated Data Tables

TABLE 054 page 1

Paralegals/Legal Assistants: Additional Cash Compensation Eligible to Receive

22. Whether or not they received any, what other types of additional cash compensation were paralegals/legal assistants at your office location eligible to receive in 2016 beyond their annual base salary?

	TOTAL	POSITION/AFFILIATION private	public	# OF ATTORNEYS AT ORGANIZATION 1	2 - 4	5 - 19	20 - 49	50 -99	100+
	a	b	c	d	e	f	g	h	i
base: those who were licensed to practice law in Colorado in 2016 and whose office location had paralegals/ legal assistants (multiple answers)	1062 100%	830 100%	183 100%	186 100%	232 100%	322 100%	91 100%	50 100%	115 100%
bonuses	405 38%	377 45%	13 7% b	61 33%	118 51% d	151 47% d	35 38% e	5 10% defg	22 19% defg
401(k) contributions from employer/firm	354 33%	292 35%	52 28%	23 12%	69 30% d	153 48% de	45 49% de	16 32% dfg	28 24% dfg
education reimbursement	170 16%	125 15%	43 23% b	14 8%	39 17% d	63 20% d	21 23% d	8 16%	16 14%
dues for other professional organizations	125 12%	104 13%	18 10%	3 2%	32 14% d	53 16% d	17 19% d	5 10% d	10 9% dfg
profit sharing	68 6%	67 8%	0 0% b	3 2%	17 7% d	39 12% d	4 4% f	4 8% d	0 0% efgh
CBA dues	30 3%	25 3%	2 1%	1 1%	9 4% d	13 4% d	3 3%	0 0%	2 2%
other	74 7%	51 6%	21 11% b	8 4%	14 6%	29 9% d	6 7%	2 4%	11 10%
indicated at least one	604 57%	486 59%	94 51%	79 42%	145 63% d	219 68% d	58 64% d	25 50% f	50 43% efg
none	221 21%	171 21%	39 21%	85 46%	57 25% d	30 9% de	14 15% d	4 8% de	19 17% df
no answer	237 22%	173 21%	50 27%	22 12%	30 13%	73 23% de	19 21% d	21 42% defg	46 40% defg

Columns tested at 95% significance level: bc defghi jk

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EXHIBIT B

☐ Small Claims ☐ County Court ☒ District Court ☐ Probate Court ☐ Juvenile Court **Jefferson County, State of Colorado** Court Address: 100 JEFFERSON COUNTY PARKWAY GOLDEN, CO 80401	DATE FILED April 28, 2025 4:43 PM
WILLIAM MONTGOMERY PLAINTIFF - APPELLANT **V.** **BEST BUY, L.P.** DEFENDANT - APPELLEE	▲ **COURT USE ONLY** ▲ DISTRICT COURT: Case No: **23CV226** Div: 6 COURT OF APPEALS: Case No: **25CA327**

NOTICE OF ELECTRONIC RECORD CERTIFIED TO THE COLORADO COURT OF APPEALS

Notice is Given that the record in the above entitled action is available electronically via jPOD, and has been certified to **TIFFANY MORTIER,** Clerk of Court for the Colorado Court of Appeals, and 1 Folder Record on Appeal has been uploaded to the Court of Appeals Appellate Records Submission folder and 2 USB and 0 disc(s) was mailed to the Court of Appeals on April 28, 2025.

The sealed folder contains motions to waive fees with supporting financial affidavits.

The mailed exhibits contain 2 unlabeled USB drives with exhibits that are attachments to motions that were given directly to the trial court division.

Witness my hand and seal of Court at my office in Jefferson County, Colorado on April 28, 2025.

Allison Clark
Clerk of Court

By: Sara Bridges

Sara Bridges
Appeals Clerk
1st Judicial District Combined Court
100 Jefferson County Parkway
Golden, Colorado 80401

I, Sara Bridges, hereby certify that I am the duly appointed and qualified Deputy Clerk of the Combined Court of Jefferson County, in the state of aforesaid: that on April 28, 2025 I mailed, in properly addressed and stamped envelope containing: 2 USB and 0 disc(s) to each of the following named person, at the addresses set forth opposite their respective names.

Name:
COURT OF APPEALS

Address:
COLORADO JUDICIAL BLDG.
2 EAST 14TH AVENUE
DENVER, CO 80203

Allison Clark
Clerk of Court



By: _____
Sara Bridges
Appeals Clerk
1st Judicial District Combined Court
100 Jefferson County Parkway
Golden, Colorado 80401

cc: Colorado Court of Appeals, via email
cc: Lori Bell, via e-file
cc: William Montgomery, via mail

2025 MAY -1 PM 1:34

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	DATE FILED May 01, 2025 1:55 PM Jefferson County, CO
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE ATTORNEY FEES COMPUTATION

Plaintiff, proceeding *pro se*, hereby RESPONDS in opposition to Defendant Best Buy's MOTION FOR EXTENSION OF TIME TO FILE, and in support thereof, states as follows:

ARGUMENT

I. DEFENDANT WAS NOT "JUGGLING COMPETING DEADLINES" IN "SIX CASES"

In paragraph 6 of Defendant's MOTION FOR EXTENSION OF TIME TO FILE, it states that "Mr. Montgomery has six cases against Best Buy, in both Colorado trial courts and Colorado appellate courts. Despite all of these cases being factually near identical, all are in different phases of litigation or appeal, each with its own disjointed schedule and deadlines. Undersigned counsel represents Best Buy in all six cases." *Def's MFEOTTF at page 2.* In other words, "we have been juggling competing deadlines in the 4 trial court cases and 2 appellate cases you are currently pursuing against Best Buy."

Exhibit #1 ~ Defendant's MFEOTTF Conferral Email. The problem with these statements, however, is that they are **complete and total hogwash.** Let's break down Defendant's "super major" "six case" "competing deadline" caseload that it claims to be "juggling," to see just how dishonest it is being on this particular issue. *See Exhibit #2 ~ Defendant's Caseload With Plaintiff.*

First, as can quickly be seen, Plaintiff only recently filed a NOTICE OF APPEAL in Cases 2023CV226 and 2024CV241 (on 2025/02/24 and 2025/03/18, respectively), ***such that neither one of their "records on appeal" have even been prepared yet,*** **thus rendering neither case TO HAVE EVEN RELEASED their own briefing schedule yet in the matters.** So right off the bat, **there goes two** of Defendant's "six cases." No "competing deadlines" in those. Indeed, no deadlines AT ALL in them [while we all wait on their appeals]. **Now we're down to four cases.**

Next, in Cases 2024CV132 and 2024CV242, Defendant filed 100% identical MOTIONS TO RECONSIDER in them on 2025/02/10, Plaintiff filed identical RESPONSES to those on 2025/03/03, and Defendant filed identical REPLIES to those on 2025/03/07. Defendant also filed identical ANSWER BRIEFS in both Cases on 2025/02/10, and then served their RULE 26(A)(1) INITIAL DISCLOSURES in 2024CV242 on 2025/03/10 (no initial disclosures are even due yet in 2024CV132 as we continue to wait for that Court to rule on a different Defendant's MOTION TO DISMISS). So **there goes two more** cases right there. No more "competing deadlines" to "juggle" in those two cases **for the next twenty two days** (i.e. until 2025/03/31 when the Proposed CASE MANAGEMENT ORDER was finally due in Case 2024CV242). **Now we're down to two cases.**

Finally, in Case 2024CV241, because the Court dismissed that case prior to Defendant (Best Buy) retaining Council in the matter, Plaintiff mailed a NOTICE OF APPEAL to the unrepresented store only on 2025/03/18. Thus, Plaintiff's NOA (again, mailed directly to the

unrepresented store only) was likely not received by Defendant's yet-to-be-appointed Council (Montgomery | Amatuzio) until sometime around 2025/03/26. This would have put Council for Defendant "on notice" **only at that time** (on 2025/03/26) that any MOTIONS TO RECONSIDER would be due 14 days after the NOA was filed (on 2025/04/01) [and to which is precisely what Council for Defendant did indeed file on that date]. But that would mean that whatever "competing deadline" Case 2024CV241 created, **was only in existence for six whole days** (from 2025/03/26 to 2025/04/01), after which any further deadlines in that particular matter ***were completely and wholly extinguished until after the appeal is processed.*** So **there goes one more** case right there. **Now we're down to one.** One whole case. From "six cases" down to one.

Of course, this one remaining case, Case 2023CV226, **is this here instant case with the 21 day deadline provided by this Court** for Defendant to file its ATTORNEY FEES COMPUTATION within. ***ABSOLUTELY CRITICAL TO NOTE HERE NOW,*** is that this 21 day deadline was provided to Defendant on **2025/03/18**, a date on which **ABSOLUTELY, LITERALLY, NOT A SINGLE DEADLINE AT ALL** [let alone a "competing deadline"] presently existed on the docket, **in literally ANY of Plaintiff's "six cases,"** to otherwise [reasonably] "confuse" a person in Defendant's position into committing some purportedly excusable "calendaring error," or whatever to that effect. Seriously. ***Go look at the spreadsheet Plaintiff prepared.*** LITERALLY NOTHING, **in all six cases,** was going on for nearly a week leading up to the 2025/03/18 deadline creation date, that would cause a reasonably prudent person in Defendant's position to "not correctly pencil in" a 21 day deadline [if that's what even happened]. And only 15 days after the 21 day deadline was created did another document finally become due in another case – Case 2024CV241 – but to which, as explained above, **was addressed and put to rest within six days of Council becoming aware of it**.

Therefore, after that other document was filed in Case 2024CV241 on 2025/04/01, another full week went by WITH LITERALLY NO OTHER DOCUMENTS NEEDING TO BE FILED IN ANY OTHER CASE [that would otherwise cause a reasonably prudent person in Defendant's position to "overlook" a 21 day deadline, if that's what alternatively happened]. **Of course,** if you pay close attention, Plaintiff just said "in any *other* case," as there actually ***WAS*** one, single, other document that became due that ***did*** temporarily create a "competing deadline" within that 21 day period, but to which was simply a REPLY to a RESPONSE to a MOTION TO RECONSIDER that Defendant filed, *in whaddayaknow,* **THIS HERE CASE OF 2023CV226!** Indeed, probably the most shocking part of this whole situation is that in said REPLY, filed on 2025/03/28, Defendant **LITERALLY** referenced its recently granted MOTION FOR ATTORNEY FEES on **Page 2** of this document, **COMPLETE WITH THE EXACT DATE ON WHICH IT WAS RECENTLY GRANTED!** *See Exhibit #3 ~ Def's RIS Of MTR Order Re Court Fees at page 2, point 1 ("This Court has already ruled upon the identical issue of whether this lawsuit was filed vexatiously and in bad faith. See, Order Re: Defendant's Motion for Attorney's Fees (entered March 18, 2025).").* As if Defendant couldn't be ANY MORE reminded of its upcoming 21 day deadline. **DEFENDANT ***L-I-T-E-R-A-L-L-Y*** REMINDED ITSELF *OF THE VERY DEADLINE* TEN DAYS INTO IT!!!**

As such, this Court should **SUMMARILY REJECT** Defendant's proffered excuse that "it has been juggling competing deadlines in the 4 trial court cases and 2 appellate cases Plaintiff is currently pursuing against Best Buy." **Such a bold, haughty statement is simply not true.** During its 21 day ATTORNEY FEES COMPUTATION deadline period, Defendant had only one REPLY due, which it addressed in a **seven day** window, and one MOTION TO RECONSIDER due, which it addressed in a **six day** window [both documents of which were nearly identical to previous ones

filed in Plaintiff's other cases, BTW, thus requiring, at most, a few minutes each to produce]. It strains credulity that such a [purportedly heavy] "competing deadline juggled" workload would be too much for FOUR seasoned attorneys (and TWO paralegals!) **with over 81 years combined experience** to handle. "As a matter of law, the defendants' motion for an extension of time does not show any excusable neglect. The general rule is that the press of work or other activities of an attorney do not constitute excusable neglect." *Cox v. Adams,* 171 Colo. 37, 464 P.2d 513 (1970).

II. DEFENDANT DID NOT HAVE "DIFFICULTIES IN KEEPING CASES ORGANIZED AND SEPARATE"

Next, Defendant claims that "Plaintiff's vexatious and never-ending lawsuits against Best Buy has created difficulties in keeping cases organized and separate." *Def's MFEOTTF at page 3.* However, this Court should also **SUMMARILY REJECT** this proffered excuse as having any merit. This is because Defendant *itself* has **already** admitted that it has "prepared" an entire "lawsuit database" of Plaintiff's cases, to **explicitly** "keep them organized and separate." *See Def's Computation Of Attorney Fees Exhibit A, page 14, date 11/04/2024 ("Prepare a lawsuit database with all pertinent information regarding plaintiff's previous lawsuits to be able to reference during plaintiff's deposition.").* Thus, **it strains serious credulity** that Defendant would not have likewise created a similar "lawsuit database" of all of Plaintiff's *current* lawsuits to also keep them "organized and separate." **Even Plaintiff has a "lawsuit database" of all his cases against all his Defendants,** and he's just a pipsqueak, indigent, *pro se* pauper!

Of course, ***even if*** Plaintiff's "never-ending lawsuits" actually ***did*** "create difficulties in keeping cases organized and separate," such a circumstance would be **extremely unlikely, if not outright impossible** to actually cause a "calendaring error" of such magnitude **that a 21 day deadline *would be overlooked entirely.*** That is, the only type of "calendaring error" that would

be possible in this "six case" scenario would be to accidentally calendar the 21 day deadline under the wrong case [not fail to calendar it at all!]. But Defendant didn't accidentally file their ATTORNEY FEES COMPUTATION in the wrong case. **Defendant failed to file it in the first place.** Indeed, *by its very own implicit admissions,* Defendant **only started** working on its COMPUTATION **two days after** the 21 day deadline **had already passed** (i.e., on 2025/04/10, when it filed its MOTION FOR EXTENSION OF TIME TO FILE). Had Defendant ***at least started*** preparing its COMPUTATION ***prior to*** the 21 day deadline, it would have surely been aware of the upcoming deadline as it was fast approaching, sufficient to prompt itself to request an extension of time to file the document before the deadline were to pass. But because, again, Defendant evidently ***didn't even start working*** on the COMPUTATION until ***after*** the deadline ***had already*** passed, **the only logical conclusion that can be reached is that Defendant simply failed to "pencil in" the deadline into its calendar *in the first place*, on 2025/03/18, when the Order was originally issued.** But, as previously discussed, because **THERE WAS LITERALLY NOT A SINGLE THING GOING ON**, in **LITERALLY ANY** of Plaintiff's "six cases" with it, *for about a week at that point,* there were simply no "competing obligations" of Defendant's at the time that would otherwise cause a reasonably prudent person in its position to ***literally fail to even pencil in*** a simple 21 day calendar deadline, **outright.** Such negligent behavior is wholly inexcusable, especially given that [again] FOUR attorneys **with over 81 years combined experience** have been assigned to this case. "Excusable neglect involves a situation where the failure to act results from circumstances which would cause a reasonably careful person to neglect a duty. It is impossible to describe the myriad situations showing excusable neglect, but in general, most situations involve unforeseen occurrences such as

personal tragedy, illness, family death, destruction of files, and other similar situations which would cause a reasonably prudent person to overlook a required deadline date in the performance of some responsibility. Failure to act due to carelessness and negligence is not excusable neglect." *Farmers Ins. Group v. District Court,* 181 Colo. 85, 507 P.2d 865 (1973). *See also Estep v. People,* 753 P.2d 1241 (1988) ("Failure to calendar the filing deadline was precisely the sort of carelessness this court and the court of appeals have condemned repeatedly in a variety of circumstances."). *See also Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (2024) ("We conclude that the lawyer's failure in this case constitutes mere 'garden-variety attorney inattention,' which does not rise to the level of excusable neglect." "If such inattention were sufficient to establish excusable neglect, it would be 'hard to fathom the kind of neglect that we would not deem excusable.'"). *See also Farm Deals, LLLP v. State,* 300 P.3d 921 (2012) ("These assertions are inadequate to show excusable neglect because they show mere carelessness."). *See also Nickerson v. Network Solutions, LLC,* 339 P.3d 526 (Colo. 2014) ("The trial court expressly rejected Network Solutions' 60(b)(1) claim, finding that its argument regarding miscalendaring the answer deadline was 'without merit.'"). *See also Cummings v. United States,* No. CV 12-00081 WJ/RHS (2014) ("[C]alendaring errors will not rise to the level of excusable neglect if they are the result of poor lawyering."). *See also Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007) ("The district court concluded that the actual reason why the notice of appeal was not timely filed was counsel's error in calendaring the deadline."). *See also Reed v. Gautreaux,* CIVIL ACTION NO. 19-130-SDD-RLB (2019) (Explaining that Courts "have routinely held that calendaring errors do not constitute excusable neglect.").

III. DEFENDANT'S FAILURE TO EXPLAIN ITS "CALENDARING ERROR" WITH ANY DETAIL RENDERS IT *AUTOMATICALLY* INEXCUSABLE

Next, Defendant claims that "this regrettably resulted in *calendaring errors* by Best Buy regarding the deadline for this computation" (emphasis added). *Def's MFEOTTF at page 3.* However, without explaining ***with any detail whatsoever*** the actual nature of the "calendaring errors" [if that's what even happened], and instead, *simply saying the magical words* – that "calendaring errors" "resulted" from a "six case" "juggled" caseload, "the Court is unable to determine whether it was the sort of clerical error that might have been excused." *Quarrie v. Wells,* Civ. No. 17-350 MV/GBW (2020). *See also Shearman v. Jorgensen,* 106 Cal. 483, 39 P. 863 ("Inadvertence in the abstract is no plea upon which to set aside a default. The court must be made acquainted with the reasons for the inadvertence; and, if satisfactory, will act upon them and relieve from burdens caused by them; but, if the inadvertence is wholly inexcusable, as if it arises from gross negligence, the court will not look upon it kindly, and will have none of it."). *See also Candelaria,* 2019 WL 4643946, at *10; Quarrie v. Wells, Civ. No. 17-350 MV/GBW, 2020 WL 954177, at *2 n.3 (D.N.M. Feb. 27, 2020) (explaining that "the nature of the [calendaring] error" may determine whether it is excusable or not and stating that it could not determine whether the error was excusable where a detailed explanation for the calendaring error was lacking).

IV. THE COURT PROVIDED DEFENDANT WITH THE REQUISITE 21 DAY DEADLINE "IN A READILY ACCESSIBLE, UNAMBIGUOUS ORDER"

Finally, Defendant's "failure to abide by the correct deadlines was 'simply not excusable' when [this Court] had expressly listed the [April 8, 2025] deadline in 'a readily accessible, unambiguous' order." *Cummings v. United States,* No. CV 12-00081 WJ/RHS (2014). **In other words, such a simple, straightforward 21 day deadline was not some cryptic timeframe to be decoded upon the careful interpretation of some state or federal rule of civil or criminal procedure, it was LITERALLY "expressly listed in a readily accessible, unambiguous order" provided to**

Defendant on March 18, 2025. You basically can't get any more straightforward than that. *See also Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (2024) ("[W]here 'the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test.'"). *See also Delta Airlines v. Butler,* 383 F.3d 1143, 1145 (10th Cir. 2004) (quotation omitted) ("[C]ounsel's misinterpretation of a readily accessible, unambiguous rule cannot be grounds for relief unless the word excusable is to be read out of the rule."). *See also Mirpuri v. ACT Mfg., Inc.,* 212 F.3d 624, 631 (1st Cir. 2000) ("A misunderstanding that occurs because a party (or his counsel) elects to read the clear, unambiguous terms of a judicial decree through rose-colored glasses cannot constitute excusable neglect."). *See also Halicki v. Louisiana Casino Cruises, Inc.,* 151 F.3d 465, 470 (5th Cir. 1998) ("Although . . . we [leave] open the possibility that some misinterpretations of the federal rules may qualify as excusable neglect, such is the rare case indeed. Where, as here, the rule at issue is unambiguous, a district court's determination that the neglect was inexcusable is virtually unassailable."). See also *Lowry v. McDonnell Douglas Corp.,* 211 F.3d 457, 463 (8th Cir. 2000) ("Notwithstanding the 'flexible' Pioneer standard, experienced counsel's misapplication of clear and unambiguous procedural rules cannot excuse his failure to file a timely notice of appeal.").

CONCLUSION

In the end, a MOTION FOR EXTENSION OF TIME TO FILE "is a simple document to prepare," *Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007), in that such failure to file one on time would hardly ever be excusable. Moreover, "Under section (b)(1) of this rule, enlargements of time are so readily obtainable where application is made therefor within apt time that there is rarely an occasion where failure to do so would appear to be excusable." *Smith v. Woodall,* 129 Colo. 435, 270 P.2d 746 (1954). *See also Freeman v. Cross,* 134 Colo. 437, 305 P.2d 759 (1957).

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR EXTENSION OF TIME TO FILE ATTORNEY FEES COMPUTATION in this matter.

Respectfully submitted on this, the 1st day of May, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 1st day of May, 2025, the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE ATTORNEY FEES COMPUTATION** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Stephanie E. Boutsicaris
Lori K. Bell
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
sboutsicaris@mac-legal.com
lbell@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery

RE: Montgomery v. Best Buy et al (23CV 226)

Stephanie E. Boutsicaris <sboutsicaris@mac-legal.com> Thu, Apr 10, 2025 at 2:21 PM
To: "zoinbergs@gmail.com" <zoinbergs@gmail.com>, "Lori K. Bell" <lbell@mac-legal.com>
Cc: Abigail Spohn <Aspohn@mac-legal.com>

DATE FILED
May 01, 2025 1:56 PM

Mr. Montgomery,

Please provide your position on a motion for extension of time on Best Buy's submission of its attorney's fees calculations. There are hundreds of pages of bills to summarize and remove privileged information before submission to the Court. Furthermore, we have been juggling competing deadlines in the 4 trial court cases and 2 appellate case you are currently pursuing against Best Buy.

Stephanie E Boutsicaris
Senior Attorney
Direct: 303.592.6684
Email: sboutsicaris@mac-legal.com

Montgomery | Amatuzio

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Effective April 5, 2024, our firm has changed its name and will now be doing business as Montgomery | Amatuzio. You can continue to contact us at the same address, phone number, email and website. Although the firm name has changed, you can expect the same high level of professionalism, excellence in legal services, and quality client services that you have come to know.

DATE	CASE				ACTION TAKEN
	2023CV226	2024CV132	2024CV241	2024CV242	
2025/01/24			2024CV241		Court **DISMISSES** Plaintiff's Case
2025/01/25					
2025/01/26					
2025/01/27					
2025/01/28			2024CV241		Court **DENIES** Plaintiff's **MOTION TO REOPEN CASE**
2025/01/29					
2025/01/30					
2025/01/31					
2025/02/01					
2025/02/02					
2025/02/03					
2025/02/04					
2025/02/05					
2025/02/06					
2025/02/07					
2025/02/08					
2025/02/09					
2025/02/10		2024CV132			Defendant Files **MOTION TO RECONSIDER** Order Re Court Fees & Defendant Files Its **ANSWER BRIEF**
2025/02/10				2024CV242	Defendant Files **MOTION TO RECONSIDER** Order Re Court Fees & Defendant Files Its **ANSWER BRIEF**
2025/02/11					
2025/02/12					
2025/02/13					
2025/02/14					
2025/02/15					
2025/02/16					
2025/02/17					
2025/02/18					
2025/02/19					
2025/02/20					
2025/02/21					
2025/02/22					
2025/02/23					
2025/02/24	2023CV226				Plaintiff Files **NOTICE OF APPEAL**
2025/02/25					
2025/02/26					
2025/02/27					
2025/02/28	2023CV226				Defendant Files **MOTION TO RECONSIDER** Order Re Court Fees
2025/03/01					
2025/03/02					
2025/03/03		2024CV132			Plaintiff Files **RESPONSE** To Defendant's **MOTION TO RECONSIDER** Order Re Court Fees
2025/03/03				2024CV242	Plaintiff Files **RESPONSE** To Defendant's **MOTION TO RECONSIDER** Order Re Court Fees
2025/03/04					
2025/03/05					
2025/03/06					
2025/03/07		2024CV132			Defendant Files **REPLY** In Support Of Its **MOTION TO RECONSIDER** Order Re Court Fees
2025/03/07				2024CV242	Defendant Files **REPLY** In Support Of Its **MOTION TO RECONSIDER** Order Re Court Fees
2025/03/08					
2025/03/09					
2025/03/10				2024CV242	Defendant Serves Plaintiff Its **RULE 26(A)(1) INITIAL DISCLOSURES**
2025/03/11					
2025/03/12				2024CV242	Plaintiff Serves Defendant Its **RULE 26(A)(1) INITIAL DISCLOSURES**
2025/03/13					
2025/03/14					
2025/03/15					
2025/03/16					
2025/03/17					

	2025/03/18	**2023CV226**		Court **GRANTS** Defendant's **MOTION FOR ATTORNEY FEES**
?	2025/03/18		2024CV241	Plaintiff Files **NOTICE OF APPEAL** (But Because Case Was Dismissed Prior To Defendant Retaining Council, Plaintiff Mails **NOA** To Unrepresented Store Only)
	2025/03/19			
	2025/03/20			
	2025/03/21	2023CV226		Plaintiff Files **RESPONSE** To Defendant's **MOTION TO RECONSIDER** Order Re Court Fees
	2025/03/22			
	2025/03/23			
	2025/03/24		2024CV242	Court Sets **CASE MANAGEMENT CONFERENCE** For 2025/04/07 @ 3:30pm
	2025/03/25			
	2025/03/26		2024CV241	Plaintiff's **NOTICE OF APPEAL** (Mailed Directly To Unrepresented Store) Is Likely Received By Defendant's Council
	2025/03/27			
	2025/03/28	2023CV226		Defendant Files **REPLY** In Support Of Its **MOTION TO RECONSIDER** Order Re Court Fees ► *Defendant Literally References Its Recently Granted **MOTION FOR ATTORNEY FEES** On **Page 2** of This Document ! ! !*
	2025/03/29			
	2025/03/30			
	2025/03/31		2024CV242	Defendant Files Proposed **CASE MANAGEMENT ORDER**
	2025/04/01		2024CV241	Defendant Files **MOTION TO RECONSIDER** Order Re Court Fees ► *This Document Is Nearly Identical To Defendant's Previous Three **MTR** Filed In 2023CV226, 2024CV132, & 2024CV242*
	2025/04/02			
	2025/04/03			
	2025/04/04			
	2025/04/05			
	2025/04/06			
	2025/04/07		2024CV242	Plaintiff Files MOTION TO RESCHEDULE Today's CMC (And Court GRANTS It)
	2025/04/08	**2023CV226**		Defendant's **ATTORNEY FEES COMPUTATION** Is Due
	2025/04/09			
	2025/04/10	2023CV226		Defendant Files **MOTION FOR EXTENSION OF TIME** To File Its Attorney Fees Computation

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6

BEST BUY'S REPLY IN SUPPORT OF ITS MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits this Reply in Support of Its Motion to Reconsider the Order re Court Fees, as follows:

The doctrine of issue preclusion, often referred to as collateral estoppel, bars relitigation of issues when "(1) the issue sought to be precluded is identical to an issue actually and necessarily determined in the prior proceeding; (2) the party against whom estoppel is asserted has been a party to or is in privity with a party to the prior proceeding; (3) there is a final judgment on the

merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding." *Vanderpool v. Loftness*, 2012 COA 115, ¶ 13, 300 P.3d 953, 957–58, as modified on denial of reh'g (Aug. 30, 2012).

Here, Best Buy is able to demonstrate all elements necessary for issue preclusion on this Motion:

(1) This Court has already ruled upon the identical issue of whether this lawsuit was filed vexatiously and in bad faith. *See,* Order Re: Defendant's Motion for Attorney's Fees (entered March 18, 2025);

(2) Plaintiff was a party to the matter in which the Court ruled that this matter was filed vexatiously and in bad faith;

(3) There was a final judgment on the merits in the Motion for Attorney's Fees; and

(4) Plaintiff had full opportunity to file a response, litigate the motion, and in fact, did so.

Thus, Plaintiff is issue precluded as to whether this lawsuit filed vexatiously and in bad faith, and the Court must find in favor of Best Buy on the present Motion.

In any event, Plaintiff's Response is demonstrative of his conduct in abusing access to the Courts. Plaintiff's Response is near identical to the same responses that are being filed over and over in other courts. To that end, Best Buy will conserve time and financial resources by attaching Plaintiff's response and Best Buy's reply to a previous Waiver of Fees briefing filed in another case pending before the District Court for Jefferson County, Colorado. **Ex. H.** Pursuant to C.R.C.P. 10(c), Best Buy hereby incorporates by reference all facts, legal authority, and arguments contained in Best Buy's reply depicted in **Ex. H.**

Plaintiff attempts to distinguish the present case from his prior lawsuits with Walmart. However, some of the very facts that are allegedly crucial to the present case were deliberately withheld from Best Buy. For instance, Plaintiff asserts that the fact that Plaintiff was not a paying customer is crucial in this case. However, Plaintiff provided evasive written discovery responses to this very fact. **Ex. I,** Plaintiff's Resp. to Request for Production No. 1. This in and of itself demonstrated that Plaintiff is abusing his access to the Court and not seeking a just determination of the issues on the merits.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court find that there is clear and convincing evidence that Plaintiff filed and maintained this lawsuit in bad faith and require Plaintiff to pay filing fees, reasonable copy fees, jury fees, eFiling and service fees, and fees for forms and instructions, including fees related to Plaintiff's pending appeal for this matter.

Filed **March 28, 2025.**

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on March 28, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/ Stephanie Boutsicaris

GRANTED BY COURT
05/05/2025

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 05, 2025 12:10 PM CHRISTOPHER CLAYTON ZENISEK District Court Judge
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING BEST BUY'S MOTION FOR EXTENSION OF TIME

THIS COURT, having reviewed Best Buy's Motion for Extension of Time and finding good cause, hereby GRANTS this Motion. Best Buy is permitted to submit its computation of attorney's fees on or before April 17, 2025.

So ordered on _____, 2025.

_____
Presiding Judge, District Court for Jefferson County, Colorado

2025 MAY -6 PM 1:42

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Filed
Combined Court
Jefferson County, CO

DATE FILED
May 06, 2025 2:30 PM
FILED IN THE
COURT of APPEALS
STATE OF COLORADO

MAY 06 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside of a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. Afterwards, the Judge granted the Defendant's MOTION FOR ATTORNEY FEES. However, the Judge made errors of fact and/or law when ruling on this MOTION, and incorrectly granted it in contravention of clearly-established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDER granting Defendant's MOTION FOR ATTORNEY FEES. He seeks to have the ORDER be REVERSED in its entirety.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on

(date) March 18, 2025

2. Remaining Issues:

■ All the issues in the case have been decided.

OR

☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

■ Any request for attorney fees and costs have been resolved.

OR

☐ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

■ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

OR

☐ Yes. A post-trial motion was filed on: (date) _____
_____.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

☐ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

☐ The district court ruled on the motion on (date) _____
_____.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

☒ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR ATTORNEY FEES?

VII. Necessity of Transcript:

☒ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

☒ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Stephanie E. Boutsicaris & Lori K. Bell

Registration Number: No. 51297 (Boutsicaris) & No. 31714 (Bell)

Name of Law Firm: Montgomery | Amatuzio

Street Address: 4100 E Mississippi Ave Ste 1600

City: Denver State: CO Zip: 80246

Phone Number: (303) 592-6600

E-Mail Address: sboutsicaris@mac-legal.com & lbell@mac-legal.com

For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: May 6, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) May 6, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: sboutsicaris@mac-legal.com & lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED March 18, 2025 1:15 PM CASE NUMBER: 2023CV226
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **2023CV00226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S MOTION FOR ATTORNEY FEES

THIS MATTER comes before the Court on Defendant Best Buy Stores' motion for attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims. The Court granted summary judgment for, among other things, Shopkeeper's Privilege. The Court also received body camera footage of the alleged detainment from Plaintiff, which showed Defendant's employees asking Plaintiff to return the purported stolen merchandise while they stood near him for several minutes outside the store.

Additionally, the Court received a YouTube video from Defendant that Plaintiff had recorded and uploaded. In this video, Plaintiff explains how he gets "free lawsuits" by going into stores and conducting himself in a manner that could be reasonably construed as suspicious and then suing when employees confront him upon believing he is stealing. Plaintiff has also filed numerous nearly identical cases against other stores around Colorado.[1]

Since the time the Court granted Defendant's motion for summary judgment, Plaintiff has filed at least three additional lawsuits against Best Buy, also alleging claims of false imprisonment: Case No. 2024CV00132 (Adams County District Court), Case No. 2024CV000241 (Jefferson

[1] See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

County District Court), and Case No. 2024CV000242 (Jefferson County District Court).

Defendant filed this motion for attorney fees on December 31, 2024. Plaintiff filed a response and Defendant replied.

II. LEGAL STANDARD

A Colorado court shall award reasonable attorney fees "against any attorney or party who has brought or defended a civil action . . . that the court determines lacked substantial justification" or "was interposed for delay or harassment," or who has "unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures." C.R.S. § 13-17-102(2), (4). "Lacked substantial justification" means "substantially frivolous, substantially groundless, or substantially vexatious." C.R.S. § 13-17-102(9)(a).

Parties appearing pro se shall not be assessed attorney fees "unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense . . . was substantially frivolous, substantially groundless, or substantially vexatious[.]" C.R.S. § 13-17-102(6).

"A claim is frivolous if the proponent has no rational argument to support it based on evidence or the law. A claim is groundless if there is no credible evidence to support the allegations in the complaint. A vexatious claim or defense is one brought or maintained in bad faith." Zivian v. Brooke-Hitching, 28 P.3d 970, 974 (Colo. App. 2001).

"Meritorious actions that prove unsuccessful and good faith attempts to extend, modify, or reverse existing law are not frivolous." City of Aurora v. Colo. State Eng'r, 105 P.3d 595, 620 (Colo. 2005). However, awarding attorney fees is an important sanction against an attorney or party who brings unjustified litigation. Sifton v. Stewart Title Guar. Co., 259 P.3d 542, 546 (Colo. App. 2011).

III. ANALYSIS

Defendant argues that Plaintiff's action was substantially vexatious and that Plaintiff knew or should have known his action was substantially vexatious. The Court agrees.

An action is "substantially vexatious" if "brought or maintained in bad faith to annoy or harass another, and vexatiousness includes conduct that is arbitrary, abusive, stubbornly litigious, or disrespectful of the truth." In re Parental Responsibilities of I.M., 410 P.3d 488, 492 (Colo. App. 2013).

The Court finds that Plaintiff planned this lawsuit before bringing it. (See Defendant's Ex. L, YouTube Video at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting.") On the date of the incident, Plaintiff sought to engage Best Buy in a situation that would result in a lawsuit. To do so, Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous. (Defendant's Ex. O, Google Maps). These purchases were made, at least in part, with the hopes of

baiting the Best Buy stores into confronting Plaintiff. (Defendant's Ex. Q, Deposition at 109:16-111:17). When speaking about his actions on that day, Plaintiff analogized his conduct to that of a police bait car. (Defendant's Ex. Q, Deposition at 35:23-37:5, 45:16-46:9).

Once the lawsuit was underway, the Court finds that Plaintiff continued to maintain the lawsuit in bad faith. Before filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure:

> I'm not going to be so nice next time [I file a lawsuit]. I've already got cases where I have it all set up perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man.

(Defendant's Ex. L, YouTube Video at 17:15-17:55).

During discovery, Plaintiff failed to comply with his Rule 26(a)(1) disclosure requirements and provided evasive discovery responses. Plaintiff omitted his brother from his 26(a)(1) Initial Disclosures, despite stating that his brother spent the entire day of the incident with him. (Defendant's Ex. S, Initial Disclosures; Defendant's Ex. Q, Deposition at 107:13-18). Plaintiff responded to many of Defendant's discovery requests with "I do not recall," despite in later pleadings making definite statements about the same subject matter. (Defendant's Ex. T). This all appears to be purposeful by Plaintiff to provide Defendant with as little information as possible, especially given the context of his earlier statement plotting to refuse to cooperate with opposing counsel.

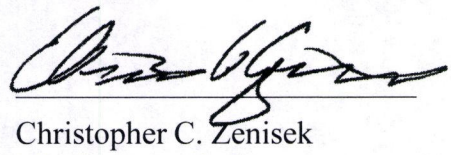
The above facts lead the Court to conclude that Plaintiff brought and maintained this suit in bad faith and, based on his statements in his deposition and YouTube video, knowingly did so. Plaintiff's planning and searching for a lawsuit and failure to cooperate honestly with the discovery process are stubbornly litigious, disrespectful of the truth, and abusive of the court system. For this reason, the Court concludes that attorney fees are justified under C.R.S. § 13-17-102. Additionally, the Court hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts, which he currently appears determined to continue.

IV. CONCLUSION

For the reasons discussed above, Defendant's motion for attorney fees is **GRANTED**. Defendant will be awarded reasonable attorney fees. Defendant Best Buy shall submit its computation within 21 days. Plaintiff may object to reasonableness within the 14 days that follow.

Done in Golden, Colorado this 18th day of March, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

2025 MAY -6 PM 1:42

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Filed
Combined Court
Jefferson County, CO

DATE FILED
May 06, 2025 2:32 PM
FILED IN THE
COURT of APPEALS
STATE OF COLORADO

MAY 06 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Designation of Record

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

Documents to Send

Please send my entire case file to the Court of Appeals. Please include:

1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
4. If a trial was held, all jury instructions, verdict forms, and answers to any special interrogatories.

Transcripts

1. Transcripts Needed:

☒ A transcript is not needed to review the issues on appeal.

OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: May 6, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) May 6, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: sboutsicaris@mac-legal.com, lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

FILED
COMBINED COURT
JEFFERSON COUNTY
2025 MAY -6 P 1:39

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

DATE FILED
May 6, 2025 2:25 PM
FILED IN THE
COURT of APPEALS
STATE OF COLORADO
MAY 06 2025
Clerk, Court of Appeals

Appeal from:
Jefferson County District Court
District Court Judge: The Hon. Christopher Zenisek
District Court Case Number: 2023CV226

In the Case of:
Plaintiff/Petitioner: WILLIAM MONTGOMERY,
■ Appellant or ☐ Appellee
&
Defendant/Respondent: BEST BUY STORES, L.P.
☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery
Street Address: 2443 S University Blvd # 129
City: Denver State: CO Zip: 80210
Phone: (970) 412-5463
E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside of a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. Afterwards, the Judge granted the Defendant's MOTION FOR ATTORNEY FEES. The Defendant then had 21 days from that ORDER to submit their ATTORNEY FEES COMPUTATION, which it failed to do. Instead, the Defedant filed a MOTION FOR EXTENSION OF TIME TO FILE its ATTORNEY FEES COMPUTATION two days after the 21 day deadline had passed. The Judge then granted the MFEOTTF. However, the Judge made errors of fact and/or law when ruling on the MFEOTTF, and incorrectly granted it in contravention of clearly-established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDER granting Defendant's MFEOTTF its AFC. He seeks to have the ORDER be REVERSED in its entirety.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on

(date) May 5, 2025

2. Remaining Issues:

☒ All the issues in the case have been decided.

OR

☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

☒ Any request for attorney fees and costs have been resolved.

OR

☐ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

☒ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

OR

☐ Yes. A post-trial motion was filed on: (date) _____
_____.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

☐ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

☐ The district court ruled on the motion on (date) _____
_____.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

■ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR ATTORNEY FEES?

VII. Necessity of Transcript:

■ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

☒ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Stephanie E. Boutsicaris & Lori K. Bell

Registration Number: No. 51297 (Boutsicaris) & No. 31714 (Bell)

Name of Law Firm: Montgomery | Amatuzio

Street Address: 4100 E Mississippi Ave Ste 1600

City: Denver State: CO Zip: 80246

Phone Number: (303) 592-6600

E-Mail Address: sboutsicaris@mac-legal.com & lbell@mac-legal.com

For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: May 6, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) May 6, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: sboutsicaris@mac-legal.com & lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

GRANTED BY COURT
05/05/2025

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 5, 2025 12:10 PM CASE NUMBER: 2023CV226 **CHRISTOPHER CLAYTON ZENISEK** **District Court Judge**
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING BEST BUY'S MOTION FOR EXTENSION OF TIME

THIS COURT, having reviewed Best Buy's Motion for Extension of Time and finding good cause, hereby GRANTS this Motion. Best Buy is permitted to submit its computation of attorney's fees on or before April 17, 2025.

So ordered on _____, 2025.

_____
Presiding Judge, District Court for Jefferson County, Colorado

FILED
COMBINED COURT
JEFFERSON COUNTY

Colorado Court of Appeals 2025 MAY -6 P 1:39

2 East 14th Avenue

Denver, CO 80203

DATE FILED
May 6, 2025 2:27 PM
FILED IN THE
COURT of APPEALS
STATE OF COLORADO

MAY 06 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Designation of Record

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

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1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
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1. Transcripts Needed:

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OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: May 6, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) May 6, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: sboutsicaris@mac-legal.com, lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED May 07, 2025
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy Stores, L.P.	Court of Appeals Case Number: 2025CA810
ADVISEMENT OF FILING NOTICE OF APPEAL	

A Notice of Appeal was filed on 05/06/25 in the case designated above. Include the Court of Appeals case number on all future pleadings and the record on appeal.

Please note that this document is advisory only and does not serve as confirmation that this court has jurisdiction or that all jurisdictional requirements have been met.

Also note that the Court of Appeals is statutorily required to advance industrial claim and juvenile appeals on its calendar. The court will expect counsel, pro-se parties and court reporters to meet all filing deadlines set forth by the Colorado Appellate Rules or by court order. In order to comply with the statutes and avoid unnecessary delay, motions to enlarge the time for filing the record on appeal or the briefs will generally be denied unless extremely compelling reasons are clearly demonstrated.

Required Filings:

The clerk of the trial court will transmit the record to the Court of Appeals. If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a **designation of transcripts** with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of

appeal. The record will be transmitted without transcripts unless appellant complies with C.A.R. 10(d).

The record on appeal is due 07/09/25.

Notice to self-represented parties: You may be able to obtain help for your civil appeal from a volunteer lawyer through the Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at https://www.cobar.org/probono or contact the Court's self-represented litigant coordinator at 720-625-5107 or Appeals.SelfHelp@judicial.state.co.us.

TIFFANY MORTIER
CLERK OF THE COURT OF APPEALS
DATE: 05/07/25

Colorado Court of Appeals 2 East 14th Avenue Denver, Colorado 80203 Appeal From: District Court for Jefferson County, Colorado 100 Jefferson County Parkway Golden, Colorado 80401 Judge Christopher Clayton Zenisek (Division 6) Case No. 2023CV226	DATE FILED May 15, 2025 7:31 PM ▲COURT USE ONLY▲
WILLIAM MONTGOMERY Plaintiff-Appellee, v. **BEST BUY STORES, L.P.** Defendant-Appellant.	Court of Appeals Case Number:
Counsel for Defendant-Appellee and Defendant-Appellant Best Buy Stores, L.P. Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 E. Mississippi Ave., Ste. 1600 Denver, Colorado 80246 Phone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	
NOTICE OF APPEAL BY BEST BUY STORES, L.P.	

I. DESCRIPTION OF THE NATURE OF THE CASE

A. A general statement of the nature of the controversy

On or about November 21, 2023, Plaintiff-Appellant/Cross-Appellee William Montgomery ("Plaintiff") filed his Complaint in this case against Defendant-Appellee/Cross-Appellant Best Buy Stores, L.P ("Best Buy"). The lawsuit involves allegations of false imprisonment, defamation per se, and assault by the Best Buy employees.

Plaintiff was a patron of Best Buy on November 21, 2023 when Best Buy employees noted an object concealed in Plaintiff's jacket pocket and suspected that he was shoplifting. Best Buy employees questioned Plaintiff and asked Plaintiff to show them what was in his pockets. Plaintiff declined to show the Best Buy employees the object in his pocket and declined to present proof of purchase for the object. Plaintiff alleged that this interaction constituted false imprisonment, defamation per se, and assault. Plaintiff had a camera concealed on his person and produced video footage of a large portion of the interaction.

Plaintiff has a long history of filing similar suits against retail stores alleging defamation and false imprisonment. Plaintiff's prior suits have been unsuccessful, with courts repeatedly recognizing the defendant stores' immunity under the shopkeeper's privilege under C.R.S. § 18-4-407 or finding that Plaintiff was not confined because Plaintiff "refused to utilize a means of escape of which he is himself aware" by refusing to comply with the store's shoplifting investigation. In this lawsuit, Best Buy was likewise found to be not liable under both the shopkeeper's privilege and because Plaintiff "refused to utilize a means of escape of which he is himself aware" by showing proof of purchase.

B. The judgment, order, or parts being appealed and a statement indicating the basis for the appellate court's jurisdiction

Defendant-Appellee/Cross-Appellant Best Buy Stores, L.P appeals the lower court's Order regarding Court Fees entered on February 24, 2025 and the Order dated March 31, 2025.

The bases for appellate court jurisdiction are C.R.S. § 13-4-102(1) and C.A.P. 1(a)(1).

C. Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs

The Order resolved all issues necessary to proceed with this appeal. However, the trial court did not resolve all issues pending before it. On March 18, 2025, the Court ordered Plaintiff to pay reasonable attorney's fees to Defendant, and the court has not entered a final order concerning the computation of attorney's fees. However, the trial court's Order dated March 31, 2025 is final and appealable.

The Court disposed of Plaintiff's claims against Defendant when it entered its Order re: Cross Motions for Summary Judgment on November 19, 2024. The Court denied two motions for reconsideration filed by Plaintiff. These orders were entered on January 6, 2025, February 18, 2025. Plaintiff is appealing those orders in Court of Appeals Case Number 2025CA327.

The Court also granted Defendant's motion for reasonable attorney's fees, and the court has not yet ruled upon Defendant's computation of attorney's fees. However, Plaintiff has noticed his intent to appeal the issue of attorney's fees as well.

D. Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b)

Yes.

E. The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel.

The Court entered the final order that forms the basis of this appeal on March 31, 2025 when it entered its Order: Motion to Reconsider. Best Buy is also appealing the Order re Court

Fees that was entered on February 24, 2025. Those filings were served/mailed on the same dates.

F. Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended.

There were no extensions with respect to post-trial relief under C.R.C.P. 59.

G. The date any motion for post-trial relief was filed

There were no motions with respect to post-trial relief under C.R.C.P. 59.

H. The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j)

There were no motions with respect to post-trial relief under C.R.C.P. 59.

I. Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended

There were no extensions with respect to filing a notice of appeal.

II. AN ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

Whether the trial court erred in granting Plaintiff's Motion to Proceed in Forma Pauperis, and whether the trial court erred in denying Defendant's Motion to Reconsider the Court's Order re Court Fees.

On February 24, 2025, Plaintiff submitted his sealed Motion to Proceed in Forma Pauperis, which was granted on the same date without Best Buy's ability to object or file a response. Best Buy submitted its motion to reconsider pursuant to C.R.C.P. 121 § 1-15 (11). Best Buy sought reconsideration of the trial court's February 24, 2025 Order re Court Fees which allows Plaintiff to proceed in this appeal in forma pauperis without paying appellate fees. Best Buy asserted that Plaintiff's repetitive lawsuits and Plaintiff's conduct, including statements that stores are giving out "free lawsuits," evidence that this suit and Plaintiff's current appeal in this matter are in bad faith,

vexatious, and plainly frivolous. The Colorado Supreme Court has indicated that a court may deny a request for waiver of costs when the claim is in bad faith, vexatious, or plainly frivolous. *Cook v. Dist. Ct. In & For Weld Cnty*., 670 P.2d 758, 760 (Colo. 1983) However, undersigned counsel is not aware of any other trial or appellate court in Colorado issuing a ruling permitting or denying a request for waiver of court fees following an allegation of bad faith, vexatious, or plainly frivolous litigation. The trial court agrees that Plaintiff's lawsuit is frivolous, but it declined to provide the relief requested by Best Buy.

Pursuant to C.A.R. 12(b)(2), if Best Buy is successful in overturning the trial court's order permitting a waiver of fees, Plaintiff would be required to pay appellate fees in Court of Appeals Case Number 2025CA327.

III. WHETHER THE TRANSCRIPT OF ANY EVIDENCE TAKEN BEFORE THE TRIAL COURT OR ANY ADMINISTRATIVE AGENCY IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL

There is no transcript for the proceedings below.

IV. WHETHER THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE WHERE CONSENT WAS NECESSARY. IF THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE WHERE CONSENT WAS NOT NECESSARY, WHETHER A PETITION FOR REVIEW OF THE ORDER WAS FILED IN THE TRIAL COURT AND RULED ON BY A TRIAL COURT JUDGE PURSUANT TO THE COLORADO RULES FOR MAGISTRATES

A magistrate was not involved in the proceedings below.

V. THE NAMES OF COUNSEL FOR THE PARTIES, THEIR ADDRESSES, TELEPHONE NUMBERS, E-MAIL ADDRESSES, AND REGISTRATION NUMBERS

Pro Se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, Colorado 80210
Telephone: 303-446-9300

970-412-5463
zoinbergs@gmail.com

Counsel for Defendant-Appellee and Defendant-Appellant Best Buy Stores, L.P.:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E. Mississippi Ave., Ste. 1600
Denver, Colorado 80246
Telephone: 303-592-6600
lbell@mac-legal.com
sboutsicaris@mac-legal.com

VI. AN APPENDIX CONTAINING A COPY OF THE JUDGMENT OR ORDER BEING APPEALED, THE FINDINGS OF THE COURT, IF ANY, THE MOTION FOR NEW TRIAL, IF ANY, AND A COPY OF THE TRIAL COURT'S ORDER GRANTING OR DENYING LEAVE TO PROCEED IN FORMA PAUPERIS IF APPELLANT IS FILING WITHOUT DOCKET FEE PURSUANT TO C.A.R. 12(B)

Attached are the trial court's Order: Motion to Reconsider the Court's Order re Court Fees, dated March 31, 2025, and the trial court's Order re Court Fees, dated February 24, 2025.

Filed May 15, 2025.

MONTGOMERY | AMATUZIO

s/ Lori K. Bell
Lori K. Bell
Stephanie E. Boutsicaris

Counsel for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I certify that on May 15, 2025, this Notice of Cross-Appeal was filed with the Colorado Court of Appeals and the trial court and served via the Colorado Courts E-Filing System to the following Courts and via email to Plaintiff:

Pro Se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, Colorado 80210
zoinbergs@gmail.com

s/ Samantha Trujillo
Samantha Trujillo, Legal Assistant

DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	
Plaintiff(s) WILLIAM MONTGOMERY v. **Defendant(s)** BEST BUY STORES L.P.	DATE FILED March 31, 2025 12:07 PM CASE NUMBER: 2023CV226 DATE FILED May 15, 2025 7:31 PM ⚠ **COURT USE ONLY** ⚠
	Case Number: 2023CV226 Division: 6 Courtroom:

Order:Motion to Reconsider The Court's Order re Court Fees

The motion/proposed order attached hereto: DENIED.

Defendant raises some valid points regarding the frivolity of Plaintiff's multiple, tactical lawsuits. That being stated, the Court is not convinced that Defendant has shown a "manifest error of fact or law the clearly mandates a different result or other circumstance resulting in manifest injustice" regarding the in forma pauperis determination. C.R.C.P. 121, Section 1-15(11).

Thus, the motion to reconsider is denied.

Issue Date: 3/31/2025



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES	

Attachment to Order - 2023CV226

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Lori K. Bell and Stephanie E. Boutsicaris of Montgomery | Amatuzio, submits this Motion to Reconsider the Order re Court Fees. In particular, Best Buy hereby requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, E-filing and service fees, and fees for forms and instructions. In support thereof, Best Buy states as follows:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

LEGAL AUTHORITY

I. Motions to Reconsider

A motion to reconsider must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. C.R.C.P. 121 § 1-15 (11). A motion to reconsider shall be filed within 14 days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. *Id.*

II. Waiver of Costs Pursuant to C.R.S. § 13-16-103

"If the judge or justice of any court, including the supreme court, is at any time satisfied that any person is unable to prosecute or defend any civil action or special proceeding because he is a poor person and unable to pay the costs and expenses thereof, the judge or justice, in his discretion, may permit such person to commence and prosecute or defend an action or proceeding without the payment of costs." C.R.S. § 13-16-103 (1) (emphasis added). The Colorado Supreme Court has held that a court may deny a request for waiver of costs when the claim is in bad faith, vexatious, or plainly frivolous. *Cook v. Dist. Ct. In & For Weld Cnty.*, 670 P.2d 758, 760 (Colo. 1983) ("In the absence of factors such as bad faith or a plainly frivolous claim . . . the legislature intended that the judge's discretion be limited to determining whether the petitioning party has the financial resources to pay the costs and expenses incident to the litigation"). Vexatious use of the right of access to the court can constitute a form of bad faith, which may be considered in a court's ruling on a petition to proceed in forma pauperis. *Id.* at n. 6.

The analogous federal statute, 28 U.S.C. § 1915 (1976), has been construed to limit the factors that a court may consider in acting on petitions in forma pauperis to the indigency of the petitioner and whether the claim is frivolous or asserted in bad faith. *Dillard v. Liberty Loan Corp.*,

Attachment to Order - 2023CV226

626 F.2d 363 (4th Cir.1980). Federal courts are expressly authorized to dismiss a case brought in forma pauperis if it "is frivolous or malicious." 28 U.S.C. § 1915(1)(2)(B)(i).

FACTS AND LEGAL ARGUMENTS

I. A Motion to Reconsider is Procedurally Warranted Here

On February 24, 2025, Plaintiff filed a Motion to Proceed in Forma Pauperis. This motion is sealed, and Best Buy is unable to view Plaintiff's Motion. However, upon information and belief, Plaintiff did not present any arguments concerning whether his lawsuit or his forthcoming appeal were filed in bad faith, or whether his lawsuit is frivolous or vexatious. Thus, the Court was not able to weigh the facts or the law to determine whether filing fees should be required in accordance with *Cook.* Defendants in Best Buy's position should have leave for a motion to reconsider because without the opportunity for a motion to reconsider, defendants would be wholly unable to contest a plaintiff's motion to proceed in forma pauperis, which is typically granted before a defendant has notice of such motion. Inability to contest the court's waiver of fees by way of a motion to reconsider would cause manifest injustice because *Cook's* holding would be pragmatically unenforceable.

II. Plaintiff's Complaint Was Filed in Bad Faith

Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado state courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess

Attachment to Order - 2025CV226

stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff has been very vocal both on the internet and in his court pleadings that he takes issue with retail stores and their employees asking patrons to show their receipts before exiting the premises. **Ex. A** (YouTube video by Plaintiff); **Ex. B** (Plaintiff's Reddit posts). For instance, Plaintiff stated in an online post, "I simply have beef with exit-posted policy-violating receipt-nazis foolishly blocking my path on the way out of a store (any store). But seriously though, free lawsuits, anyone? They're basically handing them out the door." **Ex. B,** p. 4. To address this perceived injustice of "receipt showing," Plaintiff has taken great pains to deliberately provoke situations that allow him to file "free lawsuits." *See,* **Ex. B,** p. 3 ("And if people are LITERALLY handing free lawsuits out at the door, I mean, I'm game! It's like finding a $20 bill on the ground. Wouldn't you pick it up?"). Plaintiff's modus operandi is to engage in behavior that raises

Attachment to Order - 2023CV226

suspicion of shoplifting,[1] to get detained,[2] to not show his receipts[3] in order to test his perceived "right" to not show his receipt,[4] and then file a "free lawsuit." Plaintiff engages in this behavior to "audit" stores. **Ex. C** (Excerpts of Plaintiff's Deposition), 85:4; *see also,* **Ex. C,** 107:13-111:25. Plaintiff has repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. C,** 35:23-37:5; 45:16-46:9; **Ex. B,** p. 2.

Between March 31, 2020 and September 20, 2021, Plaintiff filed eight different lawsuits against Walmart, Inc. alleging false imprisonment and/or defamation in facts that appear substantially similar to the facts alleged here. *See,* **Ex. D,** (Compilation of Complaints, Dispositive Rulings, and Appellate Decisions in Walmart, Inc. Lawsuits). Plaintiff not only failed to prove his claims in any of those cases, but also lost several appeals. **Ex. D,** p. 109-156. After Walmart, Inc. banned him from its premises, Plaintiff was forced to find a new target and set his sights on Best Buy.

This is but one of four lawsuits that Plaintiff has filed against Best Buy. Plaintiff filed three other lawsuits against Best Buy for alleged incidents that occurred on Black Friday 2023. **Ex. E** (Complaints for Case Nos. 2024CV132; 2024CV241; and 2024CV242). Even though there has not yet been an exchange of Rule 26 disclosures in any of these cases, the facts and circumstances of the present lawsuit appear eerily similar to those of the other three cases. All four lawsuits arise from incidents that allegedly occurred on Black Friday, one of the busiest shopping days of the

[1] "That's the crux of my whole sting operation!" **Ex. A,** 5:55.
[2] **Ex. A**, 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[3] "Now I don't show my receipt everywhere I shop." **Ex. A**, approximately 1:25.
[4] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. A**, 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. A**; 8:09.

Attachment to Order - 2023CV226

year. All four lawsuits arise from Plaintiff's deliberate pursuit of situations that would result in a false imprisonment and/or defamation claims. In all four lawsuits, Plaintiff traveled long distances to multiple Best Buy locations in a single day, with Plaintiff driving approximately 124 miles to at least eight different Best Buy stores on Black Friday 2022 and 66 miles to at least seven different Best Buy stores on Black Friday 2023. **Ex. F** (Plaintiff's receipts from the date of the incident for the present lawsuit, as well as a map demonstrating driving distances between each purchase); **Ex. G** (Plaintiff's receipts from Black Friday 2023, as well as a map demonstrating driving distances between each purchase). On both Black Friday 2022 and 2023, Plaintiff made duplicative purchases of the same items, such as the easily concealable Roku remote

Despite allegedly being the "victim" of defamation and false imprisonment on Black Friday 2022, Plaintiff continued to patronize Best Buy stores. Despite allegedly being a "victim" of defamation and false imprisonment multiple times in a single day, Plaintiff continued to patronize Best Buy stores on Black Friday 2023. There is no reasonable explanation for his conduct other than that Plaintiff is vexatiously abusing his right to access the courts. *See, Cook,* 670 P.2d 758 at n.6.

Plaintiff proceeds *pro se* in this lawsuit and his forthcoming appeal, which means his filings and briefs will not be constrained by the Rules of Professional Conduct. Upon information and belief, Plaintiff is judgment-proof, and Best Buy is unlikely to recoup any costs or attorney's fees if it prevails in motions under C.R.S. § 13-17-102. There is virtually no deterrent to Plaintiff filing his "free lawsuits," particularly if the Court makes the process of filing the lawsuit entirely free of charge for Plaintiff. There is also no deterrent for Plaintiff filing repetitive, frivolous motions and repetitive, frivolous appeals. In this lawsuit alone, Best Buy prevailed on its motion for summary

Attachment to Order - 2023CV226

judgment followed by two motions for reconsideration Plaintiff has been undeterred by his arguments repeatedly failing, and Best Buy will soon be litigating Plaintiff's fourth bite at the apple in Plaintiff's "free lawsuit."

