CONSOLIDATED BRIEFING COMPENDIUM

Montgomery *v.* Best Buy Stores, L.P.

COLORADO COURT OF APPEALS · NO. 2025CA1351

Attorney Fees Appeal Briefing

All merits briefing in the parallel attorney-fees appeal of 2025CA1351.

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:

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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TABLE OF AUTHORITIES

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RULES, STATUTES, ETC.

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.**

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 **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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Attorneys for Defendant


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**
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>
</table>

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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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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