

Montgomery v. Best Buy Stores, L.P.

JEFFERSON COUNTY DISTRICT COURT · NO. 2023CV226

Motion for Reconsideration & Second MFR Briefing

Both motions for reconsideration, all responses, all replies, the exhibit attached to the first MFR, and both Orders denying both motions.

1.	Plaintiff's Motion for Reconsideration Filed December 3, 2024	2
1a.	Plaintiff's MFR Exhibits Exhibit #1: 5 Ways To Shop Sustainably At Best Buy — the store's nationwide policy phasing out plastic bag use	19
2.	Defendant's Response to Plaintiff's MFR Filed December 24, 2024	20
3.	Plaintiff's Reply in Support of MFR Filed December 31, 2024	26
4.	Order Denying Plaintiff's MFR Issued January 6, 2025 · Hon. Christopher C. Zenisek (with attachments)	37
5.	Plaintiff's Second Motion for Reconsideration Filed January 21, 2025	38
6.	Defendant's Response to Plaintiff's Second MFR Filed February 7, 2025	44
7.	Plaintiff's Reply in Support of Second MFR Filed February 14, 2025	47
8.	Order Denying Plaintiff's Second MFR Issued February 18, 2025 · Hon. Christopher C. Zenisek	52

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	
Attorney Or Party Without Attorney: William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: 2023CV226 Division: 6 Courtroom: 520
PLAINTIFF'S MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

“A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.” *C.R.C.P. Rule 121 § 1-15 (11)*. Today, Plaintiff seeks to correct manifest errors this Court made in *both* fact **and** law.

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. **PLAINTIFF WAS NOT GIVEN FAIR NOTICE IN ORDER TO PRESENT [MORE SPECIFIC] EVIDENCE ON BOTH THE "SHOPKEEPER'S PRIVILEGE" AND "RECEIPT POSSESSION" ISSUES DEFENDANT RAISED FOR THE VERY FIRST TIME IN ITS MSJ REPLY BRIEF**

On July 25, 2024, Defendant filed a MOTION FOR SUMMARY JUDGEMENT in this matter. In the MOTION, Defendant: 1) **DID NOT** submit to the Court any affidavit of Mahmoud Abu-Shaweesh, 2) **DID NOT** submit to the Court any business records (i.e. receipts) purportedly of the incident at issue [let alone accompany with such business records any affidavit of their “custodian or other qualified person” necessary, *by law*, to “certify the record”], 3) **ONLY** submitted to the Court a generalized YouTube video of Plaintiff that failed to address [let alone refute] the specific facts of his specific instant case at issue, and 4) **ONLY** submitted to the Court a bunch of wholly generalized, utterly unsubstantiated, purely conclusory legal argument that Plaintiff is simply a “lawsuit scammer” *purportedly undeserving of due process* in his, again, specific instant case at issue.¹

With the aforementioned facts being irrefutably true, this Court, *through either recklessness, indifference, incompetence, malice, or some combination of the four*, officially **LIED** when it said that “Defendant has supplied [*WITH ITS INITIAL MSJ*] an affidavit stating that its employee saw Plaintiff 'remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store,’” *Order Granting Def's MSJ at page 7*, **LIED** when it said that “Defendant has submitted [*WITH ITS INITIAL MSJ*] a Best

¹ Defendant made claims that “Plaintiff intentionally concealed merchandise,” *Def's MSJ at page 8*, “Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items,” *Def's MSJ at page 10*, and “Plaintiff took Best Buy inventory and refused to show proof of purchase,” *Def's MSJ at page 11*. However, **ABSOLUTELY NONE** of these **CONCLUSORY STATEMENTS** were made with **ANY SUPPORTING DOCUMENTATION, WHATSOEVER, to even begin to create AN ACTUAL ISSUE** of material fact in the matter. “A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008). Indeed, Defendant *even admitted* that it didn't *actually* have any real, tangible evidence to support **ANY** of the baseless claims that it had been making, by way of its very own **explicit** use of the words “if” and “presumed” in the [only honest] statement it made in its MSJ: “If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is *presumed* Plaintiff had such proof...” *Def's MSJ at page 7*.

Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial² burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment," *Order Granting Def's MSJ at page 6*, **LIED** when it said that "Defendant has submitted proof *[WITH ITS INITIAL MSJ]* that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store," *Order Granting Def's MSJ at page 4*, and **LIED** when it said that "Defendant has provided proof *[WITH ITS INITIAL MSJ]* that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase," *Order Granting Def's MSJ at page 3*. **LITERALLY EVERY SINGLE HOLDING THE COURT MADE REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT BRIEFING WAS A 100% STRAIGHT UP LIE! ABSOLUTELY NO AFFIDAVITS, OR BUSINESS RECORDS, OF ANY KIND, WERE EVER SUBMITTED TO THE COURT, BY DEFENDANT, WITH ITS ***I-N-I-T-I-A-L*** MOTION FOR SUMMARY JUDGMENT, FOR A DISPOSITIVE RULING TO BE FAIRLY MADE IN THE MATTER,** as will be discussed in detail later.

Next, on September 19, 2024, Plaintiff filed his RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. In the RESPONSE, Plaintiff: 1) **DID** submit to the Court an affidavit substantiating that he had "[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022," *Plaintiff's Affidavit at ¶ 5*, 2) **DID** submit to the Court an affidavit substantiating that "all three Best Buy employees had physically 'corralled' [him] against the building's wall, leaving [him] with no place to go," *Plaintiff's Affidavit at ¶ 12*, 3) **DID** submit to the Court an affidavit substantiating that

2 This word – "initial" – is the **most damning** of the Court's **LIES**. Clearly, Defendant ***DID NOT*** satisfy its "**initial burden as the movant**," because it ***DID NOT*** supply *any* affidavits, *whatsoever*; **WITH ITS MSJ**, in the first place!