Best Buy requests a limited remedy of requiring filing fees in order to encourage Plaintiff to carefully consider whether his claims, motions, and legal arguments have merit and to only incur costs on arguments that are meritorious. If Plaintiff prevails on his appeal, and subsequently on one or more cause of action against Best Buy, he will be able to recover his filing fees, as well as his provable damages. C.R.S. § 13-16-104. Requiring Plaintiff to pay filing fees, combined with the availability of an award of costs, strikes an appropriate balance between deterring repetitive and vexatious lawsuits and appeals while still permitting Plaintiff to put his claims and arguments before the Court and adjudicating his claims on their merits.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court require Plaintiff to pay filing fees, reasonable copy fees, jury fees, eFiling and service fees, and fees for forms and instructions.

Respectfully submitted February 28, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Stephanie E. Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

Attachment to Order - 2023CV226

CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2025, a true and correct copy of the foregoing **MOTION TO RECONSIDER THE COURT'S ORDER RE COURT FEES** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☒ CCES

s/Samantha Trujillo
Samantha Trujillo, Legal Assistant

Attachment to Order - 2023CV226

JDF 206	Order re Court Fees

FILED
COMBINED COURT
JEFFERSON COUNTY
2025 FEB 24 A 9:12

DATE FILED
May 15, 2025 7:31 PM

DATE FILED
February 24, 2025 9:37 AM
CASE NUMBER: 2023CV226

A. Court

☑ District ☐ County ☐ Probate ☐ Juvenile ☐ Supreme

Colorado County: Jefferson

Mailing Address: 100 Jefferson County Pkwy, Golden, CO, 80401

B. Parties to the Case

Petitioner/Petitioner: WILLIAM MONTGOMERY

v.

Defendant/Respondent: BEST BUY STORES, L.P.

This box is for court use only.

C. Case Details

Number: 2023CV226

Division: 6

Courtroom: 520

1. Background

The Court has reviewed the *Motion to Waive Fees* filed by *(name)* William Montgomery

2. Findings and Orders

The Court finds that the Party is:

a) ☒ Indigent.

All Court fees and costs are waived, including:

- Filing Fees.
- Reasonable Copy Fees.
- Jury Fees.
- eFiling and eService Fees *(when available)*.
- Fees for Forms and Instructions.

☐ If checked, also waive/provide: _____

These fees are waived for the duration of the case, or until final orders are issued if in a Domestic Relations case.

b) ☐ Not Indigent but allowed to pay in installments.

The filing fee of $_____ can be paid in: ☐ Two Payments. ☐ Three Payments.

The first payment is due by *(date)* _____

The next payment is due by *(date)* _____

The final payment is due by *(date)* _____

If payment is not received according to the schedule above, the Court can dismiss the

party's claims, or the entire case, without further notice. C.J.D. 98-01 Section (VI).

c) ☐ Not Indigent.

The party is responsible for payment of any court fees and costs.

☐ If checked, the party must pay the filing fee of $_____ by *(date)* _____

3. Findings Made by

Name: Katie Roblez On *(date)* 2-24-25

☐ Judicial Officer ☒ Court Staff

So Ordered

Signature: Nicole Montano Dated: 2/24/25

☐ Judge ☐ Magistrate

COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	DATE FILED May 29, 2025 5:03 PM
DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No.51297 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Court of Appeals' Case No: 2025CA327 Case No.: 2023CV00226 Division: 6
DESIGNATION OF RECORD ON APPEAL	

Cross-Appellant Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, respectfully requests that the clerk of the District Court prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11.

Listing of Included Filings and Documents

Please send the entire case file from Case Number 2023CV226 to the Court of Appeals up to and including the appealable order of which Best Buy's Cross-Appeal is based upon.

Please include all documents filed in the case as listed below, all attachments and exhibits, all orders and minute orders made by the district court.

Date	Document	Party
11/21/2023	Complaint with Jury Demand	Plaintiff
11/21/2023	Motion to Proceed in Forma Pauperis	Plaintiff
11/21/2023	Order re Motion to Proceed in Forma Pauperis - Granted	Court
11/21/2023	Summons – Issued for Best Buy Stores LP	Court
11/21/2023	Civil Case Cover Sheet	Plaintiff
11/22/2023	Civil Procedure Order	Court
01/24/2024	Delay Prevention Order	Court
02/08/2024	Answer with Jury Demand	Defendant Best Buy
02/08/2024	Exhibit 1 – Montgomery v. Walmart	Defendant Best Buy
02/20/2024	Affidavit of Service – Registered Agent Samantha Peck	Plaintiff
02/26/2024	Delay Prevention Order	Court
02/27/2024	Notice to Set Case Management Conference	Defendant Best Buy
03/07/2024	Notice of Case Management Conference	Defendant Best Buy
03/27/2024	Minute Order	Court
04/01/2024	Proposed Case Management Order	Defendant Best Buy
04/16/2024	Minute Order	Court
04/16/2024	Case Management Order	Court
04/22/2024	Notice of Firm Name Change	Defendant Best Buy
05/15/2024	Defendant Best Buy LP's Unopposed Motion to Continue Jury Trial	Defendant Best Buy
06/14/2024	Order re Defendant Best Buy LP's Unopposed Motion to Continue Jury Trial	Court
06/20/2024	Notice of Status Conference	Defendant Best Buy
07/23/2024	Exhibits A-K	Defendant Best Buy
07/25/2024	Defendant Best Buy L.P.'s Motion for Summary Judgment	Defendant Best Buy
08/02/2024	Notice of Status Conference	Defendant Best Buy
08/09/2024	Minute Order	Court
08/12/2024	Emergency Motion for Extension of Time to File Plaintiff's Response to Defendant's MSJ and Plaintiff's Own Cross MSJ	Plaintiff
08/12/2024	Exhibits to Motion	Plaintiff
08/21/2024	Order re Emergency Motion for Extension of Time	Court

09/19/2024	Motion to Exceed Page Limitation Regarding Plaintiff's Response to Defendant's Motion for Summary Judgment	Plaintiff
09/19/2024	Transcript of Plaintiff's Bodycam Footage of the Event	Plaintiff
09/19/2024	Plaintiff's Affidavit of the Event	Plaintiff
09/19/2024	Motion to/for Submit Video Exhibit for Plaintiff's Cross Motion for Summary Judgment	Plaintiff
09/19/2024	Plaintiff's Cross-Motion for Summary Judgment	Plaintiff
09/19/2024	Exhibits 1-15	Plaintiff
09/19/2024	Plaintiff's Response in Opposition to Defendant's MSJ	Plaintiff
10/03/2024	Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for its Motion for Summary Judgment	Defendant Best Buy
10/04/2024	Order re Defendant's Unopposed Motion for Extension of Time	Court
10/10/2024	Defendant Best Buy LP's Response to Plaintiff's Cross Motion for Summary Judgment	Defendant Best Buy
10/10/2024	Exhibits N-P	Defendant Best Buy
10/10/2024	Defendant Best Buy LP's Reply Brief in Support of its Motion for Summary Judgment	Defendant Best Buy
10/11/2024	Order re Motion to Exceed Page Limitation	Court
10/11/2024	Order re Motion to/for Submit Video Exhibit	Court
10/14/2024	Notice of Deposit	Defendant Best Buy
10/14/2024	Notice of Substitution of Counsel	Defendant Best Buy
10/21/2024	Motion for Extension of Time to file Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-MSJ	Plaintiff
10/28/2024	Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-MSJ	Plaintiff
10/28/2024	Plaintiff's Second Affidavit	Plaintiff
10/28/2024	Motion to Exceed Page Limitation regarding Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-MSJ	Plaintiff

10/28/2024	Notice of Conventionally Submitted Material in Plaintiff's Cross-MSJ	Plaintiff
10/28/2024	Order re Motion for Extension of Time to File Plaintiff's Reply	Court
10/29/2024	Defendant's Response in Opposition to Plaintiff's Motion to Exceed Page Limitation	Defendant Best Buy
10/29/2024	Order re Motion to Exceed Page Limitation	Court
10/31/2024	Unopposed Motion to Strike and Replace Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-MSJ	Plaintiff
10/31/2024	Plaintiff's Amended Reply to Defendant's Response to Plaintiff's Cross-MSJ	Plaintiff
11/01/2024	Order re Unopposed Motion to Strike and Replace Plaintiff's Reply	Court
11/19/2024	Order re Cross Motions for Summary Judgment	Court
12/03/2024	Plaintiff's Motion for Reconsideration	Plaintiff
12/03/2024	Defendant Best Buy's Bill of Costs	Defendant Best Buy
12/24/2024	Defendant's Response in Opposition to Plaintiff's Motion to Reconsider	Defendant Best Buy
12/31/2024	Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Reconsideration	Plaintiff
12/31/2024	Best Buy's Motion for Attorneys' Fees	Defendant Best Buy
12/31/2024	Exhibits Q-T	Defendant Best Buy
12/31/2024	Notice of Clerical Error	Defendant Best Buy
12/31/2024	Exhibit A	Defendant Best Buy
01/06/2025	Order re Plaintiff's Motion for Reconsideration	Court
01/07/2025	Order re Defendant Best Buy's Bill of Costs	Court
01/08/2025	Amended Order re Defendant Best Buy's Bill of Costs	Court
01/21/2025	Plaintiff's Second Motion for Reconsideration	Plaintiff
01/21/2025	Plaintiff's Response to Defendant's Motion for Attorney Fees	Plaintiff
01/22/2025	Plaintiff's Rule 26 First Supplemental Disclosures	Plaintiff
01/28/2025	Defendant's Reply in Support of its Motion for Attorneys Fees	Defendant Best Buy

02/07/2025	Best Buy's Response in Opposition to Plaintiff's Second Motion for Reconsideration	Defendant Best Buy
02/14/2025	Plaintiff's Reply to Defendant's Response to Plaintiff's Second Motion for Reconsideration	Plaintiff
02/18/2025	Order re Plaintiff's Second Motion for Reconsideration	Court
02/24/2025	Order re Court Fees	Court
02/24/2025	Notice of Appeal	Plaintiff
02/24/2025	Motion to Proceed in Forma Pauperis	Plaintiff
02/24/2025	Designation of Record or Transcript on Appeal	Plaintiff
02/25/2025	Advisement of Filing Notice of Appeal	Court
02/28/2025	Motion to Reconsider the Court's Order re Court Fees	Defendant Best Buy
02/28/2025	Exhibits A-G	Defendant Best Buy
03/10/2025	Minute Order	Court
03/18/2025	Amended Order re Defendant's Motion for Attorney Fees	Court
03/21/2025	Plaintiff's Response to Defendant Best Buy's Motion to Reconsider the Order re Court Fees	Plaintiff
03/28/2025	Best Buy's Reply in Support of its Motion to Reconsider the Court's Order re Court Fees	Defendant Best Buy
03/28/2025	Exhibits H-I	Defendant Best Buy
03/31/2025	Order re Motion to Reconsider the Court's Order re Court Fees	Court

Filed May 29, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Lori K Bell*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on May 29, 2025, a true and correct copy of the foregoing **DESIGNATION OF RECORD ON APPEAL** was filed with the Colorado Court of Appeals and the trial court and served via the Colorado Courts E-Filing System to the following Courts and via email to Plaintiff:

Pro se Plaintiff:
William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

☐ U.S. Mail ☒ Email ☐ CCES

s/ Abigail Spohn
Abigail Spohn, Paralegal

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED June 03, 2025 1:21 PM
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **2023CV00226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S COMPUTATION OF ATTORNEY FEES

THIS MATTER comes before the Court on Defendant Best Buy Stores' computation of attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store. Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims. The Court granted summary judgment for, among other things, Shopkeeper's Privilege.

Defendant filed a motion for attorney fees on December 31, 2024. The Court granted Defendant's motion and ordered Defendant to submit this computation of attorney fees. (Order re: Defendant's Motion for Attorney Fees 03.18.2025.) Defendant seeks $43,083.00 in total attorney fees.

II. LEGAL STANDARD

"An award of attorney fees must be reasonable." Tallitsch v. Child Support Servs., Inc., 926 P.2d 143, 147 (Colo. App. 1996). "If a statute providing for a fee award does not provide a specific definition of 'reasonableness,' the amount of the award must be determined in light of all the circumstances, based upon the time and effort reasonably expended by the prevailing party's attorney." Id.

In assessing reasonableness of attorney fees, courts first calculate a lodestar amount "by multiplying the number of hours reasonably expended by a reasonable hourly fee." Tallitsch, 926 P.2d at 148. A "court then has discretion to make upward or downward adjustments to the lodestar

amount based on factors set forth in Colo. RPC 1.5(a)." S. Colorado Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein, 343 P.3d 1044, 1049 (Colo. App. 2014). Colorado Rule of Professional Conduct 1.5(a) contains a non-exhaustive list of factors that can be utilized to determine the reasonableness of fees.

III. ANALYSIS

The Court granted Defendant's request for reasonable attorney fees on March 18, 2025. (Order re: Defendant's Motion for Attorney Fees 03.18.2025.) Defendant now requests $43,083.00 in attorney fees.

Defendant requests (1) $22,685.50 for 76.9 hours of work by Lori K. Bell at $295 per hour; (2) $9,150.00 for 36.6 hours of work by Glenn D. Germany at $250 per hour; (3) $8,167.50 for 36.3 hours of work by Stephanie E. Boutsicaris at $225 per hour; (4) $1,980.00 for 7.2 hours of work by Mary B. Pucelik at $275 per hour; and (5) $1,100 for 11 hours of work by three paralegals at $100 per hour. Defendant has provided a 2017 economic survey from the Colorado Bar Association ("CBA Survey") for reference.

a. Reasonable Hourly Fees

i. Mary B. Pucelik, Glenn D. Germany, and Stephanie E. Boutsicaris

Defendant contends that $275 per hour, $250 per hour, and $225 per hour are reasonable for private practitioners with 30-39 years of practicing law, 10-19 years of practicing law, and 5-9 years of practicing law respectively. The CBA Survey does support the contention that these are the average billing rates for Colorado attorneys with similar years of experience. (Defendant's Exhibit B, CBA Survey at 37.)

However, the CBA Survey also shows that the average billing rate decreases slightly to $225 per hour for law firms that have 10-19 attorneys, and also decreases to $225 per hour for attorneys who primarily practice civil litigation. (Defendant's Exhibit B, CBA Survey at 37, 38.) Additionally, the CBA Survey shows that attorneys located in Denver bill an average of $250 per hour. (Id. at 37.)

In light of these circumstances, the Court finds that a reasonable hourly rate should be adjusted slightly downward, from $275, $250, and $225, to $250, $230, and $225. This adjustment takes into consideration not only the attorneys' years of experience, but also field of practice, firm size, and geographic location.

Thus, the Court finds a reasonable hourly rate for Ms. Pucelik to be $250, for Mr. Germany to be $230, and for Ms. Boutsicaris to be $225.

ii. *Lori K. Bell*

Defendant contends that $295 per hour is a reasonable rate for a partner at a private firm in Colorado.

The CBA Survey supports the contention that $290 per hour is the average billing rate for a partner at a private firm in Colorado with 20-29 years of practicing law. (Defendant's Exhibit B, CBA Survey at 64.) However, for the reasons explained above, the Court finds it appropriate to adjust slightly downward in consideration of the field of practice, firm size, and geographic location. Accordingly, the Court finds a reasonable hourly rate for Ms. Bell to be $270 per hour.

iii. *Paralegals*

Defendant contends that $100 per hour is a reasonable market rate for a paralegal.

Three paralegals worked on this case: Katie Salazar, Jaime Gress, and Abigail Spohn. Defendant does not say how many years of experience any of these paralegals have. As such, the Court will use the average billing rate for paralegals with less than one year of experience. In Denver, the average billing rate for paralegals with less than one year of experience is $90. (Defendant's Exhibit B, CBA Survey at 85.)

Accordingly, the Court finds a reasonable hourly rate for Ms. Salazar, Ms. Gress, and Ms. Spohn to be $90 per hour.

b. Hours Reasonably Expended

Defendant contends the attorneys and paralegals involved this action spent a total of 168 hours working on this case, including roughly 77 hours by an equity partner in the firm.

The Court has discretion to adjust the reasonable hours expended based on the complexity of the case. Payan v. Nash Finch Co., 310 P.3d 212, 220-222 (Colo. App 2012). One factor to consider when determining a reasonable fee award is "the novelty and difficulty of the questions involved." Colo. RPC 1.5(a)(1).

Although the Court acknowledges Plaintiff's litigiousness, this case was a relatively straightforward tort case against a pro se plaintiff that was dismissed on summary judgment. The questions involved were not particularly novel, complex, nor difficult. Additionally, Plaintiff has brought substantially this same case repeatedly, several of which have already been dismissed on summary judgment, which Defendant is aware of. (Defendant's Motion for Summary Judgment Exhibits A-K.) This shows a substantial lack of novelty in the present case.

The Court finds the lack of complexity and lack of novelty present in the case to require a downward adjustment in the hours reasonably expended. The Court finds a reduction of 10% in the hours expended to be appropriate.

Accordingly, the Court finds hours reasonably expended for Ms. Bell to be 69.2; for Mr. Germany to be 32.9; for Ms. Boutsicaris to be 32.7; for Ms. Pucelik to be 6.5; and for the paralegals combined to be 9.9.

c. Lodestar Amount

With the adjusted number of hours reasonably expended multiplied by the adjusted reasonable hourly fees, the lodestar amount calculated by the Court is $36,124.50.

Once the lodestar amount is determined, that amount may be adjusted upward or downward by application of factors such as "the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, and awards in similar cases." Tallitsch, 926 P.2d at 147. Courts may also consider factors such as public importance and degree of success achieved. Payan, 310 P.3d at 217.

Looking at these factors, the Court finds no further adjustment to be necessary.

1. Complexity

The Court has already made reductions based on the lack of complexity of the case, *supra*. See Payan, 310 P.3d at 220 (ruling that reductions for complexity should be addressed in the court's determination of the reasonable number of hours expended in calculating the lodestar amount, rather than after the lodestar amount has been calculated.)

2. Amount in Controversy

The amount in controversy purported to be over $100,000.00, although such recovery was highly doubtful. Regardless, this is not low enough to warrant an adjustment downward nor high enough to warrant an adjustment upward.

3. Length of Time

This case was active from November 21, 2023 through November 19, 2024, when it was dismissed on summary judgment. This is not a particularly long or particularly short case warranting adjustment in either direction.

4. Degree of Success Achieved

Defendant achieved judgment in its favor on all claims in summary judgment. This success supports allowing a full recovery of the adjusted amount.

5. Public Importance

This case is of some public importance. Plaintiff has repeatedly filed nearly identical lawsuits, including this one, on the same or similar allegations. Thus, a downward adjustment is not warranted, and a significant award hopefully dissuades Plaintiff from further vexatious lawsuits. However, this case is not of great public importance, and as such neither is an upward adjustment warranted. See cf. Payan, 310 P.3d at 223 (citing Shakopee Mdewakanton Sioux Cmty. v. City of Prior Lake, 771 F.2d 1153, 1160 (8th Cir. 1985) ("In rare circumstances the district court can increase a fee award because of the quality of the work performed or the great public

importance of the case.”))

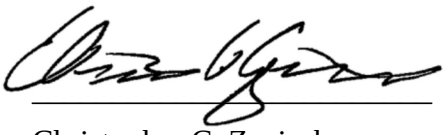
Based on these factors, the Court finds no adjustment to be necessary and finds the lodestar amount of $36,124.50 to be reasonable.

IV. CONCLUSION

For the reasons discussed above, Defendant is awarded attorney fees in its favor and against Plaintiff in the amount of $36,124.50.

Done in Golden, Colorado this 3rd day of June, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 23, 2025 3:24 PM
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy Stores, L.P.	Court of Appeals Case Number: 2025CA810
ORDER OF THE COURT	

To: All Parties

After review of the response to the Court's May 13, 2025 order to show cause, for the reasons set forth in that order, the Court determines that a final, appealable order has not been entered.

IT IS THEREFORE ORDERED that the appeal is DISMISSED, without prejudice, for lack of a final, appealable order.

BY THE COURT
Harris, J.
Brown, J.
Moultrie, J.

2025 JUL 22 PM 3:43

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

FILED
COMBINED COURT
JEFFERSON COUNTY, CO

FILED IN THE
COURT of APPEALS
STATE OF COLORADO

DATE FILED
JUL 22 2025

JUL 22 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. Afterwards, the Judge granted the Defendant's MOTION FOR ATTORNEY FEES. The Defendant then had 21 days from that ORDER to submit its ATTORNEY FEES COMPUTATION, which it failed to do. Instead, the Defedant filed a MOTION FOR EXTENSION OF TIME TO FILE its ATTORNEY FEES COMPUTATION two days after the 21 day deadline had passed. The Judge granted the MFEOTTF, then about a month later, granted the ATTORNEY FEES COMPUTATION, which ultimately required Plaintiff to pay Defendant $36,124.50 in attorney fees. The Judge made errors of fact and/or law when making such rulings, however, and incorrectly granted all motions and computations in contravention of clearly established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDERS granting Defendant's MFAF, MFEOTTF, and AFC. He seeks to have all three ORDERS be **REVERSED** in their entirety.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on (date) June 3, 2025

2. Remaining Issues:

■ All the issues in the case have been decided.

OR

☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

■ Any request for attorney fees and costs have been resolved.

OR

☐ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

■ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

OR

☐ Yes. A post-trial motion was filed on: (date) _____
_____.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

☐ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

☐ The district court ruled on the motion on (date) _____
_____.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

■ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR ATTORNEY FEES?

Did the District Court err in granting Defendant's MOTION FOR EXTENSION OF TIME TO FILE its ATTORNEY FEES COMPUTATION?

Did the District Court err in granting Defendant's ATTORNEY FEES COMPUTATION?

VII. Necessity of Transcript:

■ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

☒ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Lori K. Bell & Sarah K. Vogel

Registration Number: No. 31714 (Bell) & No. 58381 (Vogel)

Name of Law Firm: Montgomery | Amatuzio

Street Address: 720 S Colorado Blvd, Suite 1200-N

City: Denver State: CO Zip: 80246

Phone Number: (303) 592-6600

E-Mail Address: lbell@mac-legal.com & svogel@mac-legal.com

For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: July 22, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) July 22, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: lbell@mac-legal.com & svogel@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
	DATE FILED March 18, 2025 1:15 PM CASE NUMBER: 2023CV226
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **2023CV00226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S MOTION FOR ATTORNEY FEES

THIS MATTER comes before the Court on Defendant Best Buy Stores' motion for attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims. The Court granted summary judgment for, among other things, Shopkeeper's Privilege. The Court also received body camera footage of the alleged detainment from Plaintiff, which showed Defendant's employees asking Plaintiff to return the purported stolen merchandise while they stood near him for several minutes outside the store.

Additionally, the Court received a YouTube video from Defendant that Plaintiff had recorded and uploaded. In this video, Plaintiff explains how he gets "free lawsuits" by going into stores and conducting himself in a manner that could be reasonably construed as suspicious and then suing when employees confront him upon believing he is stealing. Plaintiff has also filed numerous nearly identical cases against other stores around Colorado.[1]

Since the time the Court granted Defendant's motion for summary judgment, Plaintiff has filed at least three additional lawsuits against Best Buy, also alleging claims of false imprisonment: Case No. 2024CV00132 (Adams County District Court), Case No. 2024CV000241 (Jefferson

[1] See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

County District Court), and Case No. 2024CV000242 (Jefferson County District Court).

Defendant filed this motion for attorney fees on December 31, 2024. Plaintiff filed a response and Defendant replied.

II. LEGAL STANDARD

A Colorado court shall award reasonable attorney fees "against any attorney or party who has brought or defended a civil action . . . that the court determines lacked substantial justification" or "was interposed for delay or harassment," or who has "unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures." C.R.S. § 13-17-102(2), (4). "Lacked substantial justification" means "substantially frivolous, substantially groundless, or substantially vexatious." C.R.S. § 13-17-102(9)(a).

Parties appearing pro se shall not be assessed attorney fees "unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense . . . was substantially frivolous, substantially groundless, or substantially vexatious[.]" C.R.S. § 13-17-102(6).

"A claim is frivolous if the proponent has no rational argument to support it based on evidence or the law. A claim is groundless if there is no credible evidence to support the allegations in the complaint. A vexatious claim or defense is one brought or maintained in bad faith." Zivian v. Brooke-Hitching, 28 P.3d 970, 974 (Colo. App. 2001).

"Meritorious actions that prove unsuccessful and good faith attempts to extend, modify, or reverse existing law are not frivolous." City of Aurora v. Colo. State Eng'r, 105 P.3d 595, 620 (Colo. 2005). However, awarding attorney fees is an important sanction against an attorney or party who brings unjustified litigation. Sifton v. Stewart Title Guar. Co., 259 P.3d 542, 546 (Colo. App. 2011).

III. ANALYSIS

Defendant argues that Plaintiff's action was substantially vexatious and that Plaintiff knew or should have known his action was substantially vexatious. The Court agrees.

An action is "substantially vexatious" if "brought or maintained in bad faith to annoy or harass another, and vexatiousness includes conduct that is arbitrary, abusive, stubbornly litigious, or disrespectful of the truth." In re Parental Responsibilities of I.M., 410 P.3d 488, 492 (Colo. App. 2013).

The Court finds that Plaintiff planned this lawsuit before bringing it. (See Defendant's Ex. L, YouTube Video at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting.") On the date of the incident, Plaintiff sought to engage Best Buy in a situation that would result in a lawsuit. To do so, Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous. (Defendant's Ex. O, Google Maps). These purchases were made, at least in part, with the hopes of

baiting the Best Buy stores into confronting Plaintiff. (Defendant's Ex. Q, Deposition at 109:16-111:17). When speaking about his actions on that day, Plaintiff analogized his conduct to that of a police bait car. (Defendant's Ex. Q, Deposition at 35:23-37:5, 45:16-46:9).

Once the lawsuit was underway, the Court finds that Plaintiff continued to maintain the lawsuit in bad faith. Before filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure:

> I'm not going to be so nice next time [I file a lawsuit]. I've already got cases where I have it all set up perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man.

(Defendant's Ex. L, YouTube Video at 17:15-17:55).

During discovery, Plaintiff failed to comply with his Rule 26(a)(1) disclosure requirements and provided evasive discovery responses. Plaintiff omitted his brother from his 26(a)(1) Initial Disclosures, despite stating that his brother spent the entire day of the incident with him. (Defendant's Ex. S, Initial Disclosures; Defendant's Ex. Q, Deposition at 107:13-18). Plaintiff responded to many of Defendant's discovery requests with "I do not recall," despite in later pleadings making definite statements about the same subject matter. (Defendant's Ex. T). This all appears to be purposeful by Plaintiff to provide Defendant with as little information as possible, especially given the context of his earlier statement plotting to refuse to cooperate with opposing counsel.

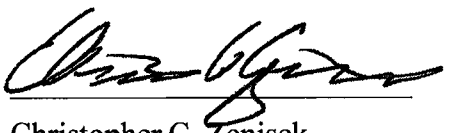
The above facts lead the Court to conclude that Plaintiff brought and maintained this suit in bad faith and, based on his statements in his deposition and YouTube video, knowingly did so. Plaintiff's planning and searching for a lawsuit and failure to cooperate honestly with the discovery process are stubbornly litigious, disrespectful of the truth, and abusive of the court system. For this reason, the Court concludes that attorney fees are justified under C.R.S. § 13-17-102. Additionally, the Court hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts, which he currently appears determined to continue.

IV. CONCLUSION

For the reasons discussed above, Defendant's motion for attorney fees is **GRANTED**. Defendant will be awarded reasonable attorney fees. Defendant Best Buy shall submit its computation within 21 days. Plaintiff may object to reasonableness within the 14 days that follow.

Done in Golden, Colorado this 18th day of March, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

GRANTED BY COURT
05/05/2025

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 5, 2025 12:10 PM CASE NUMBER: 2023CV226 **CHRISTOPHER CLAYTON ZENISEK** **District Court Judge**
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
	Case No.: 2023CV00226 Division: 6

ORDER REGARDING BEST BUY'S MOTION FOR EXTENSION OF TIME

THIS COURT, having reviewed Best Buy's Motion for Extension of Time and finding good cause, hereby GRANTS this Motion. Best Buy is permitted to submit its computation of attorney's fees on or before April 17, 2025.

So ordered on _____, 2025.

_____
Presiding Judge, District Court for Jefferson County, Colorado

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED June 3, 2025 1:21 PM CASE NUMBER: 2023CV226
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY STORES, L.P.**	▲ COURT USE ONLY ▲ Case Number: **2023CV00226** Division: 06 Courtroom: 520

ORDER RE: DEFENDANT'S COMPUTATION OF ATTORNEY FEES

THIS MATTER comes before the Court on Defendant Best Buy Stores' computation of attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store. Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff's claims. The Court granted summary judgment for, among other things, Shopkeeper's Privilege.

Defendant filed a motion for attorney fees on December 31, 2024. The Court granted Defendant's motion and ordered Defendant to submit this computation of attorney fees. (Order re: Defendant's Motion for Attorney Fees 03.18.2025.) Defendant seeks $43,083.00 in total attorney fees.

II. LEGAL STANDARD

"An award of attorney fees must be reasonable." Tallitsch v. Child Support Servs., Inc., 926 P.2d 143, 147 (Colo. App. 1996). "If a statute providing for a fee award does not provide a specific definition of 'reasonableness,' the amount of the award must be determined in light of all the circumstances, based upon the time and effort reasonably expended by the prevailing party's attorney." Id.

In assessing reasonableness of attorney fees, courts first calculate a lodestar amount "by multiplying the number of hours reasonably expended by a reasonable hourly fee." Tallitsch, 926 P.2d at 148. A "court then has discretion to make upward or downward adjustments to the lodestar

amount based on factors set forth in Colo. RPC 1.5(a)." S. Colorado Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein, 343 P.3d 1044, 1049 (Colo. App. 2014). Colorado Rule of Professional Conduct 1.5(a) contains a non-exhaustive list of factors that can be utilized to determine the reasonableness of fees.

III. ANALYSIS

The Court granted Defendant's request for reasonable attorney fees on March 18, 2025. (Order re: Defendant's Motion for Attorney Fees 03.18.2025.) Defendant now requests $43,083.00 in attorney fees.

Defendant requests (1) $22,685.50 for 76.9 hours of work by Lori K. Bell at $295 per hour; (2) $9,150.00 for 36.6 hours of work by Glenn D. Germany at $250 per hour; (3) $8,167.50 for 36.3 hours of work by Stephanie E. Boutsicaris at $225 per hour; (4) $1,980.00 for 7.2 hours of work by Mary B. Pucelik at $275 per hour; and (5) $1,100 for 11 hours of work by three paralegals at $100 per hour. Defendant has provided a 2017 economic survey from the Colorado Bar Association ("CBA Survey") for reference.

a. Reasonable Hourly Fees

i. Mary B. Pucelik, Glenn D. Germany, and Stephanie E. Boutsicaris

Defendant contends that $275 per hour, $250 per hour, and $225 per hour are reasonable for private practitioners with 30-39 years of practicing law, 10-19 years of practicing law, and 5-9 years of practicing law respectively. The CBA Survey does support the contention that these are the average billing rates for Colorado attorneys with similar years of experience. (Defendant's Exhibit B, CBA Survey at 37.)

However, the CBA Survey also shows that the average billing rate decreases slightly to $225 per hour for law firms that have 10-19 attorneys, and also decreases to $225 per hour for attorneys who primarily practice civil litigation. (Defendant's Exhibit B, CBA Survey at 37, 38.) Additionally, the CBA Survey shows that attorneys located in Denver bill an average of $250 per hour. (Id. at 37.)

In light of these circumstances, the Court finds that a reasonable hourly rate should be adjusted slightly downward, from $275, $250, and $225, to $250, $230, and $225. This adjustment takes into consideration not only the attorneys' years of experience, but also field of practice, firm size, and geographic location.

Thus, the Court finds a reasonable hourly rate for Ms. Pucelik to be $250, for Mr. Germany to be $230, and for Ms. Boutsicaris to be $225.

ii. *Lori K. Bell*

Defendant contends that $295 per hour is a reasonable rate for a partner at a private firm in Colorado.

The CBA Survey supports the contention that $290 per hour is the average billing rate for a partner at a private firm in Colorado with 20-29 years of practicing law. (Defendant's Exhibit B, CBA Survey at 64.) However, for the reasons explained above, the Court finds it appropriate to adjust slightly downward in consideration of the field of practice, firm size, and geographic location. Accordingly, the Court finds a reasonable hourly rate for Ms. Bell to be $270 per hour.

iii. *Paralegals*

Defendant contends that $100 per hour is a reasonable market rate for a paralegal.

Three paralegals worked on this case: Katie Salazar, Jaime Gress, and Abigail Spohn. Defendant does not say how many years of experience any of these paralegals have. As such, the Court will use the average billing rate for paralegals with less than one year of experience. In Denver, the average billing rate for paralegals with less than one year of experience is $90. (Defendant's Exhibit B, CBA Survey at 85.)

Accordingly, the Court finds a reasonable hourly rate for Ms. Salazar, Ms. Gress, and Ms. Spohn to be $90 per hour.

b. Hours Reasonably Expended

Defendant contends the attorneys and paralegals involved this action spent a total of 168 hours working on this case, including roughly 77 hours by an equity partner in the firm.

The Court has discretion to adjust the reasonable hours expended based on the complexity of the case. Payan v. Nash Finch Co., 310 P.3d 212, 220-222 (Colo. App 2012). One factor to consider when determining a reasonable fee award is "the novelty and difficulty of the questions involved." Colo. RPC 1.5(a)(1).

Although the Court acknowledges Plaintiff's litigiousness, this case was a relatively straightforward tort case against a pro se plaintiff that was dismissed on summary judgment. The questions involved were not particularly novel, complex, nor difficult. Additionally, Plaintiff has brought substantially this same case repeatedly, several of which have already been dismissed on summary judgment, which Defendant is aware of. (Defendant's Motion for Summary Judgment Exhibits A-K.) This shows a substantial lack of novelty in the present case.

The Court finds the lack of complexity and lack of novelty present in the case to require a downward adjustment in the hours reasonably expended. The Court finds a reduction of 10% in the hours expended to be appropriate.

Accordingly, the Court finds hours reasonably expended for Ms. Bell to be 69.2; for Mr. Germany to be 32.9; for Ms. Boutsicaris to be 32.7; for Ms. Pucelik to be 6.5; and for the paralegals combined to be 9.9.

c. Lodestar Amount

With the adjusted number of hours reasonably expended multiplied by the adjusted reasonable hourly fees, the lodestar amount calculated by the Court is $36,124.50.

Once the lodestar amount is determined, that amount may be adjusted upward or downward by application of factors such as "the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, and awards in similar cases." Tallitsch, 926 P.2d at 147. Courts may also consider factors such as public importance and degree of success achieved. Payan, 310 P.3d at 217.

Looking at these factors, the Court finds no further adjustment to be necessary.

1. Complexity

The Court has already made reductions based on the lack of complexity of the case, *supra.* See Payan, 310 P.3d at 220 (ruling that reductions for complexity should be addressed in the court's determination of the reasonable number of hours expended in calculating the lodestar amount, rather than after the lodestar amount has been calculated.)

2. Amount in Controversy

The amount in controversy purported to be over $100,000.00, although such recovery was highly doubtful. Regardless, this is not low enough to warrant an adjustment downward nor high enough to warrant an adjustment upward.

3. Length of Time

This case was active from November 21, 2023 through November 19, 2024, when it was dismissed on summary judgment. This is not a particularly long or particularly short case warranting adjustment in either direction.

4. Degree of Success Achieved

Defendant achieved judgment in its favor on all claims in summary judgment. This success supports allowing a full recovery of the adjusted amount.

5. Public Importance

This case is of some public importance. Plaintiff has repeatedly filed nearly identical lawsuits, including this one, on the same or similar allegations. Thus, a downward adjustment is not warranted, and a significant award hopefully dissuades Plaintiff from further vexatious lawsuits. However, this case is not of great public importance, and as such neither is an upward adjustment warranted. See cf. Payan, 310 P.3d at 223 (citing Shakopee Mdewakanton Sioux Cmty. v. City of Prior Lake, 771 F.2d 1153, 1160 (8th Cir. 1985) ("In rare circumstances the district court can increase a fee award because of the quality of the work performed or the great public

importance of the case."))

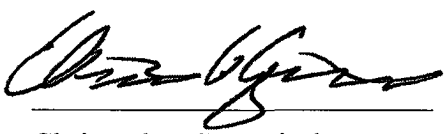
Based on these factors, the Court finds no adjustment to be necessary and finds the lodestar amount of $36,124.50 to be reasonable.

IV. CONCLUSION

For the reasons discussed above, Defendant is awarded attorney fees in its favor and against Plaintiff in the amount of $36,124.50.

Done in Golden, Colorado this 3rd day of June, 2025.

BY THE COURT:



Christopher C. Zenisek
District Court Judge

2025 JUL 22 PM 3:43

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

FILED
COMBINED COURT
JEFFERSON COUNTY, CO

DATE FILED
July 22, 2025

FILED IN THE
COURT of APPEALS
STATE OF COLORADO

JUL 22 2025

Clerk, Court of Appeals

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

▲ FOR COURT USE ▲

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

Court of Appeals' Case Number:

Designation of Record

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

Documents to Send

Please send my entire case file to the Court of Appeals. Please include:

1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
4. If a trial was held, all jury instructions, verdict forms, and answers to any special interrogatories.

Transcripts

1. Transcripts Needed:

☒ A transcript is not needed to review the issues on appeal.

OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: July 22, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) July 22, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: lbell@mac-legal.com & svogel@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 23, 2025 12:39 PM DATE FILED: July 23, 2025
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy Stores, L.P.	Court of Appeals Case Number: 2025CA1351
ADVISEMENT OF FILING NOTICE OF APPEAL	

A Notice of Appeal was filed on 07/22/25 in the case designated above. Include the Court of Appeals case number on all future pleadings and the record on appeal.

Please note that this document is advisory only and does not serve as confirmation that this court has jurisdiction or that all jurisdictional requirements have been met.

Also note that the Court of Appeals is statutorily required to advance industrial claim and juvenile appeals on its calendar. The court will expect counsel, pro-se parties and court reporters to meet all filing deadlines set forth by the Colorado Appellate Rules or by court order. In order to comply with the statutes and avoid unnecessary delay, motions to enlarge the time for filing the record on appeal or the briefs will generally be denied unless extremely compelling reasons are clearly demonstrated.

Required Filings:

The clerk of the trial court will transmit the record to the Court of Appeals. If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a **designation of transcripts** with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of

appeal. The record will be transmitted without transcripts unless appellant complies with C.A.R. 10(d).

The record on appeal is due 09/23/25.

TIFFANY MORTIER
CLERK OF THE COURT OF APPEALS
DATE: 07/23/25

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED August 11, 2025 12:41 PM
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy Stores, L.P.	Court of Appeals Case Number: 2025CA810
MANDATE	

This proceeding was presented to this Court on appeal from Jefferson County.

Upon consideration thereof, the Court of Appeals hereby ORDERS that the **APPEAL** is **DISMISSED without prejudice.**

TIFFANY MORTIER
CLERK OF THE COURT OF APPEALS

DATE: AUGUST 11, 2025

I N T E G R A T E D C O L O R A D O O N L I N E N E T W O R K (I C O N)

Status: CLSD District Court, Jefferson County
Case #: 2023 CV 000226 Div/Room: 6 Type: Other
MONTGOMERY, WILLIAM vs. BEST BUY STORES L.P.

DV STATUS:
Case File Date: 11/21/2023 Case Close Date: 11/19/2024 Appealed: Y
Confidential Intermediary.....:

	Bar #	Name
Judicial Off...:	034093	CHRISTOPHER CLAYTON ZENISEK
Alt Jud Officer:	000000	

	Description	Stat	Date	Time	Appear	Rm/
Trial.....:	Jury Trial	VACT	1/30/2025	8:00 A	P	
Next Schd Event:				0:00		
Last Schd Event:	Review	IRVH	6/20/2025	6:00 A		
Last Event.....:	Mandate from Appeals Court	n/a	8/11/2025			

Attorney(s)....: Y +

Judgements.....:Y
Motions Filed.....:Y

Amount Prayed for.....: .00

Jury Fee Paid.....:Y

----- PARTIES -----

PARTY	ROL	STS	NAME	ATTORNEY	ROL
DEF	1		BEST BUY STORES L.P.	BELL, LORI K et al	PRV
			Home Address.....: 9369 SHERIDAN BLVD		
			: WESTMINISTER, CO 80031		
PTF	1		MONTGOMERY, WILLIAM		
			Cell Phone.....: (970) 412-5463		
			Home Address.....: 2443 S UNIVERSITY BLVD		
			: NO 129		
			: DENVER, CO 80210		

FILE DATE	EVENT DESCRIPTION		
11/21/2023	Motn-Proceed In Forma Pauperis	Event ID: 000002	E-Filed: J
	PTF/ MONTGOMERY, WILLIAM		
Motion to Proceed in Forma Pauperis			
11/21/2023	Order	Event ID: 000003	E-Filed: J
re MIFP - GRANTED			
11/21/2023	Complaint & Jury Demand	Event ID: 000001	E-Filed: J
	PTF/ MONTGOMERY, WILLIAM		
Complaint w/Jury Demand			
11/21/2023	Summons-Issued	Event ID: 000004	E-Filed: J
Summons - Issued for Best Buy Stores LP			
11/21/2023	Civil Case Cover Sheet	Event ID: 000005	E-Filed: J
	PTF/ MONTGOMERY, WILLIAM		
District Civil Case Cover Sheet			
11/22/2023	Order	Event ID: 000006	E-Filed: J
Ruling: SO ORDERED, Document Title: Civil Procedure Order			
1/24/2024	Order	Event ID: 000007	E-Filed: J
Ruling: SO ORDERED, Document Title: Delay Prevention Order			

FILE DATE EVENT DESCRIPTION
2/08/2024 Answer & Jury Demand Event ID: 000008 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendant Best Buy Stores, L.P. Answer to Plaintiff's Complaint and Jury Demand Under Simplified Civil Procedure 68131FB2BFA68
2/08/2024 Exhibit-Attach to Pleading/Doc Event ID: 000009 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit 1 - Montgomery v. Walmart 68131FB2BFA68
FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
2/09/2024 Review 2/28/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ROS?
2/20/2024 Affidavit Event ID: 000010 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Affidavit OF SERVICE - REGISTERD AGENT SAMANTHA PECK
2/26/2024 Order Event ID: 000011 E-Filed: J
Ruling: SO ORDERED, Document Title: Delay Prevention Order
2/27/2024 Notice Filed Event ID: 000012 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice to Set Case Management Conference F38AC4156EBD2
3/07/2024 Notice Filed Event ID: 000013 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Case Management Conference 1E91B9986547B
3/27/2024 Minute Order (print) Event ID: 000014 E-Filed: N
3/27/24 11:00 AM CTRM 520
CCZ/RAW/FTR DIGITAL
PLAINTIFF APPEARS PRO SE VIA TELEPHONE. ATTY GLEN GERMANY APPEARS VIA WEBEX FOR DEFENDANT.
THE PARTIES ARE SET FOR CASE MANAGEMENT CONFERENCE. PLAINTIFF ANTICIPATES DAMAGES TO EXCEED $100K AND THE CASE SHALL BE CONVERTED TO RULE 16, NON-SIMPLIFIED PROCEDURE. THREE-DAY JURY TRIAL IS SET FOR OCTOBER 22, 2024 TO START AT 8:00 AM. A SECOND CASE MANAGEMENT CONFERENCE IS SET FOR APRIL 16, 2024 AT 8:30 AM. /RAW
3/27/2024 Case Management Conference 3/27/2024 11:00 AM 520 V
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: HCNT-Held and Continued
4/01/2024 PROPOSED CASE MANAGEMENT ORDER Event ID: 000015 E-Filed: J
DEF/ BEST BUY STORES L.P.
Case Management 2E96271772EE5
Related Event ORDR Order 4/16/2024
4/16/2024 Minute Order (print) Event ID: 000016 E-Filed: N
4/16/24 8:30 AM CTRM 520
CCZ/RAW/FTR DIGITAL
PLAINTIFF APPEARS VIRTUALLY PRO SE. ATTY GLENN GERMANY APPEARS VIRTUALLY FOR DEF.
ATTY GERMANY'S AUDIO WAS NOT FUNCTIONING. THE COURT SHALL ENTER WRITTEN ORDERS BASED ON THE PROPOSED CASE MANAGEMENT ORDER. /RAW
4/16/2024 Order Event ID: 000017 E-Filed: J
Ruling: GRANTED WITH AMENDMENTS, Document Title: Order:Case Management
Related Event PCMO PROPOSED CASE MANAGEMENT ORDER 4/01/2024
4/16/2024 Case Management Conference 4/16/2024 08:30 AM 520 V
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: HELD-Hearing Held
4/22/2024 Notice Filed Event ID: 000018 E-Filed: J
DEF/ BEST BUY STORES L.P.

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
Notice of Firm Name Change DD8FCC30C3BEB
5/15/2024 Proposed Order Event ID: 000019 E-Filed: J
DEF/ BEST BUY STORES L.P.
RE Defendant Best Buy LPs Unopposed Motion to Continue Jury Trial
8E7B30EB9C1A1
5/15/2024 Motion Event ID: 000020 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendant Best Buy LPs Unopposed Motion to Continue Jury Trial 8E7B30EB9C1A1
Related Event ORDR Order 6/14/2024
6/14/2024 Order Event ID: 000021 E-Filed: J
Ruling: DENIED IN PART, Document Title: Order:Defendant Best Buy LPs Unopposed
Motion to Continue Jury Trial
Related Event MOTN Motion 5/15/2024
6/20/2024 Notice Filed Event ID: 000022 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Status Conference on August 1, 2024 at 1pm C8B5230210041
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000023 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit K A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000024 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit J A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000025 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit I A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000026 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit H A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000027 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit G A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000028 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit F A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000029 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit E A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000030 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit D A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000031 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit C A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000032 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit B A46C24775778C
7/23/2024 Exhibit-Attach to Pleading/Doc Event ID: 000033 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit A A46C24775778C
7/25/2024 Proposed Order Event ID: 000034 E-Filed: J
DEF/ BEST BUY STORES L.P.
re Defendant Best Buy, L.P.'s Motion for Summary Judgment C0C33CA6CD526
7/25/2024 Motion for Summary Judgment Event ID: 000035 E-Filed: J
DEF/ BEST BUY STORES L.P.

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
Defendant Best Buy, L.P.'s Motion for Summary Judgment C0C33CA6CD526
8/01/2024 Status Conference 8/01/2024 01:00 PM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: VACT-Vacated
8/02/2024 Notice Filed Event ID: 000036 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Status Conference 8D1365AD35DC7
8/09/2024 Minute Order (print) Event ID: 000038 E-Filed: N
8/9/24 1:00 PM CTRM 520
CCZ/RAW/FTR DIGITAL
PLAINTIFF APPEARS IN PERSON PRO SE. ATTY GLENN GERMANY APPEARS IN PERSON FOR DEF.
PARTIES APPEAR FOR A STATUS CONFERENCE. PARTIES ADDRESS DEFENSE UNOPPOSED MOTION TO MOVE TRIAL DATE. THREE-DAY TRIAL IS CONTINUED TO JANUARY 28, 2025, TO BEGIN AT 8 AM. IN-PERSON PRETRIAL CONFERENCE IS SET FOR DECEMBER 13, 2024 AT 1:30 PM. COURT ADJUSTS DISCOVERY DEADLINES ACCORDING TO THE CONTINUED TRIAL DATE. PLAINTIFF HAS NOT BEEN SERVED WITH DEFENSE MOTION FOR SUMMARY JUDGMENT AND IS INSTRUCTED TO CONFER AND REQUEST ADDITIONAL TIME TO FILE A RESPONSE IF DESIRED. /RAW
8/09/2024 Jury Trial 10/22/2024 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: CONT-Continued by Parties
8/09/2024 Jury Trial 10/23/2024 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: VACT-Vacated
8/09/2024 Jury Trial 10/24/2024 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: VACT-Vacated
8/09/2024 Review 8/09/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: RESP MTN SJ
8/09/2024 Status Conference 8/09/2024 01:00 PM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: HELD-Hearing Held
8/12/2024 Motion Event ID: 000039 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ and Ptf's Own Cross MSJ
Related Event ORDR Order 8/21/2024
8/12/2024 Exhibit-Attach to Pleading/Doc Event ID: 000040 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Exhibits to Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ and Ptf's Own Cross MSJ
8/21/2024 Order Event ID: 000041 E-Filed: J
Ruling: GRANTED, Document Title: Order:Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ and Ptf's Own Cross MSJ
Related Event MOTN Motion 8/12/2024
9/19/2024 Exhibit-Attach to Pleading/Doc Event ID: 000048 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Exhibit 6
Related Event RSPN Response 9/19/2024
9/19/2024 Exhibit-Attach to Pleading/Doc Event ID: 000049 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Exhibit 7

FILE DATE	SCHEDULED EVENT DESCRIPTION	SCHD DATE	TIME	ROOM	APPEAR
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000050			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 8					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000051			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 9					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000052			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 10					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000053			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 11					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000054			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 12					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000055			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 13					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000056			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 14					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000043			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 1					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000044			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 2					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000045			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 3					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000046			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 4					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000047			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 5					
	Related Event RSPN Response				9/19/2024
9/19/2024	Exhibit-Attach to Pleading/Doc	Event ID: 000057			E-Filed: J
	PTF/ MONTGOMERY, WILLIAM				
Exhibit 15					
	Related Event RSPN Response				9/19/2024
9/19/2024	Response	Event ID: 000042			E-Filed: J

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR

PTF/ MONTGOMERY, WILLIAM

Plaintiff's Response in Opposition to Defendant's MSJ

Related Event EXHB Exhibit-Attach to Pleading/Doc 9/19/2024

9/19/2024 Motion Event ID: 000058 E-Filed: J

PTF/ MONTGOMERY, WILLIAM

Motion to Exceed Page Limitation Regarding Plaintiff's Response to Def Motion for Summary Judgment

Related Event ORDR Order 10/11/2024

9/19/2024 Filing Other Event ID: 000059 E-Filed: J

PTF/ MONTGOMERY, WILLIAM

Transcript of Plaintiff's Bodycam Footage of the Event

9/19/2024 Affidavit Event ID: 000060 E-Filed: J

PTF/ MONTGOMERY, WILLIAM

Plaintiff's Affidavit of the Event

9/19/2024 Motion Event ID: 000061 E-Filed: J

PTF/ MONTGOMERY, WILLIAM

Motion to/for Submit Video Exhibit for Plaintiff's C-MSJ

Related Event ORDR Order 10/11/2024

9/19/2024 Motion Event ID: 000062 E-Filed: J

PTF/ MONTGOMERY, WILLIAM

Plaintiff's Cross-Motion for Summary Judgment

9/20/2024 Review 9/23/2024 06:00 AM 520 N

Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)

Status.: IRVH-Internal Review Held Note..: MSJ RESP DUE

10/03/2024 Proposed Order Event ID: 000063 E-Filed: J

DEF/ BEST BUY STORES L.P.

re Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for Its Motion for Summary Judgment - Proposed Order B80C133A1B547

Related Event ORDR Order 10/04/2024

10/03/2024 Motion Event ID: 000064 E-Filed: J

DEF/ BEST BUY STORES L.P.

Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for Its Motion for Summary Judgment B80C133A1B547

10/04/2024 Order Event ID: 000065 E-Filed: J

Ruling: GRANTED, Document Title: Order: re Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for Its Motion for Summary Judgment - Proposed Order- Granted

Related Event PORD Proposed Order 10/03/2024

10/04/2024 Review 10/04/2024 06:00 AM 520 N

Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)

Status.: IRVH-Internal Review Held Note..: MSJ REPLY DUE

10/04/2024 Review 10/11/2024 06:00 AM 520 N

Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)

Status.: IRVH-Internal Review Held Note..: MEOT GRANTED?

10/10/2024 Reply Event ID: 000066 E-Filed: J

DEF/ BEST BUY STORES L.P.

Defendant Best Buy L.P.'s Reply Brief in Support of Its Motion for Summary Judgment 83539DA87E72E

10/10/2024 Response Event ID: 000067 E-Filed: J

DEF/ BEST BUY STORES L.P.

DEFENDANT BEST BUY LPS RESPONSE TO PLAINTIFFS CROSS MOTION FOR SUMMARY JUDGMENT 836F1066A19D7

10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000068 E-Filed: J

DEF/ BEST BUY STORES L.P.

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
Exhibit P - Attach to Pleading/Doc 83539DA87E72E
10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000069 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit O - Attach to Pleading/Doc 83539DA87E72E
10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000070 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit N - Attach to Pleading/Doc 83539DA87E72E
10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000071 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit P - Attach to Pleading/Doc 836F1066A19D7
10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000072 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit O - Attach to Pleading/Doc 836F1066A19D7
10/10/2024 Exhibit-Attach to Pleading/Doc Event ID: 000073 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit N - Attach to Pleading/Doc 836F1066A19D7
10/11/2024 Order Event ID: 000074 E-Filed: J
Ruling: GRANTED, Document Title: Order: Motion to Exceed Page Limitation Regarding Plaintiff's Response to Def Motion for Summary Judgment- Granted
Related Event MOTN Motion 9/19/2024
10/11/2024 Order Event ID: 000075 E-Filed: J
Ruling: GRANTED, Document Title: Order:Motion to/for Submit Video Exhibit for Plaintiff's C-MSJ
Related Event MOTN Motion 9/19/2024
10/11/2024 Review 10/11/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: MSJ RESP DUE
10/11/2024 Review 10/11/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: MSJ REPLY DUE
10/14/2024 Substitution of Counsel Event ID: 000076 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Substitution of Counsel 776442976EE55
10/14/2024 Notice Filed Event ID: 000077 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Deposit 776442976EE55
10/21/2024 Motion Event ID: 000078 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Motion for extension of time to file ptfs reply to defs response to ptfs cross msj
Related Event ORDR Order 10/28/2024
10/22/2024 JTRL DISPO-CONTINUED Event ID: 000037 E-Filed: N
10/25/2024 Review 10/25/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: MSJ REPLY DUE
10/28/2024 Order Event ID: 000079 E-Filed: J
Ruling: GRANTED, Document Title: Order:Motion for extension of time to file ptfs reply to defs response to ptfs cross msj
Related Event MOTN Motion 10/21/2024
10/28/2024 Reply Event ID: 000080 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
plaintiff's reply to defendant's response to plaintiff's cross motion for summary judgment
10/28/2024 Affidavit Event ID: 000081 E-Filed: J

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
PTF/ MONTGOMERY, WILLIAM
plaintiffs second Affidavit
10/28/2024 Motion Event ID: 000082 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Motion to exceed page limitation regarding ptfs reply to defs response to ptfs cross msj
Related Event ORDR Order 10/29/2024
10/28/2024 Notice Filed Event ID: 000083 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Notice of conventionally submitted material in plaintiff's cross-motion for summary judgement
10/29/2024 Order Event ID: 000084 E-Filed: J
Ruling: GRANTED IN PART, Document Title: Order:Motion to exceed page limitation regarding ptfs reply to defs response to ptfs cross msj
Related Event MOTN Motion 10/28/2024
10/29/2024 Exhibit-Attach to Pleading/Doc Event ID: 000085 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit A 6A8B6AEC8C75D
10/29/2024 Response Event ID: 000086 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendant's Response In Opposition to Plaintiff's Motion to Exceed Page Limitation 6A8B6AEC8C75D
10/29/2024 Review 11/01/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: EX MSJ REPLY?
10/31/2024 Motion Event ID: 000087 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Unopposed Motion to Strike and Replace PTF's Reply to DEF's Response to PTF's Cross-MSJ
Related Event ORDR Order 11/01/2024
10/31/2024 Reply Event ID: 000088 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Plaintiff's Amended Reply to Defendant's Response to Plaintiffs Cross-Motion for Summary Judgment
11/01/2024 Order Event ID: 000089 E-Filed: J
Ruling: GRANTED, Document Title: Order: Unopposed Motion to Strike and Replace PTF's Reply to DEF's Response to PTF's Cross-MSJ- Granted
Related Event MOTN Motion 10/31/2024
11/19/2024 Order Event ID: 000090 E-Filed: J
Ruling: GRANTED IN PART, Document Title: Order re: Cross Motions for Summary Judgment
11/19/2024 Dismissed with Prejudice Event ID: 000091 E-Filed: N
11/19/2024 Case Closed-Case Dismissed Event ID: 000092 E-Filed: N
11/19/2024 Jury Trial 1/28/2025 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: VACT-Vacated
11/19/2024 Jury Trial 1/29/2025 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: VACT-Vacated
11/19/2024 Jury Trial 1/30/2025 08:00 AM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Day(s)
Status.: VACT-Vacated
11/19/2024 Pre-Trial Conference 12/13/2024 01:30 PM 520 P
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
Status.: VACT-Vacated
11/19/2024 Review 12/27/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: JTPO
12/03/2024 Motion Event ID: 000094 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Plaintiff's Motion for Reconsideration
Related Event ORDR Order 1/06/2025
12/03/2024 Bill of Costs Event ID: 000095 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendant Best Buy's Bill of Costs 3D4170597226B
12/24/2024 Response Event ID: 000096 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendants Response in Opposition to Plaintiffs Motion to Reconsider
DAE3078861E78
12/31/2024 Reply Event ID: 000097 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
plaintiffs reply to defendants Response to plaintiffs motion for
reconsideration
12/31/2024 Exhibit-Attach to Pleading/Doc Event ID: 000098 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit A - Tarpill 6839F1725E76C
12/31/2024 Exhibit-Attach to Pleading/Doc Event ID: 000099 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit T - Plaintiff's Response to Defendant's First DRQs AE8C1B44FE6D0
12/31/2024 Exhibit-Attach to Pleading/Doc Event ID: 000100 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit S - Plaintiff's Initial Disclosures AE8C1B44FE6D0
12/31/2024 Exhibit-Attach to Pleading/Doc Event ID: 000101 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit R - Plaintiff's Email to Best Buy AE8C1B44FE6D0
12/31/2024 Exhibit-Attach to Pleading/Doc Event ID: 000102 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit Q - Plaintiff's Deposition AE8C1B44FE6D0
12/31/2024 Notice Filed Event ID: 000103 E-Filed: J
DEF/ BEST BUY STORES L.P.
Notice of Clerical Error 6839F1725E76C
12/31/2024 Proposed Order Event ID: 000104 E-Filed: J
DEF/ BEST BUY STORES L.P.
re Best Buy's Motion for Attorneys' Fees AE8C1B44FE6D0
12/31/2024 Motion Event ID: 000105 E-Filed: J
DEF/ BEST BUY STORES L.P.
Best Buy's Motion for Attorneys' Fees AE8C1B44FE6D0
1/02/2025 Review 12/27/2024 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: BOC RESPONSE?
1/06/2025 Order Event ID: 000106 E-Filed: J
Ruling: DENIED, Document Title: Order:Plaintiff's Motion for Reconsideration
Related Event MOTN Motion 12/03/2024
1/07/2025 Order Event ID: 000107 E-Filed: J
Ruling: GRANTED, Document Title: Order re: Defendant Best Buy's Bill of Costs
1/07/2025 Review 2/04/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: BOC ORDER?

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR

1/08/2025 Order Event ID: 000108 E-Filed: J
Ruling: GRANTED, Document Title: Amended Order re: Defendant Best Buy's Bill of Costs

1/21/2025 Response Event ID: 000117 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Plaintiff's Response to Defendant's Motion for Attorney Fees

1/21/2025 Motion Event ID: 000109 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Plaintiff's Second Motion for Reconsideration Plaintiff's Second Motion for Reconsideration
Related Event ORDR Order 2/18/2025

1/22/2025 Filing Other Event ID: 000110 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
plaintiffs rule 26 first supplemental disclosures

1/22/2025 Review 1/22/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ATTY FEES RESP?