“on that day of November 25, 2022, [he had] [n]ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period,” *Plaintiff's Affidavit at ¶ 24*, 4) **DID** submit to the Court an affidavit substantiating that “on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees,” *Plaintiff's Affidavit at ¶ 25*, 5) **DID** submit to the Court evidence, via news articles, showing “how rampant unlawful 'receipt checkpoints' are becoming in today's society,” thereby establishing that he is NOT a “lawsuit scammer” **for simply exercising the same cognizable rights that others have been exercising** to simply not answer questions and not consent to searches upon leaving non-membership stores held open to the general public, *PRTDMSJ Exhibit #14*, 6) **DID** submit to the Court evidence, via police records, that Defendant **LIED** in Plaintiff's bodycam footage that it had called the police that day [when it clearly didn't], *PRTDMSJ Exhibit #15*, 7) **DID** submit to the Court evidence, via his bodycam footage, that Defendant “had [no] earthly idea, whatsoever, the nature or identity of *whatever* Plaintiff had been holding in his hands [that day of November 25, 2022]. The same goes for whatever existed in one of his pant pockets, too,” *Def's Exhibit M*, 8) **DID** submit to the Court valid legal argument that Defendant **100% FAILED** to satisfy **ITS** affirmative-defense burden to show that it had “shopkeeper's privilege” for its actions in the matter [by not providing the Court with ANY evidence, *whatsoever*, that Plaintiff stole from it that day], and finally 9) **DID** submit to the Court valid legal argument that Defendant had also **100% FAILED** to satisfy **ITS** burden to show that Plaintiff ***was even a customer of it in the first place*** [upon which he might have potentially received a receipt that he might have otherwise been required to show]. What Plaintiff **DID NOT** do in his RESPONSE, however, was “deny having been in the store that day,” or “deny having the store's merchandise on him.” Critically, Plaintiff simply **NEITHER CONFIRMED NOR DENIED** such things, as such confirmations and/or denials [in either direction] were wholly unnecessary for him to make, **because of how Defendant did not**

SATISFACTORILY [read: even begin to] raise such ACTUAL issues of ACTUAL fact in its **I-N-I-T-I-A-L MSJ, in the first place, BY WAY OF AFFIDAVIT OR THE LIKE, for him to then be required, in turn, to ACTUALLY respond to and refute.** In other words, because Defendant didn't create any genuine DISPUTES of fact **IN ITS MSJ OPENING BRIEF** on those two particular issues, Plaintiff wasn't required to RESPOND with any confirmations OR denials regarding them [because they obviously didn't exist *to even respond to in the first place*].

With the aforementioned facts being irrefutably true, this Court, once again, *through recklessness, indifference, incompetence, malice, or some combination of the four,* officially **LIED** when it said that “Plaintiff, in his response, denies having been in Best Buy, [and] denies having the store’s merchandise on him,” *Order Granting Def’s MSJ at page 6,* and **LIED** when it said that “In Plaintiff’s affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant’s employees,” *Order Granting Def’s MSJ at page 6.*³ Again, Plaintiff’s RESPONSE and its attendant affidavit are simply bereft of any confirmations **OR** denials, altogether, that he was a customer of the store, since his **SOLE** job *in responding* to Defendant’s MSJ was to **ONLY** refute **ACTUAL** issues of fact ACTUALLY, FAIRLY, GENUINELY, AND SUCCESSFULLY raised by it in its initial MOTION, **and to which Defendant clearly failed to do.** Consequently, all Plaintiff was required to do *in response* to such an unsubstantiated MSJ, was simply

3 The Court also **LIED** when it said that “Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.” Specifically, Plaintiff **DID** submit an affidavit substantiating that he “[n]ever once met, seen, identify, pass by, or been located anywhere physically near [Mahmoud, Shane, and John Doe] on that day of November 25, 2022,” *Plaintiff’s Affidavit at ¶ 5,* **DID** submit an affidavit substantiating that “on that day of November 25, 2022, [he had] [n]ever once ‘concealed’ anything in front of (let alone not in front of) anybody, ever, period,” *Plaintiff’s Affidavit at ¶ 24,* and **DID** submit an affidavit substantiating that “on that day of November 25, 2022, [he had] [n]ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in [his] pant pockets remained there before, throughout, and after [his] interaction with the Best Buy employees,” *Plaintiff’s Affidavit at ¶ 25.* While not **explicitly** mentioning so, it strains credulity that any of these facts would NOT be referencing Plaintiff’s actions **INSIDE** the store at issue. Moreover, the absence of such “**explicitness**” is not fatal, as this Court itself has pointed out that “In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. *Vigil v. Franklin*, 81 P.3d 1084, 1086 (Colo. App. 2003), rev’d on other grounds, 103 P.3d 322 (Colo. 2004). Therefore, this Court **must** infer that said three facts substantiated by Plaintiff applied to him being INSIDE the store.

point out that Defendant failed to supply the Court with ACTUAL affidavits to support its initial MOTION, *and not just conclusory legal argument*, **and to which Plaintiff did so without issue.**

Finally, on October 10, 2024, Defendant filed its REPLY to Plaintiff's RESPONSE to its MOTION FOR SUMMARY JUDGMENT. In the REPLY, Defendant, **FOR THE FIRST TIME EVER IN ITS BRIEFING**, 1) submitted a *never-before-seen* affidavit by Mahmoud Abu-Shaweesh, and 2) submitted *never-before-seen* business records (i.e. receipts) purportedly of the incident at issue. The supplied affidavit was Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [with supposedly admissible evidence] that it “detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets.” *Def's Reply at page 11*. The supplied business records (i.e. receipts) were Defendant's **FIRST ATTEMPT** during its **ENTIRE** MSJ briefing to argue [again, with supposedly admissible evidence] that “Plaintiff had been inside the Best Buy making a purchase” [for which he might have had a receipt for and might have otherwise been required to show upon leaving]. *Def's Reply at page 5*. **HOWEVER, NEITHER OF THESE TWO FRESH ARGUMENTS WERE MADE IN DEFENDANT'S INITIAL MSJ, NOR EVIDENCE SUPPLIED THEN TO SUPPORT THEM WITH.**