1/28/2025 Reply Event ID: 000111 E-Filed: J
DEF/ BEST BUY STORES L.P.
Defendants Reply in Support of Its Motion for Attorneys Fees 8876596187646

1/30/2025 JTRL DISPO-DISMISSED Event ID: 000093 E-Filed: N

2/07/2025 Response Event ID: 000112 E-Filed: J
DEF/ BEST BUY STORES L.P.
Best Buy's Response In Opposition to Plaintiff's Second Motion for Reconsideration 9CF81A9F9BC44

2/14/2025 Reply Event ID: 000113 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Ptf's Reply to Def's Response to Ptf's Second Motion for Reconsideration

2/18/2025 Order Event ID: 000114 E-Filed: J
Ruling: DENIED, Document Title: Order:Plaintiff's Second Motion for Reconsideration
Related Event MOTN Motion 1/21/2025

2/24/2025 Order Event ID: 000116 E-Filed: J
Order re Court Fees

2/24/2025 Motn-Proceed In Forma Pauperis Event ID: 000115 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Motion to Proceed in Forma Pauperis

2/24/2025 Notice of Appeal Filed Event ID: 000118 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Notice of Appeal

2/24/2025 Designation Record/Transcript Event ID: 000119 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Designation of Record or Transcript on Appeal

2/25/2025 Advisory Notc of filing NAPF Event ID: 000120 E-Filed: J
IMP/ NON-PARTY
Advisement of Filing Notice of Appeal (25CA327)

2/28/2025 Proposed Order Event ID: 000121 E-Filed: J
DEF/ BEST BUY STORES L.P.
re Motion to Reconsider The Court's Order re Court Fees 9E24B489365C6

2/28/2025 Motion Event ID: 000122 E-Filed: J
DEF/ BEST BUY STORES L.P.
Motion to Reconsider The Court's Order re Court Fees 9E24B489365C6
Related Event ORDR Order 3/31/2025

2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000123 E-Filed: J

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR
DEF/ BEST BUY STORES L.P.
Exhibit G - Plaintiffs Black Friday Purchase History 2023 and Map 9E24B489365C6
2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000124 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit F - Plaintiffs Black Friday Purchase History 2022 and Map 9E24B489365C6
2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000125 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit E - Plaintiffs Other Complaints Against Best Buy 9E24B489365C6
2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000126 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit D - Compilation of Pleadings from Walmart Lawsuits 9E24B489365C6
2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000127 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit C - Excerpts from Plaintiffs Deposition 9E24B489365C6
2/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000128 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit B - Plaintiffs Reddit Posts 9E24B489365C6
3/10/2025 Minute Order (No Print) Event ID: 000129 E-Filed: N
One USB with exhibits to Motion to reconsider the Court's Order RE Court Fees put in Division 6's mailbox.
3/18/2025 Order Event ID: 000131 E-Filed: J
Ruling: GRANTED, Document Title: Amended Order re: Defendant's Motion for Attorney Fees
3/18/2025 Deleted Event Event ID: 000130 E-Filed: J
Ruling: GRANTED, Document Title: Item Deleted
3/18/2025 Review 3/21/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ATTY FEES ORDER?
3/21/2025 Response Event ID: 000132 E-Filed: J
PTF/ MONTGOMERY, WILLIAM
Plaintiff's Response to Defendant Best Buy's Motion to Reconsider The Order Re: Court Fees
3/28/2025 Reply Event ID: 000133 E-Filed: J
DEF/ BEST BUY STORES L.P.
Best Buys Reply in Support of Its Motion to Reconsider the Courts Order Re Court Fees 951911FE69D8D
3/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000134 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit I 951911FE69D8D
3/28/2025 Exhibit-Attach to Pleading/Doc Event ID: 000135 E-Filed: J
DEF/ BEST BUY STORES L.P.
Exhibit H 951911FE69D8D
3/31/2025 Order Event ID: 000136 E-Filed: J
Ruling: DENIED, Document Title: Order:Motion to Reconsider The Court's Order re Court Fees
Related Event MOTN Motion 2/28/2025
4/10/2025 Proposed Order Event ID: 000137 E-Filed: J
DEF/ BEST BUY STORES L.P.
Re Best Buy's Motion for Extension of Time 9FE0579D1CA15
Related Event ORDR Order 5/05/2025
4/10/2025 Motion Event ID: 000138 E-Filed: J
DEF/ BEST BUY STORES L.P.

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR

Best Buy's Motion for Extension of Time 9FE0579D1CA15

4/10/2025 Review 4/09/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: COMPUTATION?

4/10/2025 Review 4/23/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: VACT-Vacated Note..: COMP RESPONSE?

4/16/2025 Exhibit-Attach to Pleading/Doc Event ID: 000139 E-Filed: J
DEF/ BEST BUY STORES L.P.

Exhibit B - 2017 Economic Survey 194CDB1B766E3

4/16/2025 Exhibit-Attach to Pleading/Doc Event ID: 000140 E-Filed: J
DEF/ BEST BUY STORES L.P.

Exhibit A - Computation of Attorney Fees 194CDB1B766E3

4/16/2025 Affidavit Event ID: 000141 E-Filed: J
DEF/ BEST BUY STORES L.P.

Affidavit of Stephanie Boutsicaris Concerning Attorney's Fees 194CDB1B766E3

4/28/2025 Ntc Electronic Rcd Cert COA/SC Event ID: 000142 E-Filed: J

Notice of Electronic Record Certified to COA (25CA327)

5/01/2025 Response Event ID: 000143 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Plaintiff's Response to Defendant's Motion for Extension of Time to File Attorney Fee Computation

Related Event EXHB Exhibit-Attach to Pleading/Doc 5/01/2025

5/01/2025 Exhibit-Attach to Pleading/Doc Event ID: 000144 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Exhibit - Attach to Pleading/Doc

Related Event RSPN Response 5/01/2025

5/05/2025 Order Event ID: 000145 E-Filed: J

Ruling: GRANTED, Document Title: Order: Re Best Buy's Motion for Extension of Time- Granted

Related Event PORD Proposed Order 4/10/2025

5/05/2025 Review 5/09/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ATTY FEES???

5/06/2025 Notice of Appeal Filed Event ID: 000146 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Notice of Appeal

5/06/2025 Designation Record/Transcript Event ID: 000147 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Designation of Record

5/06/2025 Notice of Appeal Filed Event ID: 000148 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Notice of Appeal

5/06/2025 Designation Record/Transcript Event ID: 000149 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Designation of Record

5/07/2025 Advisory Notc of filing NAPF Event ID: 000150 E-Filed: J
IMP/ NON-PARTY

Advisory Notice - NAPF (25CA810)

5/15/2025 Notice of Appeal Filed Event ID: 000151 E-Filed: J
DEF/ BEST BUY STORES L.P.

Notice of Appeal by Best Buy Stores, L.P. F8B7BE4472B42

5/15/2025 Exhibit-Attach to Pleading/Doc Event ID: 000152 E-Filed: J
DEF/ BEST BUY STORES L.P.

FILE DATE SCHEDULED EVENT DESCRIPTION SCHD DATE TIME ROOM APPEAR

Exhibit B - 25.02.24 Order re Court Fees F8B7BE4472B42

5/15/2025 Exhibit-Attach to Pleading/Doc Event ID: 000153 E-Filed: J
DEF/ BEST BUY STORES L.P.

Exhibit A - 25.03.31 Order DENIED Mtn to Reconsider re Court Fees F8B7BE4472B42

5/20/2025 Review 5/20/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ATTY FEE RESP?

5/29/2025 Designation Record/Transcript Event ID: 000154 E-Filed: J
DEF/ BEST BUY STORES L.P.

Designation of Record on Appeal 832350FF888ED

6/03/2025 Order Event ID: 000155 E-Filed: J

Ruling: GRANTED IN PART, Document Title: Order re: Defendant's Computation of Attorney Fees

6/03/2025 Review 6/20/2025 06:00 AM 520 N
Officer: CHRISTOPHER CLAYTON ZENISEK Length: 1.00 Hour(s)
Status.: IRVH-Internal Review Held Note..: ATTY FEE ORDER?

6/23/2025 Filing Other Event ID: 000156 E-Filed: J
IMP/ NON-PARTY

COPY OF COURT OF APPEALS ORDER OF THE COURT - APPEAL DISMISSED (25CA810)

7/22/2025 Notice of Appeal Filed Event ID: 000157 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Notice of Appeal

7/22/2025 Designation Record/Transcript Event ID: 000158 E-Filed: J
PTF/ MONTGOMERY, WILLIAM

Designation of Record

7/23/2025 Advisory Notc of filing NAPF Event ID: 000159 E-Filed: J
IMP/ NON-PARTY

Advisory Notice - NAPF (25CA1351)

8/11/2025 Mandate from Appeals Court Event ID: 000160 E-Filed: J
IMP/ NON-PARTY

Mandate from Appeals Court - APPEAL DISMISSED (25CA810)

JGM DATE	JUDGMENT DESCRIPTION	STATUS		
1/07/2025	JDGE Judgment Entered	UNSATISFIED		
	Ordered By.....: CHRISTOPHER CLAYTON ZENISEK			
	Debtor Fee.....: N			
	Debtor Fee Paid.....: N			
	JUDGMENT TRANSACTION(S)		AMOUNT	DATE
	PRINCIPAL		$0.00	1/08/2025
	JUDGMENT TRANSACTION(S)		AMOUNT	DATE
	COURT COSTS		$2,094.99	1/07/2025
	ATTORNEY FEES		$0.00	1/08/2025
	INTEREST		$0.00	1/08/2025
	JUDGMENT ROLE NAME			PTY ROLE
	Debtor PTF MONTGOMERY, WILLIAM			PTF
	Creditor DEF BEST BUY STORES L.P.			DEF
6/03/2025	JDGE Judgment Entered	UNSATISFIED		
	Ordered By.....: CHRISTOPHER CLAYTON ZENISEK			
	Debtor Fee.....: N			
	Debtor Fee Paid.....: N			
	JUDGMENT TRANSACTION(S)		AMOUNT	DATE
	PRINCIPAL		$0.00	6/04/2025
	COURT COSTS		$0.00	6/04/2025
	ATTORNEY FEES		$36,124.50	6/03/2025

JGM DATE	JUDGMENT DESCRIPTION		STATUS	
	INTEREST		$0.00	6/04/2025
	JUDGMENT	ROLE NAME		PTY ROLE
	Debtor	PTF MONTGOMERY, WILLIAM		PTF
	Creditor	DEF BEST BUY STORES L.P.		DEF

End of Case: 2023 CV 000226

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

Filing Party Name: William Montgomery

Street Address: 2443 S University Blvd # 129

City: Denver State: CO Zip: 80210

Phone: (970) 412-5463

E-Mail: zoinbergs@gmail.com

▲ FOR COURT USE ▲

Court of Appeals' Case Number: _____

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside of a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. The Judge made errors of fact and/or law when making its ruling, however, and incorrectly granted the MOTION in contravention of clearly-established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDER granting Defendant's MSJ, as well as its subsequent two ORDERS denying Plaintiff's MOTION FOR RECONSIDERATION and SECOND MOTION FOR RECONSIDERATION. He seeks to have the ORDER granting Defendant's MSJ be REVERSED, so that his case may be REINSTATED and REMANDED to the Jefferson County District Court for further proceedings not inconsistent with its opinion.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on (date) November 19, 2024

2. Remaining Issues:

☒ All the issues in the case have been decided.

OR

☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

☐ Any request for attorney fees and costs have been resolved.

OR

☒ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

☐ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

OR

■ Yes. A post-trial motion was filed on: (date) December 3, 2024 and January 21, 2025.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

■ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

■ The district court ruled on the motion on (date) January 6, 2025 and February 18, 2025.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

■ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR SUMMARY JUDGMENT, which dismissed Plaintiff's case in its entirety?

Did the District Court err in denying Plaintiff's MOTION FOR RECONSIDERATION and SECOND MOTION FOR RECONSIDERATION?

VII. Necessity of Transcript:

■ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

☒ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Stephanie E. Boutsicaris & Lori K. Bell

Registration Number: No. 51297 (Boutsicaris) & No. 31714 (Bell)

Name of Law Firm: Montgomery | Amatuzio

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For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: February 24, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) February 24, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: sboutsicaris@mac-legal.com & lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	
Appeal from: Jefferson County District Court District Court Judge: The Hon. Christopher Zenisek District Court Case Number: 2023CV226	
In the Case of: Plaintiff/Petitioner: WILLIAM MONTGOMERY, ■ Appellant or ☐ Appellee & Defendant/Respondent: BEST BUY STORES, L.P. ☐ Appellant or ■ Appellee	▲ FOR COURT USE ▲
Filing Party Name: William Montgomery Street Address: 2443 S University Blvd # 129 City: Denver State: CO Zip: 80210 Phone: (970) 412-5463 E-Mail: zoinbergs@gmail.com	Court of Appeals' Case Number:
Designation of Record	

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

Documents to Send

Please send my entire case file to the Court of Appeals. Please include:

1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
4. If a trial was held, all jury instructions, verdict forms, and answers to any special interrogatories.

Transcripts

1. Transcripts Needed:

☒ A transcript is not needed to review the issues on appeal.

OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: February 24, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) February 24, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: sboutsicaris@mac-legal.com, lbell@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
PLAINTIFF'S APPEAL OPENING BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Court of Appeals his APPEAL OPENING BRIEF, and in support thereof, states as follows:

ORAL ARGUMENT REQUESTED

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My brief has **9,500** words, which does not exceed the 9,500 word limit allowed by this Court Of Appeals for appeal opening briefs.

Included Sections: In the Arguments section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The Standard of Review: I let the Court of Appeals know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the Record on Appeal I raised the issue to the District Court and where the District Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery

William Montgomery

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ISSUES ON APPEAL

1. Did the District Court err in **GRANTING** Defendant's MSJ?

2. Did the District Court err in **DENYING** Plaintiff's CROSS-MSJ?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

On November 25, 2022, Plaintiff visited a Best Buy store located in Westminster, CO. He walked into the store, walked directly over to the returns department, and then walked directly back out of the store once he realized that he was erroneously attempting to return non-store merchandise to the wrong store.

While inside the store, at all times, Plaintiff did not act suspiciously, furtively, or in any way "conceal" anything, nor did he place into, or remove, anything from any pocket either. From beginning to end, he openly held in his hands non-store private property, identical in every way to any actual customer leaving the store with a singular, non-tagged purchase. On his way out, Plaintiff did not observe anybody "posted up" at the store's exit, nor was he asked by anyone to show any receipts.

After Plaintiff exited the store, he stood just outside of it, waiting for his brother. While waiting, he was approached by three Best Buy employees, who immediately surrounded and detained him, and began accusing him of stealing.

Plaintiff had never once met, seen, identify, pass by, or been located anywhere physically near these employees, whatsoever, while inside the store.

After several unfruitful minutes of bullying, name calling, lies that the police had been contacted, and threats made to "jump" Plaintiff off-camera, all three employees eventually released him from their custody, and re-entered the store.

A year later, this lawsuit followed.

II. PROCEDURAL HISTORY

On November 21, 2023, Plaintiff filed a complaint against BEST BUY and its employees under theories of false imprisonment, defamation, and assault.

On November 19, 2024, the Jefferson County District Court **GRANTED** Defendant's MSJ and **DENIED** Plaintiff's Cross-MSJ in the matter. As such, Plaintiff's case was dismissed in its entirety. The District Court made numerous errors of both fact and law when making its rulings, however, impermissibly granting the MSJ and denying the Cross-MSJ in contravention of clearly established rules and law on the subject.

On February 24, 2025, Plaintiff filed this appeal, seeking appellate review of the District Court's conflated ruling. He seeks to have Defendant's MSJ be **DENIED**, and to have his own Cross-MSJ be **GRANTED**.

ARGUMENT SUMMARY

The District Court made numerous errors of both fact and law in this case.

First, the District Court improperly relied on legally inadmissible exhibits, affidavits, and conclusory statements submitted by Defendant, failed to properly infer statements made by plaintiff as applying to him being specifically inside the store, and "conflated" two separate and independent summary judgment motions as "two halves of the same coin," in order to unfairly **GRANT** Defendant's MSJ.

Then, the District Court relied on the same legally inadmissible exhibits, affidavits, and conclusory statements submitted by Defendant in Plaintiff's Cross-MSJ line of briefing, in order to unfairly **DENY** Plaintiff's Cross-MSJ.

ARGUMENTS

Issue 1 – The District Court erred in GRANTING Defendant's MSJ

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the

movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." C.R.C.P. Rule 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of Defendant's MSJ in his RESPONSE to Defendant's MSJ, *CF at 640.* The District Court ruled on the issue in its final ORDER granting Defendant's MSJ, *CF at 876.*

C. Discussion

THE DISTRICT COURT IMPROPERLY RELIED ON LEGALLY INADMISSIBLE EXHIBITS, AFFIDAVITS, AND CONCLUSORY STATEMENTS, FAILED TO INFER STATEMENTS MADE BY PLAINTIFF, AND CONFLATED TWO SEPARATE MOTIONS, ALL IN ORDER TO UNFAIRLY GRANT DEF'S MSJ IN THE MATTER

a. Defendant submitted <u>legally inadmissible</u> receipts with its MSJ *reply* that were also <u>not accompanied by an affidavit of their custodian</u>

In the District Court's ORDER granting Defendant's MSJ, it stated that **"Defendant has provided proof that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase."** *CF at 878.* The Court made this statement in an attempt to support its subsequent legal conclusion that "showing proof of purchase would have freed Plaintiff from the false imprisonment, and that showing proof of purchase is a slight inconvenience that it was unreasonable of Plaintiff not to

utilize. Thus, the Court concludes that Defendant did not 'confine' Plaintiff and thus cannot be held liable for false imprisonment." *Id.*

The problem here is that the District Court **erroneously** and **unlawfully** based its aforementioned legal conclusion on a **LEGALLY INADMISSIBLE** exhibit (i.e. the business records / receipts) **belatedly** submitted by Defendant ***only* with its reply brief in support of its MSJ**, and to which was also independently inadmissible **due to not being "accompanied by an affidavit of its custodian" [i.e. hearsay].**

First, as the record indisputably reveals, the bold claim made by the District Court that "Defendant has submitted a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its **initial**[1] burden as the movant," *CF at 881,* **IS FLAT OUT NOT TRUE.** Rather, on July 25, 2024, Defendant filed a MSJ in this matter, *CF at 227,* but to which **DID NOT** include any business records / receipts attached to it. Then, *and only then,* on October 10, 2024, did Defendant file a REPLY IN SUPPORT OF ITS MSJ, and to which **DID** have attached to it, as an exhibit, *for the first time ever,* the business records / receipts purportedly of the incident at issue. *CF at 729 and 741.* However, at this point, having been supplied *exclusively* and *only* as an attachment to a *R-E-P-L-Y* brief, **the entire receipts exhibit was completely and unconditionally inadmissible.**

1 This was the **exact word** used by the District Court, revealing *just how* **indisputably** mistaken it was.

This is because "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999).

In *Wallman,* the Court explained that in Defendant's "**reply** brief before the trial court, Kelley **argued for the first time** that plaintiff could not prove that the JBH she allegedly purchased from him caused her illness." *Id at 332.* The Court then explicitly held that "**because plaintiff was not given notice that she needed to present evidence** on the causation issue in defendants' initial summary judgment motions and briefs, **we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions.**" *Id.* THE SAME HOLDS **100% IDENTICALLY TRUE TODAY** IN PLAINTIFF'S INSTANT CASE. Because Plaintiff "**was not given notice that he needed to present evidence"** to refute Defendant's **REPLY-ONLY** raised issue of "receipt possession" – such as submission of an affidavit of his brother as being the entity who actually made the purchase to receive the receipt – the District Court **"incorrectly relied upon the lack of such evidence in granting [Defendant's] motion."** *Id.*

Second, ***even if*** the business records / receipts at issue could initially be considered admissible as a valid attachment to a REPLY-ONLY brief, they were still

FOREVER INADMISSIBLE *O-U-T-R-I-G-H-T* because of how they failed to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003).

In *Henderson,* the Court explained that "Authentication of a document is a **condition precedent** to its admissibility and is satisfied by a showing that the document is what the proponent claims it to be." *Id at 617.* The Court then explicitly held that because the party "**failed to lay the requisite foundation** for admission of the report by not offering evidence of authentication," **the report "constitutes inadmissible hearsay."** *Ibid.* THE SAME HOLDS **100% IDENTICALLY TRUE TODAY** IN PLAINTIFF'S INSTANT CASE. Because ***absolutely no*** "affidavit of its custodian or other qualified witness" accompanied Defendant's business records / receipts exhibit, **Defendant "failed to lay the requisite foundation** for admission of [them]," and thus, **the entire business records / receipts exhibit "constitutes inadmissible hearsay."**

Therefore, in the end, when ruling on Defendant's MSJ, there was simply **no legally admissible, non-belatedly-submitted, non-hearsay evidence in the record** for the District Court to have fairly and legally concluded that "showing proof of

purchase would have freed Plaintiff from the false imprisonment." **There is simply no legally admissible evidence in the record that Plaintiff *even possessed a sales receipt in the first place*.** Indeed, this likewise means that there is **no legally admissible evidence in the record that Plaintiff *was even a customer of the store that day.***[2] As such, *for all legal intents and purposes,* the District Court had **NO OTHER CHOICE** than to conclude that Plaintiff was a **complete and total stranger** to the store, with no legal, personal, or professional relationship to it whatsoever. In other words, a complete and total stranger with **no legal obligation whatsoever** to cooperate with ***any*** of the store's **complete and total stranger** employees' demands to perform ***whatever*** acts that might be requested of him – to include, but not be limited to, showing a receipt, answering questions, emptying pockets, etc. *See Montgomery v. Lore,* 10th Circuit Court Of Appeals Case No 23-1106 (December 13, 2023), in which the Court held that Plaintiff **was not** required to show a receipt for, **was not** required to answer questions relating to, and **was not** required to consent to a search of his pocket to reveal the identity of a package of RV lights that an Aurora police officer lacked reasonable suspicion [let alone probable cause / shopkeepers' privilege] to suspect was stolen merchandise, because of how he

2 That is, the District Court also tried to claim [in the "shopkeeper's privilege" discussion section of its ORDER] that the receipt "prov[es] . . . that Plaintiff ***had the store's merchandise on him at the time of the detainment*.**" *CF at 881.* No such conclusion can fairly and legally be reached, however, leaving the District Court **right back at square one** [which is that Defendant *lacked* "shopkeeper's privilege" for its actions because of how it failed to provide *any* evidence of such].

did not observe Plaintiff walk out of the store with it. Indeed, in *Lore,* the officer lacked lawful justification altogether ***TO EVEN DETAIN*** Plaintiff, *in the first place,* to investigate into the potentially stolen nature of the RV lights [*even after* they were **unlawfully** searched for and **unlawfully** seized from his jacket pocket].

b. Defendant submitted a legally inadmissible affidavit with its MSJ *reply* that also blatantly contradicted the record and contained hearsay

In the District Court's ORDER granting Defendant's MSJ, it stated that **"Defendant has supplied an affidavit stating that its employee saw Plaintiff 'remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store,' which was then confirmed on store security video. Plaintiff also refused to show his receipt upon being asked."** *CF at 882.* The District Court made this statement in an attempt to support its subsequent legal conclusion that "Defendant had probable cause to believe Plaintiff was shoplifting." *Id.*

The problem here is that the District Court, once again, **erroneously** and **unlawfully** based its aforementioned legal conclusion on a **LEGALLY INADMISSIBLE** exhibit (this time the affidavit of Mahmoud Abu-Shaweesh) **belatedly** submitted by Defendant ***only* with its reply brief in support of its MSJ**, and to which was also independently inadmissible **due to it blatantly**

contradicting the record as well as **containing inadmissible hearsay.**

First, as the record indisputably reveals, on July 25, 2024, Defendant filed a MSJ in this matter, *CF at 227,* but to which **DID NOT** include any affidavit of Mahmoud Abu-Shaweesh attached to it. Then, *and only then,* on October 10, 2024, did Defendant file a REPLY IN SUPPORT OF ITS MSJ, and to which **DID** have attached to it, as an exhibit, *for the first time ever,* the affidavit of Mahmoud Abu-Shaweesh. *CF at 729 and 779.* However, at this point, having been supplied *exclusively* and *only* as an attachment to a *R-E-P-L-Y* brief, **the entire affidavit was completely and unconditionally inadmissible.** This is because, as already discussed, "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999). Therefore, once again, because Plaintiff "**was not given notice that he needed to present evidence"** to refute Defendant's **REPLY-ONLY** raised issue, this time of "shopkeeper's privilege" – such as submission of a [more precise][3] affidavit that he did not steal or "conceal" anything that day, from the store, *WHILE **INSIDE** THE STORE* – the District Court **"incorrectly relied upon**

3 The District Court held that Plaintiff's sworn affidavit of the event was purportedly not specific enough to constitute "proof as to his actions inside the Best Buy immediately preceding the incident." However, Plaintiff addresses and refutes this argument later on in this briefing, in that the District Court was **required by law** to **INFER** as much when ruling on Defendant's MSJ.

the lack of such evidence in granting [Defendant's] motion." *Id.*

Second, ***even if*** the affidavit of Mahmoud Abu-Shaweesh could initially be considered admissible as a valid attachment to a REPLY-ONLY brief, it was still **FOREVER INADMISSIBLE** *O-U-T-R-I-G-H-T* because of how it "**blatantly contradicted the record"** – namely Plaintiff's pen camera video footage of the event. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris,* 550 U.S. 372, 380 (2007).

Specifically, in Mahmoud's affidavit, he claims that he "observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store." *CF at 780, ¶ 4.* However, this claim **blatantly contradicts *numerous*** facts already indisputably established by Plaintiff's video.[4] One, Mahmoud stated [once outside] that Plaintiff had been "wait[ing] for us to come out and get 'em." *Plaintiff's Pen Camera Video Footage (herein "PPCVF") at 8:08.* Here, Mahmoud's use of the term **"wait[ing]"** indicates that he did not actually **FOLLOW**

4 It also happens to blatantly contradict ***Defendant's own*** proffered business records / receipt exhibit, which Defendant claims shows Plaintiff [purportedly] making a purchase **within a single minute** of his subsequent detention. *So which is it?* Did Plaintiff **BUY** something and "immediately" leave the store, or did he **STEAL** something and "immediately" leave the store? How about **NEITHER**, in that Plaintiff's ***didn't*** steal, and ***his brother*** made the associated purchase that day.

Plaintiff out of the store after purportedly *personally* observing him steal something from it "immediately" prior to. Meaning, **it is wildly unbelievable** for an assistant manager of a $14 billion dollar multinational company to act in such a way. That is, a high-ranking employee such as Mahmoud would presumably be aware of his store's loss prevention policy which customarily requires a merchant [pursuant to shopkeeper's privilege] to maintain complete **UNINTERRUPTED** visual contact of a suspected shoplifter in order to [lawfully] detain them. Therefore, the act of such an assistant manager to purportedly ***personally*** observe a suspect steal, ***not*** *immediately follow him out of the store*, but then all of a sudden, mere moments later, ***change his mind entirely*** *to then meet up with the suspect right outside the store*, **is just not a believable, *or even plausible*, thing to have happen.** Two, throughout his entire 12 minute confrontation with Plaintiff, Mahmoud only mentions wanting to recover the contents of Plaintiff's pocket ***three whole times.*** *PPCVF at 0:28, 10:22, and 10:48.* Meanwhile, he mentions wanting to recover what Plaintiff held in his hands **a whopping 31 times.** *PPCVF at 0:00, 0:02, 0:04, 0:05, 0:10, 0:11, 0:52, 1:01, 1:13, 1:44, 1:48, 2:01, 2:10, 2:16, 2:30, 2:40, 2:45, 2:51, 3:34, 3:51, 4:38, 4:53, 6:00, 8:51, 9:17, 10:11, 10:19, 10:47, 11:31, 11:43, and 12:08.* Thus, **it is wildly unbelievable** that an assistant manager would be ***so much more interested*** in recovering merchandise that he admittedly [by way of his own affidavit] ***did not*** observe Plaintiff walk out of the store with, than merchandise that he purportedly

DID observe him walk out with.[5] Indeed, Mahmoud even began his conversation with Plaintiff by using the word **"it"** [a singular term] to describe what he wanted to recover [i.e. what he presumably noticed Plaintiff holding in his hands upon first confronting him], **which meant that he *wasn't even interested* in the contents of Plaintiff's pocket** until later on in the conversation. *PPCVF at 0:05.* Then, when Mahmoud finally ***does*** mention Plaintiff's pocket, he only uses the word "too" to describe its contents, **which meant that such contents *weren't even the primary reason* for the confrontation** in the first place. *PPCVF at 0:28.* **This is just not the typical, believable, *or even plausible* behavior of a high-ranking assistant manager to exhibit** who purportedly *personally* observes a shoplifting suspect steal something from its store. Three, throughout Plaintiff's entire 12 minute detention, Mahmoud ***never once*** mentions to him that he observed him place something [or things] into his pocket. **It is absolutely wildly unbelievable** that an assistant manager would not explicitly let a shoplifting suspect know right away how surely and precisely he got caught, especially when another employee freely offers a similar [but utterly unsubstantiated, of course] explanation. *PPCVF at 4:46.* Four, **by way of his very own captured statements,** Mahmoud ***already admitted*** that he didn't *even remotely* know the identity of ***whatever*** Plaintiff held in his hands that

5 Most shockingly here, is that Mahmoud **didn't even bother to use the word "pocket" for nearly ten consecutive minutes of his encounter with Plaintiff.** *PPCVF at 0:28 to 10:22.* Such **lack of specificity** is *wildly inconsistent* with his **much more specific** [and thus, suspiciously convenient] claim made later in his affidavit that Plaintiff *explicitly* "removed two boxes of JLab headphones/earbuds from the shelf . . . **and placed them in his *pocket*.**"

day [let alone ***whatever*** may have existed inside one of his pockets]. *PPCVF at 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Considering that Plaintiff's video incontrovertibly shows that he ***never once*** handed anything held in his hands over to Mahmoud, his fellow employees, or the police [let alone emptied his pockets in front of them], Mahmoud never once learned identity of Plaintiff's possessions, and therefore, **would have never identified them as "JLab headphones/earbuds."** Finally, **it is wildly unbelievable** that Mahmoud would have identified Plaintiff's possessions as "JLab headphones/earbuds" ***from afar,*** either, by way of having purportedly observed him "on the store security video" as the employee also claims in his affidavit. Security cameras, mounted on ceilings and thus located dozens of feet away, just don't offer that kind of resolution. As such, the entirety of ¶ 4 of Mahmoud's affidavit is legally inadmissible due to it **blatantly contradicting the record.**

Next, in Mahmoud's affidavit, he claims that he "observed the same activity on the store security video." *CF at 780, ¶ 5.* However, Plaintiff was told during his detention that the store employees ***had already*** [purportedly] observed him "on video" shoplifting from the store. *PPCVF at 4:46.* Moreover, Mahmoud **specifically** claims in his affidavit that he **a)** "observed [Plaintiff] remove two boxes of JLab

headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," and **b)** "exited the store to request that [Plaintiff] return the product from his pocket." *CF at 780, ¶¶ 4 and 7.* In other words, if Mahmoud ***really did*** "observe Plaintiff steal something, exit the store, and then [according to Defendant, ***within a minute***] confront him outside about it," **the employee LITERALLY would have never had the time to go review any security video footage of the same.** Indeed, it would have been **quite literally preposterous** for Mahmoud to have [purportedly] observed Plaintiff steal something, *run to the security office within the time that Plaintiff had been waiting on the side of the building* [to go view him on video], but then *run back outside after viewing the video* [to then personally confront him about it]. **Not only is it wildly unbelievable** that an employee would need to go to such great lengths to view such a theft on video, *from afar*, **right after** *already* [purportedly] ***personally*** observing it occur *right in front of them,* such an incredible scenario would undoubtedly not provide said employee with sufficient enough time to perform the research necessary ***to even locate the suspect*** within the store's surveillance video system, *in the first place,* as Plaintiff has observed other merchants **take literally over an hour to do.** *See Montgomery v. Cruz,* District Civil Case No 1:20-cv-03189-PAB-CYC. This leaves Mahmoud with **but one single** remaining logical possibility: that he had [purportedly] "observed the same activity on the store security video" ***ONLY AFTER*** he and his fellow employees ended their confrontation with Plaintiff. But then this scenario begs an even bigger

question: *why on earth were the police never contacted?* **EVER.** As Plaintiff showed in his RESPONSE to Defendant's MSJ, "Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store." *CF at 651, ¶ 44.* **Defendant doesn't even dispute this fact.** *CF at 736, ¶ 44.* Indeed, Defendant even claims [and Plaintiff doesn't dispute] that "Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14am for extra patrols." *CF at 681, ¶ 24.* Therefore, **Best Buy certainly had an *active* and *ongoing* relationship with the police at the time, and would have surely called them** *within the SEVERAL HOURS the store had remaining that day*, to **EVENTUALLY** turn over said purported "video footage" of a shoplifter that was purportedly ***caught positively red handed.*** Yet *not one single* "call for service" was made that day regarding Plaintiff. **EVER.** Indeed, such failure to call the police would be a clear violation of a store's loss prevention policy [that an assistant manager would presumably have knowledge of and be following]. As such, the entirety of ¶ 5 of Mahmoud's affidavit is legally inadmissible due to it **blatantly contradicting the record** [as well as being **utterly illogical** in its own right].

Next, in Mahmoud's affidavit, he claims that "As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do." *CF at 780, ¶ 6.* Here, such a statement **blatantly contradicts itself,** in that a loss prevention employee, *claimed by Mahmoud himself to have been "posted up" at the store's exit,* **would not have had the capacity to**

witness Plaintiff purportedly "remove two boxes of JLab headphones/earbuds from the shelf [and] place them in his pocket" for that employee to even know, *in the first place*, whether or not to "ask Plaintiff to show his receipt for them." *In other words,* e*mployees posted up at store exits just don't ask random people leaving to see receipts for whatever random, unidentified contents may already exist inside their random pockets / purses / etc.* Indeed, **it is wildly unbelievable** that a "loss prevention" employee ***would even bother asking to see a receipt at all, at that point,*** if they alternatively ***did*** personally observe a shoplifter steal something *right in front of them.* Rather, they would undoubtedly just jump right to detaining the positively-caught shoplifter and demand that they give the product back. Most importantly, because this statement of Mahmoud's refers to *what **some other** employee supposedly said*, the entirety of it is *already* **categorically inadmissible hearsay.** "Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination." *Henderson v. Master Klean Janitorial, Inc.,* 70 P.3d 612 (Colo. App. 2003). *See also C.R.C.P. Rule 56(e)* ("[A]ffidavits shall be made on personal knowledge."). As such, the entirety of ¶ 6 of Mahmoud's affidavit is legally inadmissible due to it **blatantly contradicting itself** [as well as being **categorically inadmissible hearsay** in its own right].

Finally, in Mahmoud's affidavit, he claims that "Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery." *CF at 780, ¶ 9.* Here, ***even this***

statement **blatantly contradicts** the record, in which **AN ABSOLUTE PLETHORA** of claims were ***already*** made during the confrontation – both by Mahmoud ***AND*** by his fellow employees – that **a)** police were ***already*** contacted ***prior to*** Plaintiff's detention, and that **b)** Plaintiff ***would be ACTIVELY detained in the mean time UNTIL the police arrived*** [as is typical and customary to have happen when police are called out to an active shoplifting detention]. *PPCVF at 0:13, 0:15, 1:05, 1:33, 1:44, 1:48, 2:51, 3:17, 4:46, 5:11, and 8:51.* Of course, **the police were never actually contacted,** *in the first place,* neither prior to, nor during Plaintiff's detention, **let alone even later on THAT ENTIRE DAY after Plaintiff was released** [and to which, again, Defendant doesn't even dispute]. So ***even this*** portion of Mahmoud's statement, "that police had been contacted," has no truth whatsoever to it. *CF at 276.* As such, the entirety of ¶ 9 of Mahmoud's affidavit is legally inadmissible due to it **blatantly contradicting the record.**

Therefore, in the end, when ruling on Defendant's MSJ, there was simply **no legally admissible, non-belatedly-submitted, non-contradictory-to-the-record, non-hearsay evidence** for the District Court to have fairly and legally concluded that "Defendant had probable cause to believe Plaintiff was shoplifting." Of course, in the alternative, if this Court Of Appeals *were* to [miraculously] accept Mahmoud Abu-Shaweesh's affidavit as being **not** belatedly submitted, **not** contradictory to the record, and **not** containing inadmissible hearsay, such would ***STILL*** not be enough

to fairly and legally allow the granting of Defendant's MSJ to take place, as Plaintiff has shown that, ***AT THE VERY LEAST,*** his pen camera video footage of the event creates **enough** of a **"controversy"** for such a **"genuine dispute of fact"** to be properly submitted to the jury. "A summary judgment denie[s] a litigant the right to trial of his case and should therefore not be granted **where there appears any controversy** concerning material facts." *McCormick v. Diamond Shamrock Corp.,* 175 Colo. 406, 487 P.2d 1333 (1971). "To authorize the granting of summary judgment **the complete absence of any genuine issue of fact must be apparent,** and all doubts thereon must be resolved against the moving party." *Hatfield v. Barnes,* 115 Colo. 30, 168 P.2d 552 (1946). "A motion for summary judgment should be denied if under the evidence **reasonable men might reach different conclusions."** *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952). "Trial courts should exercise great care in granting motions for summary judgment, and should not deny a litigant a trial **where there is the slightest doubt** as to the facts." *Smith v. Mills,* 123 Colo. 11, 225 P.2d 483 (1950).

c. Plaintiff submitted a sworn affidavit, which the District Court should have inferred as applying to his actions inside the store

In the District Court's ORDER granting Defendant's MSJ, it stated that **"Plaintiff has made no statements and submitted no proof as to his actions**

inside the Best Buy immediately preceding the incident." *CF at 882.* The District Court made this statement in an attempt to support its subsequent legal conclusion that Plaintiff had purportedly failed to overcome Defendant's MSJ because of how he "'may not rest upon the mere allegations or denials in the pleadings' and must set forth specific facts through affidavits or other means." *Id.* (quoting *Burman v. Richmond Homes Ltd.,* 821 P.2d 913, 917 (Colo. App. 1991).

The problem here is that the District Court **erroneously** and **unlawfully** failed, in violation of C.R.C.P. Rule 56, to properly **INFER** several statements made by Plaintiff as applying to him being specifically **INSIDE** the store at issue. Additionally, the District Court also **impermissibly** failed to account for a **police report** that Plaintiff independently and properly admitted into the record, upon which such entry ***was not*** disputed by Defendant, and to which ***does*** constitute "proof as to his actions inside the Best Buy immediately preceding the incident."

Attached to Plaintiff's RESPONSE to Defendant's MSJ was an affidavit he submitted to the Court, which stated that "Prior to being approached by Mahmoud, Shane, and John Doe, at no time whatsoever had I ever once met, seen, identify, pass by, or been located anywhere physically near such Best Buy employees on that day of November 25, 2022." *CF at 621, ¶ 5.* Next, in that same affidavit, Plaintiff stated that "At no point in time, on that day of November 25, 2022, had I ever once

'concealed' anything in front of (let alone not in front of) anybody, ever, period." *Id at 621, ¶ 24.* Finally, in that same affidavit, Plaintiff stated that "At no point in time, on that day of November 25, 2022, had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees." *Id at 621, ¶ 25.* Evidently Plaintiff wasn't obvious enough, but the reason why he made these three statements was to describe his experience **INSIDE** the Best Buy store immediately prior to being confronted by its three employees right outside of it. *However, to a reasonable person, the result would be the same.* In other words, **it is absolutely wildly unbelievable** that any of these statements would **NOT** be referencing Plaintiff's actions **completely inside a store** that he was **literally** just found standing **right** outside of. As if Plaintiff would feel the need to state for the record that he had never "met, seen, identify, pass by, or been located anywhere physically near such Best Buy employees" ***while casually walking down the street that day.*** As if Plaintiff would feel the need to state for the record that he had never "once 'concealed' anything in front of (let alone not in front of) anybody, ever, period" ***while casually walking down the street that day.*** As if Plaintiff would feel the need to state for the record that he had never "once placed into, or removed, anything from any pant pocket in front of anybody, ever, period" ***while casually walking down the***

street that day. These are all **absolutely preposterous notions** that any reasonable, rational, prudent person would simply not entertain. As such, it was **untenable** and **impermissible** for the District Court to not, *at the very least,* **INFER** that said three statements made by Plaintiff applied to him being **INSIDE** the store at issue [and thus, properly deny Defendant's MSJ in the matter]. Specifically, once these facts in Plaintiff's affidavit are properly **inferred,** such is enough to create a "genuine dispute of fact" regarding what had actually happened that day versus what Mahmoud Abu-Shaweesh claims to have happened [if his affidavit were even admissible, of course, but to which was indisputably **not,** *see arguments above*]. "In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, **give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence,** and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004).

Also attached to Plaintiff's RESPONSE to Defendant's MSJ was a **police report** of the day and store at issue. *CF at 615.* The validity of this report was not disputed by Defendant. *CF at 736, ¶ 44.* Therefore, such an undisputed fact – that "Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store," *CF at 651, ¶ 44* – was enough to

constitute **legally sufficient** "proof as to his actions inside the Best Buy immediately preceding the incident." That is, if Plaintiff ***did*** commit theft **inside** the store, the police would have undoubtedly been called, and a report made. But because no police were called, such evidence shows that Plaintiff ***did not*** commit theft **inside** the store.

Therefore, in the end, when ruling on Defendant's MSJ, it was **impermissible** for the District Court to have concluded that Plaintiff purportedly failed to overcome the MSJ due to him purportedly "resting upon the mere allegations or denials in the pleadings" by not otherwise "setting forth specific facts through affidavits or other means." Plaintiff clearly submitted **a sworn affidavit** containing relevant statements that the District Court should have properly **INFERRED**, as well as **a police report** of the event, *which Defendant did not dispute,* and to which thus constituted sufficient "proof as to his actions inside the Best Buy immediately preceding the incident."

d. The District Court impermissibly conflated two independent motions for summary judgment *as two halves of the same coin*

In the District Court's ORDER denying Plaintiff's MFR, it stated that **"In resolving the conflated summary judgment motions, the Court considered all briefs and exhibits presented in connection with Defendant's motion and also Plaintiff's cross-motion."** *CF at 974.* The District Court made this all-encompassing statement in an attempt to support its subsequent legal conclusion

that Plaintiff had purportedly failed to overcome the submission of Defendant's MSJ reply-brief-only exhibits (i.e. the affidavit of Mahmoud Abu-Shaweesh and the business records / receipts) because of how he purportedly had [but purportedly did not utilize] the "opportunity to respond to them" with his [own cross-MSJ] reply brief that was "filed after the exhibits about which he complains." *Id.*

The problem here is that the District Court **erroneously** and **unlawfully "conflated"** Defendant's and Plaintiff's *separate* and *independent* summary judgment motions [as somehow being two halves of the same coin] in **blatant violation** of clearly established rules and law on the subject.

As discussed earlier, on October 10, 2024, Defendant filed a REPLY IN SUPPORT OF ITS MSJ. *CF at 729.* In that REPLY, Defendant, **FOR THE FIRST TIME EVER IN ITS MSJ BRIEFING,** submitted 1) a ***never-before-seen*** affidavit of Mahmoud Abu-Shaweesh, and 2) ***never-before-seen*** business records / receipts purportedly of the incident at issue. The employee affidavit was Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [with supposedly admissible evidence] that it "detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets." *CF at 739.* The business records / receipts were Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [with, again, supposedly admissible evidence] that "Plaintiff had been inside the Best Buy making a purchase" [for which he might have been given a receipt for, and thus

might have been "required to show" upon leaving, as the argument goes]. *CF at 733.* **HOWEVER, NEITHER OF THESE TWO <u>FRESH</u>, <u>REPLY-ONLY-OFFERED</u> ARGUMENTS WERE MADE IN DEFENDANT'S INITIAL, <u>OPENING</u> MSJ BRIEF, NOR EVIDENCE SUPPLIED <u>THEN</u> TO SUPPORT THEM WITH.** Nevertheless, that didn't stop the District Court from [impermissibly] concluding that "Plaintiff provides no evidence of his actions in the store to **counter**[6] this." *CF at 879.* Newsflash: *****OF COURSE***** Plaintiff didn't **"COUNTER"** these arguments in his **<u>RESPONSE</u>** to Defendant's MSJ **<u>OPENING</u>** brief. They were **<u>BRAND NEW</u>** arguments Defendant **<u>LITERALLY RAISED FOR THE VERY FIRST TIME</u>** in its ******<u>R-E-P-L-Y</u>****** brief, but to which was obviously submitted **<u>AFTER</u>** Plaintiff had **<u>ALREADY</u>** submitted his **<u>RESPONSE</u>** brief in the matter!

Basically, in order to [impermissibly] grant Defendant's MSJ, the District Court "morphed" Plaintiff's REPLY to Defendant's RESPONSE to *his* **<u>CROSS</u>**-MSJ into some sort of ***<u>SURREPLY</u>*** to Defendant's REPLY to his RESPONSE to *Defendant's* MSJ! Such behavior is **<u>wildly inappropriate</u>** and **<u>patently illegal</u>**, however, the exact reasons for which why are discussed next.

First, in *Wallman v. Kelley,* 976 P.2d 330, 332 (Colo. App. 1999), the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond to the Defendant's fresh, reply-only-submitted MSJ arguments and evidence [using her own cross-MSJ reply brief as the vehicle], it was whether she

6 This was the **<u>exact word</u>** used by the District Court, revealing *just how* **indisputably** mistaken it was.

was "given ***NOTICE*** that she ***NEEDED*** to" respond them [and to which the Court held that she was not]. *Id.* This is of no surprise, as there exists no rule or law ***of any kind*** in the Colorado Rules Of Civil Procedure and/or Colorado Case Law that *even begins to* inform litigants that reply-only briefs are the appropriate and necessary vehicles to fairly provide such **"notice"** of such **"need."**

Second, it is **utterly inappropriate** to require a party to use *their* **reply** in support of *their* cross-MSJ as some sort of new ***SURREPLY*** in *response* to *an opposing party's* MSJ reply, as replies "in support of" are designed to *strictly* and *only* **support** (duh) *the initial motions* to which they are tied [not to mention the fact that they are **severely limited by page number and file-by date**]. Therefore, Plaintiff could not reasonably have been expected to sacrifice valuable space and time *responding* to **brand new** allegations made by Defendant in its MSJ ***reply*** brief [that should have unquestionably been presented by it in its MSJ ***opening*** brief], when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support* **his own** cross-MSJ with.

Third, conflating a cross-MSJ's ***reply*** as a MSJ's ***surreply*** creates an insurmountable **"uncertainty of fact"** that is manifestly impossible to overcome, because of how easily a party's "concessions," "admissions," and/or "legal theories" ***made in one line of briefing*** can be abused and/or misinterpreted ***in the other line of briefing.*** In other words, a party's **offense** argued *in support of their own MSJ* cannot be used as their **defense** argued *in opposition of the other party's*

MSJ. Indeed, the Court has *already* been required to address ***this exact issue.***

"Where both parties to a legal action file motions for summary judgment . . . **[e]ach of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties.** The fact that each side in moving for summary judgment in his or its favor, respectively, assert 'that there is no genuine issue as to any material fact' **does not necessarily make it so, and does not bar the court from determining otherwise.** 'It does not follow that, merely because each side moves for a summary judgment, there is no issue of material fact. For, although a [plaintiff] may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, **he may be able and should always be allowed to show that,** if [defendant's] legal theory be adopted, a genuine dispute as to a material fact exists.'" *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952) (quoting *Walling v. Richmond Screw Anchor Co.,* 154 F.2d 780, 784 (1946)). "This legal presumption of admission of fact, however, is not general **but extends only to consideration of the [plaintiff's] pending motion.** It may not be applied in connection with [defendant's] similar motion. 'The fact that both parties make motions for summary judgment, and each contends in support of his respective motion that no genuine issue of fact exists, does not require the Court to rule that no fact issue of fact exists. Each, in support of his own motion, may be willing to concede certain contentions of his opponent, **which concession, however, is only for the purpose of the pending motion. If the motion is overruled, the concession is**

no longer effective. Appellants' concession that no genuine issue existed was made in support of its own motion for summary judgment. **We do not think that the concession continues over into the Court's separate consideration of appellee's motion for summary judgment** in his behalf after appellants' motion was overruled.'" *Id.* (quoting *Begnaud v. White,* 170 F.2d 323, 327 (1948)).

THE SAME HOLDS **100% IDENTICALLY TRUE TODAY** IN PLAINTIFF'S INSTANT CASE. In the instant case, Plaintiff made a "concession" under **his** "legal theory" that **"no genuine dispute of fact exists"** [and that **his** cross-MSJ should thus be **granted**]. He presented legal argument in **his** cross-MSJ reply brief that Defendant's affidavit of Mahmoud Abu-Shaweesh was **inadmissible** due to it "blatantly contradicted the record," *Scott v. Harris,* 550 U.S. 372, 380 (2007), and that its business records / receipts were likewise **inadmissible** due to them failing to be "accompanied by an affidavit of its custodian or other qualified witness." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). In other words, **specifically and only in his cross-MSJ,** Plaintiff was arguing **offensively,** and whereby his reply brief was appropriately tailored to **support his** cross-MSJ's opening brief with [by way of arguing, via *Scott* and *Henderson,* **that no genuine dispute of fact exists, and thus, his cross-MSJ should be granted**]. ***His*** cross-MSJ reply brief *was not the place, nor the time,* to begin **defending** AGAINST Defendant's belated, reply-only-submitted argument that ***it*** introduced too late in ***its*** MSJ line of briefing. Indeed, to hold otherwise would be to require Plaintiff to ****create**** a dispute

of fact in his own cross-MSJ,[7] which is clearly not his obligation to do [his obligation in his own cross-MSJ is to only **defend** against *Defendant's* attempts to create a dispute of fact]. As such, **if Plaintiff was unable to have his own cross-MSJ granted,** he nevertheless "may be able ***and should always be allowed to show*** that, if [defendant's] legal theory be adopted, a genuine dispute as to a material fact exists." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952).

Therefore, in the end, ***even if*** Plaintiff was unable to successfully have ***his*** cross-MSJ be granted, **the District Court should have still nevertheless DENIED Defendant's MSJ in the matter,** due to the simple fact that *Defendant* did not provide any legally admissible argument and/or evidence ***of its own*** to ***independently*** support ***its*** MSJ with. "It is manifest that **when [plaintiff's] motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of [defendant's] motion.** This leaves [defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial." *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952).[8]

7 This appears to be ***exactly*** what the District Court tried to say Plaintiff failed to do. *CF at 881, footnote 6.* However, such argument made by Plaintiff [that Defendant failed to establish that he, and not just somebody else, used his credit card] was made *exclusively* **in HIS cross-MSJ line of briefing, *NOT* in Defendant's MSJ line of briefing.** By then, it was already too late for the District Court to require Plaintiff to make such an argument **in Defendant's MSJ line of briefing.**

8 This is what Plaintiff meant earlier with his **"two halves of the same coin"** argument. That is, *even if* a District Court properly **denies** one party's cross-MSJ in a matter, such does not mean that the

e. The District Court <u>impermissibly</u> relied on <u>conclusory statements</u> made by Defendant that are <u>legally insufficient</u> to grant a MSJ with

In the District Court's ORDER granting Defendant's MSJ, it stated that **"Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious."** *CF at 879.* It also stated that **"Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit,"** *Id at 880,* and that **"Plaintiff designed his conduct to inspire this belief."** *Id at 882.* The District Court made these statements in an attempt to support its subsequent legal conclusion that "Defendant had probable cause to believe Plaintiff was shoplifting." *Id.*

The problem here is that **<u>ALL</u>** of these statements / conclusions made by the District Court are **erroneously** and **unlawfully** based on **<u>LEGALLY INADMISSIBLE CONCLUSORY STATEMENTS</u>** made by Defendant in its MSJ.

In Defendant's MSJ, it made the following essentially identical statements: "Plaintiff targeted the Best Buy store located in Westminster, CO when he exited the store with merchandise in his possession." *CF at 231.* "Here, Plaintiff intentionally concealed merchandise." *Id at 234.* "Best Buy acted in good faith and had probable cause to believe Plaintiff may have shoplifted merchandise from Best Buy." *Id at 234.* "At the time Plaintiff was questioned by Best Buy employees they were acting

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other party's MSJ gets to now be *automagically* **granted** [i.e. without separate consideration]. Indeed, to hold otherwise would be to ***literally*** tell a party that he is *better off not filing a cross-MSJ in the first place,* which is an **<u>absolutely impermissible disincentive</u>** for a District Court to create.

on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy." *Id at 235.* "Plaintiff orchestrated the interaction with Best Buy employees in order to bait them into confronting him about suspected shoplifting." *Id at 236.* "Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items." *Id at 236.* "These employees had probable cause to stop Plaintiff and their actions were taken in good faith." *Id at 237.* "All of Best Buy employees' actions were protected and permissible because Plaintiff took Best Buy inventory and refused to show proof of purchase." *Id at 237.* The problem with **EACH AND EVERY SINGLE ONE** of these statements [and thus, Defendant's MSJ as a whole, as its ***entire*** MSJ appears to be premised on ***nothing but*** these statements] is that they are ***ALL*** **utterly vague and purely conclusory statements made without a single iota of legally admissible "supporting documentation or testimony" to *even begin to* REMOTELY substantiate them with.** "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Indeed, Defendant's MSJ opening[9] brief is completely bereft of **ANY** supporting affidavits, *whatsoever,* **altogether.** Defendant simply submitted to the

9 Remember, Defendant ***belatedly*** submitted its affidavit of Mahmoud Abu-Shaweesh with its MSJ's ***R-E-P-L-Y*** brief, thus rendering it, as discussed earlier, **completely unconditionally inadmissible.**

District Court **no legally admissible evidence of any kind** that Plaintiff "targeted the Best Buy store," that he "intentionally concealed merchandise," that Best Buy "had probable cause to believe he may have shoplifted," that he "orchestrated the interaction with Best Buy employees in order to bait them," that he "took Best Buy inventory and refused to show proof of purchase," etc. Indeed, Best Buy failed to submit to the District Court **literally any legally admissible evidence, whatsoever, altogether,** ***that Plaintiff was even a customer of it that day,*** in the first place, for which any of its arguments could *even begin to* have merit in the matter.

As Courts have long held, "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940). In other words, **EVERY SINGLE STATEMENT** made by Defendant that ***IT*** possessed "shopkeeper's privilege" in this matter, ***IT*** was required to have **real, tangible, admissible evidentiary support** to justify such with, but to which ***IT*** utterly failed to do [and thus, the District Court had **NO OTHER CHOICE** than to outright **DENY** its MSJ in the matter].

Of course, in a feeble attempt to satisfy its burden of persuasion, Defendant *did* submit to the District Court, with its initial MSJ, *one* piece of information: a generic

YouTube video of Plaintiff discussing his long running "receipt refusal sting operation" carried out at Walmart stores. However, there are **numerous** grave issues with this video that render it **completely useless** in deciding Plaintiff's instant case.

One, the YouTube video does not constitute **actual evidence** of what occurred specifically that day of **November 25, 2022,** specifically at that **Best Buy** store, specifically with **its three employees.** Indeed, the words "Best Buy" *aren't even mentioned* by Plaintiff in the video [and not surprisingly so, as it was a response to a video discussing his experiences shopping at *Walmart* stores]. To hold otherwise would be to violate Plaintiff's 14th Amendment Right To Due Process, in which he has an ***unconditional*** right to have this instant case be **adjudicated on its merits.**

Two, Defendant's [and the District Court's] reference to the YouTube video is a **blisteringly inappropriate** attempt to mischaracterize Plaintiff's "sting operations" as [otherwise dishonest] situations where he purportedly "conducts himself in a manner that could be reasonably construed as suspicious" [i.e. he "fakes steals" to get "free lawsuits"]. However, such could **LITERALLY** not be further than the truth. Rather, Plaintiff's historical "use of back registers," "lack of use of plastic bags," and/or "refusal to show a receipt upon leaving" **have only ever been** "cruxes" that trigger **U-N-R-E-A-S-O-N-A-B-L-E** suspicions of shoplifting, not *reasonable* ones. In other words, such variables only create ***self-fulfilling prophecy induced, artificially***

manufactured, non-objective suspicions of shoplifting [read: mere hunches] that Courts have unanimously held as **categorically insufficient** to supply merchants with "shopkeeper's privilege" in a matter. *See Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971); *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996); *Ball v. WalMart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000).

Three, ***even if*** said three variables of "using back registers," "not using plastic bags," and/or "refusing to show a receipt upon leaving" were all ***valid*** elements to consider in a "shopkeeper's privilege" assessment (which they are not), such variables ***STILL*** don't help Defendant *in Plaintiff's instant case*, in which he visited a **Best Buy** store ***that doesn't even incorporate such policies*** into its business model. Specifically, Best Buy, *a completely different merchant than Walmart,* **doesn't even utilize "back registers"** [they litter their registers all throughout their stores]. Then, *way back in July of 2022,* **the major retail chain phased out plastic bag use.** *CF at 907.* And finally, *even earlier than that, in November of 2017,* **the chain began issuing digital-only [emailed] receipts to its patrons** [thus eliminating the wherewithal for customers to even "refuse to show them" upon leaving]. *CF at 829.* **In other words, no "sting" operation of Plaintiff's *could have even occurred* that day of November 25, 2022, at that Best Buy store,** because no "elements" of his long running, *Walmart-based,* "sting operation" ***even existed*** at that point.

Four, and unquestionably the most grave of the issues, **is that Plaintiff wasn't even a customer of Best Buy that day of November 25, 2022,** in the first place, ***in order to even*** "use back registers," [if such even existed], "forgo the use of plastic bags," [if such were even offered], or "refuse to show a receipt upon leaving" [if such were even expected despite the chain having moved to digital-only receipts]. Rather, in the end, *for all legal intents and purposes,* the District Court was required to conclude that Plaintiff was nothing more than **a complete and total stranger** who had been standing on the side of a building, holding **non-store** private property in his hands, and **non-store** private property in his pockets, that **three complete and total strangers** recklessly and unlawfully chose to detain, in which they **did not** observe him on inside of, **did not** supply the Court with legally admissible evidence of his actions inside of, and thus **DID NOT** possess "shopkeeper's privilege" to detain in order to even require him to "show a receipt" to, "answer questions" for, or "empty his pockets" in front of to satisfy their baseless curiosities with [let alone serve as some "escape path" for which **a complete and total stranger** is not required to "avail" himself of].

As such, Defendant's [and the District Court's] use of Plaintiff's YouTube video as any sort of "evidence" of his actions that day of November 25, 2022 was **completely impermissible,** and whereby **all conclusory statements** derived

therefrom were "insufficient to create an issue of material fact." *Suncor* at 1269.

Issue 2 – The District Court erred in DENYING Plaintiff's CROSS-MSJ

A. Standard Of Review

"[W]e review the district court's grant of summary judgment de novo, applying the same standards that the district court should have applied." *EEOC v. C.R. Eng., Inc.,* 644 F.3d 1028, 1037 (10th Cir. 2011) (quotations omitted). In doing so, "we consider the evidence in the light most favorable to the non-moving party." *Id.* (quotations omitted). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." C.R.C.P. Rule 56(a).

B. Preservation On Appeal

Plaintiff sufficiently raised the issue of his CROSS-MSJ in his CROSS-MSJ, *CF at 254,* and his REPLY IN SUPPORT OF HIS CROSS-MSJ, *CF at 800.* The District Court ruled on the issue in its final ORDER denying Plaintiff's CROSS-MSJ, *CF at 876.*

C. Discussion

THE DISTRICT COURT IMPROPERLY RELIED ON LEGALLY INADMISSIBLE EXHIBITS, AFFIDAVITS, AND CONCLUSORY STATEMENTS IN ORDER TO UNFAIRLY DENY PTF'S CROSS-MSJ

As discussed earlier, Defendant submitted to the District Court an affidavit

of Mahmoud Abu-Shaweesh, several business records / receipts, and numerous statements that Plaintiff is a "merchant entrapping" "lawsuit scammer" who "intentionally conceals merchandise" in order to "bait" employees into detaining him. Even though these documents and statements were ***not*** untimely filed ***in Plaintiff's Cross-MSJ line of briefing,*** the affidavit was still **legally inadmissible** *in its own right* **for "blatantly contradicting the record"** in violation of *Scott v. Harris,* 550 U.S. 372, 380 (2007), the business records / receipts were still **legally inadmissible** *in their own right* **for lacking an "affidavit of their custodian or other qualified witness"** in violation of *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003), and the statements were still **legally inadmissible** *in their own right* **for being "conclusory"** in violation of *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). As such, it was still **completely and unconditionally impermissible** for the District Court to have considered such documents and statements, ***even when*** ruling on Plaintiff's CROSS-MSJ. Therefore, the District Court, ***in addition to denying Defendant's MSJ,*** should have **GRANTED** Plaintiff's **legally undisputed** CROSS-MSJ in the matter.

CONCLUSION

In the end, Plaintiff's case is most analogous to that of *Coblyn v. Kennedy's*

Inc., 359 Mass. 319, 320 (Mass. 1971). In *Coblyn,* the Court held that a merchant lacked "shopkeeper's privilege" to detain a patron despite personally observing him carry out of the store, in plain sight, non-store private property. Specifically, the *Henry* Court held, when discussing *Coblyn,* that "The absence of any indication that the merchandise was 'unpurchased' justifies the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985).

Of course, in the instant case, Defendant only met Plaintiff *for the very first time* ***ever***, ***outside*** *its store,* and thus, **did not even observe him "leave the store"** like in *Coblyn.* So now we have a situation that is ***literally one step removed***, thus rendering Defendant to have **categorically lacked** "shopkeeper's privilege" for its actions.

WHEREFORE, Plaintiff respectfully requests that this Court of Appeals ORDER the Jefferson County District Court to **DENY** Defendant's MSJ, and **GRANT** Plaintiff's Cross-MSJ, in this particular matter.

Respectfully submitted on this, the 30th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 30th day of June, 2025, the foregoing **PLAINTIFF'S APPEAL OPENING BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
REQUEST FOR ORAL ARGUMENT	

Plaintiff, proceeding *pro se*, hereby requests that ORAL ARGUMENT be held in this matter, as this case presents significant issues of law and fact, which, if oral argument were granted, would allow Plaintiff to more precisely argue.

Respectfully submitted on this, the 30th day of June, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 30th day of June, 2025, the foregoing **REQUEST FOR ORAL ARGUMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	
DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Sarah K. Vogel, Reg. No. 58381 Montgomery | Amatuzio 720 S. Colorado Blvd., Suite 1200-N Denver, CO 80246 Telephone: 303-592-6600 lbell@mac-legal.com svogel@mac-legal.com	Court of Appeals' Case No: 2025CA327 Case No.: 2023CV00226 Division: 6
DEFENDANT-APPELLEE BEST BUY, L.P.'S ANSWER BRIEF	

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Denver, Colorado 80203</td><td rowspan="3"></td></tr>
<tr><td>DISTRICT COURT, JEFFERSON COUNTY, COLORADO
100 Jefferson County Parkway
Golden, CO 80401</td></tr>
<tr><td>WILLIAM MONTGOMERY,

Plaintiff,

v.

BEST BUY, L.P.,

Defendant.</td></tr>
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Case No.: 2023CV00226

Division: 6</td></tr>
<tr><td colspan="2">DEFENDANT-APPELLEE BEST BUY, L.P.'S CERTIFICATE OF COMPLIANCE</td></tr>
</table>

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g) or C.A.R. 28.1(g).

☒ This brief contains 6,427 words, which is not more than the 9,500 word limit.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☐ **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precision location in the record where the issue was raised and ruled on, not to an entire document.

☒ **In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Sarah K. Vogel

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I. ISSUES ON APPEAL

1. Did the District Court properly consider exhibits attached to Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment in issuing its order granting Defendant's Motion for Summary Judgment?
2. Did the District Court properly consider the appropriate evidence in issuing its order denying Plaintiff's Cross Motion for Summary Judgment?

II. STATEMENT OF THE CASE

A. Description of Underlying Case

This case stems from a November 25, 2022 incident involving Plaintiff-Appellant (hereinafter "Plaintiff") and Defendant-Appellee/Cross-Appellant Best Buy Stores, L.P. (hereinafter "Defendant"), and Plaintiff's allegations of false imprisonment, defamation *per se*, and assault which he alleges stem from an event in which he was stopped by retail service employees at a Best Buy store located at 9369 Sheridan Boulevard, Westminster, Colorado, 80031. CF, p. 3. On November 25, 2022, Plaintiff alleges he was standing outside the Best Buy store location when he was approached by three retail service employees of Best Buy. *Id.* Plaintiff alleges he was then surrounded and prevented from leaving while the employees accused Plaintiff of stealing and threatened to harm Plaintiff around the corner and off camera. *Id.*

Plaintiff has established a history of filing lawsuits against Defendant and other retail companies following Plaintiff's patterned targeting of such entities. CF, p. 13 – 19; 71; 79; 91 – 238.

B. Course of Proceedings

Plaintiff filed suit on November 21, 2023, in the Jefferson County District Court, and the matter was assigned to Judge Christopher C. Zenisek. CF, p. 1-4, and

CF, p. 6-7. Plaintiff additionally filed a motion to proceed *In Forma Pauperis* on this same date, which was granted. CF, p. 5.

The District Court issued its *Civil Procedure Order* on November 22, 2023. CF, p. 6-7. The Order stated that Returns of Service on all defendants were to be filed within 63 days from the date of the filing of the Complaint. CF, p. 6.

Defendant filed its *Answer to Plaintiff's Complaint and Jury Demand under Simplified Civil Procedure* with exhibits on February 8, 2024. CF, p. 9 – 32.

Defendant filed its *Motion for Summary Judgment* on July 25, 2024. CF. p. 227 – 239. Defendant's *Motion for Summary Judgment* included exhibits. CF, p. 91 – 226.

Plaintiff filed his *Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ & Ptf's Own Cross-MSJ* with exhibits on August 12, 2024. CF, p. 242 – 248. The District Court granted Plaintiff's motion on August 21, 2024. CF, p. 249.

Plaintiff filed his *Cross-Motion for Summary Judgment* on September 19, 2024. CF, p. 254 – 275. Plaintiff's Cross-Motion included exhibits. CF, p. 276 – 280.

Plaintiff filed his *Response in Opposition to Defendant's MSJ* on September 19, 2024. CF, p. 640 – 671.

Plaintiff filed his *Motion to Exceed Page Limitation Regarding Plaintiff's Response to Defendant's Motion for Summary Judgment* on September 19, 2024. CF, p. 637 – 639.

Defendant filed *Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for its Motion for Summary Judgment* on October 3, 2024. CF, p. 672 – 675. This motion was granted by the District Court on October 4, 2024. CF, p. 676.

Defendant filed *Defendant Best Buy, L.P.'s Response to Plaintiff's Cross-Motion for Summary Judgment* on October 10, 2024. CF, p. 677 – 688. Defendant's Response included exhibits. CF, p. 689 – 728.

Defendant filed *Defendant Best Buy, L.P.'s Reply Brief in Support of its Motion for Summary Judgment* on October 10, 2024. CF, p. 729 – 740. Defendant's Reply included exhibits. CF, p. 741 – 783.

The District Court issued an Order granting Plaintiff's *Motion to Exceed Page Limitation Regarding Plaintiff's Response to Defendant's Motion for Summary Judgment* on October 11, 2024. CF, p. 784 – 786.

Defendant filed a *Notice of Deposit* attesting to delivery of Exhibit Q to Defendant's *Response to Plaintiff's Cross Motion for Summary Judgment* on October 14, 2024. CF, p. 787 – 788.

Plaintiff filed his *Motion for Extension of Time to File Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 21, 2024. CF, p. 791 – 794.

Plaintiff filed his *Notice of Conventionally Submitted Material in Plaintiff's Cross-Motion for Summary Judgment* on October 28, 2024. CF, p. 795 – 796.

Plaintiff filed his *Motion to Exceed Page Limitation Regarding Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 28, 2024. CF, p. 797 – 799.

Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 28, 2024. CF, p. 800 – 828. Plaintiff's Reply included exhibits. CF, p. 829 – 832.

Plaintiff filed *Plaintiff's Motion for Extension of Time to File Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 21, 2024. CF, p. 834 – 837. This motion was granted by the District Court on the same date.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Exceed Page Limitation* on October 29, 2024. CF, p. 838 – 840. Defendant's response included exhibits. CF, p. 841 – 843.

The District Court issued its *Order: Motion to exceed page limitation regarding ptfs reply to defs response to ptfs cross msj* on October 29, 2024, granting Plaintiff a page limitation extension by five pages. CF, p. 844 - 847.

Plaintiff filed *Plaintiff's Amended Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 31, 2024. CF, p. 849 – 869.

Plaintiff filed his *Unopposed Motion to Strike and Replace Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 31, 2024. CF, p. 870 – 872.

The District Court granted Plaintiff's *Unopposed Motion to Strike and Replace Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on November 1, 2024. CF, p. 873 – 875.

The District Court issued its *Order Re: Cross Motions for Summary Judgment* on November 19, 2024, granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*. CF, p. 876 – 883.

Plaintiff filed *Plaintiff's Motion for Reconsideration* with respect to the District Court's *Order Re: Cross Motions for Summary Judgment* on December 3, 2024. CF, p. 890 – 907.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Reconsider* on December 24, 2024. CF, p. 908 – 913.

Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Reconsideration* on December 31, 2024. CF, p. 963 – 973.

The District Court issued its *Order: Plaintiff's Motion for Reconsideration* on January 6, 2025, denying Plaintiff's *Motion for Reconsideration*. CF, p. 974 – 992.

III. SUMMARY OF THE ARGUMENT

The District Court committed no error in properly considering evidence included with Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment because such evidence did not raise any new issues for which Plaintiff had not been placed on notice in Defendant's original *Motion for Summary Judgment*. The District Court properly considered the evidence included in Defendant's Reply and Response to Plaintiff's *Cross Motion for Summary Judgment* because the evidence was admissible pursuant to Colo. R. Evid. 901(b)(4) and Colo. R. Evid. 803(6). Therefore, the District Court committed no error in issuing its Order granting Defendant's *Motion for Summary Judgment*.

The District Court committed no error in properly considering all evidence included with Defendant's *Motion for Summary Judgment* and subsequent briefing alongside Plaintiff's *Cross Motion for Summary Judgment* and subsequent briefing. The District Court committed no error in finding the facts specially and stating separately its conclusions of law thereon pursuant to Colo. R. Civ. P. 52. The District Court did not abuse its discretion in issuing a ruling on summary judgment based

upon findings of fact which shall not be set aside unless clearly erroneous pursuant to Colo. R. Civ. P. 52.

IV. ARGUMENT

A. The District Court committed no error in properly considering evidence submitted with Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment which did not raise any new issues for which Plaintiff had not been placed on notice in Defendant's original Motion for Summary Judgment.

i. Standard of Review

Defendant agrees with Plaintiff's assertion that an order granting or denying a motion for summary judgment is reviewed de novo. *Lombard v. Colorado Outdoor Educ. Center, Inc.*, 187 P.3d 565, 570 (Colo. 2008), *citing Vail/Arrowhead, Inc. v. Dist. Court*, 954 P.2d 608, 611 (Colo. 1998). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Colo. R. Civ. P. 56(c).

Defendant asserts Plaintiff has failed to properly identify the standard of review for admissibility of evidence. Colorado courts review a District Court's determination as to admissibility of evidence for abuse of discretion. *Berenson v. USA Hockey, Inc.*, 338 P.3d 379, 380 (Colo.App. 2013).

ii. *Preservation on Appeal*

Defendant filed *Defendant Best Buy, L.P.'s Reply Brief in Support of its Motion for Summary Judgment* on October 10, 2024. CF, p. 729 – 740. Defendant's Reply included exhibits. CF, p. 741 – 783. Defendant's Reply Brief provided evidence which demonstrated that Plaintiff had refused to show a receipt, and that Plaintiff had receipts on his person, thereby supporting Defendant's previous arguments as to Shopkeeper's Privilege and Plaintiff's unreasonable failure to show proof of purchase. CF, p. 741 – 783.

Plaintiff filed *Plaintiff's Amended Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 31, 2024. CF, p. 848 – 869. Plaintiff submitted argumentation as to Plaintiff's assertion that the exhibits were inadmissible. CF, p. 849. Plaintiff additionally submitted argumentation that, even if such exhibits were admissible, Defendant had not met its burden of demonstrating Plaintiff was unreasonable in refusing to provide proof of purchase. CF, p. 863. Plaintiff argued further that Defendant lacked Shopkeeper's Privilege for its actions. CF, p. 864.

The District Court issued its *Order Re: Cross Motions for Summary Judgment* on November 19, 2024, granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*. CF, p. 876 – 883.

Plaintiff filed *Plaintiff's Motion for Reconsideration* with respect to the District Court's *Order Re: Cross Motions for Summary Judgment* on December 3, 2024. CF, p. 890 – 907. Plaintiff presented arguments asserting Plaintiff was not provided notice to reply to the issues of Shopkeeper's Privilege and whether Plaintiff was unreasonable in refusing to utilize a means of escape pursuant to the Restatement (Second) of Torts § 36 cmt a. in reference to exhibits included in Defendant's Reply Brief. CF, p. 891.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Reconsider* on December 24, 2024. CF, p. 908 – 913. Defendant asserted that the exhibits were not necessary for the District Court to find in favor of Defendant with respect to the issues of Shopkeeper's Privilege and whether Plaintiff was unreasonable in refusing to utilize a means of escape pursuant to the Restatement (Second) of Torts § 36 cmt a. because the issue was sufficiently addressed in Defendant's original *Motion for Summary Judgment*. CF, p. 911.

The District Court issued its *Order: Plaintiff's Motion for Reconsideration* on January 6, 2025, denying Plaintiff's *Motion for Reconsideration*. CF, p. 974.

Accordingly, Defendant agrees this issue has been preserved on appeal.

iii. <u>*Discussion*</u>

Consideration of new evidence attached to a reply brief in support of a summary judgment motion is proper when neither the evidence nor the reply brief raise a new issue to which the non-moving party was not put on notice of the need to present evidence. *Barfield v. Hall Realty, Inc.*, 232 P.3d 286, 290 (Colo.App. 2010), *see Wallman v. Kelley*, 976 P.2d 330, 332 (Colo.App. 1998). Issues not raised by the moving party in the original motion for summary judgment cannot serve as the basis for summary judgment "because the non-moving party is not put on notice as to the need to present evidence concerning that issue." *Wallman,* 976 P.2d, at 332. "Issue" is defined in Black's Law Dictionary as "the matter to be decided in court," and is separate from factual evidence. *Issue*, Black's Law Dictionary (2nd ed., 1910).

The court in *Wallman* determined that new evidence attached to a reply brief was improper for the district court's consideration specifically because the Court found that the "plaintiff was not given notice that she needed to present evidence on the causation **issue** in defendants' initial summary judgment motions and briefs." *Wallman*, 976 P.2d, at 332 (emphasis added). In *Wallman*, the defendants argued in their original motion for summary judgment "that plaintiff's claims should be construed as claims for strict liability in tort and that, as such, they were completely barred by § 13-21-402, C.R.S. 1997." *Id.* The court further noted that the defendants

"did set out in their briefs that proof of a strict liability in tort claim requires proof of causation, but the assertion was made in the context of the argument that plaintiff's claims must be asserted as strict liability claims, or not at all." *Id.* The court found that, given the above, the reply brief was the first instance in which the defendants raised the issue of causation, thereby rendering consideration of new evidence on such issue improper. *Id.*

Plaintiff had ample notice of the issues raised by Defendant in its *Motion for Summary Judgment* and expressly responded to such issues in Plaintiff's *Response in Objection to Defendant's Motion for Summary Judgment*. Defendant argued in its initiating *Motion for Summary Judgment* that Plaintiff had failed to demonstrate the actions of Defendant amounted to false imprisonment because

> "It is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience. Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965)."
>
> CF, p. 233.

Defendant argued that Plaintiff had the tools of escape because Plaintiff "could simply comply with the request to show his receipt," and Defendant "presumed Plaintiff had such proof, because if he did not have proof of purchase,

then Plaintiff committed theft and [Defendant is] exonerated from all Plaintiff's claims." *Id.*

Plaintiff's *Response in Objection to Defendant's Motion for Summary Judgment* directly addressed Defendant's argument as to receipt possession by indicating that Plaintiff agreed with Defendant as to the assertion that showing a receipt to Defendant would not result in physical or mental damage. CF, p. 653. Further, Plaintiff addressed the Restatement (Second) of Torts § 36 cmt. a extensively in his Response, providing arguments as to Plaintiff's assertion that the section applied to pre-confinement issues with respect to false imprisonment claims. CF, p. 655. Plaintiff further responded to Defendant's arguments with supporting case law and additional context as to why Plaintiff "always refuses to show his receipt." CF, 656 – 657. (emphasis omitted). Following Plaintiff's arguments in response to Defendant's arguments as to the reasonable means of showing a receipt to end the interaction at issue, Plaintiff asserted that "all this talk about 'receipt showing' is still an entirely moot point." CF, p. 658. Plaintiff additionally responded to Defendant's arguments under Plaintiff's header which posited that "[a] receipt is legally incapable of being the 'key' to a patron's release; rather, a merchant's personal decision is the actual 'key'". *Id.* Plaintiff's arguments in response to Defendant's address of the Restatement (Second) of Torts § 36, particularly with

respect to the reasonableness of presenting a receipt to end the interaction, extended through pages 14 through 25 of Plaintiff's *Response in Opposition to Defendant's Motion for Summary Judgment*. CF, p. 653 – 664.

Plaintiff further responded to Defendant's argument as to the reasonableness of showing a receipt in his *Cross Motion for Summary Judgment*, in which Plaintiff challenged that Defendant had not shown the District Court that Plaintiff had a receipt at the time of the incident. CF, p. 270. Where a moving party points out the lack of any allegation or supporting evidence of an issue in its motion for summary judgment, it becomes incumbent on the non-moving party to come forward with evidence which demonstrates a genuine issue of material fact. *State v. 5 Star Feedlot Inc.*, 487 P.3d 1183, 1191 (Colo.App. 2019), *citing Cont'l Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712-13 (Colo. 1987). A nonmoving party "may not rely on allegations or denials in the pleadings, legal conclusions unsupported by evidence, or mere argument to establish the existence of a genuine issue of material fact." *In re Estate of Garcia*, 2023 WL 12061382, *3 (Colo.App. 2023). Where a non-moving party fails to come forward with evidence demonstrating a genuine issue of material fact on cross-motions for summary judgment, the appellate court may direct the entry of judgment against it and for the moving party. *State*, 487 P.3d at 1191.

Plaintiff's *Cross Motion for Summary Judgment* did address whether Plaintiff had a receipt on his person, demonstrating Plaintiff's continued refusal to provide proof of purchase and contending that Defendant's arguments should fail merely because such evidence had not been provided. CF, p. 270. In due response to this contention, Defendant included in its subsequent Reply brief exhibits of receipts which evidenced Plaintiff had made purchases at the store location on the date of the incident, as well as an additional affidavit in support of Defendant's arguments under the same legal issue. CF, p. 741 – 769; 779 – 780.

The District Court properly considered exhibits of receipts provided in Defendant's *Reply Brief in Support of its Motion for Summary Judgment*. Plaintiff has argued, from the outset of this instant action and its underlying action, that he did not wish to produce evidence as to whether or not he had a receipt on his person at the time of the incident alleged in the underlying case. CF, 656 – 657. Plaintiff has further demonstrated through numerous lawsuits his modus operandi of targeting retail store locations which he has specifically identified as locations in which retail service workers routinely request customers present a sales receipt upon exit from the store premises. CF, p. 91 – 226.

Defendant's inclusion of additional exhibits in its reply brief was not improper, and the District Court did not err in its consideration of the same. Plaintiff

contended that the District Court erred when it considered receipts included as exhibits to Defendant's Reply and Response to Plaintiff's *Cross Motion for Summary Judgment*. Defendant's initiating *Motion for Summary Judgment* raised the following issues: (1) false imprisonment; (2) defamation; (3) assault; and (4) Defendant's affirmative defense of the Shopkeeper's Privilege. CF, p. 233 – 237. The exhibits addressed by Plaintiff were provided in support of Defendant's argument as to the first issue of False Imprisonment, which Defendant raised in its original *Motion for Summary Judgment* and subsequently preserved throughout the briefing process. CF, p. 233.

Defendant's decision to provide evidence of the receipts in its reply brief did not raise a new issue, but rather resolved the primary issue in the underlying case. Plaintiff had notice in Defendant's *Motion for Summary Judgment* that Defendant had presented arguments with respect to Plaintiff's refusal to provide a receipt to relieve himself of the alleged detention. CF, p. 233. Plaintiff had the opportunity to respond to the issue of Defendant's assertion that Plaintiff did not meet the burden of proof for his claim of false imprisonment claim when he provided his *Response in Objection to Defendant's Motion for Summary Judgment* and *Cross Motion for Summary Judgment*. Plaintiff addressed this issue extensively in his *Response in Objection to Defendant's Motion for Summary Judgment.* CF, p. 653 – 664. Plaintiff

further acknowledged the issue in his *Cross Motion for Summary Judgment*, in which Plaintiff challenged that Defendant had not provided evidence that Plaintiff had refused to show a receipt, or that Plaintiff had a receipt on his person. CF, p. 270.

At the conclusion of Defendant's *Motion for Summary Judgment* and Plaintiff's *Cross Motion for Summary Judgment*, Plaintiff had established a reliance upon a lack of factual evidence to support his argument that a genuine issue of material fact remained in the underlying case. Plaintiff, as a nonmoving party, "may not rely on allegations or denials in the pleadings, legal conclusions unsupported by evidence, or mere argument to establish the existence of a genuine issue of material fact." *In re Estate of Garcia*, 2023 WL 12061382, *3 (Colo.App. 2023). To resolve the arguments which had been developed through briefing on the issue of false imprisonment, Defendant included with its Reply exhibits which demonstrated that Plaintiff did make purchases at the Defendant store location on the date of the incident, directly responding to Plaintiff's arguments. CF, p. CF, p. 741 – 769.

The mere fact that receipts existed for the date at issue was not a new legal issue to be addressed for which Plaintiff did not have an opportunity to formulate a response. Plaintiff responded extensively to Defendant's arguments as to Plaintiff's reasonable means of escape through showing of a receipt in Plaintiff's *Response in*

Objection to Defendant's Motion for Summary Judgment. Plaintiff further relied upon the presumption that Defendant did not have evidence of relevant receipts when providing his *Cross Motion for Summary Judgment to the District Court*. Plaintiff had received notice through Defendant's *Motion for Summary Judgment*, not only of the issues raised by Defendant as to Plaintiff's false imprisonment claim, but also of Defendant's arguments on Plaintiff's decision not to provide reasonable evidence of a receipt to end the confrontation.

The District Court properly considered the affidavit of Mahmoud Abu-Shaweesh included as an exhibit to Defendant's Reply Brief. The affidavit provided from Defendant's employee, Mahmoud Abu-Shaweesh (hereinafter "Mahmoud"), was properly considered by the District Court.

The affidavit provided from Mahmoud, Defendant's employee, merely adds additional evidence to factual information already addressed in Defendant's original *Motion for Summary Judgment*. The information provided did not create a new issue to which Plaintiff had no opportunity to respond. Plaintiff addressed Mahmoud's actions directly in his Response and *Cross Motion for Summary Judgment* and provided Plaintiff's affidavit as to how the interaction occurred. To resolve this established issue, Defendant provided an affidavit from Mahmoud which reinforced factual evidence in support of Defendant's arguments as to the legal issue of

Plaintiff's failure to meet his burden of proof for his false imprisonment claim and Defendant's argument that Plaintiff should have reasonably provided proof of purchase to end the interaction. CF, p. 779 – 780.

Defendant's *Motion for Summary Judgment* set forth the following factual allegations: (1) Plaintiff did not show a receipt to Defendant employees despite request; (2) Defendant employees suspected Plaintiff of committing theft at the time of the stop; (3) Defendant employees repeatedly asked Plaintiff to return store merchandise; (4) Defendant employees left Plaintiff and told him to "have a good one"; (5) Defendant employees did not physically touch Plaintiff during the interaction; and (6) Plaintiff could have shown a receipt at any point in time to end the confrontation. CF, p. 227 – 239.

Plaintiff's *Response in Opposition to Defendant's Motion for Summary Judgment* addressed the following with respect to Mahmoud: (1) Plaintiff asserted Mahmoud repeatedly requested Plaintiff return Defendant merchandise; (2) Plaintiff denied that Mahmoud requested to see Plaintiff's receipt; (2) Plaintiff asserted Mahmoud and other Defendant employees did not have knowledge of what was in Plaintiff's pockets or on his person; (4) Plaintiff asserted Mahmoud made statements which Plaintiff asserted made him feel he could not leave; (5) Plaintiff asserted Mahmoud and other Defendant employees physically corralled Plaintiff against the

building wall; and (6) Plaintiff confirmed Mahmoud told Plaintiff to "Have a good one" at the end of the interaction. CF, p. 640 – 671.

The affidavit included in Defendant's Reply specifically addressed the following factual information: (1) Mahmoud was a General Manager employed by Defendant at the store location at issue on the date of the incident; (2) Mahmoud had observed Plaintiff remove items from a shelf, place them in his pocket, and immediately leave the store; (3) Mahmoud had confirmed this observation through security camera footage; (4) Plaintiff was asked by Defendant's loss prevention employee upon exit of the store location to show his receipt and declined; (5) Mahmoud exited the store to request Plaintiff return the product from his pocket; (8) Plaintiff refused to return the product; and (9) Mahmoud returned to the interior of the store location after he confirmed police had been contacted. CF, p. 779 – 780.

Accordingly, this Court should uphold the District Court's Order granting Defendant's *Motion for Summary Judgment*.

B. The District Court properly considered the evidence included with Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment because such evidence was admissible under Colo. R. Evid. 901(b)(4) and 803(6).

i. Standard of Review

Colorado courts review a District Court's determination as to admissibility of evidence for abuse of discretion. *Berenson v. USA Hockey, Inc.*, 338 P.3d 379, 380

(Colo.App. 2013). Defendant asserts Plaintiff has failed to properly identify the standard of review for admissibility of evidence and respectfully requests this Court disregard Plaintiff's arguments as to the same.

A. *Preservation on Appeal*

Defendant filed *Defendant Best Buy, L.P.'s Reply Brief in Support of its Motion for Summary Judgment* on October 10, 2024. CF, p. 729 – 740. Defendant's Reply included exhibits. CF, p. 741 – 783. Defendant's Reply Brief provided evidence which demonstrated that Plaintiff had refused to show a receipt, and that Plaintiff had receipts on his person, thereby supporting Defendant's previous arguments as to Shopkeeper's Privilege and Plaintiff's unreasonable failure to show proof of purchase. CF, p. 741 – 783.

Plaintiff filed *Plaintiff's Amended Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 31, 2024. CF, p. 848 – 869. Plaintiff submitted argumentation as to Plaintiff's assertion that the exhibits were inadmissible hearsay. CF, p. 849.

The District Court issued its *Order Re: Cross Motions for Summary Judgment* on November 19, 2024, granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*. CF, p. 876 – 883.

Plaintiff filed *Plaintiff's Motion for Reconsideration* with respect to the District Court's *Order Re: Cross Motions for Summary Judgment* on December 3, 2024. CF, p. 890 – 907. Plaintiff presented arguments asserting the affidavit and receipt exhibits included in Defendant's Reply Brief were inadmissible. CF, p. 891-892.

Accordingly, Defendant agrees this issue has been preserved on appeal.

i. <u>*Discussion*</u>

Evidence is relevant when it tends to make the existence of any fact material to the determination of the action more or less probable than such fact would be without the evidence. Colo. R. Evid. 401. Relevant evidence is admissible unless otherwise enumerated in the Constitution of the United States, the Constitution of the State of Colorado, the Colorado Rules of Evidence, or other rules of the Supreme Court or the statutes of the State of Colorado. Colo. R. Evid. 402. Irrelevant evidence is inadmissible. *Id.*

Defendant's Reply and *Response to Plaintiff's Cross Motion for Summary Judgment* included three exhibits: (1) Exhibit P., Affidavit of Mahmoud Abu-Shaweesh; (2) Exhibit N., Map of Plaintiff's Travels on November 25, 2022; and (3) Exhibit O., Receipts Showing Plaintiff's Purchases at Each Location. CF, p. 689 – 728. Plaintiff has asserted that Exhibit N. is inadmissible due to the lack of an

accompanying affidavit of its custodian or other qualified person under Colo. R. Evid. 902. However, Exhibit N. may also be authenticated pursuant to assessment of its distinctive characteristics pursuant to Colo. R. Evid. 901(b)(4).

Authentication of documents is a requirement which is satisfied under Colorado law by evidence which is "sufficient to support a finding that the matter in question is what a proponent claims." Colo. R. Evid. 901(a). Documents may be authenticated through distinctive characteristics and the like, including "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances." Colo. R. Evid. 901(b)(4). Colorado courts have found that emails may be authenticated through "consideration of their distinctive characteristics shown by an examination of their content and substance." *State ex rel. Coffman v. Robert J. Hopp & Associates, LLC*, 442 P.3d 986, 1005 (Colo.App. 2018); *see People v. Bernard*, 305 P.3d 433, 435 (Clapp. 2013). Documents which could be authenticated through distinctive characteristics are not required to be supported by personal knowledge of the documents themselves for authentication. *Id.* at 1005.

Federal law provides for an identical mechanism by which documents may be authenticated through distinctive characteristics and the like, particularly through "[t]he appearance, contents, substance, internal patterns, or other distinctive

characteristics of the item, taken together with all the circumstances." Fed. R. Evid. 901(b)(4). Persuasive federal courts have found that "[w]here documents are otherwise submitted to the court, and where personal knowledge is not relied upon to authenticate the document, the district court must consider alternative means under Federal Rules of Evidence 901(b)(4)," which includes authentication through distinctive characteristics and the like, by which documents may be authenticated by review of their contents should they appear sufficiently genuine. *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533 (9th Cir. 2011), *see U.S. v. Whitworth*, 856 F.2d 1268, 1283 (9th Cir. 1988) (authenticating letters through matches between the postmark dates and defendant's location on the days letters were mailed).

The District Court properly considered the distinctive characteristics of Exhibit N. Exhibit N. provided evidence of receipts which demonstrated Plaintiff made purchases at multiple Defendant store locations on November 25, 2022. CF, p. 741 – 769. The receipts included dates, times, and addresses for each purchase made by Plaintiff. *Id.* Exhibit N. was demonstratively supported by the information evidenced in Exhibit O., which illustrated the Defendant store locations visited by Plaintiff on the date of November 25, 2022 based upon the addresses, dates, and times evidenced in Exhibit N. CF, p. CF, p. 770 – 778. Further, the receipt records provided in Exhibit N. were characterized by receipt bar codes, Plaintiff's Member

ID Number, and identification of Defendant as the company which issued each receipt. CF, p. 741 – 769.

Hearsay is defined as a "statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Colo. R. Evid. 801(c). Hearsay is generally inadmissible unless such hearsay falls within an enumerated exception. Colo. R. Evid. 802. Records of regularly conducted activity, including a record of a regularly conducted business activity, qualify as admissible hearsay under an enumerated exception. Colo. R. Evid. 803(6).

Exhibit N. provides evidence of receipt records demonstrating purchases made by Plaintiff on November 25, 2022. Receipts fall within the hearsay exception category of a regularly conducted business activity pursuant to Colo. R. Evid. 803(6). Therefore, Exhibit N. is admissible hearsay.

Exhibit P. provides evidence of a sworn affidavit from Defendant employee, Mahmoud, and does not qualify as hearsay pursuant to Colo. R. Evid. 801(c). Therefore, Exhibit P. cannot be excluded under the hearsay rule and is admissible.

Accordingly, this Court should uphold the Order issued by the District Court granting Defendant's *Motion for Summary Judgment*.

C. The District Court properly considered the applicable evidence in Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Cross Motion for Summary Judgment.

I. *Standard of Review*

Defendant agrees with Plaintiff's assertion that an order granting or denying a motion for summary judgment is reviewed de novo. *Lombard v. Colorado Outdoor Educ. Center, Inc.*, 187 P.3d 565, 570 (Colo. 2008), *citing Vail/Arrowhead, Inc. v. Dist. Court*, 954 P.2d 608, 611 (Colo. 1998). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Colo. R. Civ. P. 56(c).

ii. *Preservation on Appeal*

The District Court issued its *Order Re: Cross Motions for Summary Judgment* on November 19, 2024, granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*. CF, p. 876 – 883.

Plaintiff filed *Plaintiff's Motion for Reconsideration* with respect to the District Court's *Order Re: Cross Motions for Summary Judgment* on December 3, 2024. CF, p. 890 – 907. Plaintiff presented arguments asserting Plaintiff was not provided notice to reply to the issues of Shopkeeper's Privilege and whether Plaintiff

was unreasonable in refusing to utilize a means of escape pursuant to the Restatement (Second) of Torts § 36 cmt a. in reference to exhibits included in Defendant's Reply Brief. CF, p. 891.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Reconsider* on December 24, 2024. CF, p. 908 – 913. Defendant asserted that the exhibits were not necessary for the District Court to find in favor of Defendant with respect to the issues of Shopkeeper's Privilege and whether Plaintiff was unreasonable in refusing to utilize a means of escape pursuant to the Restatement (Second) of Torts § 36 cmt a. because the issue was sufficiently raised in Defendant's original *Motion for Summary Judgment*. CF, p. 911.

Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Reconsideration* on December 31, 2024. CF, p. 963 – 973. Plaintiff submitted arguments asserting that Plaintiff did not receive proper notice in Defendant's original *Motion for Summary Judgment* to address the issues of Shopkeeper's Privilege and whether Plaintiff was unreasonable in refusing to utilize a means of escape pursuant to the Restatement (Second) of Torts § 36 cmt a. CF, p. 964-965.

The District Court issued its *Order: Plaintiff's Motion for Reconsideration* on January 6, 2025, denying Plaintiff's *Motion for Reconsideration*. CF, p. 974.

Accordingly, Defendant agrees this issue has been preserved on appeal.

i. *Discussion*

Plaintiff has contended that the District Court erred when it ruled on both Plaintiff's *Cross Motion for Summary Judgment* and Defendant's *Motion for Summary Judgment* simultaneously.

District courts should deny both parties' motion for summary judgment and cross-motion for summary judgment when the court determines "there remained in the case for determination factual issues upon which there might or could be produced further evidence." *Morlan v. Durland Trust Co*., 252 P.2d 98, 102 (Colo. 1952). When a moving party provides its motion for summary judgment to point out the lack of any allegation or supporting evidence as to an issue, it becomes incumbent on the non-moving party to come forward with evidence demonstrating a genuine issue of material fact. *State*, 487 P.3d, 1191. When a non-moving party is unable to demonstrate a genuine issue of material fact, the district court may enter judgment against the non-moving party and for the moving party. *Id.*

Defendant raised the issue of Plaintiff's inability to meet his burden of proof with respect to his claims in its *Motion for Summary Judgment*, including Plaintiff's false imprisonment claim. CF, p. 233. In doing so, Defendant expressly addressed the Restatement (Second) of Torts § 36 and argued that it was unreasonable for Plaintiff to choose not to provide proof of purchase to end the interaction. *Id.* In

responding to Defendant's Motion for Summary Judgment, it was incumbent on Plaintiff as the non-moving party to present a genuine issue of material fact. *State*, 487 P.3d, 1191. Plaintiff provided in his *Response in Objection to Defendant's Motion for Summary Judgment* that Plaintiff always refuses to provide a receipt, rather than providing evidence there existed a genuine issue of material fact. CF, 656 – 657. Plaintiff further provided argument in his *Cross Motion for Summary Judgment* that Defendant had not provided evidence of Plaintiff having a receipt at the time of the interaction, rather than providing evidence which would demonstrate no dispute of material fact. CF, p. 270. In responding to Plaintiff's *Cross Motion for Summary Judgment*, it was incumbent on Defendant to provide evidence that there existed no genuine dispute of material fact, and that the evidence was in favor of the issues Defendant had raised in its *Motion for Summary Judgment*. Therefore, Defendant provided additional evidence in support of the issues raised in Defendant's original *Motion for Summary Judgment*. CF, p. 689 – 728.

The District Court properly considered Plaintiff's arguments in evaluating both Defendant's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment. Courts apply a more liberal standard to pleadings drafted by pro se plaintiffs in comparison to pleadings drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 519 (1972). Courts seek to ensure that pro se litigants "are not denied

review of important issues because of their inability to articulate their argument like a lawyer." *Jones v. Williams*, 443 P.3d 56, 58 (Colo. 2019). However, a court may not assume the role of advocate for a pro se litigant. *Loomis v. Seely*, 677 P.2d 400, 401 (Colo.App. 1983); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Plaintiff contended that the District Court failed to infer several points of fact with respect to Plaintiff's arguments. The District Court indicated in its *Order re: Cross Motions for Summary Judgment* that its analysis assumed "the truth of Plaintiff's evidence" and drew "every favorable inference of facts therefrom" in evaluating Plaintiff's arguments and evidence. CF, p. 881. While Plaintiff is entitled to liberal construal of his filings, Plaintiff may not expect the District Court act as advocate or attorney to bolster Plaintiff's position. *Loomis*, 677 P.2d at 401. The District Court, by its own admission, evaluated Plaintiff's arguments and evidence to draw every favorable inference. CF, p. 881. Therefore, the District Court properly met its obligation in consideration of Plaintiff's filings, and this Court should uphold the District Court's *Order re: Cross Motions for Summary Judgment*.

Accordingly, this Court should uphold the Order issued by the District Court granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*.

V. CONCLUSION

The District Court committed no error in properly considering evidence included with Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment because such evidence did not raise any new issues for which Plaintiff had not been placed on notice in Defendant's original *Motion for Summary Judgment*. The District Court properly considered the evidence included in Defendant's Reply and Response to Plaintiff's *Cross Motion for Summary Judgment* because the evidence was admissible pursuant to Colo. R. Evid. 901(b)(4) and Colo. R. Evid. 803(6). Therefore, the District Court committed no error in issuing its Order granting Defendant's *Motion for Summary Judgment*.

The District Court committed no error in properly considering all evidence included with Defendant's *Motion for Summary Judgment* and subsequent briefing alongside Plaintiff's *Cross Motion for Summary Judgment* and subsequent briefing. The District Court committed no error in finding the facts specially and stating separately its conclusions of law thereon pursuant to Colo. R. Civ. P. 52. The District Court did not abuse its discretion in issuing a ruling on summary judgment based upon findings of fact which shall not be set aside unless clearly erroneous pursuant to Colo. R. Civ. P. 52.

Accordingly, this Court should uphold the District Court's rulings on Defendant's *Motion for Summary Judgment* and Plaintiff's *Cross-Motion for Summary Judgment*, respectively.

Filed August 4, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Sarah K. Vogel*
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CERTIFICATE OF SERVICE

I hereby certify that, on August 4, 2025 a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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s/ Sarah K. Vogel

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
PLAINTIFF'S APPEAL REPLY BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his APPEAL REPLY BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My reply brief has **5,693** words, which does not exceed the 5,700 word limit allowed by this Court for appeal reply briefs.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
William Montgomery

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ARGUMENT

I. THE DISTRICT COURT IMPERMISSIBLY GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

a. The District Court improperly considered inadmissible evidence introduced *for the very first time* in Defendant's MSJ reply brief

In Defendant's Appeal Answer Brief, it claims that "The District Court committed no error in properly considering evidence included with Defendant's Reply and Response to Plaintiff's Cross Motion for Summary Judgment because such evidence did not raise any new issues for which Plaintiff had not been placed on notice in Defendant's original Motion for Summary Judgment." *Def's Answer Brief at 12.* Defendant further asserts that "'Issue' is defined in Black's Law Dictionary as 'the matter to be decided in court,' and is separate from factual evidence," *Def's Answer Brief at 16*, and that "Plaintiff had ample notice of the issues raised by Defendant in its Motion for Summary Judgment and expressly responded to such issues in Plaintiff's Response in Objection to Defendant's Motion for Summary Judgment." *Def's Answer Brief at 17.*

These arguments fundamentally misconstrue the nature of summary judgment and procedural due process. While the general "issue" of shopkeeper's privilege or receipt possession might have been mentioned in Defendant's initial motion, the ***evidence*** to support those issues was conspicuously absent. Thus,

Defendant's statement made that "The exhibits addressed by Plaintiff were provided in support of Defendant's argument as to the first issue of False Imprisonment, which Defendant raised in its original Motion for Summary Judgment and subsequently preserved throughout the briefing process," *Def's Answer Brief at 21,* **is factually incorrect.** The record clearly shows that the receipts and the affidavit of Mahmoud Abu-Shaweesh were ***NOT*** provided with Defendant's original Motion for Summary Judgment, *CF at 227.* Instead, they were introduced for the very first time in Defendant's MSJ reply brief, *CF at 729 and 741.* Therefore, Defendant did not "raise" these specific ***factual*** issues, nor did it "preserve" them through the briefing process from the outset.

Defendant's assertion that "'Issue' is defined in Black's Law Dictionary as 'the matter to be decided in court,' *and is separate from factual evidence*" (emphasis added) is intellectually dishonest in the context of summary judgment. In a summary judgment proceeding, **issues are inextricably linked to factual evidence.** By arguing that an "issue" is separate from factual evidence, Defendant attempts to ignore the fundamental standard for summary judgment. In essence, Defendant is trying to bypass the court's examination of the factual record to determine if a material factual dispute exists. C.R.C.P. Rule 56(c) explicitly states that summary judgment is appropriate only if "there is no genuine issue as to any material fact."

Thus, a "genuine issue" *literally* IS a <u>factual</u> dispute <u>supported by evidence</u>. Without factual evidence, a purported "issue" is nothing more than a conclusory statement, which is insufficient to create or sustain a claim or defense in summary judgment. *Suncor v. Aspen,* at 1269. As such, Defendant's failure to provide *actual* **<u>factual</u>** evidence in its **initial** motion meant that the "issues" it claims to have "raised" were not properly before the Court for summary judgment purposes.

Specifically, Defendant claims that "The affidavit provided from Mahmoud, Defendant's employee, merely adds additional evidence to factual information already addressed in Defendant's original Motion for Summary Judgment." *Def's Answer Brief at 23.* However, no such "factual information" was ever provided in Defendant's **original** Motion for Summary Judgment. Only conclusory argument was provided, *CF at 233-237.* Thus, Mahmoud's affidavit introduced **<u>entirely new</u>** "factual information," not merely "additional evidence" to pre-existing facts, which demonstrates precisely the procedural impropriety.

Finally, Plaintiff's responses to these "issues" that he argued in his Response to Defendant's MSJ were made purely out of thoroughness and an abundance of caution, addressing all potential arguments even if unsupported. However, they do not mean that Defendant ever met ***<u>ITS</u>*** initial burden. The burden to establish the absence of a genuine issue of material fact <u>always rests with the moving party first</u>.

If the moving party fails to satisfy that initial burden, no amount of "pointing to" the nonmovant's arguments will ever be enough to change that.

b. The District Court erred by relying on conclusory statements

The District Court's Order repeatedly relied on conclusory statements made by Defendant, which lead it to conclude that Plaintiff "act[ed] in a manner that could reasonably be construed as suspicious," "intentionally created the misunderstanding" and "designed his conduct to inspire this belief." These statements, unsupported by admissible evidence, are legally insufficient to grant summary judgment.

Defendant's Motion for Summary Judgment was replete with unsubstantiated assertions that Plaintiff "targeted" the store, "orchestrated the interaction," "intentionally concealed merchandise," "shoplifted," "took Best Buy inventory," etc. As Plaintiff has argued numerous times, **every single one of these** are "purely conclusory statements" that lack "supporting documentation or testimony" which thereby render them "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Therefore, Defendant failed to satisfy **its** burden **as the movant** to show – *with real, concrete,* ***non-conclusory*** *statements and* ***actual*** *evidence* – that it possessed "shopkeeper's privilege" in the matter.

Next, with specific regard to conclusory statements made in relation to the issue of "receipt possession," in Defendant's Appeal Answer Brief it claims that

"Plaintiff had notice in Defendant's Motion for Summary Judgment that Defendant had presented arguments with respect to Plaintiff's refusal to provide a receipt to relieve himself of the alleged detention." *Def's Answer Brief at 21.* Defendant further claims that it "expressly addressed the Restatement (Second) of Torts § 36 and argued that it was unreasonable for Plaintiff to choose not to provide proof of purchase to end the interaction." *Def's Answer Brief at 33.* However, merely "presenting arguments" in a motion for summary judgment opening brief, even those referencing legal treatises, *but whereby no supporting evidence is ever submitted,* is not enough to shift the burden as the movant. **Arguments must be supported by evidence, and conclusory statements will not suffice.** For example, Defendant's claim that "At all times, Plaintiff could have simply shown a receipt and ended the confrontation," *CF at 231,* is a prime example of a conclusory statement. It lacks any evidentiary foundation, such as proof that a receipt existed, proof that Plaintiff possessed it, or proof that whatever he had on him was even store merchandise for which a receipt might be associated.

Furthermore, Defendant's claim that "Plaintiff provided in his Response in Objection to Defendant's Motion for Summary Judgment that *Plaintiff always refuses to provide a receipt*," (emphasis added), *Def's Answer Brief at 34,* is a mischaracterization. While Plaintiff may have made a general statement in his

Response about his personal policy regarding receipt showing, this was a general, open-ended statement and not a specific admission of fact regarding the incident at Best Buy on November 25, 2022. A general statement about a personal habit does not constitute specific evidence relevant to the particular incident in question, nor does it absolve the moving party of its burden to factually support its arguments with. Crucially, Plaintiff explicitly argued in his Response to Defendant's MSJ that Defendant failed to present any admissible evidence that Plaintiff ***was even a customer of the Best Buy store*** on the date of the incident, *CF at 657.* Therefore, any general statement about Plaintiff's receipt showing habits is irrelevant to this specific case, as Plaintiff could not have refused to show a receipt for a purchase he did not make. Defendant's attempt to apply Plaintiff's general statement as a specific admission of conduct on the day of the incident is a conclusory leap, unsupported by specific evidence, that does not satisfy its burden as the movant.

Moreover, Defendant's claim that "Plaintiff asserted that *'all this talk about receipt showing is still an entirely moot point,"*" (emphasis added), *Def's Answer Brief at 18,* is also a misinterpretation of Plaintiff's argument. Plaintiff's statement was not a concession or an admission against interest. Instead, it was a strategic legal assertion emphasizing Defendant's fundamental failure to establish the foundational facts necessary to make the "receipt showing" issue relevant to the case. Plaintiff's

argument was, and remains, that without admissible evidence proving he was a customer of Best Buy on the date of the incident, or that he possessed a receipt for merchandise from Best Buy, any discussion about "receipt showing" is irrelevant and speculative. In the end, Plaintiff's statement highlights Defendant's evidentiary deficiencies, rather than providing support for its claims.

Finally, Defendant even admitted in its own Motion for Summary Judgment that it didn't ***actually*** know whether Plaintiff had a receipt on him or not that day. Specifically, Defendant stated that "It is **presumed** Plaintiff had such proof, because **if** he did not have proof of purchase..." *CF at 233.* The explicit use of the words "presumed" and "if" inherently indicates uncertainty and a lack of concrete factual assertion. Such are precisely the type of conclusory statements that *Suncor v. Aspen* deems insufficient to create a genuine issue of material fact.

c. The District Court improperly shifted the burden of proof and erroneously negated "confinement" based on Plaintiff's silence and/or refusal to accept unproven demands

In Defendant's Appeal Answer Brief, it claims that "Plaintiff[] fail[ed] to meet his burden of proof for his false imprisonment claim [that he *did not* have any 'means of escape' in the matter]." *Def's Answer Brief at 24.* However, it was Defendant who failed satisfy **its** burden **as the movant,** *in the first place,* to prove that Plaintiff ***DID*** have any "means of escape" available to him.

Specifically, the District Court relied on conclusory statements made by Defendant to effectively shift the burden to Plaintiff to now ***disprove*** the unsubstantiated claims that he had any "means of escape," which is an error of law. The moving party in a summary judgment motion always bears the initial burden of establishing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. *C.R.C.P. Rule 56(c).* ***Only if*** the moving party meets this initial burden does the burden then shift to the nonmoving party to show that a triable issue of fact exists. *Ginter v. Palmer Co.,* 196 Colo. 203, 585 P.2d 583 (1978). *See also Wolther v. Schaarschmidt,* 738 P.2d 25 (Colo. App. 1986) ("Moreover, while a party against whom a summary judgment is sought may take some risk by not submitting controverting affidavits or other evidence, nevertheless, if the moving party's proof does not itself demonstrate the lack of a genuine factual issue, summary judgment is inappropriate."); *People v. Hernandez & Assocs., Inc.,* 736 P.2d 1238 (Colo. App. 1986) ("Although it may be perilous for the party opposing summary judgment not to file a responsive affidavit, *see* C.R.C.P. 56(e), election not to do so does not relieve the moving party of its burden to establish that summary judgment is appropriate.").

Defendant's initial motion failed to provide any admissible evidence to substantiate its claims that Plaintiff had any "means of escape," yet the District

Court adopted such claims as actual factual findings. However, as just mentioned, until the moving party has made a prima facie showing that there is no genuine issue of material fact, the burden does not shift to the nonmoving party. Therefore, Defendant's attempt to introduce evidence to meet this burden **only in its reply brief** was procedurally improper and prejudicial.

Case in point: the District Court erroneously negating the element of "confinement" in this matter by improperly **inferring –** from Plaintiff's silence and refusal to accept unproven demands – that he purportedly chose not to "avail himself" of two purported "means of escape" that he purportedly had available to him.

First, the District Court stated that "Plaintiff does not deny having a receipt at the time of the incident." *CF at 878.* This statement was the District Court's way of **inferring** that Plaintiff *did* have a receipt on him [that he purportedly *could* have shown as a "means of escape"]. However, such reasoning improperly shifted the burden onto Plaintiff to now prove (in his Response to Defendant's MSJ) that he *did not* have a receipt on him, when no such **fact** [that Plaintiff *did* have a receipt on him] was ever properly established by Defendant, **in its initial MSJ brief,** *in the first place.* Rather, Defendant merely supplied *conclusory statements* in its MSJ opening brief that "Plaintiff had a receipt on him."

Second, the District Court stated that "Defendant's employees can repeatedly be

heard telling Plaintiff that he can leave as soon as he gives back the stolen goods" and that "Not once during the detainment does Plaintiff deny stealing." *CF at 878.* These statements were the District Court's way of **inferring** that Plaintiff *did* have stolen merchandise on him [that he purportedly *could* have returned as a "means of escape"].[12] However, once again, such reasoning improperly shifted the burden onto Plaintiff to now prove (in his Response to Defendant's MSJ) that he *did not* have stolen merchandise on him, when no such **fact** [that Plaintiff *did* have stolen merchandise him] was ever properly established by Defendant, **in its initial MSJ brief,** *in the first place.* Rather, Defendant, once again, merely supplied *conclusory statements* in its MSJ opening brief that "Plaintiff had stolen merchandise on him."

Therefore, the District Court's **inferences** that Plaintiff's non-denials somehow negated the "confinement" element of his false imprisonment claim is a fundamental misapplication of summary judgment law. Instead, the only appropriate decision for the District Court to have made in this matter was to **infer**

1 It should be noted that this is an **utterly terrible argument** in its own right. That is, it strains SERIOUS credulity that if Plaintiff *did* steal something from the store, then *did* return it upon being asked to, **that Defendant ***WOULD NOT*** *ABSOLUTELY* and *UNQUESTIONABLY* continue to detain him in the mean time until the police arrived to begin processing him!** At that point, the act of "returning stolen merchandise" would be *the exact opposite* of an "escape path."

2 Also worth noting is that ***EVEN IF*** Plaintiff were to "hand over" merchandise, *regardless of whether it be stolen, owned by him, or perhaps property that he had been erroneously attempting to return to the wrong store,* such would ***STILL*** not nullify his unlawful detention from having occurred in the matter. This is because **"The exercise of dominion over the property serves also to exercise dominion over the person owning such property."** *Burrow v. K-Mart Corp,* 166 Ga. App. 284, 285 (1983). That is, "it may be inferred that the employee intended to restrain and control both the property and the person of the plaintiff until the search was completed." *Id.*

that Plaintiff, the nonmoving party, ***DID NOT*** have a receipt ***OR*** stolen merchandise on him, since Defendant failed to supply actual factual evidence that ***EITHER*** was true **with its initial MSJ.** As the District Court *itself* stated in its own Order, *CF at 877,* "In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party." *Vigil v. Franklin,* 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d322 (Colo. 2004).

d. The District Court failed to properly infer facts from Plaintiff's evidence

Even though it was *not even remotely necessary* for Plaintiff to provide "counter" evidence in his Response to Defendant's MSJ – because of how Defendant, **as the movant,** failed "itself [to] demonstrate the lack of a genuine factual issue," *Wolther v. Schaarschmidt,* 738 P.2d 25 (Colo. App. 1986) – it is worth reiterating that the District Court ***STILL*** independently, erroneously, and unlawfully concluded that "Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident." *CF at 881.* This finding directly contradicts the record and demonstrates the District Court's failure to apply the fundamental summary judgment standard

requiring all reasonable inferences to be drawn **in favor of the nonmoving party.**

As detailed in Plaintiff's Response to Defendant's MSJ, Plaintiff submitted an affidavit containing several critical statements regarding his actions on November 25, 2022. *CF at 621, ¶¶ 5, 24, and 25.* While these statements did not explicitly use the words "inside the store," it strains credulity that they would not be referencing Plaintiff's actions completely inside a store from which he was literally just found standing right outside of.

Therefore, the absence of such explicit "inside the store" phrasing is not fatal to Plaintiff's position. In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. *Vigil v. Franklin,* at 1086. By failing to **infer** that Plaintiff's sworn statements applied to his actions **inside** the store, the District Court violated his fundamental rights in a summary judgment proceeding.

The District Court also failed to account for a police report that Plaintiff independently and properly admitted into the record, upon which such entry was not disputed by Defendant, and to which does constitute "proof as to his actions inside the Best Buy immediately preceding the incident." *CF at 615.* This further demonstrates

the District Court's selective and improper consideration of the evidence before it.

e. The District Court misinterpreted key jury instructions

In Plaintiff's Appeal Opening Brief, he explained that he "was nothing more than a complete and total stranger" to three store employees, that he was thereby not required to "show a receipt" to, "answer questions" for, or "empty his pockets" in front of to satisfy their baseless curiosities with [let alone serve as some "escape path" for which a complete and total stranger is not required to "avail" himself of]. *Ptf's Opening Brief at 40.* Even though Plaintiff explained, *supra,* how "returning stolen goods" and "showing a receipt" are already not valid "means of escape," it is worth reiterating why the act of "emptying one's pockets" is not a valid one, either.

Specifically, for ***all*** purported "means of escape," any misapplication of Colorado Civil Jury Instruction 21:2(1) that demonstrates a fundamental misinterpretation and abuse of its key phrases impermissibly warps legislative intent and leads to absurd results that undermine the tort of false imprisonment.

When construing a jury instruction, a court must read it "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts," and should not interpret it in ways that "defeat the legislature's obvious intent or render part of the [jury instruction] either 'meaningless' or 'absurd.'" *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003); *Reg'l Transp. Dist. v.*

Lopez, 916 P.2d 1187, 1192 (Colo. 1996). Most importantly, **"Courts may not impute their own meaning to otherwise clear statutory language, nor assume a legislative intent that would vary the words used by the General Assembly."** *People v. Gholston,* 26 P.3d 1, 7 (Colo. App. 2001).

First, a Court is not allowed to vary the plain and ordinary meaning of "escape." "Escape" refers to gaining freedom from confinement *through one's own efforts,* typically by flight or breaking free from physical restraint. It does not encompass a conditional "release" granted by the detainer upon compliance with demands. The Legislature, in crafting laws related to false imprisonment and shopkeeper's privilege, clearly intended "escape" to refer to **a physical act of self-liberation,** not an act of proving innocence or surrendering property. If a Court impermissibly expands the definition of "escape" to include such conditional acts of compliance, it will effectively render the tort of false imprisonment meaningless, as a merchant can now ***literally always*** claim the patron "failed to escape" by not complying with the *any number of* arbitrary demands that it can possibly think up. This interpretation creates an absurd result, contrary to established principles of statutory construction.

Next, a Court is not allowed to improperly expand the definition of "physical barriers" to include people. The plain and ordinary meaning of "barrier" refers to inanimate objects or structures, as evidenced by dictionary definitions and synonyms

like “barricade,” “fence,” “hedge,” and “wall.” The Colorado jury instruction itself separately addresses restriction by “physical force” (CJI 21:2(2)) and “submission to another” (CJI 21:2(5)). Therefore, to include *actual people* as “physical barriers” would render these other distinct methods of restriction redundant and meaningless, which is contrary to established principles of statutory construction.

Next, a Court is not allowed to misconstrue “unreasonable risk of harm” to encompass minor inconveniences or the “harm” of having to prove innocence. The term “harm” in the proper context refers to physical or mental *violence* or *damage*, not mere embarrassment or inconvenience. While the aforementioned actions would indeed not subject a patron to “physical or mental damage,” attempting to break through employees physically blocking an exit *would* practically always involve an “unreasonable risk of harm.” This interpretation is the only one that gives sensible effect to the phrase in conjunction with “physical barriers” and avoids an absurd result where any perceived inconvenience negates a false imprisonment claim.

Finally, a Court is not allowed to misapply the “for any amount of time, no matter how short” instruction. That is, a Court's extensive focus on whether a patron could have ended a detention by complying with demands implicitly diminishes the significance of the initial confinement. Rather, the tort of false imprisonment is complete the moment unlawful confinement occurs, regardless of

its duration. The explicit phrase **"no matter how short"** emphasizes that even a *momentary* unlawful detention is compensable. Therefore, the "means of escape" argument, even if validly applied, addresses the *continuation* of confinement, not the lawfulness of its inception. Thus, if a Court focuses too much on post-confinement actions, it may impermissibly overlook whether the initial detention itself was lawful, which is the primary inquiry for false imprisonment.

Of course, it is always worth reiterating that requiring a patron to "empty their pockets" is *undoubtedly* a **"search"** they are not required to consent to [nor are merchants are allowed to "bootstrap" such refusal to consent into justification for a detention that renders that very consent unnecessary]. *See Florida v. Bostick,* 501 U.S. 429, 111 S. Ct. 2382 (1991); *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998); *United States v. Wood,* 106 F.3d 942, 946 (10th Cir. 1997).