Now, the reason why Plaintiff has outlined the chronological background and nature of Defendant's MOTION FOR SUMMARY JUDGMENT (and its attendant briefing) is because **IT IS OF ABSOLUTE CRITICAL IMPORTANCE** that this Court understand [because it evidently does not, based on its most recently ruling] that the Colorado Rules Of Civil Procedure **PROHIBIT** nonmovants from filing REPLIES TO REPLIES (I.E. “SURREPLIES”). *See C.R.C.P. Rule 1-15(1)(a)* (holding that briefs are limited to motions, responses, and replies). *See also C.R.C.P. Rule 56(c)* (holding that affidavits can only be served “within the time allowed for the **responsive** brief,” i.e. that they are NOT allowed to be filed within the time allowed for the **reply** brief – *which is what Defendant impermissibly did in this instant case*). In other words, Plaintiff is **PROCEDURALLY DISALLOWED** from *even having the opportunity* to properly

defend himself against Defendant's aforementioned *fresh*, REPLY-ONLY arguments made in this particular matter. Therefore, without any actual SURREPLY in the record to support its holdings, this Court has, once again, officially LIED when it said that “Plaintiff provides no evidence [*IN HIS RESPONSE*] of his actions in the store to counter⁴ this,” *Order Granting Def's MSJ at page 4*, LIED when it said that “In Plaintiff’s [*RESPONSE*] affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant’s employees,” *Order Granting Def's MSJ at page 6*, and LIED when it said that “Plaintiff [*IN HIS RESPONSE*] has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident,” *Order Granting Def's MSJ at page 6*. **Now**, even though Plaintiff DID make multiple statements and DID submit multiple proofs, generally, regarding “his actions inside the Best Buy immediately preceding the incident” *see footnote 3, above*, **to the extent that such statements and proofs are not specific enough [as this Court appears to argue] to overcome the NEW arguments made by Defendant STRICTLY in its REPLY brief, PLAINTIFF ABSOLUTELY CANNOT BE FAULTED FOR NOT BEING SPECIFIC ENOUGH**. Therefore, since Plaintiff was not given FAIR NOTICE to be more specific with his arguments and evidence, [and since SURREPLIES are not allowed in Colorado Law], this Court's granting of Defendant's MSJ **was manifestly unfair to him**. In layman's terms, this Court should not have granted Defendant's MSJ using such DELAYED argument and evidence **THAT PLAINTIFF WAS INDISPUTABLY DENIED THE DUE PROCESS TO PROPERLY RESPOND TO**. “An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue.” *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999). Specifically, in *Wallman*, the Court held that in Defendant's “reply brief before the trial

4 This word – “counter” – is the **most damning** of the Court's LIES. **OF COURSE** Plaintiff didn't “counter,” in his RESPONSE to Defendant's initial MSJ, the **NEW** arguments Defendant raised **FOR THE VERY FIRST TIME** in its **REPLY, BECAUSE THEY WERE NEVER MADE BEFORE THEN!** Talk about a due process violation here!

court, Kelley **argued for the first time** that plaintiff could not prove that the JBH she allegedly purchased from him caused her illness.” *Id at 332*. The Court then **explicitly** held that “**because plaintiff was not given notice that she needed to present evidence** on the causation issue in defendants' initial summary judgment motions and briefs, **we conclude that the trial court incorrectly relied upon the lack of such evidence in granting the motions.**” *Id*. THE SAME HOLDS **100% IDENTICALLY TRUE** TODAY IN PLAINTIFF'S INSTANT CASE. Because Plaintiff “was not given notice that he needed to present evidence” [or in this case, more specific evidence] ON **BOTH** NEW, FRESH, **REPLY-ONLY** RAISED ISSUES of “shopkeeper's privilege” and “receipt possession,” this Court “incorrectly relied upon the lack of such evidence in granting [Defendant's] motion.” *Id*. Case in point: the official **LIE** this Court made when it said that “Plaintiff argues [*IN HIS RESPONSE*] that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any 'genuine' issue of fact, not whether there is any conceivable issue of fact.” *Order Granting Def's MSJ at page 6, footnote 6*. Such argument – “that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise” – was **NOT** an argument EVEN MADE in Defendant's MSJ briefing, **IT WAS MADE IN PLAINTIFF'S CROSS-MSJ BRIEFING**, [and it was only made at the end of it, in his final REPLY, at the earliest opportunity he was given to first address the argument, and to which he would not have even been able to fully address either, by way of, say, supplying an affidavit on the subject of his brother, since he isn't allowed to submit affidavits with replies any more than Defendant is allowed to do so!].⁵ *See C.R.C.P. Rule 56(c)* (holding that affidavits can only be served “within the time allowed for the

5 Ultimately, this only means that **denial** of *his* CROSS-MSJ might be proper, **not** the **granting** of *Defendant's* MSJ! “When a [Plaintiff's] motion for summary judgment is overruled, their admission of facts under their legal theory terminates, and it is error for a trial court to give any consideration thereto in connection with its determination of [Defendant's] motion. This leaves [Defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial. *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952).

responsive brief”). So, **OF COURSE** Plaintiff “failed to refute” the “genuine issue of fact” this Court claims Defendant purportedly “created” regarding “who made the associated purchase.” No genuine issue of fact was fairly created, *in time*, **in the first place**, **IN DEFENDANT'S INITIAL MOTION FOR SUMMARY JUDGMENT**, for Plaintiff TO HAVE EVEN BEEN GIVEN fair notice and opportunity to address and refute with evidence of his own!⁶ Indeed, it appears that this Court [disingenuously, recklessly, maliciously?] morphed Defendant's original, *evidence-belated* REPLY to Plaintiff's RESPONSE to its MSJ, *into the new MSJ itself*, to then [disingenuously, recklessly, maliciously?] morph Plaintiff's original RESPONSE to Defendant's MSJ *into some new, retroactively-created RESPONSE*, within which he purportedly “failed to address and refute” *the new, retroactively-applied issues* purportedly brought up by Defendant *in its new, retroactively-created super MSJ!*⁷ Nice try Court! You **almost** got away with it.⁸

In the end, Defendant simply submitted argument and evidence *too late into its briefing*,⁹ **but that's not Plaintiff's fault**. Had Defendant provided Plaintiff with FAIR NOTICE, Plaintiff would have supplied this Court with [more specific than before] evidence that he **DID NOT** conceal anything

6 Indeed, the day Defendant and Plaintiff became aware that Defendant's MSJ had been granted, Plaintiff's brother was scheduled to undergo deposition on this exact issue – that he *did* make the purchase for which the receipt was associated. But because this Court **impermissibly, prematurely** ruled on Defendant's MSJ, it failed to allow this evidence to fairly come forward. “Where the record has not been adequately developed on a material factual issue, summary judgment is not proper.” *Moore v. 1600 Downing St., Ltd.*, 668 P.2d 16 (Colo. App. 1983).

7 The Court then [disingenuously, recklessly, maliciously?] morphed Plaintiff's REPLY to Defendant's RESPONSE to *his* CROSS-MSJ into some sort of **SURREPLY** to Defendant's REPLY to his RESPONSE to *Defendant's* MSJ!

8 **Seriously**, this Court needs to be quoted again on this issue, one more time, to show **JUST HOW BAD** the dirty, timestamp-fudging, due process denial act is that it committed in this particular matter. See *Order Granting Def's MSJ at page 6* (“Defendant has submitted **[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]** a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant [NO IT DIDN'T!] of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment.”), *Order Granting Def's MSJ at page 6* (“Plaintiff, in his response **[NO HE DIDN'T!]**, denies having been in Best Buy, denies having the store's merchandise on him **[NO HE DIDN'T!]**, and denies concealing anything.”), *Order Granting Def's MSJ at page 4* (“Defendant has submitted **[NO IT DIDN'T! NOT WITH ITS INITIAL MSJ!]** proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store.”), *Order Granting Def's MSJ at page 4* (“Plaintiff provides no evidence **[NO HE DIDN'T, INTENTIONALLY THAT IS!]** of his actions in the store to counter this **[OF COURSE HE DIDN'T “PROVIDE ANY EVIDENCE OF HIS ACTIONS IN THE STORE TO COUNTER THIS,” BECAUSE HE WASN'T PUT ON NOTICE, IN THE FIRST PLACE, OF WHAT HE WOULD HAVE EVEN NEEDED TO COUNTER, SINCE DEFENDANT LITERALLY DENIED HIM THAT DUE PROCESS!]**”).

9 The tactic of impermissibly submitting evidence in REPLY briefs is a well known occurrence called **SANDBAGGING**.

specifically while inside the store, and that his brother **DID** specifically make the associated purchase.¹⁰¹¹ As such, because Defendant **DID NOT** provide Plaintiff with said FAIR NOTICE to supply said evidence, **REVERSAL** of the GRANTING of Defendant's MSJ is indisputably warranted.

II. THE COURT IMPERMISSIBLY HELD WITH CONCLUSORY STATEMENTS THAT PLAINTIFF IS SIMPLY A “LAWSUIT SCAMMER” UNDESERVING OF DUE PROCESS TO HAVE HIS CASE ADJUDICATED ON ITS MERITS

In the Court's ORDER granting Defendant's MSJ, it held that “Plaintiff’s YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his 'sting operation.” *Order Granting Def's MSJ at page 4*. Elsewhere in its ORDER, it further held that “Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit,” *Order Granting Def's MSJ at page 5*, and that “Plaintiff designed his conduct to inspire this belief.” *Order Granting Def's MSJ at page 6*.

The first problem with these tendentious holdings, IS THAT THEY ARE ALL 100% UNSUBSTANTIATED, **PURELY CONCLUSORY STATEMENTS**, DEVOID OF **ANY SPECIFIC** FACTS OR EVIDENCE **IN THE ***P-R-E-S-E-N-T*** RECORD** TO *EVEN BEGIN TO* SUPPORT THEIR PURPORTED TRUTHFULNESS WITH. “A **conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.**” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008). **Seriously**, Plaintiff's YouTube video doesn't even mention the words “Best Buy” in it, ONCE, let alone address ANY of the facts necessary to **legally and fairly** decide Plaintiff's instant case with.

10 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **WAS NOT** asked to show a receipt by any other employee [and **DID NOT** refuse to show a receipt to any other employee] on his way out of the store, contrary to what Mahmoud Abu-Shaweesh claims to have occurred in his belated, *REPLY-ONLY* affidavit.

11 Plaintiff would have also supplied this Court with [more specific than before] evidence that he **DID NOT** even have a receipt on him, in the first place, for which he might have otherwise been required to show, because of how he **DID NOT** have store merchandise in his hands, let alone in his pockets [but rather held in his hands merchandise that he had erroneously attempted to return to the wrong store, and had in his pockets boxed medication used to treat his acid reflux condition with]. [This footnote is meant to address the **LIE** this Court put forth when it impermissibly argued that “Plaintiff does not deny having a receipt at the time of the incident.” *Order Granting Def's MSJ at page 3*. Such lack of denial, again, was made without Plaintiff being given FAIR NOTICE of what he needed to address and refute].

Next, **the holdings violate Plaintiff's State and Federal 14th Amendment Rights to DUE PROCESS**, in which he has a Constitutional Right to have EACH INDIVIDUAL CASE OF HIS TRIED EACH ON AN INDIVIDUAL BASIS, i.e. completely on **EACH** of their **OWN** merits, and to not be *summarily* and *tendentiously* dismissed by some kangaroo court upon it simply spouting to the world that “we don't need to reach the merits of the instant case *today* because we hold that Plaintiff is *forevermore* a trifling lawsuit scammer!” **Seriously, whatever happened to trying a case on its merits?** Does this Court **REALLY** think that “once a lawsuit scammer, always a lawsuit scammer” is **ACTUALLY** a cognizable legal argument? **Because it's not.** About the **ONLY** thing this Court can do regarding Plaintiff's “purportedly disingenuous motives,” **is to present that issue to the Jury.** “Summary judgment is usually inappropriate in cases dealing with potentially unconstitutional motivations. Because evidence concerning motive is almost always subject to a variety of conflicting interpretations, a full trial on the merits is normally the only way to separate permissible motivations from those that merely mask unconstitutional actions.” *Ridgeway v. Kiowa Sch. Dist. C-2*, 794 P.2d 1020 (Colo. App. 1989). *See also Wolther v. Schaarschmidt*, 738 P.2d 25 (Colo. App. 1986) (“Generally, the issue of a party's intent is a question of fact, and is not an appropriate issue for summary disposition.”).