II. THE DISTRICT COURT IMPERMISSIBLY DENIED PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

a. Authentication (Rule 901) and Hearsay (Rule 803) are distinct and independent legal requirements

Defendant contends that the business records (i.e. receipts) it submitted to the District Court were admissible under a combination of Colorado Rules of Evidence Rule 901(b)(4) and Rule 803(6). However, such an argument conflates two separate evidentiary requirements. C.R.E. Rule 901 deals with authentication,

which is the process of establishing that evidence is what its proponent claims it to be. C.R.E. Rule 803 deals with exceptions to the hearsay rule. However, "Authentication [alone] does not guarantee admissibility." *People v. N.T.B.,* 457 P.3d 126, 15 (2019). "Evidence must also satisfy rules governing relevance and must not be excludable under other bars to admission, such as hearsay." *Gonzales v. People,* 471 P.3d 1059, 12 (2020). "Put simply, authentication is necessary, but insufficient, for the admission of evidence." *Id.*

Thus, while Defendant argues that the receipts were authenticated under Rule 901(b)(4) by their dates, times, addresses, bar codes, and Plaintiff's member ID number, **this is an entirely irrelevant and moot point,** as such does not negate the need for a proper foundation to be laid that satisfies Rule 803(6) regarding hearsay. Accordingly, Plaintiff stated in his briefings that the receipts were not "accompanied by an affidavit of its custodian or other qualified witness" as **explicitly** required by C.R.E. Rule 803(6) and discussed in *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003), which thereby rendered them **wholly inadmissible** – in *either* Defendant's MSJ *or* Plaintiff's Cross-MSJ.

Indeed, Plaintiff isn't even alone on this issue, as *United States v. Watkins,* 519 F.2d 294, 296 (D.C. Cir. 1975) unambiguously held that "it is a matter of horn-book law that receipts are hearsay as independent evidence of the making of payment."

Therefore, for a store receipt to be ***actually*** admissible for its *truth* – that a *particular* patron made a *particular* purchase at a *particular* store on a *particular* date – such requires a **foundation** showing that the record was "made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make such a record." *C.R.E. Rule 803(6).* Defendant failed to provide such a foundation; and without such a foundation, the receipts are inadmissible hearsay ***regardless of any purported authentication.*** Cases like *Santa Fe Energy Co. v. Baca,* 673 P.2d 374 (1983), *Ed Hackstaff Concrete v. Powder Ridge Condo.,* 679 P.2d 1112 (1984), *Herman v. Steamboat Springs Super 8 Motel,* 634 P.2d 1005 (1981), *Fasso v. Straten,* 640 P.2d 272 (1982), and *Great West Food Packers v. Longmont Foods Co.,* 636 P.2d 1331 (1981) all underscore the necessity of a proper foundation for business records to be admitted under the hearsay exception.

b. The District Court impermissibly accepted "conclusory inferences" that *Plaintiff* made the associated purchase

Even if the receipt exhibits were admissible absent an accompanied affidavit (which they are not), they do not demonstrate that ***Plaintiff*** made the purchase. In Defendant's Appeal Answer Brief, it claims that "To resolve the arguments which had been developed through briefing on the issue of false imprisonment, Defendant

included with its Reply exhibits which demonstrated that Plaintiff did make purchases at Defendant store location on the date of the incident, directly responding to Plaintiff's arguments." *Def's Answer Brief at 22.* However, the receipt exhibits only demonstrate that ***purchases were made using Plaintiff's credit card,*** not that he personally made any purchases. It is still technically [yet another] conclusory statement to effectively say, as Defendant is doing, that "because Plaintiff's name was on the credit card transaction receipt, he was the one who personally purchased the item." **This constitutes a "conclusory inference,"** not a reasonable one from undisputed facts; it requires a significant logical leap without direct supporting evidence because of how the mere presence of a name on a credit card receipt, without more, does not establish that the cardholder was the person who personally made the purchase at that specific time and place. Indeed, many people use credit cards belonging to others (e.g., family members, employers). Thus, the District Court's acceptance of this conclusory inference, rather than requiring direct evidence of personal involvement, was an error.

Furthermore, the District Court's reliance on the weak, inferential, and purely conclusory statement about who made the purchase improperly shifted the burden onto Plaintiff. For Defendant to defeat Plaintiff's Cross-Motion for Summary Judgment, it needed to show that there was a genuine issue of material fact regarding

who made the purchase. It failed to do so with "significantly probative" evidence. That is, evidence that only creates a "merely colorable" dispute is insufficient to defeat summary judgment. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249 (1986). Thus, Plaintiff had no obligation to ***create*** such a dispute ***for*** Defendant; Defendant already failed to do so ***with its own*** evidence.

III. THE DISTRICT COURT MISCHARACTERIZED PLAINTIFF'S ACTIONS AS THAT OF UNLAWFUL "ENTRAPMENT"

a. Defendant's baseless arguments of "baiting" and "entrapment"

In Defendant's MSJ, it attempted to characterize Plaintiff's behavior as that of unlawful "targeting," "baiting," and "entrapment." *CF at 231, 235, and 237.* Defendant now further asserts in its Appeal Answer Brief that "Plaintiff has further demonstrated through numerous lawsuits his modus operandi of targeting retail store locations which he has specifically identified as locations in which retail service workers routinely request customers present a sales receipt upon exit from the store premises," *Def's Answer Brief at 22.* However, such a statement inadvertently ***supports*** Plaintiff's position. That is, Plaintiff's purported "targeting" of such locations has never been nefarious, but rather a necessary response to a widespread and legally problematic retail practice.

Specifically, the "locations in which retail service workers routinely request

customers present a sales receipt upon exit from the store premises" are precisely **the locations where unlawful detentions are most likely to occur.** They are *inherently fertile ground* for violating a patron's rights. By identifying these locations, Plaintiff has not manufactured claims, but rather challenged practices that, by their very nature, are prone to infringing on constitutional and common law rights. Defendant's own characterization of Plaintiff's "modus operandi" thus serves ***to only highlight*** the systemic issue of unlawful receipt checking practices that lead to false imprisonment, rather than demonstrating any nefarious intent on Plaintiff's part.

Of course, it bears repeating, ONE MORE TIME, that all this talk about "receipt checking" **IS **STILL**** **AN ENTIRELY MOOT POINT,** as Defendant failed to show the District Court, with any tangible, admissible, **non-conclusory, non-hearsay** evidence, *whatsoever*, that Plaintiff's case ***has anything to do with receipts.*** Defendant failed to show the District Court that it *asked Plaintiff to show a receipt,* that he *refused to show one upon request,* that he *had one on him in the first place,* or that *whatever he held in his hands or was located in his pockets was even store merchandise for which one might have been associated.* Indeed, Defendant utterly failed to show the District Court ***that Plaintiff was even a customer of it that day.***

b. The District Court's baseless ruling of "baiting" and "entrapment"

In response to Defendant's conclusory, unsubstantiated, and defamatory

statements that Plaintiff "targeted," "baited," and "entrapped," it, the District Court ruled that Plaintiff "act[ed] in a manner that could reasonably be construed as suspicious," "intentionally created the misunderstanding for purposes of his later lawsuit," and "designed his conduct to inspire this belief." *CF at 879, 880, and 882.* However, these are all legally baseless attempts to invoke a *de facto* "entrapment" defense, and as such, are fundamentally flawed for several reasons.

First, entrapment is an affirmative defense typically asserted in criminal cases where a defendant admits to committing the crime but argues they were improperly induced by law enforcement. As held in *People v. Hendrickson,* 45 P.3d 786, 791 (Colo. App. 2002), "Because entrapment is an affirmative defense, it does not apply where a defendant denies committing the crime." Here, Defendant explicitly denies falsely imprisoning Plaintiff – by way of claiming that it either didn't conceptually detain him in the first place, or that it had "shopkeeper's privilege" for its actions in the alternative. **Therefore, Defendant is legally precluded from asserting an entrapment defense.**

Second, Plaintiff's actions were merely the exercise of his rights, not an inducement to commit a tort. Plaintiff's refusal to cooperate with an unlawful detention (i.e. refusal to answer questions and/or refusal to consent to searches) is a constitutional right. As established in *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir.

1993), "The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary." *See also Boxberger v. Highway Dept,* 126 Colo. 438, 440 (1952) ("The rights of a citizen remain the same whether they collide with an individual or the government."). Therefore, Defendant's attempt to "bootstrap" Plaintiff's exercise of his rights into justification for a detention is patently illegal.

Third, and most critically, the District Court formulated its nefarious "sting operation" conclusion based on past behavior that was never even applicable in the instant circumstance. That is, the supposed "elements" of Plaintiff's "modus operandi" (e.g., using "back" registers, not using plastic bags, refusing to show receipts) were drawn from prior cases involving a different merchant (Walmart) with different policies. In the instant Best Buy case:

- Best Buy does not utilize "back" registers (they have registers littered all throughout their stores).

- Best Buy phased out plastic bags in July 2022, *CF at 907.*

- Best Buy moved to digital-only receipts in November 2017, *CF at 830,* eliminating the physical receipt to "refuse to show."

Furthermore, the only "evidence" purportedly showing that Plaintiff "acted"

in a suspicious manner (e.g., concealing merchandise) was Mahmoud Abu-Shaweesh's affidavit, which was not submitted with Defendant's **initial** MSJ brief, *CF at 227,* and was independently inadmissible in Plaintiff's Cross-MSJ briefing because it **blatantly contradicts** his video record of the event (as argued in Plaintiff's Appeal Opening Brief and Cross-MSJ Reply Brief). Therefore, the District Court's explicit conclusion that Plaintiff "designed his conduct to inspire this belief" is not only a speculative finding of intent (which is inappropriate for summary judgment), but it is also based on a factual premise that is demonstrably false and inapplicable to the specific incident at Best Buy.

Finally, Plaintiff's video demonstrates that Defendant's employees showed no reluctance, but rather *indifference* and even *eagerness* to detain him, further undermining any claim of improper inducement.

CONCLUSION

The District Court improperly considered inadmissible evidence introduced belatedly in a reply brief, relied on conclusory statements that lacked evidentiary support, improperly shifted the burden of proof, failed to infer facts in the light most favorable to the nonmoving party, misinterpreted key jury instructions, misapplied the rules of authentication and hearsay, and allowed an entrapment defense to be improperly pled. These errors deprived Plaintiff of a fair opportunity to present his

case and resulted in a judgment that is not supported by the admissible record.

WHEREFORE, Plaintiff respectfully requests that this Court of Appeals **REVERSE** the District Court's granting of Defendant's Motion For Summary Judgment, so that it can then **DENY** Defendant's Motion for Summary Judgment, and **GRANT** Plaintiff's Cross-Motion for Summary Judgment.

Respectfully submitted on this, the 8th day of September, 2025.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 8th day of September, 2025, the foregoing **PLAINTIFF'S APPEAL REPLY BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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25CA0327 Montgomery v Best Buy 02-19-2026 modified

COLORADO COURT OF APPEALS

Court of Appeals No. 25CA0327
Jefferson County District Court No. 23CV226
Honorable Christopher C. Zenisek, Judge

William Montgomery,

Plaintiff-Appellant,

v.

Best Buy, L.P.,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE YUN
Grove and Schock, JJ., concur

Opinion Modified
on the Court's Own Motion
Petition for Rehearing DENIED

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 19, 2026

William Montgomery, Pro Se

Montgomery Amatuzio, Lori K. Bell, Sarah K. Vogel, Denver, Colorado, for Defendant-Appellee

CAPTION is modified as follows:

Caption page currently reads:

Montgomery Amutzio, Lori K. Bell, Sarah K. Vogel, Denver, Colorado, for Defendant-Appellee

Caption page now reads:

Montgomery Amatuzio, Lori K. Bell, Sarah K. Vogel, Denver, Colorado, for Defendant-Appellee

¶ 1 Plaintiff, William Montgomery, appeals the district court's order granting the motion for summary judgment (MSJ) filed by defendant, Best Buy, L.P., and denying the cross-MSJ filed by Montgomery. He contends that the court (1) relied on inadmissible evidence; (2) improperly considered evidence appended to Best Buy's reply brief; and (3) failed to properly apply the summary judgment standard. We reject these contentions and affirm the judgment.

I. Background

¶ 2 Montgomery has a long history of filing lawsuits against large retail chains, their employees, and police officers contacted by the employees.[1] Each lawsuit is based on similar facts. Montgomery

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[1] *See Montgomery v. Holweger*, 529 F. Supp. 3d 1212 (D. Colo. 2021) (federal district court opinion granting MSJ in favor of defendant on Montgomery's claims); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (federal appellate unpublished opinion affirming grant of MSJ in favor of defendant); *Montgomery v. Walmart Stores, Inc.*, (Colo. App. No. 21CA0359, May 12, 2022) (not published pursuant to C.A.R. 35(e)) (state appellate opinion affirming grant of MSJ in favor of defendants in plaintiff's district court case); *Montgomery v. Anderson*, No. 21-cv-03191, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (federal district court unpublished order granting MSJ in favor of defendant); *Montgomery v. Walmart, Inc.*, (Colo. App. No. 22CA0625, June 1, 2023) (not published pursuant to

walks into a store and behaves in a way that makes employees suspect theft — such as leaving the store with items in hand but no bag or receipt, choosing exits that are out of sight from the register he used, or entering one store with an item purchased from another location. When employees approach him to investigate, he records the interaction with a device that he brings with him. And while the employees investigate, he remains uncooperative — refusing to show a receipt until police arrive, keeping his hands in his pockets throughout the interaction, or ignoring the employees' inquiries or requests.

C.A.R. 35(e)) (state appellate opinion affirming grant of MSJ in favor of defendant in plaintiff's six district court cases); *Montgomery v. Cohn*, No. 22-cv-00011, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (federal district court unpublished order granting MSJ in favor of defendant); *Montgomery v. Cruz*, No. 20-cv-03189, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (federal district court unpublished report and recommendation granting MSJ in favor of defendant), *adopted in part and rejected in part*, 2023 WL 5938913 (D. Colo. Sep. 11, 2023), *aff'd*, 162 F.4th 1285 (10th Cir. 2026); *Montgomery v. Lore*, No. 21-cv-02553, 2023 WL 2423325 (D. Colo. Mar. 9, 2023) (federal district court unpublished order granting MSJ in favor of defendant); *Montgomery v. Walmart Inc.*, (Colo. App. No. 23CA0159, Oct. 26, 2023) (not published pursuant to C.A.R. 35(e)) (state appellate opinion affirming grant of MSJ in favor of defendant on plaintiff's claims in two district court cases).

¶ 3 The facts of these encounters vary slightly, but the pattern remains the same. After these incidents, Montgomery files lawsuits that raise a combination of claims, including assault, false imprisonment, defamation, battery, negligence, malicious prosecution, and, if police were involved, claims under 42 U.S.C. § 1983 for Fourth Amendment violations.

A. Montgomery's Complaint

¶ 4 The present case follows this pattern. In his complaint, Montgomery brought claims of assault, false imprisonment, and defamation per se against Best Buy for the actions of its employees. He alleged that he was standing outside a Best Buy store at 2:19 p.m. when three employees approached him, accused him of theft, and threatened and detained him for twelve minutes. Best Buy denied these claims and invoked the shopkeeper's privilege. *See* § 18-4-407, C.R.S. 2025.[2]

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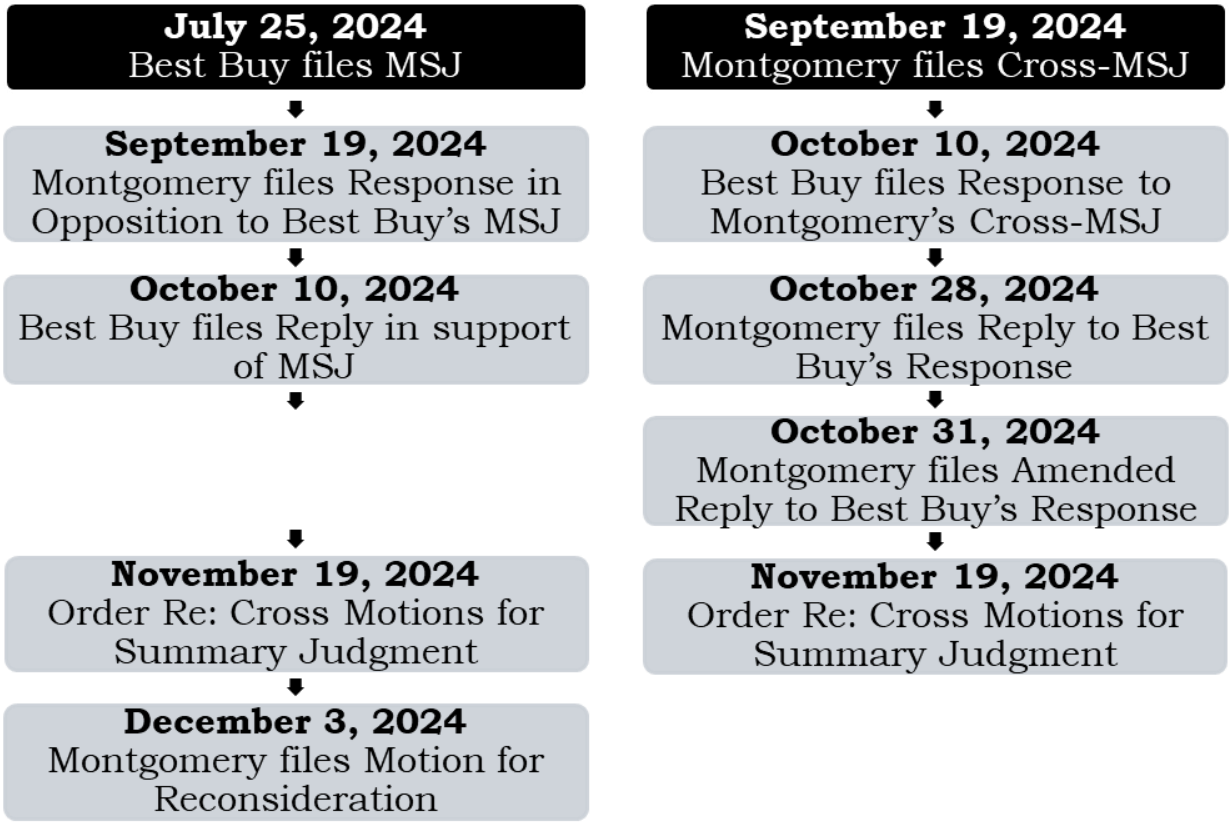
[2] The shopkeeper's privilege offers "protection from . . . claims based on [slander and false imprisonment] to one who[,] acting in good faith and upon probable cause based upon reasonable grounds[,] questions [a suspected shoplifter]." *J.S. Dillon & Sons Stores Co. v. Carrington*, 455 P.2d 201, 203 (Colo. 1969).

B. MSJ Filings

¶ 5 Both parties filed motions for summary judgment. For clarity, the chart below shows the timelines for the parties' motions and related filings.



1. Best Buy's MSJ and Related Responsive Filings

¶ 6 Best Buy argued in its MSJ that (1) Montgomery failed to establish a prima facie case for his claims of false imprisonment,

defamation per se, and assault;[3] and (2) even if he could establish a prima facie case for the former two, the employees' actions were protected by the shopkeeper's privilege.

¶ 7 Best Buy's "statement of facts" asserted that Montgomery left the store with merchandise and refused to produce his receipt when asked by employees who suspected theft. Best Buy attached exhibits, including Montgomery's pen camera footage of the incident outside the store and a YouTube video posted by Montgomery. In his YouTube video, Montgomery explains how he gets "free lawsuits" by running a "sting operation" against merchants and then withholding information, like whether he "[had] a receipt" or "was a customer," in the lawsuits he files.

¶ 8 In his response, Montgomery disagreed with Best Buy's "statement of facts," specifically "DEN[YING] that he 'exited' the store, or that he did so with any of the store's 'merchandise' in his possession." Instead, he filed an affidavit, stating as follows:

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[3] Because Montgomery did not develop any argument addressing the court's grant of summary judgment on his assault claim in his opening brief, we do not discuss the claim further. *See In re Estate of Chavez*, 2022 COA 89M, ¶ 26 ("We don't consider undeveloped and unsupported arguments." (quoting *Woodbridge Condo. Ass'n v. Lo Viento Blanco, LLC*, 2020 COA 34, ¶ 41 n.12)).

- "On or about November 25[,] 2022, at approximately 2:19 p.m. I was standing outside a Best Buy store . . . waiting for my brother."
- "I had been standing . . . for about five minutes before I was approached by several Best Buy employees."
- "Prior to being approached by [the Best Buy employees], at no time whatsoever had I ever once met, seen, identify [sic], pass by [sic], or been located anywhere physically near [the employees] on that day . . . this was the very first time that I had ever become aware as to the very existence of said Best Buy employees, whatsoever, in the first place."
- "At no point in time, on [that day] had I ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period."
- "At no point in time, on that day . . . had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees."

He also included the results of his police records request for calls originating from the Best Buy store on the day of the incident, which showed that there were "2 calls for service" in the morning.

¶ 9 Best Buy filed its reply, reiterating that Montgomery failed to establish a prima facie case for each claim and, alternatively, that the shopkeeper's privilege barred his claims of defamation and false imprisonment. Best Buy added two new exhibits to those it had already submitted. The first consisted of Montgomery's Best Buy receipts from the day of the incident, including one from the store where he was questioned with his name on it and a timestamp of 2:20 p.m. The second was an affidavit from the general manager of the store in question, stating as follows:

- He observed Montgomery "remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store."
- He observed "the same activity on security video."
- Montgomery declined to show his receipt when "asked by a loss prevention employee."
- He "exited the store to request Mr. Montgomery return the product from his pocket."

- He "walked back inside the store" once he "received confirmation that the police had been contacted."

2. Montgomery's Cross-MSJ and Related Responsive Filings

¶ 10 Montgomery filed his cross-MSJ, arguing that (1) he established his claims, and (2) the shopkeeper's privilege did not apply since the employees lacked probable cause. He again attached the pen camera footage and the results of his police records request, and he referenced his previously filed affidavit. He reiterated that he was waiting outside the store at 2:19 p.m. when the employees "took [him] by surprise."

¶ 11 Best Buy filed its response, which reiterated the arguments from its own MSJ — specifically, that Montgomery could not establish a prima facie case for any claim and that the shopkeeper's privilege applied. In support, Best Buy attached to its response the same exhibits that were attached to its reply, including the receipts and the manager's affidavit.

¶ 12 Montgomery filed a reply and an amended reply. His arguments closely followed his previous filings and referred to the same exhibits, with two exceptions. First, he submitted a second affidavit stating that he had authorized others to use his credit card

and opted to receive receipts by email from Best Buy. Second, he challenged the admissibility of the receipt from the store where he was questioned and the manager's affidavit, arguing that both were hearsay and that the manager's affidavit was contradicted by the record.

3. Summary Judgment Order

¶ 13 The district court granted Best Buy's MSJ on Montgomery's claims of false imprisonment, defamation per se, and assault, and denied Montgomery's cross-MSJ on the same claims. The court ruled that each of Montgomery's claims failed as a matter of law and, alternatively, that the shopkeeper's privilege protected Best Buy from his claims of defamation and false imprisonment.

¶ 14 As to his false imprisonment claim, the court noted that Montgomery's claim fails if he refused to use "a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt a (A.L.I. 1965). The court explained that Best Buy offered evidence that Montgomery "had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase," and that Montgomery "does not deny having a receipt at the time of the

incident." Accordingly, the court concluded that "showing proof of purchase," although a slight inconvenience, "would have freed Montgomery from the false imprisonment."

¶ 15 As for his defamation per se claim, the court noted that Montgomery must prove that the Best Buy employees were at least negligent in accusing him of stealing merchandise from the store. Restatement (Second) of Torts § 580B (A.L.I. 1977). The court noted that the manager "saw [Montgomery] remove merchandise from the shelf and place it in his pocket," Montgomery provided no contrary evidence about his actions inside the store, and his YouTube video corroborated "how [he] goes to stores and acts in a manner that could reasonably be construed as suspicious." Based on this evidence, the court ruled that this claim failed because the employees were not negligent in accusing Montgomery of stealing store merchandise.

¶ 16 As to the shopkeeper's privilege, the court noted that it shields Best Buy and its employees from liability if they, acting in good faith and with probable cause, detained Montgomery to question him about theft in a reasonable manner. *See* § 18-4-407. The court concluded that the timestamped receipt proved Montgomery

was inside the store with merchandise before the incident. The court then stated that the manager's affidavit supported probable cause — Montgomery removed "two boxes of JLab headphones/earbuds from the shelf, place[d] them in his pocket and immediately [left] the Best Buy Store, which was then confirmed on the store security video," and Montgomery "refused to show his receipt upon being asked." The court noted that neither of Montgomery's affidavits contradicted the manager's affidavit since Montgomery "claim[ed] only that he had been waiting outside of the Best Buy for five minutes when he was approached." Thus, the court ruled that the shopkeeper's privilege would protect the employees' actions, "even if Plaintiff were able to make a prima facie case of false imprisonment and defamation."

4. Motion for Reconsideration

¶ 17 Montgomery then filed a motion for reconsideration, arguing that he was denied fair notice and an opportunity to respond to the two exhibits — the manager's affidavit and the receipts — that Best Buy submitted with (1) its reply in support of its MSJ and (2) its response to Montgomery's cross-MSJ. The court denied the motion, noting that it had considered all the briefs and exhibits related to

both Best Buy's MSJ and Montgomery's cross-MSJ together. It explained that Montgomery was given an opportunity to respond to the two exhibits because he filed his reply in support of his cross-MSJ after the two exhibits were filed and did, in fact, file his second affidavit along with his reply in support of his cross-MSJ.

¶ 18 Montgomery now appeals.

II. Inadmissible Evidence

¶ 19 Montgomery contends that the district court relied on inadmissible hearsay evidence in granting Best Buy's MSJ and denying his cross-MSJ — namely, his receipt from the store where he was questioned and the manager's affidavit.[4] We disagree.

A. Applicable Law and Standard of Review

¶ 20 In deciding whether to grant or deny a party's MSJ, the district court must consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits. C.R.C.P. 56(c). However, a court should not consider evidence that would be inadmissible at trial. *St. Croix v. Univ. of Colo. Health Scis.*

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[4] Montgomery also argues the court impermissibly relied on conclusory statements from Best Buy's MSJ to support its order. We disagree because the court cites specific exhibits supporting its conclusions.

Ctr., 166 P.3d 230, 244 (Colo. App. 2007). While the form of the evidence, such as an affidavit, does not need to be admissible at trial, the "content or substance of the evidence must be admissible." *People in Interest of S.N. v. S.N.*, 2014 CO 64, ¶ 16 (quoting *Johnson v. Weld County*, 594 F.3d 1202, 1210 (10th Cir. 2010)).

¶ 21 The hearsay rule generally prohibits the admission of any "statement other than one made by the declarant while testifying at the trial or hearing" that is offered "to prove the truth of the matter asserted." CRE 801(c), 802. If an out-of-court statement is not offered for its truth, then it is admissible as nonhearsay evidence as long as it is relevant. *People v. Phillips*, 2012 COA 176, ¶ 62. For example, a statement is not hearsay when the statement is offered to show its effect on the listener or to explain the listener's later actions. *Id.* at ¶ 107.

¶ 22 If a statement is hearsay, it is inadmissible unless it falls within a statutory exception or an enumerated exception in CRE 803 or 804. *See* CRE 802. Under CRE 803(6), a court can admit into evidence records of regularly conducted activity when supported by an adequate foundational showing that (1) the document was made at or near the time of the matters recorded in

it; (2) the document was prepared by, or from information transmitted by, a person with knowledge of the matters recorded; (3) the person who recorded the document did so as part of a regularly conducted business activity; (4) it was the regular practice of that business activity to make such documents; and (5) the document was retained and kept in the course of a regularly conducted business activity. *People v. Flores-Lozano*, 2016 COA 149, ¶ 13.

¶ 23 Furthermore, "[e]ven if a party introduces a computer-generated record to prove the truth of its contents, that record may not constitute hearsay if the computer created the record automatically without human input or interpretation." *People v. N.T.B.*, 2019 COA 150, ¶ 22. The computer generated record is not hearsay because no "person" or "declarant" made a communicative "statement" within the meaning of CRE 801. *People v. Hamilton*, 2019 COA 101, ¶ 24.

¶ 24 We review evidentiary rulings for an abuse of discretion. *Leaf v. Beihoffer*, 2014 COA 117, ¶ 9. A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair or when it misapplies the law. *Id.* However, "[e]ven when a [district]

court may have abused its discretion in admitting certain evidence, reversal is not required if the error was harmless under the circumstances." *People v. Summitt*, 132 P.3d 320, 327 (Colo. 2006); *see also* C.A.R. 35(c) ("The appellate court may disregard any error or defect not affecting the substantial rights of the parties.").

B. Best Buy's Receipt

¶ 25 Montgomery argues that the court could not consider the receipt when evaluating false imprisonment or the shopkeeper's privilege because it was hearsay. He further contends that the business records exception to hearsay, CRE 803(6), cannot apply without an affidavit from a records custodian.

¶ 26 In evaluating false imprisonment, the court relied on the receipt to conclude "that showing proof of purchase would have freed Plaintiff." The existence of the receipt was therefore not offered for the truth of the matter asserted — that is, the price and details of the purchase. Instead, it was offered to show the effect it would have had on the listener — specifically, that the employees would have permitted Montgomery to leave the premises if presented with his receipt. *See, e.g.*, *People v. Tenorio*, 590 P.2d 952, 958 (Colo. 1979) (A radio report was "elicited only to establish

the officers' reasons for initially going to the park and for drawing their guns after arrival there," not "to show the truth of the contents of the radio report."); *People v. Robinson*, 226 P.3d 1145, 1152 (Colo. App. 2009) ("[T]he informant's statements — referencing the drug transaction arrangements, purportedly describing the two suppliers and giving their street names, and identifying them upon arriving at the scene — were all introduced for the nonhearsay purpose of showing" why the officers "chose to go to that particular location and stop, arrest, and search defendant and the car in which he was traveling."); *Phillips*, ¶ 108 (The witness's statement to the defendant's girlfriend "was admissible for the nonhearsay purpose of showing its effect on [the girlfriend] as a listener, in that she called defendant to notify him of the message . . . and sought his advice."). Thus, for the false imprisonment claim, we hold the receipt was admissible for the nonhearsay purpose of showing the effect on the listener.

¶ 27 However, in evaluating the shopkeeper's privilege, the court relied on the receipt's contents as true to conclude that "[Montgomery] was in Best Buy directly preceding the incident [at 2:20 p.m.] and . . . had the store's merchandise on him." As used

for this purpose, the receipt was offered for its truth, which generally is "not admissible except as provided by [the Colorado Rules of Evidence]." CRE 802. And the record does not contain an affidavit from a records custodian establishing the five-part foundational showing required for the business records exception. *See* CRE 803(6); *Flores-Lozano*, ¶ 13.

¶ 28 But even if the court abused its discretion by considering the receipt as evidence that Montgomery had been in the store and had merchandise on him, any such error was harmless for two reasons. *Summitt*, 132 P.3d at 327. First, the receipt was cumulative of other evidence establishing that Montgomery had been in the store and left with merchandise. *Curry v. Brewer*, 2025 COA 28, ¶ 57. The manager's affidavit established the same facts. Second, Best Buy offered the receipt to support its shopkeeper's privilege defense. Because the court ruled that the defamation per se and false imprisonment claims independently failed on their merits, this affirmative defense was unnecessary to resolve those claims.

¶ 29 Finally, we may affirm the district court's summary judgment on any grounds supported by the record. *Roque v. Allstate Ins. Co.*, 2012 COA 10, ¶ 7. Montgomery has failed to show that the receipt

was not generated automatically by a computer without human input or interpretation. If the receipt was computer generated, it would not constitute hearsay and it would be admissible for its truth to establish the shopkeeper's privilege defense and to disprove the false imprisonment claim. *See N.T.B.*, ¶ 22.

¶ 30 For all these reasons, the district court did not err by relying on the receipt to resolve the false imprisonment claim and the shopkeeper's privilege defense.

C. Best Buy's Affidavit

¶ 31 Montgomery argues that the district court could not consider the manager's affidavit when evaluating defamation per se or the shopkeeper's privilege because it was hearsay. Specifically, he objects to one paragraph in the affidavit stating that Montgomery declined to show his receipt when "asked by a loss prevention employee." Insofar as Montgomery contends "the entirety of [the manager's affidavit] is *already categorically inadmissible hearsay*" because of this one paragraph, we disagree. Montgomery provides no authority suggesting that one paragraph renders the entire affidavit inadmissible.

¶ 32 Moreover, even if the court abused its discretion by mentioning this paragraph in its finding of probable cause for the shopkeeper's privilege, the error was harmless because it did not "substantially influence[]" the outcome. *Stockdale v. Ellsworth*, 2017 CO 109, ¶ 32 (An error is harmless unless "it can be said with fair assurance that the error substantially influenced the outcome of the case or impaired the basic fairness of the trial itself." (citation omitted)). If we were to exclude this paragraph, the court's finding of probable cause is supported by other paragraphs in the affidavit, including the manager's observations of apparent theft in person and on security footage, and by the pen camera footage — in which Best Buy employees can be heard repeatedly asking for the merchandise back.

III. Late Evidence

¶ 33 Montgomery contends that the district court should not have considered the manager's affidavit or "the entire receipts exhibit" because they were "belatedly" submitted with Best Buy's reply in support of its MSJ. He argues that both exhibits were late because including them with Best Buy's reply deprived him of fair notice and a meaningful opportunity to respond to the issues of "receipt

possession" and "shopkeeper's privilege." We disagree for three reasons.

¶ 34 First, Montgomery did not object to or move to strike the manager's affidavit or the receipts on the basis that they were late until his motion for reconsideration — after the district court had entered summary judgment. And we do not review arguments raised for the first time in a motion for reconsideration. *United States v. City of Golden*, 2024 CO 43M, ¶¶ 77-78 (declining to review arguments raised for the first time in a motion for reconsideration, unless they are based on "newly discovered evidence").

¶ 35 Second, even if his objections were timely, we are not convinced that the exhibits were late. A court may properly consider an affidavit attached to a reply in support of an MSJ if "[n]either the affidavit nor the reply brief raised a new issue as to which [the nonmoving party] was not put on notice of the need to present evidence." *Barfield v. Hall Realty, Inc.*, 232 P.3d 286, 290 (Colo. App. 2010) (citing *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1998)). Here, Best Buy's MSJ put Montgomery on notice that he needed to present evidence of his actions inside the

store because it raised the shopkeeper's privilege and specifically claimed that he exited the store with merchandise, refused to show a receipt, and was suspected of theft. Best Buy's reply, by including the affidavit and the receipts, did not advance a "new argument" to which Montgomery was unable to respond. Rather, these reply exhibits rebutted Montgomery's various denials — about exiting the store, having merchandise, and having a receipt. Thus, the court did not err by considering the affidavit and receipts.

¶ 36 Third, any error in considering the manager's affidavit and receipts was harmless. Both exhibits were submitted not only with Best Buy's reply in support of its MSJ but also with its response to Montgomery's cross-MSJ. As a result, Montgomery had the opportunity to respond to the affidavit and receipts when he submitted his reply in support of his cross-MSJ.[5] Because the

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[5] Montgomery argues that the district court "erroneously and unlawfully conflated" the separate motions for summary judgment "in blatant violation of clearly established rules or law on the subject." But he cites no authority supporting this argument. Based on our review of the record, both Best Buy's MSJ and Montgomery's cross-MSJ addressed the same claims and affirmative defense and submitted substantially the same evidence for both motions. Under these circumstances, the court did not err in considering briefs and exhibits in connection with both motions together.

district court considered all briefs and exhibits in connection with both parties' motions together, Montgomery was not prejudiced by the "belated" affidavit and receipts. *See* C.A.R. 35(c); *Stockdale*, ¶ 32.

IV. Summary Judgment Evidence

¶ 37 Montgomery contends that the district court disregarded conflicting evidence and failed to give him the benefit of all reasonable inferences when it granted Best Buy's MSJ and denied his cross-MSJ. We are not persuaded.

A. Standard of Review and Applicable Law

¶ 38 We review a grant of summary judgment de novo. *Griswold v. Nat'l Fed'n of Indep. Bus.*, 2019 CO 79, ¶ 22. Summary judgment is appropriate only when the pleadings, affidavits, depositions, and admissions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Griswold*,¶ 23; C.R.C.P. 56(c). In evaluating a motion for summary judgment, all doubts must be resolved against the moving party, and the nonmoving party is entitled to the benefit of all favorable inferences that may be reasonably drawn from the undisputed facts. *Griswold*, ¶ 24.

¶ 39 The mere existence of a factual dispute is insufficient to defeat a summary judgment motion; instead, the disputed factual issue must be "genuine" and "material." *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007). A factual issue is material if it will affect the outcome of the case. *Gognat v. Ellsworth*, 224 P.3d 1039, 1045 (Colo. App. 2009), *aff'd*, 259 P.3d 497 (Colo. 2011). A factual issue is genuine if the nonmoving party can provide sufficient evidence to demonstrate that a reasonable fact finder could return a verdict in his favor. *Andersen*, 160 P.3d at 239. "If the evidence opposing summary judgment is merely colorable or is not significantly probative, summary judgment may be granted." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

B. Manager's Affidavit

¶ 40 Relying on *Scott v. Harris*, 550 U.S. 372, 380 (2007), Montgomery contends the manager's affidavit is inadmissible for establishing material facts because it "blatantly contradicted . . . [his] pen camera footage of the event" and the results of his police records request. *See also Andersen*, 160 P.3d at 240 ("[I]f the evidence presented in opposition to summary judgment is so

incredible that it could not be accepted as true by a reasonable jury, it cannot serve to create a 'genuine' issue, or dispute, of fact.").

¶ 41 As an initial matter, we are unsure how the manager's statements about what he observed inside the store could contradict the pen camera footage of the subsequent incident outside the store. Indeed, many of Montgomery's claimed "contradictions" are based on speculation. For example, he claims the following:

- In the footage, the manager "mentions wanting to recover what Plaintiff held in his hands a whopping 31 times," which, to Montgomery, means "[the headphones/earbuds the manager observed him take] *weren't even the primary reason for the confrontation*."
- In the footage, the manager commented that it was odd for him to "stand here and wait for us to come get [him]," which, to Montgomery, "indicates that he did not actually *FOLLOW* Plaintiff out of the store after purportedly *personally* observing him steal something from it 'immediately' prior to."

- In the footage, the employees say they saw his apparent theft "on video," but Montgomery hypothesizes the manager "*LITERALLY would have never had the time to go review any security video footage* [before the interaction]."

But Montgomery cannot manufacture a contradiction, or a "genuine issue" of material fact, simply by means of argument. *People in Interest of A.C.*, 170 P.3d 844, 846 (Colo. App. 2007) ("A genuine issue of material fact cannot be established simply by allegations in pleadings or argument; rather, the opposing party must set forth specific facts by affidavit or otherwise showing that there is a genuine issue for trial."). Based upon our review of the record, the manager's affidavit is not "blatantly contradicted" by the pen camera footage.

¶ 42 Montgomery does raise one possible contradiction: The manager's affidavit stated that he returned inside "[o]nce [he] received confirmation that the police had been contacted," but the police records responsive to Montgomery's records request indicated that the police were called only in the morning, hours before the incident. Assuming this record is admissible, it did not create a genuine or material factual issue for purposes of the district court's

decision. The court did not mention, much less rely on, his police records request because whether the police were called was not "significantly probative" of the false imprisonment claim, the defamation claim, or the shopkeeper's privilege. *Andersen*, 160 P.3d at 239 ("If the evidence opposing summary judgment is merely colorable or is not significantly probative, summary judgment may be granted." (quoting *Anderson*, 477 U.S. at 249)). Accordingly, there was no genuine issue of material fact for trial.

C. Montgomery's Actions Inside the Store

¶ 43 Montgomery argues that the district court failed to give him the benefit of reasonable inferences when it found that he presented no evidence of his actions inside the store to counter the manager's affidavit. Specifically, he argues the court should have inferred that his affidavit described his actions inside the store — namely, that he was never "physically near" any Best Buy employees before they approached him about theft, did not "conceal" anything, and did not put anything in his pockets "in front of anybody."

¶ 44 The court did give Montgomery the benefit of all reasonable inferences. Throughout the district court proceedings, Montgomery insisted that Best Buy could not prove he entered the store. In his

briefing, he began each "statement of facts" with him standing outside the Best Buy at 2:19 p.m. He explicitly "DENIE[D] that he 'exited' the store, or that he did so with any of the store's 'merchandise' in his possession." Given Montgomery's refusal to admit he entered the store or to discuss his conduct inside the store in his briefing, the court properly found that he presented no evidence of his actions inside the store.

¶ 45 Further, Montgomery's affidavit does not give rise to reasonable inferences that would contradict the court's finding. Montgomery's affidavit states that he was waiting outside Best Buy at 2:19 p.m. for five minutes before the Best Buy employees "surprise[d]" him. He explained that this was the first time he was "anywhere physically near" them and "the very first time that [he] had ever become aware as to the very existence of said Best Buy employees." Although he states that he did not "conceal" anything or put anything in his pockets "in front of anybody," neither statement creates disputed issues of material fact. His statement that he never "concealed" anything is a "merely self-serving conclusion[] of the ultimate facts," and thus insufficient to create a genuine issue for trial. *Ginter v. Palmer & Co.*, 585 P.2d 583, 585

(Colo. 1978). And given that Montgomery said the first time he was ever "physically near" or aware of any Best Buy employee was outside the store, his statement that he never put anything in his pocket "in front of anybody" must refer to his conduct outside the store.

¶ 46 For all these reasons, we agree with the district court that it "assum[ed] the truth of [Montgomery's] evidence and [drew] every favorable inference of fact therefrom" when it found that Montgomery presented no evidence of his actions inside the store.

D. Montgomery's Police Records Request

¶ 47 Montgomery argues the district court should have inferred from the results of his police records request — which indicated that the police did not receive a call from Best Buy that afternoon — that he "*did not* commit theft inside the store." It is unclear whether this exhibit is even admissible, given that there is no affidavit or certification laying the foundation for its admission. *See St. Croix*, 166 P.3d at 244 ("Failure to authenticate a document or otherwise submit evidence establishing its admissibility precludes consideration of the document for purposes of summary judgment."). Moreover, it is unclear how this document contradicts

the manager's observation or how it would alter the court's resolution of the claims. Because this argument is undeveloped, we do not consider it further. *See People v. Cuellar*, 2023 COA 20, ¶ 44 (declining to address a pro se party's arguments that were "undeveloped" (citation omitted)).

V. Other Arguments

¶ 48 Montgomery raises additional arguments in his reply brief on appeal. However, we do not consider issues raised for the first time in a reply brief. *Colo. Korean Ass'n v. Korean Senior Ass'n of Colo.*, 151 P.3d 626, 629 (Colo. App. 2006).

VI. Disposition

¶ 49 The judgment is affirmed.

JUDGE GROVE and JUDGE SCHOCK concur.

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
<u>COMBINED</u> PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals the following <u>COMBINED</u> PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC, and in support thereof, states as follows:

<u>CERTIFICATE OF COMPLIANCE</u>

I hereby certify that this COMBINED PETITION complies with all the requirements of C.A.R. Rules 40 and 32, including all formatting requirements set

forth in these rules. Specifically, I certify that this COMBINED PETITION contains **3,041** words, which does exceed the 1,900 word limit, but to which can be allowed by this Court via Plaintiff's attached MOTION TO EXEED WORD COUNT.

William Montgomery
William Montgomery

INTRODUCTION

Plaintiff William Montgomery respectfully petitions for panel rehearing under C.A.R. Rule 40 and, to the extent necessary, rehearing en banc under C.A.R. Rule 35.

Rehearing is warranted because the Opinion announced on February 19, 2026 misapprehends and conflicts with established Colorado precedent on the basic structure of summary-judgment practice. In particular, the Opinion:

1. Upholds summary judgment based on factual grounds and evidentiary materials (Best Buy's receipts and the Mahmoud affidavit) first presented in a **reply** in support of Best Buy's motion for summary judgment, notwithstanding *Wallman v. Kelley's* holding that a nonmovant is entitled to **notice in the opening motion** of the specific issues on which it must present evidence to avoid judgment.

2. Endorses the District Court's treatment of the parties' cross-motions for summary judgment as "two halves of the same coin," using Montgomery's own

cross-MSJ reply as the vehicle to respond to Best Buy's reply-only exhibits. That approach cannot be reconciled with *Morlan v. Durland Trust Co.* and *Central Bank & Trust Co. v. Robinson,* which require that each summary-judgment motion "stand on its own" and be decided separately, without being "aided" by the opponent's motion or supporting documents.

3. Mischaracterizes Montgomery's Response to Best Buy's MSJ by treating his insistence that Best Buy had not carried its initial evidentiary burden as "denials" of store entry, merchandise, and receipt possession, and then uses that mischaracterization to justify treating the reply-only exhibits as mere "rebuttal" to those supposed denials. This effectively inverts the Rule 56 burden structure and provides a path around *Wallman's* notice requirement, permitting a movant to withhold evidence in its opening brief and later cure that omission in reply.

4. Treats the mere **possibility** that Montgomery could have responded to the reply-only exhibits somewhere in the combined briefing as a forfeiture of his right to insist that Best Buy meet its initial burden and provide *Wallman*-compliant notice in its opening motion—a standard directly at odds with *Wallman's* explicit rule that a "[n]onmovant is entitled to notice of [the] issue regarding which evidence must be introduced to avoid granting of summary judgment; lacking such notice, summary judgment cannot be granted."

These holdings create an intra-court conflict on four core points of law:

• Whether a movant may use reply-only evidence as a dispositive ground for summary judgment without having given the nonmovant clear notice in the opening motion of the need to present counter-evidence on that ground (*Wallman*).

• Whether, in cross-motion situations, a court may treat the parties' motions and briefs as a single, blended record and use the nonmovant's separate cross-MSJ filings to cure defects in the movant's original MSJ (*Morlan* and *Central Bank*).

• Whether a nonmovant's refusal to adopt the movant's unsupported factual narrative can be treated as a true, factual "denial" that invites reply-only "rebuttal" evidence and overrides *Wallman's* notice requirement.

• Whether the absence of a motion to strike or surreply can override *Wallman's* notice requirement and permit summary judgment on grounds first revealed in a reply.

This case also has outsized practical significance for Montgomery as a *pro se* pauper. In addition to granting Best Buy's motion for summary judgment, the District Court awarded Best Buy $36,124.50 in attorney fees against him, an amount he has no realistic ability to pay absent reversal. Allowing reply-only grounds to sustain summary judgment, and then to support a substantial fee award against an indigent, self-represented litigant, raises serious access-to-justice concerns and

amplifies the need for strict adherence to *Wallman's* notice requirement and *Morlan* / *Central Bank's* rule that each summary-judgment motion must stand on its own.

Because these are not case-specific fact disagreements but direct tensions with published Colorado authority governing summary-judgment procedure, they present both a compelling basis for panel rehearing and, if necessary, an issue of intra-court conflict warranting rehearing en banc.

ARGUMENT

I. THE COURT OVERLOOKED *MORLAN* BY TREATING TWO MSJS AS "TWO HALVES OF THE SAME COIN"

a. Montgomery did cite *Morlan*, which strictly forbids conflating cross-motions

To begin, the February 19th Opinion states that Montgomery "cites no authority" for his argument that the District Court impermissibly "conflated" Best Buy's motion for summary judgment with his cross-motion. **The panel is demonstrably mistaken:** Montgomery's appeal opening brief devoted literally seven pages (pages 28–34) to *Morlan v. Durland Trust Co.,* 127 Colo. 5, 252 P.2d 98 (1952) and related authority, explaining that each MSJ must be evaluated independently, on its own record and theory.

Morlan holds that where both parties move for summary judgment, "[e]ach of such motions is to be considered and ruled upon separately, without regard to

whether similar motion has been filed by other parties" and whereby each party bears the burden of demonstrating its entitlement to judgment as a matter of law on its own motion; one party's failure does not automatically establish the other's entitlement. *Central Bank Trust Co. v. Robinson,* 137 Colo. 409, 326 P.2d 82 (1958) similarly explains that "[e]ach motion, together with evidentiary matters tendered in support thereof, must stand on its own and cannot be aided by the motion of the opposing party, with its supporting documents, for summary judgment.").

Montgomery invoked *Morlan* to argue that Best Buy's MSJ had to stand or fall on its *own* motion, evidence, and timing, and that his cross-MSJ (and reply) could not be used to supply the missing response to Best Buy's late-filed evidence. The Opinion's statement that he cited no authority for "conflation" overlooks *Morlan* and the numerous pages in his appellate record where it was fairly developed.

b. The District Court used Montgomery's MSJ reply as the de facto response to Best Buy's reply-only exhibits

Best Buy's opening MSJ contained only conclusory assertions that Montgomery "had a receipt," "could have simply shown a receipt," and exited the store with Best Buy merchandise; it attached no receipts, no Mahmoud affidavit, and no authenticated records to support those assertions. The first time Best Buy actually submitted the receipt exhibit and the Mahmoud affidavit was with (1) its reply in

support of its MSJ and (2) its response to Montgomery's cross-MSJ.

The District Court then treated all filings on both motions as a single, blended record and expressly relied on the reply-only exhibits to grant Best Buy's MSJ. In practical terms, the only place Montgomery could have attempted to respond to those late-filed materials was his reply on *his* motion—not a response on Best Buy's motion.

That is precisely the kind of conflation *Morlan* and *Central Bank* forbid. Best Buy, as movant, had to meet its initial burden on every dispositive factual ground in its **own** MSJ papers; Montgomery's cross-MSJ briefing is not a substitute for the response that Rule 56 contemplates to Best Buy's motion. By treating the cross-MSJ reply as the de facto response to Best Buy's reply-only exhibits, and then using that blended record to rule on both motions, the District Court did exactly what *Morlan* and *Central Bank* forbid—treating two independent motions as "two halves of the same coin."

The Opinion's approval of that approach misapprehends *Morlan* and *Central Bank*. Properly applied, those cases required (1) denial of Best Buy's MSJ for failure to support its key factual theories in its opening motion and supporting materials, and (2) a separate analysis of Montgomery's cross-MSJ on the evidence and law he submitted, without transforming *his* reply to *his* motion into some *surreply* to *Best Buy's* motion.

II. THE COURT MISAPPLIED *WALLMAN* BY FOCUSING ON "OPPORTUNITY" INSTEAD OF RULE-COMPLIANT "NOTICE"

a. *Wallman's* rule is about notice in the *opening* MSJ, not theoretical chances to respond later

Wallman v. Kelley holds that "an issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the nonmoving party is not put on notice as to the need to present evidence concerning that issue." In *Wallman,* the defendant's reply raised a new dispositive theory, and the trial court granted summary judgment on that ground; the Court of Appeals reversed, even though the plaintiff had not moved to strike or sought a surreply.

Wallman thus distinguishes **notice** from mere **opportunity**. The question is not whether the nonmovant could, in theory, have responded somewhere; it is whether the opening MSJ gave clear notice that the nonmovant needed to marshal evidence on that specific ground to avoid judgment. Because that notice was missing, the plaintiff did not forfeit her right to insist that summary judgment be denied on the reply-only ground, despite the absence of motions to strike or surreply requests.

b. Best Buy's opening MSJ did not give *Wallman*-compliant notice of the receipt-based and Mahmoud-affidavit grounds

Best Buy's opening MSJ raised the general topics of false imprisonment and

shopkeeper's privilege, but it offered no *evidence*—no receipts, no Mahmoud affidavit, no authenticated records—supporting its factual claims that Montgomery was a Best Buy customer at that store at the relevant time, that the item in his hand was store merchandise, or that he had an associated receipt on his person. Those assertions were purely conclusory.

As Montgomery thoroughly explained in his appeal briefing, until a movant supports an "issue" with evidence, there is no properly framed summary-judgment ground that shifts any burden to the nonmovant. The first time Best Buy actually supplied evidence on both "receipt possession" and its version of what occurred inside the store was in its MSJ reply (adding the receipt exhibit and Mahmoud's affidavit). Those reply-only materials were therefore not mere elaboration; they were the initial evidentiary basis **for entirely new factual grounds** on which summary judgment was ultimately granted.

The Opinion nevertheless treats Montgomery as having forfeited his right to complain about those reply-only exhibits by (1) not moving to strike them until his motion for reconsideration and (2) being able, in theory, to address them in his cross-MSJ reply. That analysis misapprehends *Wallman* in two ways:

1. It converts *Wallman's* **notice** requirement into a mere **opportunity** test, asking only whether Montgomery "could have" responded somewhere, rather than

whether Best Buy's opening MSJ put him on notice that he *needed* to respond with evidence on these specific, later-supported grounds.

2. It treats the absence of a motion to strike or surreply as dispositive, even though *Wallman* reversed a reply-only summary-judgment ruling ***WITHOUT*** requiring either, precisely because fair notice under Rule 56 was lacking.

Here, Best Buy's opening MSJ never gave Montgomery *Wallman*-compliant notice that (a) register receipts and (b) sworn testimony from a manager about in-store concealment would be used as ***evidentiary*** grounds for summary judgment. Montgomery was not required to anticipate and rebut evidence that had not yet been presented, and he did not waive his right to have Best Buy's MSJ denied simply because he did not file a motion to strike or seek a surreply once that evidence appeared in reply.

Under *Wallman,* the reply-only grounds could not serve as the basis for granting summary judgment. Rehearing is warranted so the panel can apply *Wallman's* notice-based rule to these facts.

III. BEST BUY'S REPLY EXHIBITS WERE NEW FACTUAL GROUNDS, NOT MERE FOLLOW-UPS TO PRESERVED ISSUES

a. The Opinion mischaracterizes Montgomery's "denials" to impermissibly justify admitting reply-only evidence

The Opinion states that Best Buy's reply-only exhibits were admissible because they merely "rebutted Montgomery's various denials—about exiting the store, having merchandise, and having a receipt." Yet the Opinion itself elsewhere concedes the truth: "Given Montgomery's **refusal to admit** he entered the store or to discuss his conduct inside the store in his briefing…" *Opinion, p.27.* This admission undercuts the panel's own rationale and shows precisely why the reply exhibits were **new** factual grounds, not mere "rebuttal" to supposed "denials."

In his Response to Best Buy's MSJ, Montgomery did not offer a competing factual story about whether he was ever in the store, whether he carried store merchandise, or whether he had a receipt. Instead, he argued that Best Buy, as the movant, **had not yet carried its initial Rule 56 burden**, repeatedly pointing out that it had "failed to provide this Court with any tangible, admissible evidence, whatsoever" to substantiate those assertions. His sworn Affidavit of the Event likewise begins the timeline outside the store at 2:19pm, and stays neutral on what, if anything, occurred inside before that time; it focuses on the detention and threats outside, not on purchase / receipt issues. Under Colorado summary-judgment law, a nonmovant is not required to disprove a movant's bald assertions or fill evidentiary gaps in the movant's affirmative defenses; the burden shifts **only after** the movant first makes a prima facie showing, *with admissible*

evidence, that there is no genuine dispute and it is entitled to judgment as a matter of law. *See Suncor v. Aspen; Ginter v. Palmer Co.*

By relabeling Montgomery's insistence that Best Buy had not met its burden as true, factual "denials" of store entry, merchandise, and receipt possession—and despite the Opinion's own acknowledgment that he merely "refus[ed] to admit" those facts—the Opinion treats new, reply-only exhibits as legitimate "rebuttal" to those supposed denials. That reverses the burden structure and circumvents *Wallman:* it allows a movant to withhold evidence on key factual grounds in its opening MSJ, then introduce that evidence for the first time in reply on the theory that it is just responding to the nonmovant. *Wallman* squarely holds that summary judgment cannot rest on a ground as to which the nonmovant lacked clear notice in the opening motion of the need to present counter-evidence. Here, questions of theft, receipt possession, and shopkeeper's privilege went to Best Buy's **affirmative defense**, on which it—not Montgomery—bore the burden. Treating his decision not to adopt Best Buy's narrative as actual factual "denials" that justify reply-only "rebuttal" evidence is inconsistent with *Wallman* and with *Morlan / Central Bank's* rule that each MSJ must stand on its own evidentiary footing.

b. The reply exhibits were the first evidentiary support for critical grounds, not "additional" evidence

The Opinion asserts that "Best Buy's MSJ put Montgomery on notice that he needed to present evidence of his actions inside the store because it raised the shopkeeper's privilege and specifically claimed that he exited the store with merchandise, refused to show a receipt, and was suspected of theft." Montgomery squarely rebutted this claim in his appellate reply brief, where he addressed Best Buy's assertion that the Mahmoud affidavit and receipt exhibit "merely add[ed] additional evidence to factual information already addressed in Defendant's original Motion for Summary Judgment." As he explained, the exhibits introduced "entirely new 'factual information,' not merely 'additional evidence' to pre-existing facts."

Under *Suncor,* a summary-judgment movant must support its factual assertions with admissible evidence; "purely conclusory statements," even if "specifically claimed," are insufficient. Under *Wallman,* an issue that is not properly raised (i.e. supported with admissible, factual evidence) in the opening motion cannot serve as the basis for summary judgment.

Only in its MSJ reply (and its response to Montgomery's cross-MSJ) did Best Buy first introduce:

- The receipt exhibit, offered to show that Montgomery personally made a purchase at that store at the relevant time and had that merchandise and receipt on his person at the time he left; and

• Mahmoud's affidavit, asserting detailed, inculpatory facts about alleged in-store concealment and immediate exit.

Those submissions were therefore not "additional" support for facts already backed by evidence; they were the **first** actual evidentiary support for new, dispositive factual grounds on which summary judgment was granted.

The Opinion's conclusion that the exhibits were "not late" because Best Buy's opening MSJ mentioned the ***topics*** of false imprisonment and shopkeeper's privilege conflates *issues* with *evidence*. ***Wallman*** **and** ***Suncor*** **both attach summary-judgment "issues" to their supporting evidence, not to bare assertions.** Once the receipt and affidavit are recognized as new factual grounds first raised in a reply, they cannot properly serve as the foundation for granting summary judgment.

Montgomery's appeal squarely and timely presented this argument in his appeal opening and reply briefs, supported by *Wallman, Suncor,* and *Morlan,* and to which condemns the use of reply-only evidence as a dispositive basis for granting summary judgment. The Opinion did not address that reasoning. Rehearing is necessary so the panel can confront and resolve it.

CONCLUSION

WHEREFORE, for the reasons set out in this petition, Plaintiff William

Montgomery respectfully requests:

1. **Panel rehearing:** That the panel GRANT rehearing under C.A.R. Rule 40, withdraw or modify its Opinion, and hold that:

- Under *Wallman v. Kelley,* summary judgment may not rest on factual grounds and evidentiary materials (Best Buy's receipts and the Mahmoud affidavit) first presented in Best Buy's reply because Montgomery lacked fair notice in the opening MSJ of the specific issues on which he was required to present evidence.

- Under *Morlan v. Durland Trust Co.* and *Central Bank & Trust Co. v. Robinson,* Best Buy's motion for summary judgment must stand or fall on its own motion and supporting materials and cannot be "aided" by Montgomery's separate cross-MSJ briefing or reply; the parties' cross-motions may not be treated as "two halves of the same coin."

- Because Best Buy failed to carry its initial burden on these grounds in its opening MSJ, the District Court erred in granting summary judgment, and this Court should reverse that portion of the judgment and remand for further proceedings on Montgomery's claims.