Next, **the holdings impermissibly shift the burden of proof back onto Plaintiff** to somehow argue that he is *not* a “lawsuit scammer,” **when the burden really still lies with the Defendant** [and will **FOREVER** lie with the Defendant] regarding its AFFIRMATIVE defense of “shopkeeper's privilege” in a false imprisonment claim. “The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification.” *People v. Agnew*, 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940). **Seriously**, such monumentally vague statements that Plaintiff “acts in a manner,” “creates misunderstandings,” and “designs his conduct” come **nowhere near** the level of specificity necessary

to satisfy *any* actual affirmative defense of “shopkeeper's privilege” in a matter. Such statements are so astoundingly vague that they could LITERALLY be invoked by *any* merchant, on *any* occasion, looking to hastily avoid liability for their actions. Therefore, such **conclusory** “hot words” are nothing more than **lazy** attempts to **skirt** having to *actually* address the issue, *which is not even that difficult of an issue to address, by the way.* **That is, Plaintiff’s “sting operation” is by no means some complicated, elaborate “ruse.”** He simply refuses to answer questions and/or refuses to consent to searches while on his way out of stores after shopping. **THAT'S IT!** Why can't Defendants and Courts simply address that issue, on its face? Why dance around vaguely chanting “lawsuit scammer, lawsuit scammer!”? Oh yeah, that's right, because they'd lose the argument, because merely “refusing to cooperate” isn't *actually* particularized behavior, because it's really just bootstrapping, because merchants [and police] “**lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention**, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter” with them. *Brief of the United States as Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick*, No. 89-1717.

Next, regarding Plaintiff's purported “sting operation,” **Best Buy stores don't even have “back registers”** [they have registers littered all throughout their stores], **they began phasing out plastic bags way back in July of 2022** [PMFR Exhibit #1], **and Plaintiff didn't even refuse to show his receipt on his way out** [nor was he even asked to show one, let alone did he have one on him in the first place for which he might have otherwise been required to show due to him not even being a customer of the establishment that day in the first place.]. Of course, **NONE of these facts were even remotely developed by the Court [let alone a Jury] in the first place, for which it would have otherwise been able to rule on, one way or the other.** So by that alone we KNOW this Court is 100% FULL OF CRAP regarding its purportedly dispositive holdings that “Plaintiff is simply a lawsuit scammer.” **Seriously.** Where's the scam? Where's the sting? Plaintiff BEGS this

Court to point to **A SINGLE FACT** fairly and indisputably¹² developed in the record that would *even begin to* substantiate the “elements” of his purported “sting operation.”¹³ Indeed, “[A] trial court's order must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision.” *In re Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988). *See also Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959) (“[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision.”). **Yet this Court has made no such EXPLICIT findings that the Appellate Court can even review. All it has done is conclusorily establish that “Plaintiff is simply a lawsuit scammer,” without even so much as describing how. What a monumental waste of time this will be for the Appellate Court if this Lower Court doesn't reverse this case immediately!** Moreover, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, **with different receipt checking policies**, where Plaintiff was **an actual customer** of those stores, had receipts **both printed AND provided to him** [i.e. not just emailed] upon shopping at those stores, and finally, **refused to show** [or keep on him] said **printed** receipts upon leaving those particular stores. However, **NONE** of those facts have *even remotely* been fairly and legally established by Defendant [or the Court] in Plaintiff's instant case. **It is truly baffling that this Court evidently does not understand how important it is that “A**

12 Remember, for purposes of ruling on Defendant's MSJ, the Court is **not allowed** to point to Mahmoud's affidavit, nor the affidavit-less business records (i.e. receipts), both *belatedly* submitted by Defendant *only* in its REPLY brief.

13 Technically, Plaintiff doesn't even know if “using back registers” and/or “not using plastic bags” are the actual reasons for why he is potentially detained. As such, they're not even a part of his long running “sting operation.” Meaning, Plaintiff certainly has *hypotheses* that such are reasons for why he is being *asked* to show a receipt, **but he has never filed lawsuits for merely being asked to show a receipt, he's only ever filed lawsuits for being detained AFTER NOT SHOWING ONE.** And to this date, no Defendant has EVER come forward on the record to explain precisely *why* they've detained him. Courts [like this one evidently] have always prematurely dismissed his cases without ever adjudicating them on the merits. As such, the only real, actual “element” to Plaintiff's long running “sting operation” **is to simply refuse to show his receipt [like any other patron has the right to do] and see what happens. THAT'S IT.** Of course, not even *that* “element” is part of Plaintiff's instant case, so there's **NO** “sting operation” going on *at all* now!

conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008).

Next, *while not even being necessary to provide, since Plaintiff is not required to refute conclusory statements made without supporting documentation or testimony*, Plaintiff nevertheless provided this Court with ***more than enough*** evidence to conclusively show [if not, **AT THE VERY LEAST**, send to the Jury to decide] that he is not a “lawsuit scammer” ***for simply refusing to answer questions and/or refusing to consent to searches while on his way out of stores***. Such conclusive evidence includes, but is not limited to: a) **dozens of news articles on the exact subject** [PRTDMSJ Exhibit #14], b) **decades-old law reviews on the exact subject** [Victoria S. Salzman, *Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!*, 4 Fla. A&M U. L. Rev. (2009)], c) **actual police activity of the same exact behavior as Plaintiff** [Cop Records Himself Detained At Walmart Receipt Check, *The Consumerist*, <https://tinyurl.com/4npw8cba> (Dec 23, 2010)], d) **identical or nearly identical case law on the subject** [*Coblyn v. Kennedy's Inc.*, 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971), *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000), *J. C. Penney Co. v. Cox*, 246 Miss. 1, 10 (Miss. 1963), *Mullins by Mullins v. Friend*, 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994), *Zenik v. O'Brien*, 137 Conn. 592 (Conn. 1951)], and e) **Supreme Court and Federal Court case law on the subject explicitly holding that “refusals to cooperate and/or consent to searches” absolutely cannot be used to “bootstrap” detentions with** [*Florida v. Bostick*, 501 U.S. 429, 111 S. Ct. 2382 (1991), *United States v. Hunnicutt*, 135 F.3d 1345 (10th Cir. 1998), *U.S. v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993)]. If, after familiarizing oneself with ALL THAT, one still ***miraculously*** considers Plaintiff to be a “lawsuit scammer,” **all hope is lost for that person**, *and they should probably not be practicing law in this Country*.

Last, but certainly not least, **is the statistics fraud**. If this Court is ***so confident*** that Plaintiff “acts in a manner that could **reasonably** be construed as suspicious,” then surely *every other*

merchant would be acting in the same way as Defendant has, by also *reasonably* detaining him for “scamming” them too, no? And because it's *so darn easy* to “entrap” all these innocent, *reasonably* acting merchants for simply *doing their jobs* and *following the law*, Plaintiff, being the greedy, money-grubbing “lawsuit scammer” that he is, would then have surely gone around and collected a bunch more fake lawsuits by now, no? **Right?** EXCEPT THAT HE HASN'T. BECAUSE HE'S NOT A LAWSUIT SCAMMER. BECAUSE IT'S NOT EASY TO CATCH FALSE IMPRISONERS. BECAUSE THERE AREN'T THAT MANY OUT THERE. BECAUSE MOST MERCHANTS ARE SMART, KNOW THE LAW, AND DON'T DETAIN PEOPLE FOR MERELY REFUSING TO COOPERATE. INDEED, THE LAST TIME PLAINTIFF CAUGHT A MERCHANT VIOLATING HIS RIGHTS BEFORE THE INSTANT CASE AT BAR **WAS LITERALLY OVER FOUR YEARS AGO.** So just give it up. Your stats aren't adding up. True lawsuit scammers would be INUNDATING your Courthouse with dozens, *if not hundreds* of fake lawsuits by now, if it is truly as easy as you say it is to “entrap” *reasonable* acting people. **As such, Plaintiff deserves to stop being eternally, retaliatorally, conclusorily defamed as a trifling “lawsuit scammer,” AND HAVE HIS INSTANT CASE ADJUDICATED ON ITS MERITS.**

CONCLUSION

“Trial courts should not grant motions or deny a trial where there is the slightest doubt. Trial courts should exercise great care in granting motions for summary judgment, and should not deny a litigant a trial where there is the slightest doubt as to the facts.” *Smith v. Mills*, 123 Colo. 11, 225 P.2d 483 (1950). “Even where it is extremely doubtful that a genuine issue of fact exists, summary judgment is not appropriate.” *Abrahamsen v. Mountain States Tel. & Tel. Co.*, 177 Colo. 422, 494 P.2d 1287 (1972). “Where the record has not been adequately developed on a material factual issue, summary judgment is not proper.” *Moore v. 1600 Downing St., Ltd.*, 668 P.2d 16 (Colo. App. 1983). “In passing upon a motion for summary judgment, it is no part of the court's function to decide issues

of fact but solely to determine whether there is an issue of fact to be tried.” *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). “Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment.” *Primock v. Hamilton*, 168 Colo. 524, 452 P.2d 375 (1969). **OF UPMOST IMPORTANCE:** “An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue.” *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999). **AND FINALLY:** “A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its most recent ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 3rd day of December, 2024.


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CERTIFICATE OF SERVICE

I hereby certify that on this, the 3rd day of December, 2024, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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Best Buy moving away from single-use plastic bags

By Ale Valeriano July 19, 2022



Starting this month, Best Buy will begin working with customers to create a more sustainable future together, one bag at a time.

Beginning July 19, customers shopping in-store will have the option to purchase a plastic bag for 10 cents or are encouraged to bring their own bags for purchases to help reduce plastic waste headed to landfills.

“As we continue to work toward our goal to be a more sustainable company, we are focused on reducing our waste and finding new ways to work with our customers to make a positive impact on the planet,” said Tim Dunn, Best Buy’s head of environmental sustainability. “This is just another example of the many sustainable choices we offer our customers.”

Here’s what you need to know:

- Starting July 19, we will begin charging 10 cents for each single-use plastic bag provided with store purchases.
- A portion of the fee goes toward supporting teens through programs like the Best Buy Teen Tech Center®
- Over the next few years, we will continue to work toward solutions to reduce plastic bag usage in our stores including offering more sustainable options for customers, such as paper bags.

From smart thermostats to offering 100 percent recyclable paper gift cards, Best Buy makes it easy to shop and live more sustainably. Since 2009, we have achieved major milestones in our sustainability programs and have reduced our carbon emissions by 62%. Through initiatives that include recycling more than 2 billion pounds of electronics and appliances to offering a wide variety of ENERGY STAR® certified products to help customers reduce their carbon emissions, we proudly continue our journey to building a more sustainable future.

Learn more about our sustainability program [here](#).

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>WILLIAM MONTGOMERY,</p> <p>Plaintiff,</p> <p>v.</p> <p>BEST BUY, L.P.,</p> <p>Defendant.</p>	
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
<p>DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO RECONSIDER</p>	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Response in Opposition to Plaintiff’s Motion to Reconsider as follows:

I. Legal Standard for Motions to Reconsider

“Once a court issues a final decision, that decision becomes the law of the case and cannot be relitigated.” *Vashone-Caruso v. Suthers*, 29 P.3d 339, 342 (Colo. App. 2001). Accordingly, motions for reconsideration are disfavored under Colorado law and are only appropriate in

exceptional circumstances. C.R.C.P. 121 § 1-15(11). A movant’s disagreement with the Court’s analysis provides no basis for reconsideration. Instead, the movant must show “a manifest error of fact or law that clearly mandates a different result or other circumstances resulting in manifest injustice.” *Id.*

For this reason, a “motion for reconsideration is not a license for [a party] to get a second bite at the apple’ . . . and file a reread of the old brief disguised as a motion for reconsideration.” *Shields v. Shelter*, 120 F.R.D. 123, 126 (D. Colo. 1988). Nor does the process exist “at the disposal of parties who want to rehash older arguments.” *Foster v. Mountain Coal Co., L.L.C.*, 61 F. Supp.3d 993, 998 (D. Colo. 2014). Because reconsideration seeks correction of a “clearly” erroneous order – and is not an opportunity to refine movant’s theories after having viewed the order – a movant may not present new arguments or evidence not included in briefing. “Colorado courts addressing this rule have consistently concluded that a district court does not abuse its discretion by failing to consider new arguments and evidence submitted in motions to reconsider.” *Fox v. Alfini*, 432 P.3d 593, 603 (Colo. 2018); *Hice v. Lott*, 223 P.3d 139, 149 (Colo. App. 2009) (following entry of summary judgment, trial court not required to consider evidence provided for the first time in a motion for reconsideration); *Ogunwo v. Am. Nat’l Ins. Co.*, 936 P.2d 606, 611 (Colo. App. 1997) (trial court need not entertain new theories on a motion to reconsider following the grant of summary judgment).