2. **Rehearing en banc in the alternative:** If the panel declines to grant rehearing or to conform its decision to *Wallman, Morlan,* and *Central Bank,* that the Court GRANT rehearing en banc under C.A.R. Rule 35 because:

• The Opinion cannot be reconciled with those published decisions on the questions of (a) what constitutes adequate notice of summary-judgment issues to a nonmovant, and (b) how cross-motions must be treated under Rule 56; and

• Allowing the Opinion to stand would create or perpetuate an intra-court conflict on fundamental summary-judgment procedures that recur frequently in Colorado civil litigation and have especially severe consequences for *pro se*, indigent parties facing large fee awards.

3. **Any further relief:** That the Court GRANT any additional or alternative relief it deems just and proper, including narrowing or clarifying the Opinion to eliminate the identified conflicts.

Respectfully submitted on this, the 5th day of March, 2026.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th day of March, 2026, the foregoing **COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Attorneys for Defendant

William Montgomery
William Montgomery

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
MOTION TO EXCEED WORD COUNT IN PETITION FOR REHEARING / EN BANC	

Plaintiff, proceeding *pro se*, humbly requests that this Court allow him to exceed the 1,900 word limit of his COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Counsel for Defendant concerning this MOTION. Defendant states that it OPPOSES the relief sought herein.

ARGUMENT

I. APPLICABLE RULES AND WORD COUNT

C.A.R. Rule 40(b) provides that, "[e]xcept by permission of court, a petition for rehearing must not exceed 1,900 words, excluding material not counted under C.A.R. 28(g)(1)." C.A.R. Rule 32 and related rule changes expressly contemplate that a party may move to exceed applicable word limits upon a showing of need, and that such a motion must be filed with the document at issue.

Plaintiff's Combined Petition For Panel Rehearing And/Or Rehearing En Banc (the "Combined Petition"), filed contemporaneously with this motion, contains **3,041 words**, as reflected in its Certificate of Compliance.

II. NATURE AND COMPLEXITY OF THE ISSUES

The Combined Petition presents several interrelated but distinct grounds for rehearing that cannot be fairly developed within 1,900 words without sacrificing clarity or omitting critical legal points. In particular, it explains that the February 19, 2026 Opinion:

a. Upholds summary judgment based on factual grounds and evidentiary materials (Defendant's receipts and the Mahmoud affidavit) first presented in a **reply** in support of Defendant's motion for summary judgment, notwithstanding *Wallman v. Kelley's* rule that a nonmovant is entitled to notice in the *opening* motion of the

specific issues on which it must present evidence to avoid judgment.

b. Endorses the District Court's treatment of the parties' cross-motions for summary judgment as "two halves of the same coin," contrary to *Morlan v. Durland Trust Co.* and *Central Bank & Trust Co. v. Robinson,* which require that each motion "stand on its own" and not be "aided" by the opponent's motion or supporting documents.

c. Mischaracterizes Plaintiff's response to Defendant's MSJ by treating his insistence that Defendant had not carried its initial evidentiary burden as actual factual "denials" of store entry, merchandise, and receipt possession, and then uses that mischaracterization to justify treating reply-only exhibits as mere rebuttal—effectively inverting the Rule 56 burden structure and providing a way around *Wallman's* notice requirement.

d. Treats the mere possibility that Plaintiff *could* have responded somewhere in the combined briefing as a forfeiture of his right to insist on proper *Wallman*-compliant notice in Defendant's opening MSJ, creating direct tension with *Wallman's* express language.

These issues involve **multiple published Colorado authorities**, including *Wallman, Morlan, Central Bank, Suncor,* and others, as well as a structural interaction between Rule 56 burdens, reply-only evidence, and cross-motions.

Compressing all of this into 1,900 words would either (1) prevent Plaintiff from identifying with particularity "each point of law or fact [he] believes the court has overlooked or misapprehended," as C.A.R. Rule 40 requires, or (2) reduce his arguments to bare citations without sufficient explanation to aid the Court.

III. COMBINED PANEL AND EN BANC REQUEST

The Combined Petition is a **single document** seeking both *panel rehearing* under C.A.R. Rule 40 and, to the extent necessary, *rehearing en banc* under C.A.R. Rule 35. To meet the standards for both forms of relief, Plaintiff must:

- Identify the points of law and fact the panel misapprehended or overlooked; and
- Explain why those errors create an **intra-court conflict** with *Wallman, Morlan,* and *Central Bank* that warrants en banc consideration if the panel does not correct them.

Doing both in one document necessarily requires more space than a straightforward, panel-only petition limited to a single discrete issue. The additional approximately 1,141 words are used to articulate the specific conflicts and their doctrinal significance, not to re-argue the entire appeal.

IV. ACCESS-TO-JUSTICE AND FEE-AWARD CONSIDERATIONS

This case also carries outsized practical consequences for Plaintiff as an indigent, self-represented litigant. In addition to granting Defendant's motion for summary judgment, the District Court awarded Defendant **$36,124.50 in attorney fees** against him, which he has no realistic ability to pay absent reversal. The Combined Petition explains how the structural errors in the summary-judgment process—particularly the use of reply-only grounds and conflated cross-motions—directly underlie that fee award. Given the magnitude of the financial consequences for a *pro se* pauper, a modest expansion of the word limit is warranted to ensure the Court fully understands the Rule 56 and due-process issues at stake.

V. NO PREJUDICE TO ANY PARTY OR TO THE COURT

The requested expansion—from 1,900 to 3,041 words—is relatively modest in absolute terms (approximately five additional pages). Under C.A.R. Rule 40(a)(3), no answer to a petition for rehearing is permitted unless the Court requests one, so the expanded word count imposes no automatic additional briefing burden on Defendant. The record is already before the Court, and the additional words are used to clarify the procedural conflicts and supporting authority, which should assist, rather than burden, the Court in resolving the petition.

VI. GOOD CAUSE SHOWN

Under C.A.R. Rule 32 and related rule changes, a motion to exceed word

limitations should explain "why additional words are necessary." For the reasons above —multiple intertwined procedural issues; the need to address specific conflicts with *Wallman, Morlan,* and *Central Bank;* the combined panel / en banc posture; and the significant fee award against an indigent, pro se litigant—Plaintiff respectfully submits that good cause exists to permit the modest word-count extension requested here.

CONCLUSION

WHEREFORE, Plaintiff humbly requests that the Court **GRANT** this Motion and accept for filing his Combined Petition For Panel Rehearing And/Or Rehearing En Banc, containing 3,041 words, notwithstanding the 1,900-word limit in C.A.R. Rule 40(b), and grant such further relief as it deems just and proper.

Respectfully submitted on this, the 5th day of March, 2026.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th day of March, 2026, the foregoing **MOTION TO EXCEED WORD COUNT IN PETITION FOR REHEARING / EN BANC** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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William Montgomery
William Montgomery

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED March 26, 2026
Jefferson County 2023CV226	
Plaintiff-Appellant: William Montgomery, **v.** **Defendant-Appellee:** Best Buy, L.P.	Court of Appeals Case Number: 2025CA327
OPINION MODIFIED ON THE COURT'S OWN MOTION & ORDER DENYING PETITION FOR REHEARING	

The motion to exceed word limit is GRANTED.

The **PETITION FOR REHEARING** filed in this appeal by:

William Montgomery, Plaintiff-Appellant,

IT IS THIS DAY ORDERED that said Petition shall be, and the same hereby is, DENIED. OPINION MODIFIED ON THE COURT'S OWN MOTION AND PETITION FOR REHEARING IS **DENIED**.

Issuance of the Mandate is stayed until: April 24, 2026

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

DATE: March 26, 2026

BY THE COURT:
Grove, J.
Yun, J.
Schock, J.

2603262014 0354 1-133-1019 3

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Appeal from:

Jefferson County District Court

District Court Judge: The Hon. Christopher Zenisek

District Court Case Number: 2023CV226

In the Case of:

Plaintiff/Petitioner: WILLIAM MONTGOMERY,

■ Appellant or ☐ Appellee

&

Defendant/Respondent: BEST BUY STORES, L.P.

☐ Appellant or ■ Appellee

FOR COURT USE

Filing Party Name: William Montgomery

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Court of Appeals' Case Number:

Notice of Appeal

I. Case Background

In one page or less, give the court a brief description of this case and why you are appealing:

On November 21, 2023, WILLIAM MONTGOMERY filed a lawsuit against BEST BUY STORES, L.P., alleging that three of its employees false imprisoned, assaulted, and slandered him outside a BEST BUY STORE located in Jefferson County, CO.

In the matter, the District Court Judge granted the Defendant's MOTION FOR SUMMARY JUDGMENT, dismissing Plaintiff's three-claim case. Afterwards, the Judge granted the Defendant's MOTION FOR ATTORNEY FEES. The Defendant then had 21 days from that ORDER to submit its ATTORNEY FEES COMPUTATION, which it failed to do. Instead, the Defedant filed a MOTION FOR EXTENSION OF TIME TO FILE its ATTORNEY FEES COMPUTATION two days after the 21 day deadline had passed. The Judge granted the MFEOTTF, then about a month later, granted the ATTORNEY FEES COMPUTATION, which ultimately required Plaintiff to pay Defendant $36,124.50 in attorney fees. The Judge made errors of fact and/or law when making such rulings, however, and incorrectly granted all motions and computations in contravention of clearly established rules and law on the subject.

Plaintiff MONTGOMERY now seeks appellate review of the District Court Judge's ORDERS granting Defendant's MFAF, MFEOTTF, and AFC. He seeks to have all three ORDERS be **REVERSED** in their entirety.

II. Final Order on Appeal

1. Final Order: I am appealing the final order or judgment issued on

   (date) June 3, 2025

2. Remaining Issues:

   ☒ All the issues in the case have been decided.

   OR

   ☐ Not all of the issues in the case have been decided. The following issues are still undecided: _____.

3. Attorney Fees and Costs:

   ☒ Any request for attorney fees and costs have been resolved.

   OR

   ☐ The District Court needs to resolve a request for attorney fees and costs.

III. Post-Trial Motions

1. Motions Filed: Did any party file a post-trial motion?

   ☒ No (If this is checked, you may skip to the section IV. - Extension of Time to File the Notice of Appeal).

   OR

☐ Yes. A post-trial motion was filed on: (date) _____
_____.

2. Extensions of Time: Did a party request an extension of time to file a motion for post-trial relief?

☐ No party asked for an extension of time to file a post-trial motion, or the request was denied.

OR

☐ A request for extension of time to file a post-trial motion was filed on (date) _____. The District Court granted the motion on (date) _____ and extended the deadline to file a post-trial motion to (date) _____.

3. Ruling on Post-Trial Motion:

☐ The district court ruled on the motion on (date) _____
_____.

OR

☐ The post-trial motion has not been decided by the district court.

IV. Extension of Time to File the Notice of Appeal:

☒ There were no requests to extend the deadline to file this notice of appeal.

OR

☐ A request to extend the deadline was filed on (date) _____.

V. Magistrate Order:

☐ Check here if your case was decided by a magistrate.

VI. Issues on Appeal:

List the legal questions you want the court of appeals to decide.

Did the District Court err in granting Defendant's MOTION FOR ATTORNEY FEES?

Did the District Court err in granting Defendant's MOTION FOR EXTENSION OF TIME TO FILE its ATTORNEY FEES COMPUTATION?

Did the District Court err in granting Defendant's ATTORNEY FEES COMPUTATION?

VII. Necessity of Transcript:

☒ A transcript is not necessary to review the issues on appeal.

OR

☐ A transcript of the hearing or trial is necessary to review the issues on appeal.

VIII. Lawyer or Party Information

1. My lawyer: I do not have a lawyer at this time.

2. The lawyer for the other side:

☐ The other side does not have a lawyer. Their contact information is:

Name:

Street Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

E-Mail Address: _____

OR

☒ The other side has a lawyer. That lawyer's contact information is:

Attorney Name: Lori K. Bell & Sarah K. Vogel

Registration Number: No. 31714 (Bell) & No. 58381 (Vogel)

Name of Law Firm: Montgomery | Amatuzio

Street Address: 720 S Colorado Blvd, Suite 1200-N

City: Denver State: CO Zip: 80246

Phone Number: (303) 592-6600

E-Mail Address: lbell@mac-legal.com & svogel@mac-legal.com

For all of the other parties to this appeal, list each person, state whether they have a lawyer, and if so, add that lawyer's contact information here:

IX. Attachments

Please see the documents I attached to this notice:

1. A copy of the judgment or order being appealed.
2. A copy of the district court order, if any, waiving my filing fees on appeal.

Dated: July 22, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

I certify that on (date) July 22, 2025 I filed this Notice of Appeal with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐ U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email: lbell@mac-legal.com & svogel@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	
Appeal from: Jefferson County District Court District Court Judge: The Hon. Christopher Zenisek District Court Case Number: 2023CV226	
In the Case of: Plaintiff/Petitioner: WILLIAM MONTGOMERY, ■ Appellant or ☐ Appellee & Defendant/Respondent: BEST BUY STORES, L.P. ☐ Appellant or ■ Appellee	▲ FOR COURT USE ▲
Filing Party Name: William Montgomery Street Address: 2443 S University Blvd # 129 City: Denver State: CO Zip: 80210 Phone: (970) 412-5463 E-Mail: zoinbergs@gmail.com	Court of Appeals' Case Number:
Designation of Record	

I respectfully request the clerk of the District Court to prepare and send the Record on Appeal. Please follow Colorado Appellate Rules (C.A.R.) 10 and 11. I understand that in addition to completing this Designation of Record, I need to

contact the district court's clerk's office and follow their instructions on what I need to do to have the record sent to the appellate court.

Documents to Send

Please send my entire case file to the Court of Appeals. Please include:

1. All documents filed in the case, including attachments.
2. All exhibits admitted at any hearing or trial.
3. All orders the district court made, including minute orders.
4. If a trial was held, all jury instructions, verdict forms, and answers to any special interrogatories.

Transcripts

1. Transcripts Needed:

☒ A transcript is not needed to review the issues on appeal.

OR

☐ A transcript of the following hearings or trial is necessary to review the issues on appeal. I will contact the court reporters and/or the appeals clerk to order and pay for the transcripts listed below. Please send these to the Court of Appeals as part of the Record on Appeal.

(For an event that lasted more than one day, please list each day separately.)

What Type of Event was Held in Court	Date & Start Time	Reporter Name Write *digital* if it was machine recorded.

Dated: July 22, 2025

Respectfully submitted,

Signature: William Montgomery

Print Name: William Montgomery

Certificate of Service

certify that on (date) July 22, 2025 I filed this Designation of Record with the Court of Appeals. I sent a copy, along with any attachments, to the people listed below:

Name of Party Served: BEST BUY STORES, L.P.

Sent by (Check One): ☐U.S. Mail; OR ☐ In-Person Hand Delivery ■ Email

Email Address: lbell@mac-legal.com & svogel@mac-legal.com

City: _____ State: _____ Zip: _____

Enter the names and address of any other parties served here:

And filed with the:

Jefferson County District Court

Street Address: 100 Jefferson County Pkwy

City: Golden State: CO Zip: 80401

Signature: William Montgomery

Print Name: William Montgomery

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA1351** Jefferson County District Court Case No: **2023CV226**
PLAINTIFF'S APPEAL OPENING BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Court of Appeals his APPEAL OPENING BRIEF, and in support thereof, states as follows:

ORAL ARGUMENT REQUESTED

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My brief has **9,500** words, which does not exceed the 9,500 word limit allowed by this Court Of Appeals for appeal opening briefs.

Included Sections: In the Arguments section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The Standard of Review: I let the Court of Appeals know which standard to use in reviewing the issue. I cited to a law or case that supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the Record on Appeal I raised the issue to the District Court and where the District Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery

William Montgomery

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INTRODUCTION

This appeal challenges critical errors committed by the District Court in its attorney fees rulings. Plaintiff contests (1) the erroneous granting of Defendant's attorney fees motion without adequate findings made or due process afforded; (2) the erroneous granting of Defendant's motion for extension of time to file its fee computation, which lacked a showing of excusable neglect; and (3) the erroneous adopting of Defendant's unsegregated, grossly excessive fee computation without appropriately applying statutory factors or safeguarding Plaintiff's rights.

Together, these rulings reflect fundamental procedural and substantive flaws requiring reversal to preserve fairness and statutory compliance under Colorado law.

ISSUES ON APPEAL

1. Did the District Court err in **GRANTING** Defendant's Motion For Attorney Fees?

2. Did the District Court err in **GRANTING** Defendant's Motion For Extension Of Time To File Attorney Fees Computation?

3. Did the District Court err in **GRANTING** Defendant's Attorney Fees Computation?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

On November 25, 2022, Plaintiff visited a Best Buy store located in Westminster, CO. He entered the store, proceeded directly to the returns department, and then directly exited the store upon realizing that he was attempting to return non-store merchandise to the wrong location.

Throughout his time inside the store, Plaintiff conducted himself in an ordinary manner. He did not act suspiciously, furtively, or conceal anything, nor did he place into or remove anything from any pant or jacket pocket. At all times, Plaintiff openly held non-store private property, identical to what a legitimate customer might carry after a purchase. Upon exiting, he did not observe anyone stationed at the store's exit, nor was he asked to show any receipts.

After Plaintiff exited the store, he stood just outside, waiting for his brother. He was then approached by three Best Buy employees who immediately surrounded and detained him, accusing him of stealing. Plaintiff had never once met, seen, identify, pass by, or been located anywhere physically near these employees, whatsoever, while inside the store.

After several unfruitful minutes of bullying, name calling, lies that the police had been contacted, and threats made to “jump” Plaintiff off-camera, all three

employees eventually released him from their custody, and re-entered the store.

About one year later, this lawsuit followed.

II. PROCEDURAL HISTORY

On November 21, 2023, Plaintiff filed a Complaint against BEST BUY and its employees under theories of false imprisonment, defamation, and assault. *Court File (herein "CF") at 3.*

On July 25, 2024, Defendant filed a Motion For Summary Judgment. *CF at 227.* On September 19, 2024, Plaintiff filed a Response to the MSJ. *CF at 640.*

On September 19, 2024, Plaintiff filed a Cross-Motion For Summary Judgment. *CF at 254.* On October 10, 2024, Defendant filed a Response to the Cross-MSJ. *CF at 677.*

On October 10, 2024, Defendant filed a Reply In Support of the MSJ, *CF at 729,* introducing for the first time business records (receipts), *CF at 741,* and an affidavit of an employee (Mahmoud Abu-Shaweesh), *CF at 779,* neither of which were included with its initial MSJ, thereby depriving Plaintiff of notice and an opportunity to present controverting evidence.

On October 31, 2024, Plaintiff filed a Reply In Support of his Cross-MSJ. *CF at 848.*

On November 19, 2024, the District Court issued an Order **GRANTING**

Defendant's MSJ and **DENYING** Plaintiff's Cross-MSJ, *CF at 876,* dismissing Plaintiff's case in its entirety. The District Court made numerous errors of both fact and law when issuing the Order, however, and acted in contravention of clearly established rules and law on the subject.

On December 3, 2024, Plaintiff filed a Motion For Reconsideration, *CF at 890,* which the District Court denied on January 6, 2025, *CF at 974.*

On December 31, 2024, Defendant filed a Motion For Attorney Fees. *CF at 914.* On January 21, 2025, Plaintiff filed a Response to the MFAF. *CF at 999.* On January 28, 2025, Defendant filed a Reply In Support of the MFAF. *CF at 1029.*

On January 21, 2025, Plaintiff filed a Second Motion For Reconsideration, *CF at 1016,* which the District Court denied on February 18, 2025, *CF at 1042.*

On March 18, 2025, the District Court issued an Order **GRANTING** Defendant's Motion For Attorney Fees, *CF at 1362,* but did so without making adequate findings of fact and conclusions of law as required by C.R.S. §§ 13-17-102 and 103, and without analyzing the statutory factors therein. The Court ordered Defendant to submit its Attorney Fees Computation within 21 days, by April 8, 2025.

Defendant failed to file its Attorney Fees Computation by April 8, 2025.

On April 10, 2025, two days after the deadline, Defendant filed a Motion For Extension Of Time To File Attorney Fees Computation, *CF at 1418,* claiming

"calendaring errors" and "competing deadlines" in "six cases" as justification for missing the 21-day deadline. On May 1, 2025, Plaintiff filed a Response to the MFEOTTF AFC. *CF at 1631.*

On May 5, 2025, the District Court issued an Order **GRANTING** Defendant's MFEOTTF AFC, *CF at 1648,* despite the absence of excusable neglect.

On April 16, 2025, Defendant filed its Attorney Fees Computation, *CF at 1423,* requesting $43,083.00 in attorney fees.

On June 3, 2025, the District Court issued an Order **ADOPTING** Defendant's Attorney Fees Computation, *CF at 1704,* reducing the requested fees to $36,124.50.

On July 22, 2025, Plaintiff filed a Notice of Appeal, challenging all three Attorney Fee Orders issued by the District Court. *CF at 1710.* He seeks to have all three Orders be **REVERSED** in their entirety.

ARGUMENT SUMMARY

The District Court committed multiple errors in granting Defendant's Motion For Attorney Fees, Motion For Extension Of Time To File Attorney Fees Computation, and Attorney Fees Computation.

First, the award of attorney fees was improper because Plaintiff's lawsuit

was not frivolous, groundless, vexatious, or brought in bad faith—the predicate for any attorney fees award under Colorado law. Plaintiff presented novel legal arguments and factual distinctions from prior cases, and the District Court's underlying summary judgment ruling, which found Plaintiff's claims to lack substantial justification, was itself flawed due to reliance on inadmissible evidence, misapplication of procedural rules, and improper factual inferences.

Second, the District Court abused its discretion in granting Defendant's Motion For Extension Of Time To File Attorney Fees Computation. Defendant's stated reasons for delay—"juggling competing deadlines" and "difficulties in keeping cases organized"—were demonstrably false and insufficient to establish excusable neglect. The record shows no significant overlapping deadlines during the relevant period, and Defendant's own actions contradict its claims of disorganization. Furthermore, Defendant failed to provide any specific details regarding the alleged "calendaring errors," and the deadline was clearly and unambiguously stated in a Court Order, making any miscalculation inexcusable.

Third, the District Court's computation of attorney fees was flawed because it failed to make adequate findings of fact and conclusions of law as required by statute. Specifically, the Court did not analyze the relative financial positions of the parties, whether issues of fact were reasonably in conflict, or other mandatory

factors as required under C.R.S. § 13-17-103(1). The Court's conclusory statements regarding these factors are insufficient for appellate review.

For these reasons, the District Court's Orders should be **REVERSED.**

ARGUMENTS

Issue 1 – The District Court Erred In Granting Defendant's Motion For Attorney Fees

A. Standard Of Review

The question of whether a party is entitled to attorney fees is reviewed for abuse of discretion. *Munoz v. Measner,* 247 P.3d 1031 (Colo. 2011). An abuse of discretion occurs when the trial court's decision is manifestly arbitrary, unreasonable, or unfair, or when it misapplies the law. *People v. Muniz,* 190 P.3d 774, 781 (Colo. App. 2008). However, where statutory factors are involved and findings are required, the trial court's findings of fact are reviewed for clear error, and conclusions of law are reviewed de novo. *E-470 Pub. Highway Auth. v. 455 Co.,* 3 P.3d 18, 23 (Colo. 2000).

B. Preservation On Appeal

Plaintiff raised objections to Defendant's Motion For Attorney Fees in his Response To Defendant's Motion For Attorney Fees, *CF at 999,* and in his Motions For Reconsideration, *CF at 890; 1016.* The District Court ruled on the matter in its

Order Granting Defendant's Motion For Attorney Fees, *CF at 1362,* and its Orders denying Plaintiff's Motions For Reconsideration, *CF at 974; 1042.*

C. Discussion

I. THE COURT FAILED TO MAKE ADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY STATUTE

a. Legal framework for attorney fees under C.R.S. §§ 13-17-102 & 103

Colorado law is clear and unambiguous regarding the requirements for awarding attorney fees in civil litigation. Pursuant to C.R.S. § 13-17-102, attorney fees may be assessed only in limited circumstances, including when a claim or defense is frivolous, groundless, vexatious, or pursued in bad faith. However, determination of entitlement to attorney fees cannot be made without adequate findings of fact and conclusions of law on the issue. *Bd. of County Comm'rs v. Auslaender,* 745 P.2d 999 (Colo. 1987); *Pedlow v. Stamp,* 776 P.2d 382 (Colo. 1989).

Moreover, in determining whether a claim or defense is substantially frivolous or groundless, the trial court must consider all factors set forth in C.R.S. § 13-17-103(1), and must specifically "set forth the reasons for said award." *Haney v. City Court,* 779 P.2d 1312 (Colo. 1989); *Pedlow v. Stamp,* 776 P.2d 382 (Colo. 1989). "Conclusory statements that a claim is frivolous, groundless, or vexatious are insufficient for purposes of appellate review and inadequate to satisfy the statutory

requirement of specificity." *In re Aldrich,* 945 P.2d 1370 (Colo. 1997).

b. The District Court's Order is replete with conclusory statements and lacks adequate findings

The District Court's Order granting Defendant's Motion For Attorney Fees, *CF at 1362,* fundamentally fails to comply with these statutory mandates. Rather than engaging in a methodical analysis of the C.R.S. § 13-17-103(1) factors, the Court wholesale adopted the conclusory assertions made by Defendant in its Motion briefing. The Order states, for example, that Plaintiff "go[es] into stores and conduct[s] himself in a manner that could be reasonably construed as suspicious," *CF at 1362,* that he "planned this lawsuit before bringing it," *CF at 1363,* and that he "sought to engage Best Buy in a situation that would result in a lawsuit," *CF at 1363,* all purely conclusory statements made without any admissible evidence in the record to support such findings. Rather, they represent the Court's impermissible adoption of Defendant's unfounded speculation about Plaintiff's subjective intentions.

Most critically, the Court's Order failed to address:

- The extent of Plaintiff's efforts to determine the validity of his action before asserting it, as required by C.R.S. § 13-17-103(1)(a).

- The extent of Plaintiff's efforts to reduce or dismiss claims found not to be valid, as required by C.R.S. § 13-17-103(1)(b).

- The availability of facts to assist Plaintiff in determining the validity of his claims, as required by C.R.S. § 13-17-103(1)(c).

- The relative financial positions of the parties involved, as required by C.R.S. § 13-17-103(1)(d).

- Whether issues of fact were reasonably in conflict, as required by C.R.S. § 13-17-103(1)(f).

The Court's failure to "specifically set forth" these required statutory factors constitutes clear error and an abuse of discretion.

II. PLAINTIFF DID NOT FILE A LAWSUIT THAT WAS FRIVOLOUS, GROUNDLESS, VEXATIOUS, OR IN BAD FAITH

a. Definitions and legal standards

"Frivolous" means no rational argument based on the evidence or the law. "Groundless" means the complaint's allegations, while sufficient to survive a motion to dismiss, are not supported by any credible evidence at trial. "Vexatious" means bringing or maintaining an action in bad faith to harass, annoy, or delay. *Western United Realty, Inc. v. Isaacs,* 679 P.2d 1063, 1068 (Colo. 1984); *Zivian v. Brooke-Hitching,* 28 P.3d 970, 974 (Colo. App. 2001).

A party who successfully seeks summary judgment is not necessarily entitled to attorney fees. *Kemp v. State Board of Agriculture,* 790 P.2d 870 (Colo. App.

1989), *aff'd on other grounds,* 803 P.2d 498 (Colo. 1990). A claim is not frivolous, groundless, or vexatious simply because it fails to survive summary judgment. Where a plaintiff attempts to present evidence in good faith in support of their claims, but simply falls short of what is required to create an issue of material fact, a Court does not abuse its discretion by failing to award fees. *Munoz v. Measner,* 247 P.3d 1031 (Colo. 2011). *See also Torres v. Portillos,* 638 P.2d 274 (Colo. 1981); *State Farm Mut. Auto Ins. Co. v. Sanditen,* 701 P.2d 876 (Colo. App. 1985); *Romberg v. Slemon,* 778 P.2d 315 (Colo. App. 1989).

b. Prior litigation does not render the current suit frivolous

The District Court erroneously concluded that Plaintiff's current lawsuit was "nearly identical" to his previous Walmart cases. *CF at 1362.* However, significant factual (and therefore legal) distinctions exist between the cases:

- *Customer Status:* In prior Walmart cases, Plaintiff was a customer. In this case, he was a non-patron attempting to return non-store merchandise.

- *Store Layout / Policies:* Best Buy does not have "back registers," phased out plastic bags in July 2022, *CF at 907,* and primarily uses emailed receipts, *CF at 830.* These are distinct from Walmart's layout / policies.

- *Receipt Request:* No explicit request for a receipt was made by Best Buy employees, unlike what Plaintiff routinely encountered at Walmart.

- *Recording Initiation:* Plaintiff began recording after the confrontation occurred, not in anticipation of it.

These distinctions are material and demonstrate that Plaintiff's Best Buy lawsuit was not a mere rehashing of failed Walmart arguments, but rather a good-faith assertion of rights in different factual circumstances.

c. Plaintiff's claims involved novel questions of law for which no determinative authority existed at the time

C.R.S. § 13-17-102(7) provides that: "No attorney, licensed legal paraprofessional, or party shall be assessed attorney fees or licensed legal paraprofessional fees for any claim or defense that the court determines was asserted by the attorney, licensed legal paraprofessional, or party in a good faith attempt to establish a new theory of law in Colorado."

Courts have repeatedly held that claims involving novel questions of law for which no determinative authority existed at the time the complaint was filed were not frivolous, groundless, or vexatious. *See Montoya by Montoya v. Bebensee,* 761 P.2d 285 (Colo. App. 1988); *Colo. Supply Co., Inc. v. Stewart,* 797 P.2d 1303 (Colo. App. 1990); *Bd. of County Comm'rs v. Colo.,* 888 P.2d 352 (Colo. App. 1994); *Fowler Irrevocable Trust 1992-1 v. City of Boulder,* 992 P.2d 1188 (Colo. App. 1999) *aff'd in part, rev'd in part on other grounds,* 17 P.3d 797 (Colo. 2001).

As previously discussed, a claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim or defense. *Western United Realty, Inc. v. Isaacs,* 679 P.2d 1063 (Colo. 1984); *Hart & Trinen v. Surplus Elecs. Corp.,* 712 P.2d 491 (Colo. App. 1985); *Merrill Chadwick Co. v. October Oil Co.,* 725 P.2d 17 (Colo. App. 1986); *Fox v. Div. Eng. For Water Div. 5,* 810 P.2d 644 (Colo. 1991). However, this test does not apply to meritorious actions that prove unsuccessful, legitimate attempts to establish a new theory of law, or good-faith efforts to extend, modify, or reverse existing law. *Covert v. Allen Group, Inc.,* 597 F. Supp. 1268 (D. Colo. 1984); *Hart & Trinen v. Surplus Elecs. Corp.,* 712 P.2d 491 (Colo. App. 1985); *Buttermore v. Firestone Tire & Rubber Co.,* 721 P.2d 701 (Colo. App. 1986); *Norton v. School District No. 1,* 807 P.2d 1160 (Colo. App. 1990); *SaBell's, Inc. v. City of Golden,* 832 P.2d 974 (Colo. App. 1991); *Wheeler v. T.L. Roofing, Inc.,* 74 P.3d 499 (Colo. App. 2003).

Plaintiff presented numerous legal arguments that have never been adequately addressed by any Court and represent good-faith attempts to establish new or modified applications of Colorado false imprisonment law, including:

- *The distinction between "escape" and "release."* Plaintiff argued that the term "escape" applies to situations where a person achieves freedom through their own efforts or by overcoming physical barriers, not by conditional release upon

compliance with a detainer's subjective demands. This distinction is critical to false imprisonment analysis and has not been squarely addressed by Colorado courts.

- *The requirement that jury instructions be correctly interpreted.* Plaintiff argued that false imprisonment jury instructions regarding what constitutes "physical barriers," "unreasonable risk of harm," "slight inconvenience," and "no matter how short," are all required to be read "in harmony" with one another so as to not be interpreted in such a way that renders their application "meaningless" or "absurd."

- *The logical contradiction between showing and not showing a receipt.* Plaintiff argued, with numerous cases to support his position, that "showing a receipt" and "not showing a receipt" cannot ***both*** be considered consent.

- *The "last clear chance" doctrine as applied to merchants.* Plaintiff argued that merchants, not patrons, have the "last clear chance" to avoid false imprisonment by exercising reasonable judgment prior to detention. Just as police have a duty to not make unlawful arrests, merchants have a duty to not unlawfully detain. This principle has never been explicitly articulated in Colorado shopkeeper's privilege jurisprudence.

- *The impermissibility of bootstrapping non-cooperation into justification for detention.* Following Fourth Amendment principles articulated in cases such as *Florida v. Bostick,* 501 U.S. 429 (1991), and *United States v. Hunnicutt,* 135 F.3d

1345 (10th Cir. 1998), Plaintiff argued that merchants cannot "bootstrap" a customer's refusal to cooperate into the very justification for detention that they otherwise lack. No Colorado court has definitively resolved this question.

- *The temporal distinction between pre-detention and post-detention conduct.* Plaintiff argued that conduct occurring before detention cannot retroactively be used to justify detention after the fact—that the lawfulness of detention must be determined by facts known at the moment of detention, not by facts learned afterward. This represents a coherent application of causation principles in tort law.

- *The principle that showing a receipt does not retroactively nullify a detention.* Plaintiff argued that even if he had possessed a receipt and shown it, his initial detention would have occurred unlawfully, as the showing of a receipt represents a conditional release, not an "escape" that retroactively legitimizes a prior restraint.

- *The requirement that uniquely inculpatory evidence, not just an absence exculpatory evidence, be used to properly support shopkeeper's privilege with.* Plaintiff argued that mere "lack of plastic bag use" and/or mere "lack of front register use" does not reasonably indicate that merchandise is "unpurchased" sufficient to justify a patron's detention with, and that suspicions premised on them are nothing more than "self-fulfilling prophesies."

- *Application of Supreme Court precedent regarding the impermissibility of*

conducting detentions for exculpatory purposes. In *Montgomery v. Lore,* 10th Cir. Court of Appeals Case No. 23-1106 (Dec. 13, 2023), the Court held that Plaintiff was not required to show a receipt, answer questions, or consent to a search of his pocket to reveal the identity of merchandise to an off-duty police officer employed by a store as a security guard, and that any detention premised on such "refusal to cooperate" was not supported by reasonable suspicion, let alone probable cause / shopkeeper's privilege. These are novel applications of Fourth Amendment principles to merchant detention law.

Each of these arguments represents a rational legal theory arguably supported by existing precedent from Colorado, the Tenth Circuit, and the Supreme Court. The fact that they have been unsuccessful does not render them frivolous. Rather, as Colorado law clearly provides, "A plaintiff cannot be faulted for attempting to convince the court to reconsider its view of the applicable law." *Hamon Contractors, Inc. v. Carter & Burgess, Inc.,* 229 P.3d 282 (Colo. App. 2009).

d. Disputes over material facts preclude the Court from finding that Plaintiff's claims are frivolous

Colorado's shopkeeper's privilege allows a reasonable, good-faith detention upon probable cause. When facts bearing on probable cause, good faith, and the reasonableness of detention are disputed, these are questions for the fact finder—

not appropriate for fee sanctions predicated on frivolousness. *J.S. Dillon & Sons Stores Co. v. Carrington,* 169 Colo. 242, 246-49, 455 P.2d 201, 203-05 (1969); *Gonzales v. Harris,* 528 P.2d 259, 261-62 (Colo. App. 1974); *Goodboe v. Gabriella,* 1983 Colo. App. LEXIS 828, at *2-5 (Colo. App. 1983) (legal justification is an affirmative defense; good faith typically for the jury).

Here, the record reflects genuine disputes on these elements:

- *Did Defendant observe suspicious conduct?* Plaintiff's body camera video shows him standing outside a store. His affidavit states that he never concealed items, never acted furtively, made no suspicious movements, and never prior encountered the detaining employees. Defendant's employee affidavit, introduced only in reply, contradicts the video and affidavit, and is itself internally inconsistent.

- *Did Defendant have probable cause to believe Plaintiff stole merchandise?* There is no admissible evidence that Plaintiff ever possessed stolen merchandise. Plaintiff properly submitted to the District Court a non-eventful police report, which Defendant did not dispute. Defendant employee's affidavit, introduced only in reply, claims that police were contacted. Again, this is contradictory.

- *Did Plaintiff have a "means of escape"?* The mere possibility that Plaintiff might have possessed a receipt—a fact Defendant failed to establish with admissible evidence—does not constitute a clear means of escape, particularly given that

showing a receipt represents a conditional release, not an autonomous escape.

The existence of these disputed facts and the questions of law they raise render the suit not frivolous, but rather appropriate for jury determination.

e. Plaintiff's actions were not a "strategic misuse of litigation" or "entrapment"

The District Court accepted Defendant's argument that Plaintiff "planned this lawsuit before bringing it" and that he "sought to engage Best Buy in a situation that would result in a lawsuit." *CF at 1363.* This analysis fundamentally misconceives the nature of Plaintiff's rights as a consumer and merchant detention law.

For the last decade, Plaintiff has shopped at hundreds of merchants on thousands of occasions while consistently exercising his right to refuse to answer questions and refuse to consent to searches. Virtually all of these shopping occasions proceeded without incident or detention. Plaintiff did not "plan" the November 25, 2022 incident at Best Buy; it is impossible to "plan" a random act of a merchant false imprisoning a patron. As such, Best Buy was the rare exception among hundreds of shopping occasions where a merchant improperly exercised detention authority.

Critically, in the District Court's Order, it misquotes Plaintiff's use of the phrase "free lawsuits" to suggest that he "manufactures lawsuits." *CF at 1362.* However, Plaintiff's exclusive use of "free lawsuits" has only ever referred to **how overzealous**

stores like Walmart and Best Buy routinely and flagrantly violate the law—which essentially allows *anyone* who knows their rights the opportunity to simply refuse to show their receipt upon leaving and thereby secure a legitimate lawsuit. In layman's terms, these lawsuits would not even exist if such "Big-Box Bully" stores did not ***regularly hand them out by their own unlawful conduct.*** Indeed, such lawsuits have become increasingly common precisely *because* these merchants persist in their illegal detention practices. Plaintiff is not strategically manufacturing disputes; he is observing that merchants' own illegal behavior creates these claims.

The analogy to police bait car operations is instructive and legally sound. An undercover police officer who parks a car with the knowledge that it might attract would-be car thieves is not engaged in entrapment. *See* C.R.S. § 18-1-709 ("Merely affording a person an opportunity to commit an offense is not entrapment"). *See also Mora v. People,* 172 Colo. 261, 262 (Colo. 1970) ("Entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed."). Similarly, Plaintiff simply shopping and leaving stores, while consistently exercising his rights to refuse cooperation with non-compulsory questioning and searches, is not "entrapment" of merchants or evidence of frivolous conduct. Rather, if nobody takes the police "bait," the car remains parked, just like any

other; if nobody detains Plaintiff for merely exercising his rights, he simply leaves stores after shopping, just like any other.

If Plaintiff truly "acted deliberately" and "design[ed] his conduct to inspire [a] belief" of shoplifting by merchants, as the District Court concluded, *CF at 882,* then logically Plaintiff should have accumulated multiple detentions and lawsuits by now from his hundreds of shopping occasions at other merchants. The absence of such detentions and suits is itself evidence that Plaintiff's encounter with Defendant on November 25, 2022 was the exception, not the norm—and therefore Defendant's conduct, not Plaintiff's ordinary shopping, was the anomaly.

Indeed, Defendant's own proffered evidence contradicts itself on this very subject. Defendant's argument that Plaintiff "made numerous purchases at various Best Buy locations" [but only sued Best Buy in this particular instance] actually demonstrates that other Best Buy stores acted *reasonably* by not detaining him. This undermines the claim that Plaintiff's behavior is inherently "suspicious" or "provocative." To argue otherwise would imply that dozens of Best Buy employees across the state were "wildly incompetent" for not detaining a "bona fide thief" on Black Friday. *CF at 1008.* Of course, it must not be forgotten that the District Court's conclusion regarding Plaintiff's "deliberate" actions was itself based on inadmissible hearsay (the receipt records) that were never properly

authenticated by a sworn affidavit of their custodian. *See Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). So there is no admissible evidence in the record to even conclude that "Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous." *CF at 1363.*

Plaintiff also provided the District Court with numerous news articles, similar cases, and law review articles such as Victoria S. Salzmann, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!,* 4 Fla. A&M U. L. Rev. (2009), all demonstrating that his concerns regarding "receipt nazism" are legitimate and widely recognized. Indeed, Plaintiff's YouTube video itself was made in response to one of many attorneys, Steve Lehto, chiming in on the subject.

III. PLAINTIFF DID NOT MAINTAIN HIS LAWSUIT IN BAD FAITH

a. Plaintiff's YouTube video was severely misinterpreted

Plaintiff's YouTube video, heavily relied upon by Defendant and the District Court as evidence of bad faith, was actually a general response to a YouTube lawyer discussing merchant detention rights—particularly Walmart's policies. The video never mentioned Best Buy or the November 25, 2022 incident.

Even if the video is interpreted as reflecting Plaintiff's general stance on receipt showing, it does not indicate that he "had no intention of cooperating in good

faith with court procedure." Rather, it was a discussion about where the "burden of proof" lies under evidentiary standards, court procedures, and affirmative defenses such as "shopkeeper's privilege" and "means of escape." Plaintiff was reiterating the well-established principle that the burden does not rest on him to "prove his innocence" or disprove "means of escape," as those matters are fundamentally within the defendant's knowledge and burden. As the California Supreme Court explained: "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940). Indeed, Plaintiff's underlying appeal (2025CA327) directly addresses these impermissible "burden-shifting" tactics, which were again unfairly deployed against him despite his clear objections.

Ultimately, Plaintiff's alleged hesitance to disclose "whether or not he had a receipt" or "whether or not he was a customer" was his way of illustrating how those questions have become a fundamental violation of discovery rules—especially considering prior adverse rulings against him in his Walmart cases. Effectively, Plaintiff was being asked to provide a "legal conclusion" (i.e., that a means of escape always exists), which is improper under discovery rules and

beyond what a party must truthfully answer.

Defendant's own summary judgment argument crystallized this problem: "If in fact Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff's claims." *CF at 233.* Plaintiff explained in his Response that adopting such an argument—without even so much as requiring the merchant to file a supporting affidavit—would grant merchants absolute, unchallengeable immunity in all situations. *CF at 660.* Such a position would be grossly unfair and is precisely why Plaintiff voiced concern on his video. His YouTube comments were never an expression of "no intention of cooperating in good faith," but a reasoned response to a pattern of judicial and legal abuses he has repeatedly faced.

b. Plaintiff complied with all disclosure and discovery requirements

Even aside from the video's inapplicability, Plaintiff fully complied with all discovery and disclosure obligations once clarified. His initial discovery responses, while admittedly incomplete, reflected his honest recollection at the time. After Defendant initiated a meet-and-confer on the perceived deficiencies, Plaintiff promptly supplemented disclosures and amended responses, curing any concerns. *CF at 1022; 1026.* Plaintiff was never defiant or obstructive, merely

cautious and desirous of providing accurate information. Moreover, Defendant never filed motions to compel or for more definite statements—prerequisites for sanctions against a truly non-cooperating party.

c. Plaintiff reasonably did not consider his brother to be relevant

Plaintiff cannot fairly be faulted for not identifying his brother as a potential source of relevant information. Although David accompanied Plaintiff into the Best Buy on November 25, 2022, he did not browse, make purchases, or leave with Plaintiff, nor did he witness Plaintiff's detention by store employees. Therefore, Plaintiff reasonably concluded that his brother was unlikely to have discoverable information relevant to any claims or defenses, consistent with C.R.C.P. Rule 26(a)(1)(A).

IV. DEFENDANT'S PROCEDURAL FAILURE TO USE DISCOVERY REMEDIES UNDERMINES BAD FAITH AND FRIVOLOUSNESS FINDINGS

a. Legal framework: distinct categories

Frivolousness (merit-based, evaluated when claim is filed) and **bad faith maintenance** (conduct-based, evaluated during litigation) are separate categories. *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *In re Parental Responsibilities of I.M.*, 410 P.3d 488 (Colo. App. 2013). **Discovery deficiencies cannot support frivolousness findings** because they address litigation conduct, not claim merit. Discovery issues can *theoretically* support bad faith only if: (1) conduct

was willfully obstructive; (2) plaintiff had notice; (3) plaintiff refused to cure; and (4) misconduct was ongoing at judgment, **none of which are satisfied here.**

b. Defendant's critical procedural failure

The record establishes that Defendant identified perceived discovery deficiencies between October 2024 and January 2025 **but never filed any motion to compel, request sanctions, seek an adverse inference, or continue summary judgment**. Most tellingly:

July 25, 2024: Defendant's MSJ filed without mentioning any disclosure or discovery deficiencies.

October 10, 2024: Only in Reply does Defendant introduce for the first time its employee affidavit and receipt records (violating *Wallman v. Kelley*, 976 P.2d 330 (Colo. App. 1999)).

November 19, 2024: Defendant's MSJ granted; Court's Order makes no reference to disclosure or discovery issues.

March 18, 2025: Only after obtaining favorable MSJ does Defendant raise disclosure and discovery conduct as evidence of bad faith.

The timing is dispositive: If Defendant genuinely believed Plaintiff was maintaining the suit in bad faith through disclosure and discovery evasion, Defendant would have sought C.R.C.P. Rule 37 sanctions when it discovered the alleged

deficiencies, not after winning summary judgment. Defendant's post-judgment invocation of discovery issues demonstrates post-hoc narrative construction.

c. Plaintiff cured deficiencies proactively—proving good faith

Plaintiff filed supplemental disclosures, *CF at 1022,* and supplemental discovery responses, *CF at 1026,* without compulsion, curing any alleged deficiencies before Defendant's MSJ was decided (November 19, 2024). **A party maintaining a lawsuit in bad faith would not voluntarily cure deficiencies.** The act of curing is affirmative evidence of good faith.

Under Colorado law, substantial compliance defeats bad faith sanctions because discovery's purpose is to obtain information—which Defendant ultimately received. *Pinkstaff v. Black & Decker*, 211 P.3d 698 (Colo. 2009).

d. Due process violation

Plaintiff received no formal notice through a Motion To Compel that his discovery responses would be used against him in sanctions proceedings. Due process requires notice and opportunity to cure before conduct is used as evidence of bad faith. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here, Defendant never gave Plaintiff notice before using discovery conduct against him—Plaintiff was ambushed post-judgment with a retroactive bad faith characterization.

e. Proportionality problem

Even if discovery deficiencies existed, C.R.C.P. Rule 37(c) requires that sanctions be proportional to the violation. The alleged deficiencies were minimal (omission of one witness, "I do not recall" responses) and cured before judgment. **No spoliation, calculated evasion, ongoing defiance, or prejudice occurred.** Appropriate sanctions for such minor, cured violations might include payment of Defendant's attorney fees specifically related to the discovery dispute (Plaintiff calculated to be 8.40 hours, equaling perhaps $1,000–$3,000) —not a $36,124.50 award for the entire case.

f. Defendant's failure to timely seek sanctions

Defendant did not file any motion to compel or seek sanctions from October 2024 through March 2025. Under Colorado practice, delay in seeking sanctions suggests that the party did not genuinely believe the conduct warranted them. If Defendant truly believed Plaintiff was deliberately evading discovery in bad faith, **it would have filed a C.R.C.P. Rule 37 motion immediately**—not after obtaining favorable judgment.

g. Logical inconsistency

The District Court found that Plaintiff: (1) planned the lawsuit to provoke Best Buy, yet (2) maintained it in bad faith through evasive discovery. These are

logically incompatible. If Plaintiff planned to sue Best Buy over a meritorious false imprisonment claim, he would have cooperated with discovery to support that claim—which he did, by proactively curing deficiencies. His conduct during litigation proves he was not acting in bad faith.

h. Procedural vs. substantive distinction

Colorado law distinguishes procedural conduct (discovery cooperation) from substantive merit (whether claim has rational argument). *Wallman*, 976 P.2d 330. **The District Court impermissibly conflated these.** Even if Plaintiff had evaded discovery, evasion demonstrates disrespect for court process—not that the underlying claim is frivolous or brought in bad faith.

i. Conclusion

Disclosure and discovery issues cannot support bad faith findings here because:

- Defendant failed to use statutory remedies (no C.R.C.P. Rule 37 motion, no C.R.C.P. Rule 56(f) continuance).

- Plaintiff cured the deficiencies proactively before judgment.

- Defendant's post-judgment invocation (after MSJ success) demonstrates post-hoc construction.

- Plaintiff received no due process notice before conduct was used against him.

- $36,124.50 award violates proportionality for minimal, cured violations.

The District Court's reliance on disclosure and discovery deficiencies to support frivolousness or bad faith findings is legally improper and factually baseless.

V. PENDING MERITS APPEAL UNDERMINES VEXATIOUSNESS

The existence of substantial questions on appeal counsels strongly against branding the suit frivolous or vexatious. If the merits are reversed or remanded, the fee award must be vacated. *Roberts v. Adams,* 47 P.3d 690, 699 (Colo. App. 2001).

Plaintiff's appeal in Case 2025CA327 raises substantial questions regarding:

- Whether the District Court improperly relied on inadmissible evidence introduced only in Reply.

- Whether the District Court applied the proper standard of review for summary judgment.

- Whether material facts regarding probable cause, good faith, and the availability of means of escape remain genuinely disputed.

- Whether the District Court properly interpreted the elements of false imprisonment under Colorado law.

- Whether the Court improperly excluded consideration of Plaintiff's affidavit, a police report, and the implications of his body camera video.

These are not frivolous appellate arguments. They raise legitimate questions about trial court procedures and substantive law that warrant appellate review.

VI. PLAINTIFF'S FUTURE CASES AGAINST DEFENDANT HAVE NO BEARING ON HIS CURRENT ONE

The District Court's statement that it "hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts," *CF at 1364,* is a clear violation of due process. Sanctioning a current lawsuit based on the mere prospect of unrelated future lawsuits is improper and speculative. The District Court has no knowledge of the facts or legal merits of any potential future cases.

Issue 2 – The District Court Erred In Granting Defendant's Motion For Extension Of Time To File Attorney Fees Computation

A. Standard of Review

A trial court's decision to grant an extension of time under C.R.C.P. Rule 6(b) will not be disturbed upon appeal absent an abuse of discretion. *Mitchell v. Espinosa,* 125 Colo. 267, 277, 243 P.2d 412, 417 (Colo. 1952). However, the court may grant an extension only "for cause shown" and only where "the failure to act was the result of excusable neglect." An abuse of discretion occurs when the trial court's decision is manifestly unreasonable or when based upon an erroneous legal standard.

B. Preservation On Appeal

Plaintiff raised objections to Defendant's Motion For Extension Of Time To

File Attorney Fees Computation in his Response to the Motion For Extension Of Time. *CF at 1631.* The District Court ruled on the matter in its Order granting the Motion For Extension Of Time. *CF at 1648.*

C. Discussion

I. DEFENDANT FAILED TO DEMONSTRATE "EXCUSABLE NEGLECT" AS REQUIRED BY C.R.C.P. RULE 6(B)

a. Legal standard for excusable neglect

"Excusable neglect involves a situation where the failure to act results from circumstances which would cause a reasonably careful person to neglect a duty. It is impossible to describe the myriad situations showing excusable neglect, but in general, most situations involve unforeseen occurrences such as personal tragedy, illness, family death, destruction of files, and other similar situations which would cause a reasonably prudent person to overlook a required deadline date in the performance of some responsibility. Failure to act due to carelessness and negligence is not excusable neglect." *Farmers Ins. Group v. District Court,* 181 Colo. 85, 507 P.2d 865 (1973).

Colorado courts have consistently held that a failure to act due to carelessness, including "calendaring errors," is not excusable neglect. *Farmers Ins. Group v. District Court,* 181 Colo. 85, 507 P.2d 865 (1973); *Estep v. People,* 753 P.2d 1241

(Colo. 1988) ("Failure to calendar the filing deadline was precisely the sort of carelessness this court and the court of appeals have condemned repeatedly in a variety of circumstances."); *Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (Colo. App. 2024) ("We conclude that the lawyer's failure in this case constitutes mere 'garden-variety attorney inattention,' which does not rise to the level of excusable neglect. If such inattention were sufficient to establish excusable neglect, it would be 'hard to fathom the kind of neglect that we would not deem excusable.'"); *Farm Deals, LLLP v. State,* 300 P.3d 921 (Colo. App. 2012) ("These assertions are inadequate to show excusable neglect because they show mere carelessness."); *Nickerson v. Network Solutions, LLC,* 339 P.3d 526 (Colo. 2014) ("The trial court expressly rejected Network Solutions' 60(b)(1) claim, finding that its argument regarding miscalendaring the answer deadline was 'without merit.'"). *See also Cummings v. United States,* No. CV 12-00081 WJ/RHS (D.N.M. Dec. 22, 2014) ("[C]alendaring errors will not rise to the level of excusable neglect if they are the result of poor lawyering."); *Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007) ("The district court concluded that the actual reason why the notice of appeal was not timely filed was counsel's error in calendaring the deadline."); *Reed v. Gautreaux,* Civil Action No. 19-130-SDD-RLB (M.D. La. 2019) (Courts "have routinely held that calendaring errors do not constitute excusable neglect.").

b. Defendant's conduct shows mere calendaring carelessness

The record demonstrates that Defendant simply failed to calendar the 21-day deadline in the first place. Defendant's evidence shows that it did not even begin work on the fee computation until April 10, 2025—two days after the deadline had already passed. *CF at 1418.*

Had Defendant been diligent in performing its obligation, it would have:

- Calendared the 21-day deadline on March 18, 2025, when the Order creating the deadline was entered.

- Begun preparation of the fee computation at least one week before the deadline.

- Been aware of the approaching deadline and filed the extension motion, if needed, BEFORE the deadline passed.

Instead, Defendant waited until April 10—2 days AFTER the deadline to file the extension motion. This is textbook calendaring negligence and does not rise to the level of excusable neglect.

c. "Press of work" does not constitute excusable neglect

As a matter of law, "the press of work or other activities of an attorney do not constitute excusable neglect." *Cox v. Adams,* 171 Colo. 37, 464 P.2d 513 (1970).

Defendant attributed its failure to "difficulties in keeping cases organized

and separate" created by Plaintiff's "vexatious and never-ending lawsuits." *CF at 1420.* However, Defendant undermines this excuse by its own admission that it "prepared" an entire "lawsuit database" of Plaintiff's cases to "keep them organized and separate." *CF at 1442.* If Defendant had created such a database for Plaintiff's previous lawsuits, there is no credible explanation for why it would not have created a similar tracking system for Plaintiff's current lawsuits. Moreover, Plaintiff himself—a *pro se* pauper with far fewer resources than Defendant—maintains his own comprehensive lawsuit database. *CF at 1635.*

The reality is that Defendant—with FOUR seasoned attorneys and THREE paralegals assigned to the case, with over 81 years of combined legal experience—simply failed to properly manage its docket. This is negligence, not excusable neglect.

d. The deadline was unambiguous and clearly stated in the Court Order

Defendant's "failure to abide by the correct deadlines was 'simply not excusable' when [the District Court] had expressly listed the [April 8, 2025] deadline in 'a readily accessible, unambiguous' order." *Cummings v. United States,* No. CV 12-00081 WJ/RHS (D.N.M. Dec. 22, 2014). The March 18, 2025 Order creating the 21-day deadline was not cryptic or difficult to understand. It explicitly stated the deadline. No special interpretation of rules was required. This is about as straightforward as deadline enforcement gets.

As Colorado courts have repeatedly held: "[W]here 'the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the *Pioneer* test.'" *Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (Colo. App. 2024). *See also Delta Airlines v. Butler,* 383 F.3d 1143, 1145 (10th Cir. 2004) ("[C]ounsel's misinterpretation of a readily accessible, unambiguous rule cannot be grounds for relief unless the word excusable is to be read out of the rule"); *Mirpuri v. ACT Mfg., Inc.,* 212 F.3d 624, 631 (1st Cir. 2000) ("A misunderstanding that occurs because a party (or his counsel) elects to read the clear, unambiguous terms of a judicial decree through rose-colored glasses cannot constitute excusable neglect."); *Halicki v. Louisiana Casino Cruises, Inc.,* 151 F.3d 465, 470 (5th Cir. 1998) ("Where, as here, the rule at issue is unambiguous, a district court's determination that the neglect was inexcusable is virtually unassailable.").

e. Defendant failed to explain its "calendaring error" with any detail

Defendant claims that "this regrettably resulted in calendaring errors by Best Buy regarding the deadline for this computation." *CF at 1420.* However, without explaining with **ANY** detail *whatsoever* the actual nature of the "calendaring errors"—if that is what even occurred—and instead simply invoking the magical words "calendaring errors," "the Court is unable to determine whether it was the sort of clerical error that might have been excused." *Quarrie v. Wells,* Civ. No. 17-

350 MV/GBW (D.N.M. Feb. 27, 2020).

As another court has held: "Inadvertence in the abstract is no plea upon which to set aside a default. The court must be made acquainted with the reasons for the inadvertence; and, if satisfactory, will act upon them and relieve from burdens caused by them; but, if the inadvertence is wholly inexcusable, as if it arises from gross negligence, the court will not look upon it kindly, and will have none of it." *Shearman v. Jorgensen,* 106 Cal. 483, 39 P. 863 (Cal. 1895).

Defendant's failure to provide *even a minimal* explanation of what specific "calendaring errors" occurred, how they occurred, and why they should be excused, renders the excuse inherently deficient.

f. A motion for extension of time "is simple to prepare"

Notably, a motion for extension of time "is a simple document to prepare," *Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007), such that failure to file one on time would hardly ever be excusable. Moreover, under C.R.C.P. Rule 6(b)(1), "enlargements of time are so readily obtainable where application is made therefor within apt time that there is rarely an occasion where failure to do so would appear to be excusable." *Smith v. Woodall,* 129 Colo. 435, 270 P.2d 746 (1954). *See also Freeman v. Cross,* 134 Colo. 437, 305 P.2d 759 (1957).

Here, Defendant failed even to file the extension motion within the deadline.

It waited two days after the deadline had passed to seek relief. This is inexcusable.

II. DEFENDANT DID NOT DEMONSTRATE "COMPETING DEADLINES" IN "SIX CASES"

a. Misrepresentation of caseload

Defendant claimed in its MFEOTTF that it "has been juggling competing deadlines in the 4 trial court cases and 2 appellate cases" Plaintiff is "currently pursuing against Best Buy." *CF at 1419; 1641.* This representation is demonstrably false, as an examination of the actual docket status reveals:

Trial cases status as of March 18, 2025 (the date the attorney fees deadline was created):

2023CV226 (this case): MSJ just granted; no pending deadlines except the 21-day attorney fees computation deadline created by the Court.

2024CV132: Defendant files an identical MTR on 2/10; Plaintiff responds on 3/3; Defendant replies on 3/7. NO FURTHER DEADLINES pending. *CF at 1642.*

2024CV241: Plaintiff mails NOA on 3/18 to unrepresented store; Defendant's MTR is due 14 days after NOA is filed (on 4/1)—creating a 6-day "competing deadline" window. *CF at 1643.*

2024CV242: Defendant files an identical MTR on 2/10; Plaintiff responds on 3/3; Defendant replies on 3/7. Case management conference is set for 4/7;

Proposed case management order is due on 3/31. *CF at 1643.*

Appellate cases status as of March 18, 2025:

2025CA327: No record on appeal prepared yet; no briefing schedule issued yet.