This is particularly true for motions for reconsideration following entry of summary judgment because “evidence submitted after the grant of summary judgment cannot properly be considered by the district court.” *E.g., Pzerkurat v. Torres*, 488 P.3d 125, 134 (Colo. App. 2016).

II. The Reply exhibits properly rebutted Plaintiff’s Response.

Plaintiff appears to take issue with two exhibits that were submitted in Best Buy's Reply Brief, namely the affidavit of Mahmoud Abu-Shaweesh and the receipts of Plaintiff's Best Buy purchases on the date of the incident. Both exhibits were properly offered in response to allegations by Plaintiff in his Response Brief. To wit, Defendant was responding to Plaintiff's allegations concerning his behavior immediately preceding the start of the video. *See, e.g.*, Plaintiff's Resp. at ¶¶ 22-23, 25. Thus, Best Buy's inclusion of these exhibits in Reply was proper. *See Tarpill v. Entelechy LLC*, No. 19CV30279, 2021 WL 4349996, at *2 (Boulder County Dist. Ct. Jan. 27, 2021) (denying motion to strike where information contained in reply brief responded to arguments raised in response brief); *City of Thornton v. Bd. of Cnty. Comm'rs*, No. 2019CV30339, 2019 WL 3228258, at *4 n.6 (Larimer County Dist. Ct. July 16, 2019) ("The Court may consider points raised for the first time in a reply brief when those points are made in response to arguments raised by a response brief."). To the extent that Plaintiff took issue with Best Buy's inclusion of such exhibits, Plaintiff could have availed himself to a motion to strike these exhibits or requested a sur-reply brief, but Plaintiff failed to do so.

III. Plaintiff failed to adequately respond rebut the exhibits in his own Reply.

Plaintiff argues that he was deprived of an opportunity to respond to these exhibits. However, the exhibits at issue were also submitted in the briefings for Plaintiff's Cross-Motion for Summary Judgment. Plaintiff had the opportunity to respond to and rebut the exhibits in Plaintiff's Reply submitted in the Cross Motion for Summary Judgment. The Court ruled upon both summary judgment motions simultaneously and considered all evidence and arguments submitted with both briefings before ruling in Defendant's favor.

Plaintiff had a *higher* burden in proving his cross-motion for summary judgment than the burden he had in opposing Defendant's motion for summary judgment. Thus, he was incentivized to provide stronger evidence in his cross-motion for summary judgment briefing, and yet, he still failed to present evidence sufficient to survive Defendant's motion for summary judgment. As such, Plaintiff cannot reasonably claim that he was unable to respond to these exhibits or that such alleged inability would have resulted in a different ruling. Therefore, Plaintiff has failed to prove that the present situation "clearly mandates a different result." *See*, C.R.C.P. 121 § 1-15(11).

IV. Best Buy met its initial burden on summary judgment.

The Court did not need to consider **Exhibits N, O and P** of the motions for summary judgment in order to find in Best Buy's favor. In the video of the incident, submitted as **Exhibit M** in Defendant's Motion for Summary Judgment, Best Buy employees repeatedly request that Plaintiff return the product in his possession, and Plaintiff remains silent. He does not deny that he has product in his possession nor did he make any effort to show the Best Buy employees that they were mistaken in believing Plaintiff had stolen product – perhaps by revealing whatever object was in his pockets. Plaintiff's conduct would be sufficient to invoke the shopkeepers' privilege and would likewise constitute a "refus[al] to utilize a means of escape." *See*, Restatement (Second) of Torts § 36 cmt a. Thus, Best Buy met its initial burden for summary judgment.

WHEREFORE, for the forgoing reasons, Defendant Best Buy respectfully requests that this Court deny Plaintiff's Motion for Reconsideration.

Filed **December 24, 2025**.

MONTGOMERY | AMATUZIO

By: s/ *Stephanie Boutsicaris*
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 24, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
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U.S. Mail Email CCES

s/ Stephanie Boutsicaris_____

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	
Attorney Or Party Without Attorney: William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: 2023CV226 Division: 6 Courtroom: 520
PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his REPLY to Defendant's RESPONSE to his MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

ARGUMENT

I. DEFENDANT FAILED TO INCLUDE EVIDENCE AND ARGUMENTS IN ITS INITIAL MSJ FOR PLAINTIFF TO PROPERLY RESPOND TO, AND EVIDENCE IN ONE MOTION CANNOT BE USED IN ANOTHER

In Defendant's RESPONSE to Plaintiff's MOTION FOR RECONSIDERATION, it begins by claiming that “Both exhibits were properly offered in response to allegations by Plaintiff in his Response Brief. To wit, Defendant was responding to Plaintiff’s allegations concerning his behavior immediately preceding the start of the video.” *Def's Resp. To Ptf's MFR at page 3*. First, this argument **doesn't ACTUALLY address** what Plaintiff argued in his MFR [which is based on what the Court argued in its ORDER]. Specifically, the Court **erroneously** and **impermissibly** held that