2025CA481: No record on appeal prepared yet; no briefing schedule issued yet.

Analysis:

The alleged "six cases" with "competing deadlines" fundamentally misrepresents the situation. As of March 18, 2025, when the 21-day attorney fees deadline was created:

- No briefing schedule existed in the two appellate cases, rendering them to have no deadlines whatsoever.

- In trial case 2024CV132, no substantive deadlines existed.

- In trial case 2024CV242, no substantive deadlines existed until 3/31 (the proposed case management order), then 4/7 (the case management conference).

- In trial case 2024CV241, Plaintiff's NOA was mailed on 3/18 and likely not received by Defendant's counsel until approximately 3/26—creating a competing deadline for only 6 days (3/26–4/1).

- Only trial case 2023CV226 had an active deadline—the very 21-day deadline in question.

The "competing deadlines" narrative is unsupported by the actual docket.

When the attorney fees computation deadline was created on March 18, 2025, literally no other document deadlines existed in any other case for nearly a week. After the receipt of Plaintiff's NOA in 2024CV241 on approximately 3/26, Defendant had already filed its MTR and Reply in 2024CV132 and 2024CV242, and was only working on case management issues in 2024CV242. None of this represented a substantial competing obligation. *CF at 1631–1634.*

b. Defendant's own conduct undermines the "competing deadlines" excuse

Most damaging to Defendant's credibility is the fact that on March 28, 2025 —10 days into the 21-day deadline—Defendant filed its Reply In Support of its Motion To Reconsider The Court's Order Re Court Fees in the very case (2023CV226) whose deadline it was missing. In that Reply, Defendant **EXPLICITLY REFERENCED** its recently granted Motion For Attorney Fees on Page 2: "This Court has already ruled upon the identical issue of whether this lawsuit was filed vexatiously and in bad faith. *See,* Order Re: Defendant's Motion for Attorney's Fees (entered March 18, 2025)." *CF at 1645.*

Defendant LITERALLY reminded itself of the exact deadline it was missing —11 days before the deadline actually expired. Yet despite this explicit reference to the March 18 order and its deadline, Defendant failed to file its computation

until April 10—two days AFTER the deadline had passed. This pattern of conduct demonstrates that Defendant's failure was not the result of a calendar oversight in the context of genuinely competing deadlines, but rather either negligent docket management or strategic delay. *CF at 1634–1635.*

Because Defendant has not demonstrated excusable neglect, the Court should **VACATE** the April 10, 2025 Order granting the extension and **STRIKE** the late-filed computation.

Issue 3 – The District Court Erred In Granting Defendant's Attorney Fees Computation

A. Standard Of Review

An award of attorney fees must be reasonable. The determination of the reasonableness of an attorney fee award is a question of fact for the trial court, and its ruling will not be disturbed on review unless patently erroneous and unsupported by the evidence. *Tallitsch v. Child Support Services, Inc.*, 926 P.2d 143, 147 (Colo. App. 1996); *Double Oak Construction, L.L.C. v. Cornerstone Development International, L.L.C.*, 97 P.3d 140, 152 (Colo. App. 2003). Colorado courts use the "lodestar" method: multiplying the hours reasonably expended by a reasonable hourly rate, which carries with it a presumption of reasonableness. *Spensieri v.*

Farmers Alliance Mut. Ins. Co., 804 P.2d 268, 270 (Colo. App. 1990).

The lodestar, however, is not invariably the appropriate award. Once set, the trial court must consider whether to adjust that base amount using the factors identified in *Hensley v. Eckerhart*, 461 U.S. 424 (1983)—a framework Colorado has expressly adopted. *Spensieri*, 804 P.2d at 270–71. The most critical of these is the "extent of success." The trial court's findings of fact are reviewed for clear error; legal conclusions are reviewed de novo. *Double Oak*, 97 P.3d at 152.

B. Preservation On Appeal

Plaintiff did not file an opposition or request a hearing in response to Defendant's fee computation because neither the District Court's order granting entitlement nor Defendant's computation set any deadline, provided notice, or informed Plaintiff of the need to object or present argument regarding the statutory factors set forth in C.R.S. § 13-17-103(1). The order adopting the computation likewise gave no directive or opportunity for further briefing or a hearing.

However, under well-settled Colorado law, the trial court's duty to consider and make findings on all required statutory factors exists "whether or not a party objects or presents specific argument on each factor." *Haney v. City Court*, 779 P.2d 1312, 1313–14 (Colo. 1989); *Irwin v. Elam Constr., Inc.*, 793 P.2d 609, 610 (Colo. App. 1990); *Pedlow v. Stamp*, 776 P.2d 382, 384 (Colo. 1989). Thus, any

alleged failure to raise, brief, or request a hearing on specific § 13-17-103 factors does not constitute waiver under Colorado law—especially where the court's procedure did not afford a clear, practical opportunity to do so.

Accordingly, Plaintiff respectfully submits that all arguments regarding the reasonableness of the attorney fee award and all C.R.S. § 13-17-103(1) factors are preserved for appellate review.

C. Discussion

I. THE COURT FAILED TO CONSIDER THE DRASTIC DISPARITY IN THE PARTIES' FINANCIAL POSITIONS

The District Court failed to address the substantial disparity between Plaintiff—a *pro se*, modest means individual—and Defendant, a multinational corporation. Colorado law requires consideration of relative financial resources before awarding large fees. *See* C.R.S. § 13-17-103(1)(d). The Court's failure to even acknowledge, let alone analyze, this factor is a material omission that undermines the validity of the entire fee award.

II. THE FEE AWARD OVERLOOKED GENUINE FACTUAL DISPUTES BETWEEN THE PARTIES

Material factual disputes existed, as reflected by the parties' contrary affidavits, body camera video, and contemporaneous police report. Where issues of fact are legitimately contested, even if the movant ultimately prevails, full fees are unjust. *See*

C.R.S. § 13-17-103(1)(f). The Court erred in ignoring this statutory factor.

III. THE COURT DID NOT ADDRESS OTHER STATUTORY AND GOOD-FAITH LITIGATION FACTORS REQUIRED BY LAW

Plaintiff researched Colorado false imprisonment law, federal law, and made a reasonable pre-suit investigation. *See* C.R.S. § 13-17-103(1)(a).

Plaintiff presented his strongest arguments throughout the case and did not abandon meritorious claims midway. *See* C.R.S. § 13-17-103(1)(b).

Plaintiff worked *pro se* with access to body camera video, his own affidavit, a police report, and Colorado case law—all providing sufficient factual availability to assess his claims' validity. *See* C.R.S. § 13-17-103(1)(c).

The Court's complete failure to address any of these statutory factors constitutes clear error.

IV. THE COURT APPROVED UNSEGREGATED AND EXCESSIVE BILLING WITHOUT ENSURING REASONABLE ALLOCATION

The District Court accepted an unsegregated fee request encompassing hours for discovery disputes, research into unrelated past lawsuits, and post-judgment activities not tied to the main defense. This violates *Hensley's* requirement that only hours "reasonably expended" on the successful claims be awarded, with all unrelated or unsuccessful hours excluded. *Double Oak,* 97 P.3d at 152; *Hensley,* 461 U.S. at 434–37.

V. THE COURT FAILED TO CONSIDER WHETHER DEFENDANT'S OWN CONDUCT WARRANTED FEE REDUCTION

Under *Hensley,* the reasonableness of fees may be affected by the conduct of counsel. Here, Defendant's counsel:

- Improperly introduced evidence only in a Reply, depriving Plaintiff of notice and opportunity to respond.

- Failed to properly authenticate business records, violating the Colorado Rules of Evidence.

- Submitted an affidavit from its own employee that was internally inconsistent and contradicted by video evidence.

- Missed the attorney fees deadline by two days, requiring an extension motion.

While these issues relate primarily to the propriety of the attorney fees award itself (Issue I), they also bear on whether Defendant's fees for this litigation were reasonably incurred. To the extent Defendant's own litigation defects contributed to the need for the fees motion and appeal, the reasonableness of the fees should be correspondingly diminished. *Spensieri,* 804 P.2d at 271.

VI. THE COURT'S ORDER LACKED SUFFICIENT AND REVIEWABLE FINDINGS ON FEE REASONABLENESS

The District Court's Order offered only generic statements of "reasonableness" and a blanket percentage reduction, without tying its findings to

statutory factors, correlating hours to claims, or explaining its methodology. Colorado law requires "transparent, reviewable findings" addressing all relevant factors and the lodestar's components. *Tallitsch*, 926 P.2d at 147.

VII. THE TOTAL FEE AWARD WAS DISPROPORTIONATE GIVEN THE CASE'S SIMPLICITY AND EARLY RESOLUTION

The ultimate $36,124.50 award was grossly disproportionate to the case's scope—a single-incident, *pro se* tort claim, dismissed at summary judgment, that asked for a modest sum. Proportionality is mandated by both the lodestar framework and C.R.S. § 13-17-103(1). *Hensley*, 461 U.S. at 436–37.

CONCLUSION

In sum, the District Court committed reversible error at every stage of the attorney fee proceedings. First, it granted Defendant's Motion For Attorney Fees without making the specific and adequate findings required by C.R.S. § 13-17-103 or affording due process, despite the existence of genuine factual disputes and Plaintiff's novel, good-faith legal theories. Second, it improperly granted Defendant's Motion For Extension Of Time To File Attorney Fees Computation without a showing of excusable neglect, in disregard of clear Colorado law requiring diligent compliance with deadlines. Third, in adopting Defendant's Fee

Computation, the District Court failed to conduct a reasoned lodestar analysis, ignored its duty to segregate hours and weigh all statutory factors—most notably the parties' disparate financial positions, the existence of disputed facts, and questions of proportionality—and adopted an award grossly excessive for the nature, scope, and complexity of this case. Together, these errors undermined the fairness of the proceedings and resulted in Fee Orders that contravene Colorado statute, case law, and principles of justice. Accordingly, the Orders below cannot stand.

WHEREFORE, Plaintiff respectfully requests that this Court of Appeals:

REVERSE the District Court's Order granting Defendant's Motion For Attorney Fees, with directions to the District Court to **DENY** the Motion in its entirety; or, in the alternative, **VACATE AND REMAND** for entry of adequate findings of fact and conclusions of law that comply with C.R.S. §§ 13-17-102 and 103, after affording Plaintiff full due process including, if appropriate, an evidentiary hearing;

REVERSE the District Court's Order granting Defendant's Motion For Extension Of Time To File Attorney Fees Computation, and **STRIKE** the late-filed computation as untimely filed;

REVERSE the District Court's Order adopting Defendant's Attorney Fees Computation and **VACATE** the award of $36,124.50; or, alternatively, **VACATE AND REMAND** for a thorough reasonableness determination consistent with the

standards established in *Hensley v. Eckerhart,* 461 U.S. 424 (1983), *Spensieri v. Grotefeld,* 2014 COA 20, 320 P.3d 1244 (Colo. App. 2014), *Tallitsch v. Child Support Services, Inc.,* 926 P.2d 143 (Colo. App. 1996), and the statutory requirements of C.R.S. § 13-17-103(1), including (i) proper segregation of hours by claim and by stage of litigation, (ii) application of appropriate lodestar discipline, and (iii) detailed written findings addressing each factor required by statute;

AWARD Plaintiff his costs on appeal, including preparation and filing fees, under C.A.R. Rule 39; and

GRANT such other and further relief as this Court deems just, proper, and equitable under the circumstances of this case.

Respectfully submitted on this, the **26th day of November, 2025.**



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CERTIFICATE OF SERVICE

I hereby certify that on this, the **26th day of November, 2025,** the foregoing **PLAINTIFF'S APPEAL OPENING BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA1351** Jefferson County District Court Case No: **2023CV226**
REQUEST FOR ORAL ARGUMENT	

Plaintiff, proceeding *pro se*, hereby requests that ORAL ARGUMENT be held in this matter, as this case presents significant issues of law and fact, which, if oral argument were granted, would allow Plaintiff to more precisely argue.

Respectfully submitted on this, the **26th day of November, 2025.**

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the **26th day of November, 2025,** the foregoing **REQUEST FOR ORAL ARGUMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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<table>
<tr><td>COLORADO COURT OF APPEALS
2 East 14th Avenue
Denver, Colorado 80203</td><td rowspan="3">▲ COURT USE ONLY ▲</td></tr>
<tr><td>DISTRICT COURT, JEFFERSON COUNTY, COLORADO
100 Jefferson County Parkway
Golden, CO 80401</td></tr>
<tr><td>WILLIAM MONTGOMERY,

Plaintiff,

v.

BEST BUY, L.P.,

Defendant.</td></tr>
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2025CA1351

Case No.: 2023CV226

Division: 6</td></tr>
<tr><td colspan="2">DEFENDANT-APPELLEE BEST BUY, L.P.'S ANSWER BRIEF</td></tr>
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COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	
DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	
WILLIAM MONTGOMERY, Plaintiff, v. **BEST BUY, L.P.,** Defendant.	**▲ COURT USE ONLY ▲**
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Sarah K. Vogel, Reg. No. 58381 Montgomery | Amatuzio 720 S. Colorado Blvd., Suite 1200-N Denver, CO 80246 Telephone: 303-592-6600 lbell@mac-legal.com svogel@mac-legal.com	Court of Appeals' Case No: 2025CA1351 Case No.: 2023CV226 Division: 6
DEFENDANT-APPELLEE BEST BUY, L.P.'S CERTIFICATE OF COMPLIANCE	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g) or C.A.R. 28.1(g).

☒ This brief contains 3,951 words, which is not more than the 9,500 word limit.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☐ **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precision location in the record where the issue was raised and ruled on, not to an entire document.

☒ **In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/ Sarah K. Vogel

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I. ISSUES ON APPEAL

1. Did the District Court abuse its discretion in granting Defendant's Motion for Attorney Fees?
2. Did the District Court abuse its discretion in granting Defendant's Motion for Extension of Time to File Attorney Fees Computation?
3. Did the District Court abuse its discretion in granting Defendant's Attorney Fees Computation?

II. STATEMENT OF THE CASE

A. Description of Underlying Case

This case stems from a November 25, 2022 incident involving Plaintiff-Appellant (hereinafter "Plaintiff") and Defendant-Appellee Best Buy, L.P. (hereinafter "Defendant"), and Plaintiff's allegations of false imprisonment, defamation *per se*, and assault which he alleges stem from an event in which he was stopped by retail service employees at a Best Buy store located at 9369 Sheridan Boulevard, Westminster, Colorado, 80031. CF, p. 3. On November 25, 2022, Plaintiff alleges he was standing outside the Best Buy store location when he was approached by three retail service employees of Best Buy. *Id.* Plaintiff alleges he was then surrounded and prevented from leaving while the employees accused Plaintiff of stealing and threatened to harm Plaintiff around the corner and off camera. *Id.*

Plaintiff has established a history of filing lawsuits against Defendant and other retail companies following Plaintiff's patterned targeting of such entities. CF, p. 13 – 19; 71; 79; 91 – 238.

Defendant proceeded with filing a *Motion for Summary Judgment* on July 25, 2024. CF, p. 227-239. Plaintiff filed his *Cross-Motion for Summary Judgment* on September 19, 2024. CF, p. 254-275. Following a full briefing schedule, the Trial

Court issued an Order granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross-Motion for Summary Judgment* on November 19, 2024. Defendant then moved for attorney fees and alleged that Plaintiff's claims were frivolous, groundless, and/or vexatious. Following a full briefing schedule, the District Court granted Defendant's request for attorney fees on June 3, 2025.

Plaintiff now appeals the District Court's award of attorney fees.

B. Course of Proceedings

Plaintiff filed suit on November 21, 2023, in the Jefferson County District Court, and the matter was assigned to Judge Christopher C. Zenisek. CF, p. 1-4, and CF, p. 6-7. Plaintiff additionally filed a motion to proceed *In Forma Pauperis* on this same date, which was granted. CF, p. 5.

The District Court issued its *Civil Procedure Order* on November 22, 2023. CF, p. 6-7. The Order stated that Returns of Service on all defendants were to be filed within 63 days from the date of the filing of the Complaint. CF, p. 6.

Defendant filed its *Answer to Plaintiff's Complaint and Jury Demand under Simplified Civil Procedure* with exhibits on February 8, 2024. CF, p. 9 – 32.

Defendant filed its *Motion for Summary Judgment* on July 25, 2024. CF. p. 227 – 239. Defendant's *Motion for Summary Judgment* included exhibits. CF, p. 91 – 226.

Plaintiff filed his *Emergency Motion for Extension of Time to File Ptf's Response to Def's MSJ & Ptf's Own Cross-MSJ* with exhibits on August 12, 2024. CF, p. 242 – 248. The District Court granted Plaintiff's motion on August 21, 2024. CF, p. 249.

Plaintiff filed his *Cross-Motion for Summary Judgment* on September 19, 2024. CF, p. 254 – 275. Plaintiff's Cross-Motion included exhibits. CF, p. 276 – 280.

Plaintiff filed his *Response in Opposition to Defendant's MSJ* on September 19, 2024. CF, p. 640 – 671.

Plaintiff filed his *Motion to Exceed Page Limitation Regarding Plaintiff's Response to Defendant's Motion for Summary Judgment* on September 19, 2024. CF, p. 637 – 639.

Defendant filed *Defendant's Unopposed Motion for Extension of Time to File a Reply Brief for its Motion for Summary Judgment* on October 3, 2024. CF, p. 672 – 675. This motion was granted by the District Court on October 4, 2024. CF, p. 676.

Defendant filed *Defendant Best Buy, L.P.'s Response to Plaintiff's Cross-Motion for Summary Judgment* on October 10, 2024. CF, p. 677 – 688. Defendant's Response included exhibits. CF, p. 689 – 728.

Defendant filed *Defendant Best Buy, L.P.'s Reply Brief in Support of its Motion for Summary Judgment* on October 10, 2024. CF, p. 729 – 740. Defendant's Reply included exhibits. CF, p. 741 – 783.

The District Court issued an Order granting Plaintiff's *Motion to Exceed Page Limitation Regarding Plaintiff's Response to Defendant's Motion for Summary Judgment* on October 11, 2024. CF, p. 784 – 786.

Defendant filed a *Notice of Deposit* attesting to delivery of Exhibit Q to Defendant's *Response to Plaintiff's Cross Motion for Summary Judgment* on October 14, 2024. CF, p. 787 – 788.

Plaintiff filed his *Motion for Extension of Time to File Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 21, 2024. CF, p. 791 – 794.

Plaintiff filed his *Notice of Conventionally Submitted Material in Plaintiff's Cross-Motion for Summary Judgment* on October 28, 2024. CF, p. 795 – 796.

Plaintiff filed his *Motion to Exceed Page Limitation Regarding Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 28, 2024. CF, p. 797 – 799.

Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 28, 2024. CF, p. 800 – 828. Plaintiff's Reply included exhibits. CF, p. 829 – 832.

Plaintiff filed *Plaintiff's Motion for Extension of Time to File Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 21, 2024. CF, p. 834 – 837. This motion was granted by the District Court on the same date.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Exceed Page Limitation* on October 29, 2024. CF, p. 838 – 840. Defendant's response included exhibits. CF, p. 841 – 843.

The District Court issued its *Order: Motion to exceed page limitation regarding ptfs reply to defs response to ptfs cross msj* on October 29, 2024, granting Plaintiff a page limitation extension by five pages. CF, p. 844 - 847.

Plaintiff filed *Plaintiff's Amended Reply to Defendant's Response to Plaintiff's Cross-Motion for Summary Judgment* on October 31, 2024. CF, p. 848 – 869.

Plaintiff filed his *Unopposed Motion to Strike and Replace Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on October 31, 2024. CF, p. 870 – 872.

The District Court granted Plaintiff's *Unopposed Motion to Strike and Replace Ptf's Reply to Def's Response to Ptf's Cross-MSJ* on November 1, 2024. CF, p. 873 – 875.

The District Court issued its *Order Re: Cross Motions for Summary Judgment* on November 19, 2024, granting Defendant's *Motion for Summary Judgment* and denying Plaintiff's *Cross Motion for Summary Judgment*. CF, p. 876 – 883.

Defendant filed *Defendant's Bill of Costs* on December 3, 2024. CF, p. 884 – 889.

Plaintiff filed *Plaintiff's Motion for Reconsideration* with respect to the District Court's *Order Re: Cross Motions for Summary Judgment* on December 3, 2024. CF, p. 890 – 907.

Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion to Reconsider* on December 24, 2024. CF, p. 908 – 913.

Defendant filed *Best Buy's Motion for Attorneys' Fees* on December 31, 2024. CF, p. 914 – 919. Defendant's Motion included exhibits. CF, p. 920 – 953.

Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Reconsideration* on December 31, 2024. CF, p. 963 – 973.

The District Court issued its *Order: Plaintiff's Motion for Reconsideration* on January 6, 2025, denying Plaintiff's *Motion for Reconsideration*. CF, p. 974 – 992.

The District Court issued its *Order Re: Defendant's Bill of Costs* on January 7. 2025. CF, p.993 – 995. The District Court issued its *Amended Order Re: Defendant's Bill of Costs* on January 8, 2025. CF, p. 996 – 998.

Plaintiff filed *Plaintiff's Response to Defendant's Motion for Attorney Fees* on January 21, 2025. CF, p. 999 – 1015. Plaintiff's Motion included exhibits. CF, p. 1022 – 1028.

Plaintiff filed *Plaintiff's Second Motion for Reconsideration* on January 21, 2025. CF, p. 1016 – 1021.

Defendant filed *Defendant's Reply in Support of its Motion for Attorneys' Fees* on January 28, 2025. CF, p. 1029 – 1033.

Defendant filed *Best Buy's Response in Opposition to Plaintiff's Second Motion for Reconsideration* on February 7, 2025. CF, p. 1034 – 1036.

Plaintiff filed *Ptf's Reply to Def's Response to Ptf's Second Motion for Reconsideration* on February 14, 2025. CF, p. 1037 – 1041.

The District Court filed its *Order: Plaintiff's Second Motion for Reconsideration* on February 18, 202, denying Plaintiff's Second Motion for Reconsideration. CF, p. 1042 – 1065.

The District Court filed its *Order Re: Defendant's Motion for Attorney Fees* on March 18, 2025, granting Defendant's Motion. CF, p. 1362 – 1365.

Defendant filed *Best Buy's Motion for Extension of Time* on April 10, 2025. CF, p. 1418 – 1422.

Defendant filed *Affidavit of Stephanie Boutsicaris Concerning Attorney's Fees* on April 16, 2022. CF, p. 1423 – 1428. Defendant's Affidavit included exhibits. CF, p. 1429 – 1628.

Plaintiff filed *Plaintiff's Response to Defendant's Motion for Extension of Time to File Attorney Fees Computation* on May 1, 2025. CF, p. 1631 – 1640. Plaintiff's Response included exhibits. CF, p. 1641 – 1647.

The District Court issued its *Order Regarding Best Buy's Motion for Extension of Time* on May 5, 2025, granting Defendant's Motion. CF, p. 1648.

The District Court issued its *Order Re: Defendant's Computation of Attorney Fees* on June 3, 2025, granting Defendant attorney fees in the amount of $36,124.50. CF, p. 1704 – 1708.

Plaintiff filed his *Notice of Appeal* on July 22, 2025. CF, p. 1710 – 1727.

III. SUMMARY OF THE ARGUMENT

The District Court committed no error in granting Defendant's Motion for Attorney Fees, Defendant's Motion for Extension of Time to File Attorney Fees Computation, and Defendant's Attorney Fees Computation.

The District Court properly considered the record and identified reasonable support for its conclusion that Plaintiff's claim was frivolous, groundless, and/or vexatious and, therefore, acted well within its discretion when it made the

determination to award attorney fees to Defendant. Accordingly, the Court should uphold the District Court's decision to award Defendant attorney fees based upon the same.

The District Court properly exercised its discretion pursuant to C.R.C.P. 6(b) in granting Defendant's *Motion for Extension of Time*. Plaintiff has not demonstrated a clear showing that the District Court abused its discretion in granting the *Motion for Extension of Time*. Accordingly, this Court should uphold the District Court's *Order Re: Defendant's Motion for Extension of Time*.

The District Court properly assessed its lodestar calculation and issued a reasonable lodestar amount in assessing its order of attorney fees against Plaintiff. Further, Defendant does not contest the lodestar amount assessed by the District Court. Defendant notes the lodestar amount assessed by the District Court substantially reduced Defendant's originally requested amount for attorney fees. Accordingly, this Court should uphold the District Court's award of attorney fees to Defendant in the amount of $36,124.50.

IV. ARGUMENT

A. The District Court committed no error in granting Defendant's Motion for Attorney Fees

i. *Standard of Review*

Defendant agrees that the standard of review for determining whether a party is entitled to attorney fees is that of abuse of discretion. *Nienke v. Naiman Group*, Ltd., 857 P.2d 446, 448 (Colo.App. 1992). Defendant agrees issues of statutory interpretation are reviewed de novo. *Castro v. Lintz*, 338 P.3d 1063, 1067 (Colo.App. 2014).

ii. *Preservation on Appeal*

Defendant agrees that Plaintiff preserved his objections on this issue for appeal.

iii. *Discussion*

Plaintiff appeals the District Court's decision to award attorney fees as authorized under C.R.S. § 13-17-101. The Colorado legislature provided this statutory authority to the trial courts because it "recognize[d] that courts of record of this state have become increasingly burdened with litigation which is straining the judicial system and interfering with the effective administration of civil justice," and "[i]n response to this problem, the general assembly . . . set[] forth provisions for the recovery or attorneys fees when the bringing or defense of an action … is determined to have been substantially frivolous, substantially groundless, or substantially vexatious." C.R.S. § 13-17-101. Courts "shall liberally construe the provisions of

this article 17 to effectuate substantial justice and comply with the intent set forth in this section." *Id.*

A trial court is vested with broad authority in determining whether to impose attorney fees. *Nienke*, 857 P.2d at 448. Colorado courts have deferred to the judgment of the trial court in decisions to award attorney fees "if there is support in the record for the conclusion that the claim or defense advanced was frivolous, that is, the general fact pattern alleged, without regard to the quantum of evidence in support thereof, does not entitle the moving party to relief under any valid or rational legal theory." *Id.* at 449. Further, "even if a claim or defense escapes characterization as frivolous, the trial court's award will not be disturbed if the record, nonetheless, supports a conclusion that the claim is groundless, that is, lacks any credible evidentiary support at trial." *Id.*

The District Court entered its *Order Re: Defendant's Motion for Attorney Fees* on March 18, 2025, in which the District Court concluded "that Plaintiff brought and maintained this suit in bad faith and, based on his statements in his deposition and YouTube video, knowingly did so." CF, p. 1364. The District Court based its conclusion, in part, on Plaintiff's deposition statements, which the District Court found demonstrated Plaintiff's "purchases were made, at least in part, with the hopes of baiting the Best Buy Stores into confronting Plaintiff," and noted that

"[w]hen speaking about his actions on that day, Plaintiff analogized his conduct to that of a police bait car." CF, p. 1363-64.

The District Court further evaluated Plaintiff's publicly available YouTube video, finding that "Plaintiff planned this lawsuit before bringing it" and that, in the video, "Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure." CF, p. 1363-64. Lastly, the District Court evaluated Defendant's Google Maps exhibit, attached to its Reply Brief in support of Defendant's Motion for Summary Judgment, and found that "Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous." CF, p. 1363. Plaintiff contests the admissibility of the Google Maps exhibit and the related receipt exhibit, for which Plaintiff is challenging admissibility based on lack of authentication in the case captioned *William Montgomery v. Best Buy, L.P.*, Colorado Court of Appeals Case No. 2025CA327. Defendant will not relitigate those issues here. For the purposes of this Answer Brief, Defendant respectfully submits, in summary, that both the Google Maps exhibit and the receipt exhibit may be properly authenticated pursuant to C.R.E. 901(a) and C.R.E. 901(b)(4).

Plaintiff has further confirmed the District Court's analysis in his Opening Brief, noting that "Plaintiff's exclusive use of 'free lawsuits' has only ever referred

to how overzealous stores like Walmart and Best Buy routinely and flagrantly violate the law—which essentially allows anyone who knows their rights the opportunity to simply refuse to show their receipt upon leaving and thereby secure a legitimate lawsuit." Opening Brief, p. 26-27 (emphasis omitted). Plaintiff's framing of "stores like Walmart and Best Buy routinely and flagrantly violat[ing] the law" stems from simple disagreement with the "Shopkeeper's Privilege" statute, an issue which Plaintiff has brought through the courts on a substantially repetitive basis. Opening Brief, p. 26-27, *See* C.R.S. § 18-4-407.

The District Court properly found support in the record for the conclusion that Plaintiff's claim was frivolous and, therefore, acted well within its discretion when it made the determination to award attorney fees to Defendant. Accordingly, the Court should uphold the District Court's decision to award Defendant attorney fees based upon the same.

B. The District Court committed no error in granting Defendant's Motion for Extension of Time to File Attorney Fees Computation

i. Standard of Review

Generally, the Colorado Court of Appeals reviews a trial court's determination as to an enlargement of time within which to perform an act for abuse of discretion. *Premier Members Fed. Credit Union v. Block*, 312 P.3d 276, 278 (Colo.App. 2013). However, the application of the Colorado Rules of Civil

Procedure is reviewed de novo. *Id.* Further, a trial court's ruling may be affirmed on any ground supported by the record. *Id.*

ii. *Preservation on Appeal*

Defendant agrees that Plaintiff preserved his objections on this issue for appeal.

iii. *Discussion*

The Colorado Rules of Civil Procedure provide allowance for an enlargement of time for instances "when by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time," which may be permitted "upon motion made after the expiration of the specified period … where the failure to act was the result of excusable neglect." C.R.C.P. 6(b). Colorado law provides the trial court with broad discretion under C.R.C.P. 6(b) to permit an enlargement of time. *Premier Members,* 312 P.3d at 278. The Rules of Civil Procedure are to be construed liberally to "effectuate their objective to secure the just, speedy, and inexpensive determination of every case and their truth-seeking purpose." *Maslak v. Town of Vail,* 345 P.3d 972, 975 (Colo. App. 2015). Liberal construction assures that all parties are afforded their day in court and guarantees that all relevant evidence is available for presentation during a trial on the merits. *J.P. v. Dist. Court,* 873 P.2d 745, 750 (Colo. 1994); *see also Todd v. Bear Valley*

Village Apartments, 980 P.2d 973, 976 (Colo. 1999) ("[A] trial court must strive to afford all parties their day in court and an opportunity to present all relevant evidence at trial.").

Defendant filed its *Motion for Extension of Time* on April 10, 2025, citing the following reasons for requesting an extension to file its computation of attorney fees: (1) due to the length of the case exceeding one year at the time of filing, Defendant noted its "bills consist of hundreds of pages of documents and must be re-formatted in such a way to remove privileged and sensitive information, particularly in light of the pending appeal in this matter"; (2) Defendant noted Plaintiff had six active cases against it, and that, "[d]espite all of these cases being factually near identical, all are in different phases of litigation or appeal, each with its own disjointed schedule and deadlines," and that defense counsel represented Defendant in all six cases; (3) Defendant argued "Plaintiff's vexatious and never-ending lawsuits against Best Buy has created difficulties in keeping cases organized and separate," which Defendant asserted "regrettably resulted in calendaring errors by [Defendant] regarding the deadline for this computation." CF, 1419-1420.

The District Court granted Defendant's *Motion for Extension of Time* on May 5, 2025. The Supreme Court of Colorado has found that, generally, the granting of a motion for extension of time pursuant to C.R.C.P. 6(b) on the basis of excusable

neglect "rests within the sound discretion of the trial court, and the action taken will not be disturbe[d] on review in the absence of a clear showing of abuse of that discretion." *Mitchell v. Espinosa*, 243 P.2d 412, 417 (Colo. 1952).

Plaintiff has set forth arguments as to Plaintiff's interpretation of Defendant's *Motion for Extension of Time*. However, Plaintiff has not demonstrated a clear showing that the District Court abused its discretion in granting the *Motion for Extension of Time*. Accordingly, this Court should uphold the District Court's *Order Re: Defendant's Motion for Extension of Time*.

C. The District Court committed no error in granting Defendant's Attorney Fees Computation

i. Standard of Review

Defendant agrees that the standard of review for the reasonableness of an award for attorney fees is that of abuse of discretion. *S. Colo. Orthopaedic Clinic Sports Med. and Arthritis Surgeons, P.C. v. Weinstein*, 343 P,3d 1044, 1049-50 (Colo.App. 2014). The reasonableness of attorney fees is determined to be "a question of fact for the trial court, and its ruling will not be disturbed on review unless patently erroneous and unsupported by evidence." *Payan v. Nash Finch Co.*, 310 P.3d 212, 216 (Colo.App. 2012), *citing Tallitsch v. Child Support Servs, Inc.*, 926 P.2d 143, 147 (Colo.App. 1996).

ii. Preservation on Appeal

Defendant agrees Plaintiff waived his objections as to this issue for appeal, as Plaintiff did not file any briefing in response to Defendant's requested attorney fees computation.

iii. *Discussion*

As a preliminary matter, the District Court did not fully grant Defendant's requested attorney fees computation and instead reduced Defendant's requested amounts pursuant to a lodestar calculation. CF, p. 1726-1727. Defendant's requested amount of $42,083.00 was reduced by a substantial amount to $36,124.50 per the Trial Court's assessment. CF, p. 1724, 1727. Defendant does not contest the lodestar amount issued by the District Court. The District Court noted multiple times that it intended for the attorney fees award to serve as a deterrent against Plaintiff filing future frivolous lawsuits. CF, p. 1719, 1726.

Plaintiff argues the District Court failed to consider Plaintiff's pecuniary status. This is factually incorrect. The District Court addressed this point in its *Order Re: Defendant's Motion for Attorney Fees* by noting Plaintiff's *pro se* status:

> Parties appearing pro se shall not be assessed attorney fees "unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense . . . was substantially frivolous,

substantially groundless, or substantially vexatious[.]" C.R.S. § 13-17-102(6).

CF, p. 1719.

The District Court further noted that "the [Trial] Court hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts, which he currently appears determined to continue." *Id.* The District Court reiterated this conclusion in its subsequent assessment of the lodestar amount. CF, p. 1726. In assessing the case's public importance as one of the lodestar factors considered, the District Court noted that "Plaintiff has repeatedly filed nearly identical lawsuits, including this one, on the same or similar allegations," and that, on this basis, "a downward adjustment is not warranted, and a significant award hopefully dissuades Plaintiff from further vexatious lawsuits." *Id.*

Plaintiff argued the District Court overlooked genuine factual disputes between the parties. Opening Brief, p. 50. However, the District Court had already ruled in Defendant's favor on its Motion for Summary Judgment. Therefore, the District Court had already found no genuine issue of material fact between the parties. Furthermore, the District Court addressed the complexity of the case in its lodestar assessment, noting that "[a]lthough the [District] Court acknowledges

Plaintiff's litigiousness, this case was a relatively straightforward tort case against a pro se plaintiff that was dismissed on summary judgment." CF, p. 1725.

The District Court iterated its finding of bad faith multiple times throughout both its initial award of reasonable attorney fees and its order of a reasonable amount pursuant to a lodestar calculation. CF, p. 1719, 1726.

The District Court properly addressed comprehensive and appropriate factors in issuing its lodestar calculation. The District Court specifically assessed the billing information requested through analysis of reasonable hours expended and reasonable rates charged for each billable professional. CF, p. 1724. In doing so, the District Court assessed bills for the following: (1) one partner attorney; (2) three separate associate attorneys, for which separate reasonable rates were addressed; and (3) three separate paralegals, each of whom were assessed at the minimum level of experience of less than one year. CF, p. 1724-25. The District Court then applied these separately assessed rates to an analysis of hours reasonably expended, further reducing the fees requested for each billable professional on a per-professional basis. CF, p. 1725. The District Court additionally considered the following factors in issuing its lodestar amount: (1) complexity; (2) amount in controversy; (3) length of time; (4) degree of success achieved; and (5) public importance. CF, 1726-27.

The District Court properly assessed its lodestar calculation and issued a reasonable lodestar amount in assessing its order of attorney fees against Plaintiff. Further, Defendant does not contest the lodestar amount assessed by the District Court. Accordingly, this Court should uphold the District Court's award of attorney fees to Defendant in the amount of $36,124.50.

V. CONCLUSION

The District Court committed no error in granting Defendant's Motion for Attorney Fees, Defendant's Motion for Extension of Time to File Attorney Fees Computation, and Defendant's Attorney Fees Computation.

Accordingly, this Court should uphold the District Court's rulings on Defendant's Motion for Attorney Fees, Defendant's Motion for Extension of Time to File Attorney Fees Computation, and Defendant's Attorney Fees Computation, respectively.

Filed December 31, 2025.

MONTGOMERY | AMATUZIO

By: *s/ Sarah K. Vogel*
Lori K. Bell
Sarah K. Vogel

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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☐ U.S. Mail ☒ Email ☐ CCES

s/ Sarah K. Vogel

COLORADO COURT OF APPEALS 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
Appeal From: **Jefferson County District Court** District Court Judge: **The Honorable Christopher Zenisek** District Court Case Number: **2023CV226**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Court Of Appeals Case No: **2025CA1351** Jefferson County District Court Case No: **2023CV226**
PLAINTIFF'S APPEAL REPLY BRIEF	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Court of Appeals his APPEAL REPLY BRIEF, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Those include:

Word Limits: My reply brief has **5,022** words, which does not exceed the 5,700 word limit allowed by this Court for appeal reply briefs.

I understand that my brief may be rejected if I fail to comply with these rules.

William Montgomery
William Montgomery

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ARGUMENT SUMMARY

Defendant's Answer Brief fundamentally fails to engage with the substance of Plaintiff's appellate arguments. Rather than presenting persuasive legal reasoning addressing each statutory requirement and factual element, Defendant relies on conclusory assertions, circular logic, and strategic silence on matters that significantly undermine its position.

This Reply Brief identifies four critical deficiencies in Defendant's Answer:

First, Defendant does not address the statutory mandate that trial courts must make specific findings of fact and conclusions of law when determining attorney fees under C.R.S. §§ 13-17-102 and 13-17-103. The District Court's Order is replete with unsupported conclusory statements. Defendant's failure to respond to the *In re Aldrich* standard and the requirement to analyze C.R.S. § 13-17-103(1) factors constitutes an admission that the statutory requirements were not met.

Second, Defendant completely fails to engage with Plaintiff's substantive legal arguments concerning: (1) novel legal theories protected by C.R.S. § 13-17-102(7); (2) material factual distinctions from prior cases; (3) genuine factual disputes that preclude frivolousness findings; and (4) procedural violations that undermine the bad faith determination. This silence constitutes waiver of responses to these significant arguments.

Third, Defendant's theory of "bad faith" rests entirely on discovery-related conduct and selective quotations from a YouTube video and deposition, without acknowledging that: (a) Defendant never filed a Rule 37 motion to compel or seek sanctions; (b) Plaintiff proactively cured alleged deficiencies before judgment; (c) Defendant's post-judgment invocation of discovery issues demonstrates post-hoc narrative construction; and (d) Defendant failed to comply with procedural requirements for imposing sanctions.

Fourth, Defendant ignores logical inconsistencies, procedural failings, due process violations, and proportionality concerns that require reversal.

For these reasons, all three of the District Court's attorney fee orders should be **REVERSED** and **VACATED** in their entirety.

ARGUMENTS

Reply To Issue 1 – The District Court Erred In Granting Defendant's Motion For Attorney Fees

I. DEFENDANT'S ANSWER BRIEF FAILS TO ADDRESS STATUTORY MANDATE FOR SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff's Opening Brief established that Colorado law imposes a mandatory statutory requirement that trial courts make specific findings of fact and conclusions

of law when awarding attorney fees under C.R.S. § 13-17-101 et seq. Specifically:

1. **The Statutory Requirement:** C.R.S. § 13-17-102 requires attorney fees only in limited circumstances. C.R.S. § 13-17-103(1) mandates that the trial court "shall specifically set forth the reasons for said award" after considering, among others, seven enumerated statutory factors.

2. **The Appellate Standard:** *In re Aldrich,* 945 P.2d 1370 (Colo. 1997) establishes that "conclusory statements that a claim is frivolous, groundless, or vexatious are insufficient for purposes of appellate review and inadequate to satisfy the statutory requirement of specificity." (Opening Brief, page 16)

3. **What Plaintiff's Opening Brief Showed:** Plaintiff identified numerous conclusory statements in the District Court's Order and demonstrated that the Court failed to analyze mandatory statutory factors, including:

- C.R.S. § 13-17-103(1)(a): Extent of efforts to determine claim validity
- C.R.S. § 13-17-103(1)(b): Extent of efforts to reduce or dismiss invalid claims
- C.R.S. § 13-17-103(1)(c): Availability of facts to assist plaintiff
- **C.R.S. § 13-17-103(1)(d): Relative financial positions of the parties**
- C.R.S. § 13-17-103(1)(f): Whether issues of fact were reasonably in conflict

Defendant's Non-Response Constitutes Admission: Defendant's Answer Brief does not address this statutory mandate. The Answer Brief:

- Does not cite C.R.S. § 13-17-103(1) at all
- Does not engage with *In re Aldrich* or the specific findings requirement
- Does not defend the District Court's alleged compliance with statutory factor analysis
- Does not explain why the District Court's conclusory statements satisfy the law

This silence on a foundational legal requirement—one that Plaintiff extensively briefed—effectively concedes that the District Court failed to comply with the statute.

The District Court's Order Fails The *In re Aldrich* Test: The District Court's Order, *CF at 1362–1365,* contains statements such as:

- "Plaintiff… go[es] into stores and conduct[s] himself in a manner that could be reasonably construed as suspicious" (no factual basis)
- "Plaintiff planned this lawsuit before bringing it" (speculative)
- "Plaintiff sought to engage Best Buy in a situation that would result in a lawsuit" (conjecture about subjective intent)

These are precisely the type of conclusory statements that *In re Aldrich* condemns. Defendant cannot defend them because they are indefensible as findings of fact.

Statutory Factor Analysis Is Missing: The District Court Order nowhere states:

- That it considered Plaintiff's efforts to determine claim validity before filing
- That it considered Plaintiff's efforts to dismiss invalid claims
- That it considered financial positions of the parties involved (Plaintiff filed *In Forma Pauperis*; Best Buy is a large multinational corporation)
- That it considered whether factual disputes existed

Defendant's failure to address these omissions means Defendant cannot argue the statutory requirements were satisfied.

II. DEFENDANT WAIVES SUBSTANTIVE RESPONSE TO PLAINTIFF'S NOVEL LEGAL ARGUMENTS AND GOOD FAITH EXCEPTION UNDER C.R.S. § 13-17-102(7)

Plaintiff's Opening Brief presented eight substantive novel legal arguments, each with rational basis in Colorado, Tenth Circuit, or Supreme Court precedent:

1. The distinction between "escape" and "release" in false imprisonment
2. The requirement that jury instructions be read "in harmony"
3. The logical contradiction between showing / not showing a receipt both constituting consent
4. The "last clear chance" doctrine as applied to merchants
5. The impermissibility of bootstrapping non-cooperation into justification

for detention

6. The temporal distinction between pre- and post-detention conduct

7. The principle that receipt-showing does not retroactively nullify detention

8. The requirement that uniquely inculpatory evidence, not just absence of exculpatory evidence, supply Shopkeeper's Privilege

Plaintiff also cited *Montgomery v. Lore,* 10th Cir. Court of Appeals Case No. 23-1106 (Dec. 13, 2023), as supporting novel applications of Fourth Amendment principles to merchant detention law.

Defendant's Waiver Of Response: Defendant's Answer Brief:

- Does not address ANY of these eight legal arguments
- Does not cite or reference *Montgomery v. Lore*
- Does not engage with any substantive legal theory Plaintiff advanced
- Instead, dismisses the entire category by stating that Plaintiff's statement about disagreement with the Shopkeeper's Privilege statute shows "simple disagreement" with C.R.S. § 18-4-407

This non-response constitutes waiver. Under appellate rules and practice, when an appellee fails to respond to substantive legal arguments, those arguments are deemed conceded or waived.

Defendant's Mischaracterization Of Plaintiff's Position: Defendant

states: "Plaintiff's framing of 'stores like Walmart and Best Buy routinely and flagrantly violate the law' stems from simple disagreement with the Shopkeeper's Privilege statute." (Answer Brief, page 19)

This mischaracterizes Plaintiff's argument. Plaintiff did not merely state disagreement with the statute. Rather, Plaintiff argued that the statute has been misapplied and that certain legal principles—such as the requirement for uniquely inculpatory evidence and temporal causation—have not been properly integrated into Colorado jurisprudence.

C.R.S. § 13-17-102(7) Protection: Colorado law explicitly protects good faith attempts to establish new legal theories. C.R.S. § 13-17-102(7) states: "No attorney, licensed legal paraprofessional, or party shall be assessed attorney fees or licensed legal paraprofessional fees for any claim or defense that the court determines was asserted by the attorney, licensed legal paraprofessional, or party in a good faith attempt to establish a new theory of law in Colorado."

Plaintiff's eight legal arguments represent precisely the type of good faith attempts to establish new or modified applications of law that C.R.S. § 13-17-102(7) protects. Defendant's Answer Brief never addresses this statute. The failure to address it means the District Court never determined whether these arguments constituted good faith attempts to establish new law—and therefore the

fee award is premature and improper.

III. DEFENDANT IGNORES MATERIAL FACTUAL DISTINCTIONS FROM PRIOR CASES

Plaintiff's Opening Brief identified four material factual distinctions between the Best Buy case and prior Walmart cases:

1. **Customer Status:** In Walmart cases, Plaintiff was a customer; in Best Buy, he was a non-patron attempting to return non-store merchandise

2. **Store Layout/Policies:** Best Buy has no back registers, eliminated plastic bags in July 2022, and primarily uses emailed receipts (unlike Walmart)

3. **Receipt Request:** No explicit receipt request was made by Best Buy employees (unlike routine requests at Walmart)

4. **Recording Initiation:** Plaintiff began recording after the confrontation occurred, not in anticipation

Defendant's Answer Brief:

- Does not address any of these factual distinctions
- Simply asserts "pattern" and "substantially repetitive" without engagement
- Makes no effort to distinguish why these factual differences are legally immaterial

This silence means Defendant cannot defend a characterization that the cases

are "nearly identical." The factual differences are material and demonstrate that Plaintiff's Best Buy claims were not merely duplicative attempts to re-litigate Walmart theories, but good faith assertions of rights in distinct factual circumstances. This directly rebuts the "frivolous" characterization.

IV. DEFENDANT FAILS TO ADDRESS FACTUAL DISPUTES PRECLUDING FRIVOLOUSNESS FINDING

Colorado law is clear: when facts bearing on probable cause, good faith, and reasonableness of detention are disputed, these are questions for the fact finder—not appropriate for fee sanctions predicated on frivolousness. *J.S. Dillon & Sons Stores Co. v. Carrington,* 169 Colo. 242, 455 P.2d 201 (1969); *Gonzales v. Harris,* 528 P.2d 259 (Colo. App. 1974); *Goodboe v. Gabriella,* 1983 Colo. App. LEXIS 828 (Colo. App. 1983).

Plaintiff's Opening Brief identified multiple genuine factual disputes:

1. **Did Defendant observe suspicious conduct?**

- Plaintiff's body camera video shows him standing outside a store ordinarily
- Plaintiff's affidavit: never concealed items, never acted furtively, never made suspicious movements
- Defendant's employee affidavit (introduced only in Reply): contradicts the video and affidavit; internally inconsistent

2. **Did Defendant have probable cause to believe Plaintiff stole merchandise?**

- No admissible evidence that Plaintiff possessed stolen merchandise
- Non-eventful police report (unchallenged by Defendant)
- Defendant's employee affidavit contradicts itself

3. **Did Plaintiff have a "means of escape"?**

- Mere possibility that Plaintiff might possess a receipt (a fact Defendant failed to establish with admissible evidence) does not constitute a clear means of escape
- Defendant's own summary judgment argument crystallized the problem: "If Plaintiff purchased items, he could simply show his receipt; it is presumed Plaintiff had such proof, because if he did not, he committed theft." *CF at 233.*
- This amounts to granting merchants absolute, unchallengeable immunity

Defendant's Response: Defendant's Answer Brief states: "However, the District Court had already ruled in Defendant's favor on its Motion for Summary Judgment. Therefore, the District Court had already found no genuine issue of material fact between the parties." (Answer Brief, page 24)

This is circular reasoning. The fact that a motion for summary judgment was granted does not retroactively establish that no factual disputes existed.

Rather, it shows that the trial court concluded that when viewing facts in favor of Plaintiff (the proper MSJ standard), Plaintiff could not prevail as a matter of law.

The Distinction Matters For Attorney Fees: The presence of genuine factual disputes is precisely what precludes a finding that a claim is "frivolous." *See Munoz v. Measner,* 247 P.3d 1031 (Colo. 2011) (a court does not abuse its discretion by failing to award fees when a plaintiff attempts to present evidence in good faith in support of their claims, but simply falls short of what is required to create an issue of material fact); *Kemp v. State Board of Agriculture,* 790 P.2d 870 (a court is not permitted to use summary judgment victory as an automatic justification for frivolousness findings).

Defendant's failure to engage with this principle and these factual disputes constitutes waiver of the argument that they are immaterial.

V. DEFENDANT'S BAD FAITH THEORY RESTS ON PROCEDURAL VIOLATIONS AND INADEQUATE PROCESS

Plaintiff's Opening Brief established that bad faith and frivolousness are separate categories: frivolousness addresses claim merit (evaluated when filed); bad faith addresses litigation conduct (evaluated during litigation). *Western United Realty, Inc. v. Isaacs,* 679 P.2d 1063 (Colo. 1984); *In re Parental Responsibilities of I.M.,* 410 P.3d 488 (Colo. App. 2013).

Plaintiff further established that Defendant's bad faith theory fails because:

1. **Defendant Never Filed A Rule 37 Motion To Compel:** Plaintiff's Opening Brief (pages 33–37) demonstrated that if Defendant genuinely believed Plaintiff was maintaining the suit in bad faith through discovery evasion, Defendant would have sought C.R.C.P. Rule 37 sanctions when deficiencies were discovered, not after winning summary judgment.

Timeline:

- July 25, 2024: Defendant's MSJ filed without mentioning any disclosure/discovery deficiencies
- October 10, 2024: Defendant introduces employee affidavit and receipts for FIRST TIME in Reply (violating *Wallman v. Kelley*)
- November 19, 2024: Defendant's MSJ granted; District Court order makes no reference to disclosure/discovery issues
- March 18, 2025: Only AFTER obtaining favorable MSJ does Defendant raise disclosure/discovery conduct as evidence of bad faith

Defendant's Response: Defendant does not address this timeline or procedural failure. Defendant does not explain why, if discovery conduct was genuinely obstructive, no Rule 37 motion was filed. This silence is damning. The absence of a Rule 37 motion when one was clearly available—and when Defendant

claims to have discovered "evasive" conduct—demonstrates that Defendant did not genuinely believe Plaintiff was in bad faith. Rather, Defendant is engaging in post-hoc narrative construction to support a frivolousness finding already made.

2. **Plaintiff Proactively Cured Alleged Deficiencies Before Judgment:** Plaintiff's Opening Brief (page 34) established that Plaintiff filed supplemental disclosures, *CF at 1022,* and supplemental discovery responses, *CF at 1026,* without compulsion, curing any alleged deficiencies before Defendant's MSJ was decided (November 19, 2024).

A party genuinely maintaining a lawsuit in bad faith would not voluntarily cure alleged deficiencies. The act of curing is affirmative evidence of good faith.

Defendant's Response: Defendant does not address this curative conduct. Defendant does not explain how Plaintiff's proactive curing is consistent with bad faith maintenance of suit. This silence concedes the point.

3. **Due Process Violation – Plaintiff Received No Notice:** Plaintiff's Opening Brief (page 34) established that Plaintiff received no formal notice through a Motion to Compel that his discovery responses would be used against him in sanctions proceedings. Due process requires notice and opportunity to cure before conduct is used as evidence of bad faith. *Mathews v. Eldridge,* 424 U.S. 319 (1976).

Here, Defendant never gave Plaintiff notice before using discovery conduct

against him. Plaintiff was "ambushed" post-judgment with a retroactive bad faith characterization.

Defendant's Response: Defendant does not address this due process argument. Defendant does not explain why Plaintiff should be sanctioned for conduct that he was never formally notified would be used against him. The absence of response constitutes waiver.

4. **C.R.C.P. Rule 37(c) Proportionality Requirement:** Plaintiff's Opening Brief (page 35) established that even if discovery deficiencies existed, C.R.C.P. Rule 37(c) requires that sanctions be proportional to the violation. The alleged deficiencies were minimal (omission of one witness, "I do not recall" responses) and cured before judgment. No spoliation, calculated evasion, ongoing defiance, or prejudice occurred.

Appropriate sanctions for such minor, cured violations might include payment of Defendant's attorney fees specifically related to the discovery dispute (calculated by Plaintiff to be 8.40 hours, equaling perhaps $1,000–$3,000), not a $36,124.50 award for the entire case.

Defendant's Response: Defendant does not address proportionality at all. Defendant does not engage with Rule 37(c) or explain why a $36k+ sanction is proportional to alleged minimal discovery violations that were cured before judgment.

5. **The YouTube Video And Deposition Quotes Are Misinterpreted:** Defendant relies on selective quotations from a YouTube video and deposition statements as proof of bad faith. But:

Regarding the YouTube video: Plaintiff's Opening Brief (pages 26–27, 31) explained that Plaintiff's YouTube comments were not an expression of "no intention of cooperating in good faith," but a reasoned response to a pattern of judicial and legal abuses Plaintiff has repeatedly faced. The comments addressed the structural problem that merchants cannot be held accountable: once detained, a customer's "failure to show a receipt" (which may not exist) becomes the very justification for detention. Plaintiff's concern is legally sound, not evidence of bad faith intent at the time of filing.

Regarding the deposition: Plaintiff's "baiting" comments and "bait car" analogy were made in response to specific questioning and reflected Plaintiff's understanding of his own investigative tactics—attempting to create scenarios that would test merchant conduct. This is not evidence that the lawsuit itself was frivolous, only that Plaintiff was strategic in his store visits.

Defendant does not distinguish between (a) strategic conduct in planning store visits and (b) frivolous litigation. These are not the same thing.

VI. DEFENDANT IGNORES LOGICAL

INCONSISTENCIES IN THE BAD FAITH FINDING

Plaintiff's Opening Brief (page 36) identified a logical inconsistency: The District Court found that Plaintiff:

(1) Planned the lawsuit to provoke Best Buy, yet

(2) Maintained it in bad faith through evasive discovery

These are logically incompatible. If Plaintiff planned to sue Best Buy over a meritorious false imprisonment claim (which he believed he had), he would cooperate with discovery to support that claim—which he did, by proactively curing deficiencies.

Defendant's Response: Defendant does not address this logical inconsistency. No attempt is made to reconcile these findings. The absence of response suggests they are irreconcilable.

Reply To Issue 2 – The District Court Erred In Granting Defendant's Motion For Extension Of Time To File Attorney Fees Computation

I. DEFENDANT'S MOTION WAS PREMISED ON FALSE FACTUAL ASSERTIONS

Defendant's Motion For Extension Of Time, *CF at 1418–1422,* cited the following reasons for purportedly justifying its requested extension:

1. Case exceeded one year; bills "consist of hundreds of pages of

documents" requiring reformatting to remove privileged information

2. Plaintiff had "six active cases" against Best Buy, all "factually near identical," in "different phases of litigation or appeal," each with "disjointed schedule and deadlines"

3. This created "difficulties in keeping cases organized and separate," which "regrettably resulted in calendaring errors"

These assertions were factually false: Plaintiff's Response, *CF at 1631–1640,* demonstrated:

- At the time of the April 8, 2025 deadline, there were NOT six active cases against Best Buy in different phases with materially different deadlines
- The alleged "competing deadlines" Defendant cited either did not exist or were remote in time
- Defendant cited cases in different phases, but failed to identify what specific competing deadline existed on or near April 8, 2025
- Defendant's assertion that cases were "factually near identical" is itself debatable

Defendant's Response: Defendant's Answer Brief (pages 19–22) does not defend the factual accuracy of these assertions. Instead, Defendant simply restates that the District Court's decision "rests within the sound discretion of the trial court"

and that Plaintiff "has not demonstrated a clear showing of abuse of discretion."

But the question is not simply whether the trial court had discretion. The question is whether Defendant's factual representations were true. If they were false, the District Court's grant of the extension was premised on false information —which constitutes abuse of discretion.

Defendant's failure to defend the factual accuracy of its representations concerning competing deadlines effectively concedes they were false or highly misleading.

II. DEFENDANT FAILS TO ESTABLISH "EXCUSABLE NEGLECT" UNDER C.R.C.P. RULE 6(B)

Defendant's Motion claimed "calendaring errors." But C.R.C.P. Rule 6(b) requires "excusable neglect" for an enlargement of time to be granted after the deadline has passed.

Colorado law, however, does not define "excusable neglect" to include mere "garden-variety" calendaring mistakes, particularly when:

- The deadline was stated unambiguously in a Court Order
- The party claiming neglect (Defendant) manages multiple lawsuits and is represented by counsel

Defendant's Response: Defendant's Answer Brief (pages 19–22) does not

discuss what "excusable neglect" means or defend why Defendant's alleged "calendaring errors" satisfy the standard. Defendant merely cites that the District Court has "broad discretion" and that rules should be "liberally construed."

But Defendant does not explain how a law firm's calendar error—occurring while managing multiple cases for the same client—rises to "excusable neglect" when a clear deadline was stated in a Court Order. The failure to explain this suggests Defendant recognizes that pure calendaring errors may not satisfy the "excusable neglect" standard.

Reply To Issue 3 – The District Court Erred In Granting Defendant's Attorney Fees Computation

I. THE DISTRICT COURT FAILED TO PERFORM MANDATORY STATUTORY FACTOR ANALYSIS

Plaintiff's Opening Brief established that C.R.S. § 13-17-103(1) requires the trial court to consider several specific factors when computing attorney fees:

(a) The extent of the plaintiff's efforts to determine the validity of the action or defense

(b) The extent of the plaintiff's efforts to reduce or dismiss claims found not to be valid

(c) The availability of facts to assist plaintiff in determining the validity of

his claims

(d) The relative financial positions of the parties involved

(f) Whether issues of fact were reasonably in conflict

The District Court's Order, *CF at 1704–1708,* does not specifically analyze these factors. Instead, the Order contains general statements about complexity, amount in controversy, length of time, degree of success, and public importance—language that does not track these explicit 13-17-103(1) statutory factors.

Defendant's Critical Admissions:

1. **Defendant agrees** the District Court did not fully grant its requested fees ($42,083 reduced to $36,124.50)

2. **Defendant agrees** the District Court "does not contest the lodestar amount" (Answer Brief, page 15)

3. **Defendant does NOT contest** that the lodestar calculation was properly reduced

This means Defendant is NOT defending the methodology or the statutory factor analysis. Defendant has conceded that this issue is contested.

But Defendant Does Not Address:

- How the District Court satisfied the statutory requirement to analyze factor (a): Plaintiff's efforts to determine claim validity

- How the District Court satisfied factor (b): Plaintiff's efforts to reduce or dismiss invalid claims
- How the District Court satisfied factor (c): Availability of facts
- How the District Court satisfied factor (d): Relative financial positions
- How the District Court satisfied factor (f): Whether factual issues were in conflict

The Answer Brief's silence on these statutory requirements constitutes waiver of any defense that the necessary statutory analysis was performed.

II. FINANCIAL DISPARITY AND *PRO SE* STATUS WERE INADEQUATELY CONSIDERED

Defendant's equivocation of "*pro se* status" with "pecuniary status" in its Answer Brief (pages 23–24) constitutes a categorical error that fundamentally misunderstands both Colorado statutory law and the economic realities of civil litigation. This conflation deserves emphatic correction.

a. The Legal Distinction Under C.R.S. § 13-17-103(1)(d)

The relevant statute explicitly requires courts to consider "the relative financial positions of the parties involved." (C.R.S. § 13-17-103(1)(d)). This statutory language compels analysis of **actual pecuniary circumstances**—income, assets, liabilities, and ability to bear attorney fees burdens—not a party's litigation status.

Defendant's argument reduces this statutory mandate to a mere restatement of Plaintiff's *pro se* status, then cites a completely unrelated statute: "Parties appearing *pro se* shall not be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense...was substantially frivolous." (C.R.S. § 13-17-102(6), quoted in Defendant's Answer Brief, page 23). However, this statute addresses the **threshold question of frivolousness**, not the **economic impact analysis** mandated by § 13-17-103(1)(d).

b. *Pro Se* Status Is Procedural; Pecuniary Status Is Substantive

***Pro se* status** describes a **procedural choice**—a party's election to represent themselves without retained counsel. This status reflects nothing about financial condition. A self-employed entrepreneur, a successful small business owner, a professional with substantial assets, or even a wealthy retiree may all choose to represent themselves *pro se* for various reasons: confidence in their legal abilities, familiarity with procedural rules, desire to maintain direct control over their case, or philosophical preference for self-representation. Conversely, a *pro se* litigant may be indigent and unable to afford counsel. Thus, *pro se* litigants exist across the entire economic spectrum.

Pecuniary status, by contrast, reflects **substantive financial reality:** earned income, savings, property ownership, debt obligations, and ability to satisfy

substantial monetary judgments.

These are fundamentally distinct inquiries, thus requiring courts to analyze the latter question, not assume it from the former.

c. The District Court's Omission Regarding In Forma Pauperis

The record reveals a significant gap in the District Court's analysis that Defendant conveniently ignores. Plaintiff filed a Motion to Proceed **In Forma Pauperis** on the same date as his Complaint (November 21, 2023; *CF at 5*), which the District Court **granted.** This filing constitutes direct, admissible evidence of actual financial hardship sufficient to justify waiver of court filing fees—a determination made upon sworn evidence or declaration of financial status.

The District Court's Order contains no acknowledgment of this In Forma Pauperis status, no analysis of Plaintiff's actual financial resources, and no explanation for why a party previously found too poor to pay a $265 filing fee should now be assessed $36,124.50 in attorney fees.

Defendant's Answer Brief fails entirely to acknowledge this In Forma Pauperis filing, instead conflating the entirely separate concept of "*pro se* representation" with financial inability to pay. This omission is striking and undermines Defendant's entire position on this statutory factor.

d. The Incoherence Of Defendant's Position

If Defendant's logic were sound—that *pro se* status automatically satisfies the pecuniary analysis—then several absurd consequences would follow:

1. A wealthy party choosing self-representation would receive identical fee consideration as an indigent party choosing self-representation, rendering the statutory factor meaningless.

2. No *pro se* litigant could ever successfully argue financial hardship because their self-representation status would supersede all inquiry into actual finances.

3. The statutory requirement to analyze "relative financial positions" would become surplusage, eliminated by the mere fact of self-representation.

None of these consequences comport with Colorado statutory law, common sense, or the purpose of fee awards—which is to sanction bad litigation conduct while remaining proportionate to the parties' circumstances.

e. Proper Application Of C.R.S. § 13-17-103(1)(d)

A proper pecuniary analysis would require the District Court to consider:

- **Plaintiff's financial resources:** Income, savings, employment status, asset ownership, and debt obligations
- **Defendant's financial resources:** A multinational corporation (Best Buy, L.P.) with revenues likely exceeding $40 billion annually and resources to retain four attorneys and three paralegals (with 81+ years of combined experience) on a

single civil case

- **Proportionality:** The relative financial burden of a $36,124.50 judgment on an In Forma Pauperis *pro se* litigant versus the cost to a Fortune 100 retailer of funding litigation through routine business operations

- **Impact on access to justice:** Whether the magnitude of the fee award effectively bars Plaintiff from meaningful future access to Colorado courts

The District Court made no such analysis. Instead, it merely noted only that Plaintiff appeared *pro se* and cited a statute about frivolousness—then proceeded to uphold a fee award that, by any reasonable measure, represents a staggering economic burden to a litigant with documented financial hardship. This is not analysis; it is abdication of statutory duty.

III. PROPORTIONALITY DEMANDS REVERSAL FOR AN AWARD THAT BEARS NO REASONABLE RELATIONSHIP TO THE VIOLATION

Even accepting *arguendo* that some fee award was warranted, the $36,124.50 award bears no reasonable relationship to any actual violation.

Why Proportionality Requires Reversal:

1. **The Underlying Case Was Straightforward:** The District Court itself acknowledged this: "[A]lthough the [District] Court acknowledges Plaintiff's litigiousness, this case was a relatively straightforward tort case against a *pro se*

plaintiff that was dismissed on summary judgment." *CF at 1725.*

2. **Alleged Discovery Violations Were Minimal And Cured:** Plaintiff's discovery "deficiencies" consisted of:

- Omission of one witness (brother) from initial disclosures
- Some "I do not recall" responses initially
- Both cured proactively before judgment

These are NOT the types of violations that warrant $36k+ in fees.

3. **No Calculation Of Fees Specifically Attributable To The Alleged Violation:** Defendant's fee computation does not segment fees attributable to discovery disputes versus fees for representation generally. The $36,124.50 figure represents fees for the entire case—MSJ briefing, summary judgment hearing, discovery work, etc.

Proper proportionality analysis would identify:

- Fees specific to responding to alleged discovery deficiencies (perhaps $1,000-$3,000)
- Fees for work that would have been necessary regardless (the balance)

Then, only fees attributable to the alleged violation would be considered for potential sanctions.

4. **Chilling Effect On *Pro Se* Litigants:** A $36k+ fee award against a *pro*

se litigant in a case where the underlying claims were "straightforward" and the violation was minimal and cured is draconian. It will chill legitimate litigation by *pro se* parties who cannot afford such massive counterclaims.

Defendant's Response: Defendant does not address proportionality at all. Defendant does not explain why $36k+ is proportional to alleged minimal discovery violations. Defendant does not segment the fees to show what portion relates to actual discovery misconduct versus general representation.

The absence of proportionality analysis suggests Defendant recognizes that $36k+ cannot be justified as proportional to the alleged misconduct.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant's arguments in its Answer Brief fail on multiple levels:

First, Defendant does not address the statutory mandate for specific findings of fact and analysis of C.R.S. § 13-17-103(1) factors. This silence constitutes an admission that the statutory requirements were not met.

Second, Defendant completely waives substantive response to Plaintiff's arguments concerning: (1) novel legal theories protected by C.R.S. § 13-17-102(7); (2) material factual distinctions from prior cases; (3) genuine factual disputes precluding

frivolousness; and (4) procedural violations undermining bad faith findings.

Third, Defendant's bad faith theory depends on discovery conduct, but Defendant never pursued statutory remedies (i.e. Rule 37 motion), Plaintiff cured alleged deficiencies proactively, and Defendant's post-judgment invocation of discovery issues demonstrates post-hoc narrative construction.

Fourth, Defendant ignores logical inconsistencies, procedural failings, due process violations, and proportionality concerns that require reversal.

For these reasons, Plaintiff respectfully requests that this Court of Appeals:

1. **REVERSE** the District Court's Order granting Defendant's Motion for Attorney Fees, and **REMAND** with directions to **DENY** the motion in its entirety; or, alternatively,

2. **VACATE AND REMAND** for entry of adequate findings of fact and conclusions of law complying with C.R.S. § 13-17-102 and § 13-17-103, after affording Plaintiff full due process including an evidentiary hearing if appropriate;

3. **REVERSE** the District Court's Order granting Defendant's Motion for Extension of Time to File Attorney Fees Computation;

4. **REVERSE** the District Court's Order adopting Defendant's Attorney Fees Computation and **VACATE** the award of $36,124.50; or, alternatively,

5. **VACATE AND REMAND** for a thorough reasonableness determination

consistent with the *Hensley* framework, addressing all required statutory factors with particular emphasis on the relative financial positions of the parties;

6. **AWARD** Plaintiff his costs on appeal, including preparation and filing fees, under C.A.R. Rule 39; and

7. **GRANT** such other and further relief as this Court deems just, proper, and equitable under the circumstances of this case.

Respectfully submitted on this, **the 21st day of January, 2026.**

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, **the 21st day of January, 2026,** the foregoing **PLAINTIFF'S APPEAL REPLY BRIEF** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2025CA327**	
WILLIAM MONTGOMERY Plaintiff / Plaintiff-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Supreme Court Case No: Colorado Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI	

Plaintiff, proceeding *pro se*, hereby submits to the Colorado Supreme Court the following MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI, so as to allow him **thirty-five (35) additional days** to file it within, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with counsel for Defendant concerning this motion. Defendant states that it **DOES NOT TAKE A POSITION** with regard to the relief sought herein.

PROCEDURAL HISTORY AND DEADLINE

1. On February 19, 2026, the Court Of Appeals issued its Opinion in 2025CA327 affirming the District Court's grant of summary judgment to Defendant.

2. On March 26, 2026, the Court Of Appeals denied Plaintiff's Petition For Rehearing without explanation.

3. Under C.A.R. Rule 52(a)(1), Plaintiff has twenty-eight (28) days from the Denial Of Rehearing—until April 23, 2026—to file a Petition For Writ Of Certiorari.

4. Plaintiff respectfully requests a **thirty-five (35) day** extension, to May 28, 2026, to file it.

GROUNDS FOR EXTENSION

a. Plaintiff Suffers From A Severe Disabling Medical Condition

Plaintiff suffers from **Abdomino Phrenic Dyssynergia** (APD), a severe and disabling neuromuscular disorder that affects coordination between the diaphragm

and abdominal muscles. This condition substantially impairs Plaintiff's ability to perform physical and cognitive tasks at a normal pace. Plaintiff's APD has reduced his working capacity to approximately **33% of what a healthy individual can accomplish**—meaning tasks that would take a healthy person one hour require Plaintiff approximately three hours to complete.

The cognitive and physical toll of APD is compounded by:

- **Chronic fatigue** requiring frequent rest breaks
- **Malnutrition** impairing sustained concentration and legal analysis
- **Physical discomfort** limiting Plaintiff's ability to sit, type, and research for extended periods
- **Sleep disruption** due to respiratory irregularities, further diminishing daytime productivity

These limitations are not temporary inconveniences—they are permanent disabilities that Plaintiff must navigate daily while representing himself *pro se* in multiple complex civil rights cases. Because Plaintiff cannot afford counsel and must act as his own advocate, these medical impairments directly impact his ability to meet strict filing deadlines without sacrificing the quality and thoroughness required for appellate practice.

b. Plaintiff Has Been Required To Prepare And File Four Major Briefs In Other Active Cases During The Same Period

Between March 30, 2026, and April 20, 2026—the exact period within which Plaintiff was simultaneously tasked with preparing his Petition For Writ Of Certiorari—he was required to research, draft, and file **four separate major legal briefs** in four other active federal and state court cases:

- On March 30, 2026, Plaintiff had a Reply In Support Of His Objection To The Magistrate Judge's Report & Recommendation due in *Montgomery v. Lore,* District Civil No. 1:21-cv-02553-PAB-CYC.
- On April 13, 2026, Plaintiff had a Response To Defendant's MTD due in *Montgomery v. Wu et al,* District Civil No. 1:25-cv-03728-PAB-CYC.
- On April 17, 2026, Plaintiff had an Appeal Opening Brief due in *Montgomery v. Best Buy,* Court Of Appeals Case No. 2025CA2317.
- On April 20, 2026, Plaintiff has a Response To Defendant's MTD due in *Montgomery v. Taylor et al,* District Civil No. 1:25-cv-04047-PAB-CYC.

Each of these briefs required:

- Comprehensive legal research into distinct bodies of federal and state law
- Detailed factual record review and citation to voluminous case files
- Precise compliance with separate procedural rules (Federal Rules Of Civil

Procedure, Federal Rules Of Appellate Procedure, and Colorado Appellate Rules)

- Substantial time investment in drafting, editing, and cite-checking

Plaintiff was not filing routine status updates or procedural motions—these were **substantive dispositive and appellate filings** that could result in outright dismissal or adverse judgments if not prepared with care and diligence. The cumulative burden of preparing these four briefs simultaneously, while managing APD's debilitating effects, has made it **physically and cognitively impossible** for Plaintiff to also complete a thorough and competent Petition For Writ Of Certiorari by the April 23, 2026 deadline.

c. This Case Involves Complex And Novel Issues Of Statewide Importance

The issues Plaintiff seeks to present to this Supreme Court are not routine or straightforward. They involve:

- **Fundamental conflicts with controlling Colorado Supreme Court precedent** (*Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952); *Central Bank & Trust Co. v. Robinson*, 137 Colo. 409, 326 P.2d 82 (1958)) regarding the separate consideration of cross-motions for summary judgment.

- **Creation of a new procedural forfeiture rule** unsupported by *Wallman v. Kelley*, 976 P.2d 330 (Colo. App. 1999), requiring motions to strike or surreply

requests to preserve evidentiary objections.

- **Redefinition of the movant's initial burden under C.R.C.P. Rule 56**, allowing conclusory statements without supporting evidence to "raise" issues sufficient to shift the burden to the non-movant.

- **Systematic denial of due process** to *pro se* litigants who cannot anticipate that cross-motion replies can be conflated with opposing-party motion surreplies.

These are issues of first impression with **statewide ramifications** for every summary judgment motion filed in Colorado courts. Plaintiff's Petition must carefully and thoroughly develop these issues with precision, supported by comprehensive legal research and citation to controlling authority. Rushing such a filing risks presenting an inadequate petition unworthy of this Court's consideration —thereby forfeiting Plaintiff's only opportunity to seek review of errors that have already resulted in a **$36,124.50 attorney fee award** he cannot pay and **dismissals and fee denials in two other unrelated cases** based on the erroneous Court Of Appeals decision at issue here.

d. Plaintiff Is *Pro Se* And Faces Substantial Prejudice Without Extension

Plaintiff proceeds *pro se* not by choice, but by necessity. He cannot afford counsel. He receives **SNAP benefits** (food assistance) and resides in an **RV due to his disabling medical conditions**. He has no legal training beyond what he has

taught himself through years of self-representation.

The legal system's procedural complexity—particularly at the appellate and certiorari stages—is daunting even for experienced attorneys. For a *pro se* litigant with severe disabilities and competing deadlines, it is nearly insurmountable.

Plaintiff does not have:

- Law clerks to assist with research
- Paralegals to cite-check and format briefs
- Colleagues to review drafts and provide feedback
- Financial resources to hire consultants or legal writing services

He has only himself—and himself operating at 33% capacity due to APD, while simultaneously defending against motions to dismiss in two federal cases, objecting to a magistrate judge's recommendation in a third federal case, and preparing an appellate opening brief in a fourth state case.

Without this extension, Plaintiff faces a Hobson's choice: file a rushed, inadequate Petition For Writ Of Certiorari that fails to present his issues competently, or forfeit his right to seek this Court's review entirely. Neither option serves justice. The thirty-five day extension Plaintiff seeks will allow him to:

- Recover physically and cognitively from the intensive briefing schedule of March and April

- Conduct thorough research and prepare a competent Petition For Writ Of Certiorari worthy of this Court's consideration

e. Defendant Will Not Be Prejudiced By A Thirty-Five Day Extension

A thirty-five day extension will not prejudice Defendant in any way. Defendant has already obtained:

- Summary judgment in the District Court
- Affirmance by the Court Of Appeals
- Denial of Plaintiff's Petition For Rehearing
- A $36,124.50 attorney fee award against Plaintiff

Defendant stands to gain **nothing** from forcing Plaintiff to file a rushed, inadequate petition by April 23, 2026, and stands to lose nothing if Plaintiff is granted until May 28, 2026 to prepare a thorough filing. The only effect of the extension is to ensure that **if this Court ultimately grants certiorari**, it will review a petition that fully and competently presents the issues—thereby allowing the Court to make its decision based on the merits, not on the happenstance of an overwhelmed *pro se* litigant's inability to meet an aggressive deadline while managing severe disabilities and competing litigation deadlines.

f. Good Cause Exists Under C.A.R. Rule 52(b)

C.A.R. Rule 52(b) provides: "The supreme court, for good cause, may

extend the time for filing a petition for rehearing or a petition for writ of certiorari." "Good cause" has been established through:

- **Severe disabling medical condition** (APD) reducing Plaintiff's working capacity to 33% of normal
- **Unavoidable competing deadlines** requiring four major briefs in four other cases during the exact period when the Petition was due
- **Complexity and importance of the issues** requiring careful, thorough presentation to this Court
- ***Pro se* status** and lack of resources, requiring Plaintiff to perform all legal work himself without assistance
- **Absence of prejudice to Defendant**, who has already prevailed at every stage and will suffer no harm from a thirty-five day extension
- **Substantial prejudice to Plaintiff** if forced to choose between an inadequate filing and forfeiture of his right to seek certiorari

These factors, individually and cumulatively, constitute good cause for a thirty-five day extension.

CONCLUSION

WHEREFORE, for the forgoing reasons, Plaintiff respectfully requests that this Supreme Court **GRANT** a thirty-five (35) day extension of time—from April

23, 2026, to May 28, 2026—to file his Petition For Writ Of Certiorari.

This modest extension will allow Plaintiff, a disabled *pro se* litigant facing severe medical challenges and unavoidable competing litigation deadlines, to prepare and file a thorough and competent petition presenting issues of statewide importance worthy of this Court's review.

Respectfully submitted on this, the 17th day of April, 2026.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 17th day of April, 2026, the foregoing **MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2025CA327**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Colorado Supreme Court Case No: **2026SC236** Colorado Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**

PETITION FOR WRIT OF CERTIORARI

Plaintiff, proceeding *pro se*, respectfully submits to the Colorado Supreme Court the following PETITION FOR WRIT OF CERTIORARI, and in support thereof, states as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this PETITION complies with all the requirements of C.A.R. 32 and 53, including all formatting requirements set forth in these rules.

Specifically, I certify that this PETITION contains **3,800** words, which does not exceed the 3,800 word limit allowed by the rules.

William Montgomery

William Montgomery

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ISSUES PRESENTED FOR REVIEW

1. Whether a court may impose a strict, uncodified forfeiture rule that *prohibits* a non-movant from challenging reply-only evidence on appeal without a prior motion to strike, thereby creating a direct, irreconcilable **division split** with *Amada*—which expressly *permits* such challenges.

2. Whether a court may conflate independent motions for summary judgment by treating one party's reply as a **surrogate surreply** to the opposing party's reply, in direct conflict with the separation mandates of *Morlan* and *Central Bank*.

3. Whether a court may characterize procedural challenges to the movant's burden of proof as **factual** "denials" sufficient to permit the movant's belated introduction of "rebuttal" evidence in a reply brief, thereby relieving the movant of its initial evidentiary burden under C.R.C.P. 56.

4. Whether a court may deem an issue properly "raised" when the movant vaguely discusses a **general topic** without submitting supporting evidence, thereby rewriting *Suncor's* mandate into a mere pleading standard.

OPINION FROM WHICH RELIEF IS SOUGHT

The Court Of Appeals issued an Opinion in Case No. 2025CA327 affirming the District Court's granting of Defendant's MSJ and simultaneous denying of Plaintiff's Cross-MSJ. Plaintiff filed a Petition For Rehearing, which was denied. The Court Of Appeals' Opinion and the Order denying the Petition For Rehearing are attached to this Petition For Writ Of Certiorari.

BASIS OF JURISDICTION

This Court has jurisdiction pursuant to C.R.S. § 13-4-108 and C.A.R. 49. The Court Of Appeals entered its Opinion on February 19, 2026. Plaintiff's Petition For Rehearing was denied on March 26, 2026. The deadline to file a Petition For Writ Of Certiorari was April 23, 2026. This Court granted a 35-day extension, making the deadline May 28, 2026. This Petition is timely filed.

REFERENCE TO PENDING CASES WITH THE SAME LEGAL ISSUES

Plaintiff is unaware of any pending cases with the same or similar legal issues.

STATEMENT OF THE CASE

On November 25, 2022, Plaintiff visited a Westminster Best Buy. He entered, walked directly to returns, realized he brought merchandise from another store, and immediately exited without making any purchase. Three employees later surrounded and detained him outside, accusing him of theft. During the twelve-minute detention, the employees repeatedly demanded Plaintiff show what he held and empty his pockets. *Court File ("CF") at 640.* They also claimed police had been called—yet none were, a fact undisputed by Defendant. *CF at 615, 651 ¶ 44.*

Critically, employees never identified what Plaintiff possessed. The video shows they stated: "I want what's in your pocket, too."; "What do you even got in there?"; "Just give it to me, and you can leave."; "You'll have zero problems if you hand me what's in your pocket, and what's in your coat." *Plaintiff's Body Camera ("PBC") at 0:28, 7:58, 10:22, 10:48.* Plaintiff's brother, David—an authorized user of Plaintiff's credit card—made a purchase at **2:20pm** using Plaintiff's account. *CF at 758.* Plaintiff was not inside the store at that time and made no purchase. *PBC at 0:00 (**2:19pm**).*

On July 25, 2024, Defendant filed a MSJ containing **no** affidavits or business records—only **conclusory** arguments that Plaintiff "intentionally concealed merchandise," "left the Best Buy store with merchandise," and "took Best Buy

inventory." *CF at 234, 236, 237.* Defendant *itself* admitted uncertainty, stating: "***If*** in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is ***presumed*** Plaintiff had such proof, because ***if*** he did not have proof of purchase..." *CF at 233.*

On September 19, 2024, Plaintiff filed his Response and Cross-MSJ, supported by his affidavit, body camera footage, and police records. *CF at 640.*

On October 10, 2024—**only in its MSJ reply**—Defendant introduced for the first time: (1) business records (receipts) without a custodian affidavit, and (2) a manager's affidavit. *CF at 729, 741, 779–780.* Plaintiff was procedurally barred from filing a surreply under C.R.C.P. 121 § 1-15(1)(a).

On November 19, 2024, the District Court granted Defendant's MSJ, explicitly relying on the reply-only evidence, and falsely stating: "Defendant has submitted a Best Buy receipt . . . satisfying its initial burden as the movant." *CF at 881.* **This statement was materially false**—Defendant submitted no such evidence.

On February 19, 2026, the Court Of Appeals affirmed, holding: (1) the District Court properly "considered all briefs and exhibits in connection with both parties' motions together"; (2) because Plaintiff filed no motion to strike or request for surreply, he forfeited objections to reply-only evidence; (3) the reply-only evidence was proper "rebuttal" to "Montgomery's various denials"; and (4) Defendant's MSJ

"put Montgomery on notice" by "specifically claiming" facts, despite Defendant submitting no evidence to substantiate those facts with.

On March 26, 2026, Plaintiff's Petition For Rehearing was denied.

SPECIAL AND IMPORTANT REASONS FOR GRANTING THE WRIT

*All issues were **preserved** below,*
*and all are reviewed **de novo**.*

Certiorari is imperative for this Court to exercise its supervisory authority under C.A.R. 49 to resolve a pure diametric split within the Court of Appeals and halt the systemic erosion of summary judgment practice for civil litigants statewide.

The diametric split is only the first of four profound departures from established law. The Panel further eroded procedural fairness by (2) conflating independent cross-motions in violation of *Morlan* and *Central Bank*, (3) mischaracterizing procedural objections as factual "denials" to permit belated "rebuttal" evidence in violation of C.R.C.P. 56, and (4) allowing general topics to substitute for tangible evidence in violation of *Suncor.*

I. THE PANEL DEPARTED FROM FUNDAMENTAL SUMMARY JUDGMENT RULES BY CREATING A STRICT, UNCODIFIED PROCEDURAL TRAP

a. The Panel Imposed A New Forfeiture Rule In Direct, Irreconcilable Conflict With *Amada*

The Panel held that Plaintiff forfeited his right to challenge Best Buy's reply-only evidence on appeal because he "did not object to or move to strike the manager's affidavit or the receipts on the basis that they were late." *Opinion at ¶ 34.* The Panel reasoned: "we do not review arguments raised for the first time in a motion for reconsideration." *Id.* This uncodified forfeiture rule does not merely lack foundation in Colorado law; it places the Panel in direct, irreconcilable conflict with *Amada Family Ltd. Partnership v. Pomeroy*, 2021 COA 73.

The baseline rule is that a movant is strictly **prohibited** from introducing new arguments or evidence for the first time in a reply brief. As established in *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999): "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue."

Under C.R.C.P. 56, a non-movant's silence is structural: they **cannot "waive"** a movant into satisfying an unmet initial burden. *See People v. Hernandez & Assocs., Inc.*, 736 P.2d 1238 (Colo. App. 1986) (holding a non-movant's silence "does not relieve the moving party of its burden").

This structural protection extends to the reply phase. Because reply-only evidence is a legal nullity under *Wallman*, there is nothing to "strike." Thus, the

Panel's forfeiture rule demands the impossible: it requires non-movants to file discretionary motions to combat **phantom evidence** the trial court is already strictly mandated to ignore. Furthermore, because motions to strike are not codified within C.R.C.P. 56, litigants lack any structural "opportunity" to deploy them. In practice, surviving summary judgment becomes a frantic race against time—the litigant's pen against the judge's gavel—where a dispositive ruling on the late evidence could drop at any moment.

Recognizing this precise absurdity, the *Amada* panel explicitly **rejected** the uncodified forfeiture trap, holding: "We disagree. [The non-movants] had no opportunity to raise the issue because [the movant] did not make arguments... until it replied to the [non-movants'] response to its motion for summary judgment. Although we normally do not consider unpreserved issues in civil cases... here, we elect to do so." 2021 COA 73, ¶ 42 (internal citation omitted). *Amada* therefore cemented the principle that because the rules provide no formal opportunity to strike late evidence, the failure to utilize an uncodified, extra-procedural tool cannot be weaponized as a waiver. The right to appellate review remains **absolute**.

Here, by holding that Plaintiff *forfeited* his right to challenge the reply-only evidence on appeal, the Panel issued a ruling in pure diametric conflict with *Amada*. Now, under Colorado law, a non-movant is either expressly *permitted*

to contest reply-only evidence on appeal without a prior motion to strike (*Amada*), or strictly *prohibited* from doing so (the Panel).

Inevitably, the coexistence of these mutually exclusive procedural regimes forces litigants and practitioners to defensively assume the more punitive standard will govern their case. That is, requiring motions to strike merely to preserve *appellate* review eviscerates the core of *Wallman's* automatic *trial-level* shield: uncodified defensive motions must now be frantically filed to strike phantom evidence and shift burdens back that never lawfully shifted *in the first place.* Consequently, the Panel has **extinguished** all three protections—*Wallman*, *Hernandez*, and *Amada*—statewide. To restore the structural integrity of C.R.C.P. 56, this Court must grant certiorari and reverse.

b. The Panel Departed From *Morlan* And *Central Bank* By Conflating Independent Motions

Beyond its forfeiture trap, the Panel departed from Colorado law mandating that cross-motions for summary judgment "be considered and ruled upon separately." *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). "Each motion, together with evidentiary matters tendered in support thereof, must stand on its own and cannot be aided by the motion of the opposing party." *Central Bank & Trust Co. v. Robinson*, 137 Colo. 409, 326 P.2d 82 (1958). Under this rule, "concessions" made for a cross-motion "terminate" once that motion is overruled and cannot "carry over"

into the opposing motion, which must be "completely unsupported by anything except such as it had itself placed in the record." *Morlan*, 252 P.2d at 101.

The Panel flatly disregarded these established principles. It held that the District Court properly "considered all briefs and exhibits in connection with both parties' motions together," because Plaintiff "had the opportunity to respond to the affidavit and receipts when he submitted his reply in support of his cross-motion for summary judgment." *Opinion at ¶ 36.*

This creates an impossible structural conflict. A Cross-MSJ reply asserts that *no genuine dispute of fact exists*—the very "admission of facts" *Morlan* describes that "terminate." Yet the Panel requires this pleading to now serve a **contradictory** dual function: arguing that *no* dispute exists (for Plaintiff's Cross-MSJ) while simultaneously *creating* disputes (as a surreply to Defendant's MSJ). Structurally, a single document cannot do both.

More critically, had Plaintiff *not* filed a Cross-MSJ, Defendant's MSJ would have to "stand on its own"—exactly as *Morlan* requires. Instead, Plaintiff was **penalized** for invoking procedural rights.

Systemically, the Panel's rule allows movants to file evidence-free opening briefs, then introduce evidence only in reply, all while the court treats the non-movant's cross-motion reply as a *surrogate surreply.* This renders the

movant's initial burden **illusory** while forcing the non-movant to defend against unanticipated arguments in an incompatible procedural vehicle.

c. The Panel Permitted "Rebuttal" Evidence Based On Burden-Of-Proof Arguments, Not Actual Denials

Further nullifying the movant's burden, the Panel held that Defendant's MSJ reply-only evidence was proper "rebuttal" because it merely "responded to Montgomery's various denials—about exiting the store, having merchandise, and having a receipt." *Opinion at ¶ 35.* **Plaintiff made no such factual denials.**[1]

In his Response to Defendant's MSJ, Plaintiff argued that it provided no "tangible, admissible evidence" of a receipt or stolen merchandise, offering only "conclusory statements" unsupported by "actual independent evidence." *CF at 645, 667.* These are **burden-of-proof arguments,** not factual denials. Plaintiff was pointing out that Defendant had not carried its initial burden under C.R.C.P. 56. A non-movant has no obligation to present contrary evidence until the movant satisfies that burden.

The Panel itself conceded that Plaintiff made no factual denials, stating: "Montgomery 'does not deny having a receipt at the time of the incident.'"; "Montgomery provided no contrary evidence about his actions inside the store." *Opinion at ¶¶ 14, 15.* The Panel cannot have it both ways: either Plaintiff provided

1 Plaintiff made no such factual affirmances, either.

"no contrary evidence" and made "no denials"—in which case Defendant's reply-only evidence was not rebuttal, *but a belated attempt to satisfy its initial burden*—or Plaintiff made denials. But if the latter were true, those denials would *themselves* have created a genuine dispute of material fact, satisfying Plaintiff's burden as the non-movant and precluding summary judgment. The Panel's own words thus lead inescapably to the same conclusion either way: **Defendant's MSJ should have been denied.**

By permitting Defendant to introduce foundational evidence for the first time in reply, then classifying it "rebuttal," the Panel **nullified** the movant's initial burden. Under this rule, movants may bootstrap their way past *Wallman* by making unsupported factual assertions in their opening briefs, characterizing the non-movant's procedural objections as factual "denials," and then submitting the missing evidence in reply under the guise of "rebuttal." This inverts C.R.C.P. 56's burden structure and rewards strategic sandbagging.

d. The Panel Redefined "Raising An Issue" To Mean *Topic* Discussion Without Evidence

Finally, the Panel held that Defendant's MSJ "put Montgomery on notice" because it "raised the shopkeeper's privilege and specifically claimed that he exited the store with merchandise, refused to show a receipt, and was suspected of theft." *Opinion at ¶ 35.* This holding directly contravenes the established principle that "a conclusory statement made without supporting documentation or testimony is

insufficient to create an issue of material fact." *Suncor Energy (USA), Inc. v. Aspen Petroleum Prods., Inc.*, 178 P.3d 1263 (Colo. App. 2008).

Defendant's MSJ contained **no** affidavits or business records—only **bare** assertions. Indeed, Defendant offered only *speculation*, stating "It is *presumed* Plaintiff had such proof [of purchase], because *if* he did not..." *CF at 233.*

Suncor holds that no matter how "specifically claimed" a statement is, it is legally insufficient to "raise" an issue **without supporting evidence.** *Id. at 1269.* The Panel's rule eviscerates this protection: if *general topics* in opening briefs can serve as *placeholder allegations*, movants may file skeletal opening briefs that act as *mere drafts*, finalizing them with evidence in reply by using the non-movant's response as a roadmap to cure their own deficiencies. This renders the initial burden **meaningless,** collapsing summary judgment from a traditionally front-loaded procedure into a back-and-forth discovery process where the movant gets to belatedly satisfy its burden of production.

II. THE PROCEDURAL DEVIATIONS WERE OUTCOME-DETERMINATIVE

Excluding the improper reply-only exhibits leaves Best Buy's opening motion entirely **devoid** of admissible evidence. Alternatively, even if considered, the late evidence is so inconsistent and blatantly contradicted by the record that it **cannot** support summary judgment as a matter of law.

a. The Panel Did Not Address The Contradiction Between The Affidavit And The Receipt

The manager's affidavit claims he "observed [Plaintiff] remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and **immediately leave** the Best Buy Store." *CF at 780 ¶ 4.* Yet, Defendant's proffered receipt purportedly shows Plaintiff making a purchase at **2:20pm**—one minute *after* his **2:19pm** detention shown on body camera. *CF at 758; PBC at 0:00.* As Plaintiff argued, factual reality resolves this contradiction: "Plaintiff *didn't* steal, and *his brother* made the associated purchase that day." *Opening Brief at 16, footnote 4.*

If Plaintiff stole and "immediately" left, there was no time for a purchase. If he made a purchase and "immediately" left, the theft observation is impossible. **Both cannot be true simultaneously.** The Panel did not address this contradiction. Under *Scott v. Harris*, 550 U.S. 372, 380 (2007), courts cannot adopt a factual version that is "blatantly contradicted by the record." Here, Defendant's *own* two pieces of evidence irreconcilably contradict *each other*—and Plaintiff's body camera footage—yet the Panel concurrently adopted ***both*** as true, instead of denying Defendant's MSJ.

b. The Panel Concluded That The Receipt Was Admissible For Its "Effect On The Listener"

The Panel held that the receipt was admissible for its "effect on the listener" rather than the truth of its contents. *Opinion at ¶ 26.* This rationale fails because the District Court explicitly used the receipt to prove the *substantive* truth of **three specific assertions:** (1) *Plaintiff* made a particular purchase, (2) that purchase *was a Chromecast with Google TV*, and (3) Plaintiff therefore could have shown ***the associated receipt*** to end his detention. *CF at 878, 881, 882.* Using a receipt to prove that a *specific* transaction occurred implicates hearsay rules. As *United States v. Watkins*, 519 F.2d 294, 296 (D.C. Cir. 1975) held, "it is a matter of horn-book law that receipts are hearsay as independent evidence of the making of payment."

c. The Panel Misapplied Evidentiary Rules By Shifting The Foundation Burden

The Panel held that Plaintiff "failed to show that the receipt was not generated automatically by a computer without human input," thus failing to establish it was hearsay. *Opinion at ¶ 29.* This impermissibly shifts the evidentiary burden.

Under *People v. Hamilton*, 2019 COA 101, 452 P.3d 184 (Colo. App. 2019), "[a] computer-generated record constitutes hearsay, however, when its creation involves human input or interpretation." Furthermore, the *proponent* "must lay a sufficient foundation to establish that the machine's results are valid and reliable."

Therefore, *Defendant* bore the burden to establish *both* that the receipt lacked human input, *and* that the system was reliable. **It established neither.**

Here, an employee scanned items, entered account information, and processed payment—classic human input rendering the receipt hearsay. *See United States v. Cestnik*, 36 F.3d 904, 907 (10th Cir. 1994).

By assuming computer-printed receipts are inherently reliable and non-hearsay, while forcing Plaintiff to prove the **negative,** the Panel created an unworkable rule allowing parties to bypass foundational evidentiary requirements statewide.

d. The Panel Accepted The Inference That *Plaintiff* Made The Purchase

The Panel held that the receipt constituted "proof" that *Plaintiff* made the purchase. *Opinion at ¶ 14.* However, a receipt reflects **only** that *a linked Best Buy account* is charged, regardless of who presents the card. *CF at 831 ¶ 3.* Here, Plaintiff's *brother*—an authorized user—made the purchase. As Plaintiff argued, a receipt tied to an account "only establishes that *some* person made that purchase, not actually *who* made it." *CF at 801.*

Without direct evidence identifying the physical purchaser, the Panel's cardholder-equals-purchaser assumption is **"[m]erely colorable"** and insufficient to support, let alone preclude, summary judgment. *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 249 (1986).

e. The Panel Dismissed Sworn Testimony And Video As Self-Serving Speculation

The Panel dismissed Plaintiff's sworn affidavit—that he never concealed anything, used pockets, or met employees inside—as "self-serving" "speculation." *Opinion at ¶¶ 41, 45.* But a party's sworn testimony about personal actions is competent evidence. Their inherent "self-serving" nature neither renders affidavits inadmissible nor diminishes their weight at summary judgment.

Furthermore, Plaintiff's body camera footage—capturing the manager's contradictions, focus on *hands* over *pockets* (31 mentions vs. 3), and failure to claim personal observation of theft—is also **objective** evidence. Courts must credit video that contradicts party accounts. *Scott v. Harris*, 550 U.S. at 380-81. By failing to do so, the Panel weighed evidence, assessed credibility, and resolved facts in Defendant's favor—all **impermissible** at summary judgment.

III. GRAVE CONSEQUENCES NECESSITATE SUPREME COURT REVIEW

a. Plaintiff Faces Financial Ruin And Loss Of Court Access

Following affirmance, Defendant may be awarded **$36,124.50** in attorney fees (Appeal No. 2025CA1351). Plaintiff—an RV-bound SNAP recipient due to severe, disabling medical conditions—cannot possibly pay this sum.

Moreover, such prejudice now extends beyond this single action. Plaintiff's action in Case No. 2024CV242 (Appeal No. 2025CA2317) was dismissed because

of the judgment entered in this case, and Plaintiff's IFP status was likewise revoked in Case No. 2024CV132, requiring payment of filing fees despite severe hardship. Now, in Case No. 2024CV241, another defendant is weaponizing the Panel's ruling to demand dismissal, openly asserting: "the Colorado Supreme Court has refused to take up any of his claims."

Denying certiorari would therefore cement **financial ruin** and continuing collateral consequences that impair Plaintiff's access to the courts.

b. The Panel's Precedent Threatens Access To Courts For All *Pro Se* Litigants

Pro se litigants—the majority of civil plaintiffs—are particularly vulnerable to the Panel's rules. They lack legal training to **anticipate** uncodified forfeiture traps requiring protective motions, or resources to preemptively **refute** every conceivable claim a movant might later support, or procedural sophistication to **navigate** a system where filing a cross-motion is *weaponized* against them as a *backdoor surreply.*

Left standing, well-resourced defendants will adopt this playbook for a **judicially sanctioned ambush:** file evidence-free opening briefs, review the plaintiff's arguments, introduce evidence only in reply, then claim "raised," "surreply," "rebuttal," and "forfeiture" to any later objection. *Pro se* plaintiffs will lose not because their claims lack merit, but because they cannot navigate this procedural labyrinth—a result antithetical to deciding cases on their merits.

c. These Deviations Warrant Review Under C.A.R. 49

Review is warranted under C.A.R. 49 because the Panel's decision creates a diametric split with *Amada*, flatly contradicts *Morlan* and *Suncor*, and so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

First, the magnitude and systemic nature of the Panel's departures from fundamental summary judgment principles require correction despite the Opinion's unpublished status.

Second, the judgment has already been weaponized against Plaintiff by sister District Courts, creating a *de facto* precedent threatening his access to justice.

Third, because this case involves core C.R.C.P. 56 mechanics that have procedurally drifted statewide, it provides a clean vehicle for this Court to correct that drift by reaffirming and modernizing foundational pillars (*Morlan*, *Suncor*) while elevating appellate precedents (*Wallman*, *Amada*), thereby equipping every district judge with concise, contemporary guidance—all without needing to invent new law.

Finally, the Panel wholly subverted the bedrock standard that **only if** "the moving party has met [its] initial burden of production, [does] the burden shift[] to the nonmoving party." *Cont'l Air Lines, Inc. v. Keenan,* 731 P.2d 708, 713 (Colo. 1987).

CONCLUSION

The Court Of Appeals' decision fundamentally departs from established Colorado summary judgment law. It conflicts with multiple controlling precedents, creates procedural requirements unsupported by authority, vitiates the movant's initial burden, and redefines what it means to "raise" an issue. By bypassing these structural guardrails, the lower courts committed outcome-determinative errors that improperly shielded a facially deficient motion from mandatory denial. These deviations carry immediate, irreparable consequences for Plaintiff, and threaten fundamental procedural protections for every civil litigant in Colorado.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court **GRANT** this Petition For Writ Of Certiorari, **REVERSE** the Court Of Appeals' decision, and **REMAND** with instructions to **DENY** Defendant's MSJ and **GRANT** Plaintiff's Cross-MSJ, or, alternatively, **REMAND** for trial.

Respectfully submitted on this, the 28th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of May, 2026, the foregoing **PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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APPENDIX

The **February 19, 2026 Opinion** issued by the Colorado Court Of Appeals in Case No. 2025CA327 and the **March 26, 2026 Order** denying Plaintiff's Petition For Rehearing in the case are filed as an attachment to this pleading.

Supreme Court, State Of Colorado 2 East 14th Ave Denver, CO 80203 (720) 625-5150	
On Certiorari To The Colorado Court Of Appeals Colorado Court Of Appeals Case No: **2025CA327**	
WILLIAM MONTGOMERY Plaintiff / Petitioner-Appellant vs. **BEST BUY STORES, L.P.** Defendant / Respondent-Appellee	▲ Court Use Only ▲
	Colorado Supreme Court Case No: **2026SC236** Colorado Court Of Appeals Case No: **2025CA327** Jefferson County District Court Case No: **2023CV226**
BRIEF OF *AMICI CURIAE* IN SUPPORT OF GRANTING PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI	

Amici Curiae respectfully submit to the Colorado Supreme Court the following BRIEF OF *AMICI CURIAE*, and in support thereof, state as follows:

CERTIFICATE OF COMPLIANCE

Amici hereby certify that this BRIEF OF *AMICI CURIAE* complies with all applicable requirements of C.A.R. 29, 32, and 53. Specifically, the undersigned certify that this BRIEF contains **3,149** words, which does not exceed the 3,150 word limit allowed by the rules.

[Amici Signature Placeholder]

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INTEREST OF *AMICI CURIAE*

Amici are attorneys and civil rights advocacy organizations from across the country committed to protecting procedural fairness in civil litigation and ensuring that courts of last resort exercise supervisory authority when intermediate appellate decisions depart from established law. *Amici* have no financial stake in the outcome of this case. They file this brief to address the systemic implications of the decision below—implications that extend far beyond the parties to this case and threaten the integrity of summary judgment practice in Colorado and nationally.

[Amici Curiae: Please Edit / Replace This Entire Section Accordingly]

INTRODUCTION AND SUMMARY OF ARGUMENT

This case calls upon the Court to exercise the supervisory authority C.A.R. 49 contemplates. The Court of Appeals' unpublished decision does not simply apply existing doctrine to a difficult record; it introduces a set of interlocking procedural innovations that conflict with multiple controlling Colorado precedents and lack any foothold in the text of C.R.C.P. 56 or 121. In doing so, the Panel alters the basic architecture of summary judgment in a way that, if left uncorrected, will shape how trial courts handle similar motions for years to come.

Amici adopt the factual recitation set forth in Montgomery's Petition and do not repeat it here. For present purposes, it is enough to note that the summary-judgment proceedings involved a defendant that filed an opening motion unsupported by affidavits or business records, and then presented foundational evidence for the first time in reply—a sequencing that makes this case a clean vehicle for examining the Panel's four legal rulings.

The Panel's decision generates four distinct legal errors, each independently warranting this Court's review:

First, the Panel announced a new, uncodified forfeiture rule under which a non-movant forfeits their right to appellate review of reply-only evidence unless

they first move to strike in the court below. *Wallman v. Kelley*, 976 P.2d 330 (Colo. App. 1999), imposes no such requirement, and *Amada Family Ltd. Partnership v. Pomeroy*, 2021 COA 73, confirms that the protection against reply-brief ambush is not lost simply because a litigant did not file such motions.

Second, the Panel treated the plaintiff's reply in support of his own cross-motion for summary judgment as a *functional surreply* to the defendant's separate motion. That approach conflicts with *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952), and *Central Bank & Trust Co. v. Robinson*, 137 Colo. 409, 326 P.2d 82 (1958), which require each summary judgment motion to be considered independently on its own evidentiary record.

Third, the Panel permitted the defendant's first evidentiary submissions in reply to be characterized as "rebuttal" even while acknowledging that the plaintiff had offered no contrary evidence to rebut. That reasoning erodes the movant's initial burden under C.R.C.P. 56 and is at odds with Colorado and federal authority requiring the movant to make a sufficient evidentiary showing before any obligation falls on the non-movant.

Fourth, the Panel held that the defendant's evidence-free opening motion nevertheless "put [the non-movant] on notice" because it "specifically claimed" certain facts. That holding cannot be reconciled with *Suncor Energy (USA), Inc. v.*

Aspen Petroleum Prods., Inc., 178 P.3d 1263 (Colo. App. 2008), which rejects the proposition that detailed assertions in a brief may substitute for supporting proof.

ARGUMENT

Amici address the four Issues Presented for Review of the Petition for Writ of Certiorari, which raise pure questions of procedural law of statewide importance. The factual record, including the prejudice resulting from these procedural deviations, is fully briefed in the Petition itself.

I. THE PANEL'S NOVEL "NO-MOTION-TO-STRIKE" FORFEITURE RULE HAS NO BASIS IN COLORADO LAW AND CONFLICTS WITH FEDERAL AUTHORITY

The Panel held that the plaintiff forfeited his right to challenge the defendant's reply-only evidence on appeal because he failed to file a motion to strike in the court below. This uncodified forfeiture rule has no basis in *Wallman v. Kelley*, is expressly foreclosed by *Amada Family Ltd. Partnership v. Pomeroy*, and conflicts with the approach of federal courts across multiple circuits.

Wallman addressed facts materially identical to those here: the defendant raised a causation argument for the first time in his summary judgment reply brief. The Court held: "An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is

not put on notice as to the need to present evidence concerning that issue." 976 P.2d at 332. The Court reversed the grant of summary judgment, holding: "because plaintiff was not given notice... we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions." *Id.* Critically, *Wallman* imposes *no* requirement that the plaintiff must first move to strike or seek leave for surreply before raising that objection: the procedural protection against reply-only evidence is automatic, not contingent upon the non-movant taking additional procedural steps. This structural protection—a cornerstone of summary judgment procedure—was established decades ago in *People v. Hernandez & Assocs., Inc.,* 736 P.2d 1238 (Colo. App. 1986).

Furthermore, enforcing this forfeiture rule diametrically conflicts with *Amada Family Ltd. Partnership v. Pomeroy.* The Panel's ruling effectively subjects litigants to two mutually exclusive procedural realities: one where *Amada* guarantees appellate review without a prior motion to strike, and one where the Panel strictly forbids it. By reviving the exact uncodified trap that *Amada* expressly forecloses, the Panel has created a direct, irreconcilable split.

This forfeiture rule also conflicts with federal authority recognizing the unfairness of permitting movants to introduce new reply-only evidence without affording an opportunity to respond. The Eleventh Circuit, in *Atlantic Specialty Ins.*

Co. v. Digit Dirt Worx, Inc., 793 F. App'x 896 (11th Cir. 2019), vacated a summary judgment because the district court relied on a new declaration submitted in a reply brief while denying the non-movant's request for a surreply—holding that a court must either permit a response or disregard the new evidence entirely. The Tenth Circuit enforces the identical rule under Fed. R. Civ. P. 56 in *Beaird v. Seagate Tech., Inc.,* 145 F.3d 1159, 1164 (10th Cir. 1998). In *Knowlton v. Shaw*, 791 F. Supp. 2d 220, 228 (D. Me. 2011), the Court explained that summary judgment rules do not "allow the movant to add new facts at this late stage" because "[b]oth efficiency, and fairness to one's adversary, militate in favor of requiring a movant's opening brief [to serve as] a conclusive statement of its position."

Finally, the Panel's rule creates serious practical difficulties for trial courts and litigants. C.R.C.P. 121 generally disfavors surreplies and permits them only with leave of court, and uncodified motions to strike evidentiary submissions at the summary-judgment stage are likewise committed to judicial discretion. Conditioning preservation of a *Wallman*/*Amada* objection on a non-movant's success in obtaining such discretionary relief shifts the burden of enforcing Rule 56's structure from the offending party to the party that has already been disadvantaged by the reply-only submission. In *amici's* experience, rules that operate in this way tend to function as traps for unrepresented or resource-constrained litigants rather

than as neutral case-management tools. The Court should clarify that the prohibition on reply-brief ambush is a *limitation* on what may support summary judgment in the first place, not a *privilege* forfeited by failing to pursue disfavored motions.

II. THE PANEL DEPARTED FROM THE BEDROCK RULE THAT CROSS-MSJS MUST BE CONSIDERED INDEPENDENTLY

The foundational principle of summary judgment with cross-motions is that each motion is evaluated separately on its own evidentiary record. *Morlan* stated this rule plainly: "Each of such motions is to be considered and ruled upon separately." 252 P.2d at 100. *Central Bank* reinforced the point: "Each motion, together with evidentiary matters tendered in support thereof, must stand on its own and cannot be aided by the motion of the opposing party." 326 P.2d at 83. *Morlan* went further, holding that "concessions" made in support of a cross-motion "terminate" once that motion is overruled and cannot "carry over" into the opposing party's motion, which must be "completely unsupported by anything except such as it had itself placed in the record." 252 P.2d at 101. In *amici's* experience, clear adherence to this separation prevents cross-motions from silently shifting burdens or expanding the evidentiary record without transparent notice to either side.

This principle is not parochial to Colorado. The Ninth Circuit held, in *Fair Housing Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001), that when parties file cross-motions for summary judgment, "[e]ach

motion must be considered on its own merits" and the court must evaluate each independently to determine whether genuine issues of material fact exist.

The Panel's holding departs from this structure. It reasoned that the plaintiff "had the opportunity to respond to the affidavit and receipts when he submitted his reply in support of his cross-motion for summary judgment," effectively treating that filing as a surreply to the defendant's separate motion. But a reply in support of a cross-motion serves a different function: it argues that no genuine dispute of material fact exists as to the cross-movant's claims. Under *Morlan*, any concessions implicit in that posture "terminate" once the cross-motion is denied and cannot be carried over to shore up an opposing motion that must stand on its own proof.

From *amici's* perspective, the problem is not unique to this case. If cross-motion replies may routinely be treated as surrogate surreplies, litigants who file cross-motions will be worse off than those who do not: their filings will be used to fill gaps in an opponent's record in a way *Morlan* and *Central Bank* do not permit. That asymmetry undermines the predictability of summary judgment practice and discourages parties from using cross-motions to frame issues efficiently. The Court should reaffirm that each summary-judgment motion must be evaluated on its own evidentiary record and that exercising the right to file a cross-motion does not waive the protections those cases provide.

III. THE PANEL NULLIFIED THE MOVANT'S INITIAL BURDEN BY PERMITTING "REBUTTAL" EVIDENCE WITHOUT ANY PRIOR FACTUAL DENIAL

The cornerstone of summary judgment practice under C.R.C.P. 56 is the movant's initial burden. Under Colorado law, the moving party bears a two-component burden: first, an initial burden of production to demonstrate the absence of a genuine issue of material fact; and second, a final burden of persuasion if the non-movant's showing is made. *Cont'l Air Lines, Inc. v. Keenan,* 731 P.2d 708, 710 (Colo. 1987). Only after the movant satisfies their initial production burden does the burden shift to the non-movant to establish that a triable issue of fact exists. *Woodward v. Bd. of Directors of TACO*, 155 P.3d 621, 626 (Colo. App. 2007). In cases *amici* have litigated, that allocation has been essential to ensuring that summary judgment does not function as a one-sided pleading device. However, in this case, Best Buy's opening MSJ contained no affidavit, no receipt, and no business record—only conclusory argument. It therefore failed to satisfy the initial production burden as a matter of law.

The non-movant correctly identified this deficiency in his Response, noting the complete lack of tangible, admissible evidence in the opening motion to substantiate the accusations. These are burden-of-proof arguments, not factual denials, and they are precisely the arguments the non-movant is entitled to make

when the movant has failed to satisfy its initial burden. The Panel, however, characterized the plaintiff's arguments as factual "denials" about "exiting the store, having merchandise, and having a receipt," and held that Best Buy's reply-only evidence was "rebuttal" to those denials.

This characterization is self-defeating. The Panel simultaneously held that the plaintiff "does not deny having a receipt at the time of the incident" and "provided no contrary evidence about his actions inside the store." But if the plaintiff made no factual denials and presented no contrary evidence, then the defendant's reply-only evidence cannot logically constitute "rebuttal"—by definition, rebuttal responds to something. Evidence introduced to prove a fact never disputed is not rebuttal; it is belated foundational evidence that should have accompanied the opening brief. And if, on the other hand, the plaintiff's arguments *did* constitute denials sufficient to trigger a rebuttal response, those denials *themselves* created genuine disputes of material fact independently requiring denial of the defendant's MSJ. The Panel's own logic leads inescapably to the same conclusion either way: Best Buy's MSJ should have been denied.

The Panel's reasoning thus allows a movant to postpone its evidentiary showing until reply while still claiming the benefit of the "rebuttal" label and a strict forfeiture rule. In practical terms, a party could file an opening brief resting solely

on attorney argument, wait to see how the non-movant responds, and then submit foundational proof in reply while asserting that any objection has been waived. That sequencing is difficult to reconcile with the front-loaded design of C.R.C.P. 56 and with decisions holding that the movant must make a sufficient evidentiary showing before any burden shifts to the non-movant. *Amici* respectfully submit that this Court should clarify that "rebuttal" evidence presupposes an evidentiary showing to rebut; it cannot be used to supply the movant's initial burden in the first instance.

IV. THE PANEL REDEFINED "RAISING AN ISSUE" TO MEAN DISCUSSING GENERAL TOPICS WITHOUT EVIDENCE, CONTRAVENING *SUNCOR*

The Panel committed an independently fatal error by holding that Best Buy's evidence-free opening brief "put Montgomery on notice" of the need to present evidence. The Panel reasoned that the MSJ provided notice because it "raised the shopkeeper's privilege and specifically claimed that he exited the store with merchandise, refused to show a receipt, and was suspected of theft." *Opinion at ¶ 35.* This holding directly contravenes *Suncor v. Aspen*, which holds that "a conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact."

The words "specifically claimed" are critical to the Panel's rationale—and *Suncor* expressly rejects them. *Suncor* holds that no matter how specifically a

movant states a proposition, the statement is legally insufficient to discharge its burden under C.R.C.P. 56 *without supporting evidence*. The specificity of the language does not transform bare argument into evidentiary substance. Best Buy's opening brief contained no affidavit attesting to observed theft, no receipt, and no business record—only counsel's assertions. An attorney's assertion in a brief is not evidence; it is argument. And argument, however pointedly phrased, cannot substitute for the evidentiary showing C.R.C.P. 56 requires.

The Panel's rule substantially weakens *Suncor's* protection. If "specifically claiming" facts in an evidence-free brief suffices to "raise an issue" under C.R.C.P. 56, movants may file skeletal opening submissions and reserve the presentation of actual proof for reply, while non-movants are expected to anticipate and counter factual showings that have not yet been made. In *amici's* view, that approach collapses the distinction between argument and evidence that *Suncor* draws and makes it difficult for courts to determine, at the opening-brief stage, whether the movant has carried its initial burden. No Colorado precedent endorses this type of placeholder practice, and *Suncor* strongly indicates that it is impermissible.

The combined effect of the Panel's holdings in Sections III and IV is particularly corrosive. Under the Panel's framework, a movant may file an evidence-free brief that "specifically claims" key facts; the non-movant, getting no

notice of what actual evidence exists, raises burden-of-proof arguments; the movant then introduces foundational evidence in reply; and the court treats the reply-only evidence as proper "rebuttal" while holding that the non-movant was "on notice" from the original evidence-free assertions. This closed loop renders the movant's initial burden under C.R.C.P. 56 entirely illusory—a procedural fiction that the Panel has substituted for the substantive rule this Court has consistently applied.

V. THE DECISION ENDANGERS ACCESS TO JUSTICE FOR ALL *PRO SE* LITIGANTS

The Panel's four errors do not operate in isolation. Together, they create a procedural framework that is especially difficult for *pro se* and resource-constrained litigants to navigate, even though those litigants comprise a substantial share of Colorado's civil docket. In *amici's* experience representing civil-rights plaintiffs and low-income clients, rules that condition preservation on sophisticated motion practice in reply-brief settings tend to function as traps rather than as neutral case-management tools. The same dynamics also affect represented parties who face well-resourced opponents willing to exploit the procedural openings the Panel has created.

The Panel's "no-motion-to-strike" forfeiture rule demands that a litigant—upon seeing new evidence introduced in an opposing reply brief—immediately recognize the procedural significance of that evidence, identify the applicable motion practice, and file a motion to strike, without delay, before summary

judgment is entered. *Wallman* imposes no such requirement. The Panel created it for everyone, without acknowledging that its burden falls most heavily on those without legal training. Courts have long recognized that procedural rules must not become traps that cause inadvertent forfeitures, particularly for unrepresented parties. *Findlay v. Lewis*, 831 P.2d 830, 833 (Ariz. Ct. App. 1991). *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983).

The Panel's "sufficiently raised" error further compounds these dangers. Under the new "specifically claimed" standard, a movant need never produce a single piece of evidence in its opening brief to place the non-movant "on notice." It need only assert—confidently and specifically—what it expects its evidence to eventually show. The non-movant must then anticipate, gather, and produce rebuttal evidence against a factual case that has not yet been made. For *pro se* litigants without discovery counsel, investigative resources, or legal training, this is an impossible task. But even for represented parties, it is fundamentally unfair: C.R.C.P. 56 requires the movant to come forward with evidence first, not last.

As *Smith v. Mills,* 123 Colo. 11, 225 P.2d 483 (1950), instructs, courts "should not deny a litigant a trial where there is the slightest doubt as to the facts." The combination of rules endorsed by the Panel—imposing automatic forfeiture in the absence of a motion to strike, conscripting a cross-motion reply to serve as a surrogate

surreply, allowing reply-only evidence to serve as both foundation and "rebuttal," and treating unsupported assertions as sufficient "notice,"—makes it significantly easier for meritorious claims to be resolved on procedural grounds rather than on the evidence. From *amici's* perspective, that development is inconsistent with Colorado's longstanding commitment to resolving civil disputes on their merits and warrants this Court's supervisory intervention under C.A.R. 49(b), (c), and (d).

CONCLUSION

The decision below conflicts with multiple controlling Colorado precedents, creates uncodified forfeitures of appellate rights unsupported by any rule or prior case law, alters the allocation of the movant's initial burden under C.R.C.P. 56, and dilutes the distinction between argument and evidence by treating "specifically claimed" assertions as if they were proof. In *amici's* view, these errors are likely to recur in other cases and, if left uncorrected, will weaken basic procedural protections for civil litigants throughout the state.

WHEREFORE, for the foregoing reasons, *Amici* respectfully urge this Court to **GRANT** the Petition For Writ Of Certiorari.

Respectfully submitted on this, the 4th day of June, 2026.

[Amici Signature Placeholder]

CERTIFICATE OF SERVICE

Amici hereby certify that on this, the 4th day of June, 2026, the foregoing **BRIEF OF *AMICI CURIAE* IN SUPPORT OF GRANTING PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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