“Defendant has submitted [a Best Buy receipt and an employee affidavit] satisfying its “INITIAL” burden as the movant . . . [but whereby] Plaintiff, in his “RESPONSE” . . . has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.” *Order Granting Def’s MSJ at pages 6 and 7.* Obviously, as has already been satisfactorily argued by Plaintiff in the Opening Brief of his MOTION FOR RECONSIDERATION, Defendant **DID NOT** submit any such argument or evidence, *whatsoever*, with its ***I-N-I-T-I-A-L*** Motion For Summary Judgment, **NOR DID** Plaintiff “fail” to “respond” to such **NON-EXISTENT, non-initially-provided** arguments or evidence, either. As such, and because Defendant has failed to *actually* address this *specific* **time-stamp-fudging, due-process-violation** argument put forth by Plaintiff in his MFR, it has hereby *confessed* the argument as true and valid [and whereby this Court should grant Plaintiff’s MFR as a result]. Second, *and perhaps more importantly*, is that such an argument – that “Defendant was responding to Plaintiff’s allegations concerning his behavior immediately preceding the start of the video” – is actually an argument **FOR** Plaintiff, rather than **AGAINST** him! This is because it literally contains within it *the very confession* that Plaintiff **DID INDEED** make specific enough allegations in his Response Brief “concerning his behavior immediately preceding the start of the video.” BUT WAIT, isn’t that **the exact opposite** argument that the Court made in its ORDER – that Plaintiff purportedly “*has provided no evidence* as to his actions inside the Best Buy store” immediately preceding the start of the video? *Order Granting Def’s MSJ at pages 7.* WHY, IT IS! **So, Defendant and Court, which is it?** Did Plaintiff “provide no evidence” in his RESPONSE to Defendant’s MSJ [the Court’s argument], or did he “provide evidence” [Defendant’s argument]??? Ultimately, **it doesn’t matter either way**, because both positions favor Plaintiff. Either Plaintiff **DID NOT** provide [specific enough] argument and evidence negating “shopkeeper’s privilege” and “receipt possession” in his RESPONSE to Defendant’s initial MSJ, but whereby he cannot be faulted for not doing so because of how Defendant **DID NOT** put him on FAIR NOTICE to be able counter such NON-EXISTENT arguments or evidence NOT initially put

forth by it, OR he **DID** provide [specific enough] argument and evidence negating “shopkeeper’s privilege” and “receipt possession” in his RESPONSE to Defendant’s initial MSJ, but whereby Defendant’s REPLY “rebuttal” introducing the receipts and affidavit **is really just a moot point, as such does nothing more than merely confirm that a “genuine dispute of material fact” does indeed exist, that Plaintiff already legitimately created in his RESPONSE brief,** WHICH STILL TRIGGERS DENIAL OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT BECAUSE OF HOW SUCH GENUINE DISPUTES OF FACT ARE ALWAYS SENT TO THE JURY FOR DELIBERATION. “In passing upon a motion for summary judgment, it is no part of the court’s function to decide issues of fact but solely to determine whether there is an issue of fact to be tried.” *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). “Any issue of fact must be determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment.” *Primock v. Hamilton*, 168 Colo. 524, 452 P.2d 375 (1969).

Next, Defendant attempts to support its argument by pointing to *Tarpill v. Entelechy LLC*, No. 19CV30279, 2021 WL 4349996, at *2 (Boulder County Dist. Ct. Jan. 27, 2021) and *City of Thornton v. Bd. of Cnty. Comm’rs*, No. 2019CV30339, 2019 WL 3228258, at *4 n.6 (Larimer County Dist. Ct. July 16, 2019). However, both cases are utterly inapposite. Indeed, the Court in *Tarpill* even held “specifically, with respect to Plaintiff’s first two arguments, the Court finds that the facts Plaintiff takes issue with **are contained in exhibits attached to Defendants’ original Motion**. Plaintiff had an opportunity to respond to those facts in its Response.” *Id.* Obviously, the same is **NOT EVEN REMOTELY TRUE** today with regard to Plaintiff’s instant case, where “the facts Plaintiff takes issue with” **WERE NOT** “contained in exhibits attached to Defendant’s original motion,” and whereby he **DID NOT** “have an opportunity to respond to those facts in its Response.” Seriously, did Defendant ***even read*** the whopping six page *Tarpill* order, or did it only have time to quote mine it? Anyways, same goes for *City of Thornton v. Bd. of Cnty. Comm’rs*. In *City of Thornton*, the Court likewise allowed “points raised for the first time in a reply brief,” but again, **only when** they “are made in

response to arguments raised by a response brief.” *Id.* **So we're back to square one**, where Plaintiff either **WAS NOT** specific enough in his RESPONSE brief regarding “shopkeeper's privilege” and “receipt possession” **such that he cannot be ruled against by this Court for not doing so** because of how Defendant failed to supply any receipts or affidavits in its OPENING brief for him to even counter, or Plaintiff **WAS** specific enough in his RESPONSE brief regarding “shopkeeper's privilege” and “receipt possession” such that Defendant **WAS** allowed to supply said receipts and affidavits in its REPLY brief **but to which doing so does literally nothing more than merely confirm that a genuine dispute of fact does indeed exist, that Plaintiff already legitimately created in his RESPONSE brief,** WHICH, AGAIN, STILL TRIGGERS DENIAL OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT. Indeed, *City Of Thornton* cites to *Sch. Dist. No. 1, City & Cty. of Denver v. Cornish*, 58 P.3d 1091, 1095 (Colo. App. 2002), which in turn cites to *People v. Czemyrnski*, 786 P.2d 1100 (Colo. 1990), which, *whaddayaknow*, holds that “issues not raised in an appellant's opening brief will not be considered when raised for the first time in the reply brief.”

Next, Defendant claims that “Plaintiff could have availed himself to a motion to strike these exhibits or requested a sur-reply brief, but Plaintiff failed to do so.” *Def's Resp. To Ptf's MFR at page 3.* **Honestly, this is got to be the most laughable, preposterous argument proffered by Defendant to date.** As if Plaintiff “waived his rights” to have excluded from the record material impermissibly introduced into it for the first time by way of a REPLY brief just because he didn't file his own MOTION TO STRIKE or SURREPLY brief! Newsflash, it is the Defendant who already “waived its rights” to make such arguments and present such evidence, ***in the first place, BY NOT INCLUDING SUCH IN ITS INITIAL MSJ OPENING BRIEF.*** Never before has the Court required a MOTION TO STRIKE or a SURREPLY brief to be filed in order for such belated arguments and evidence to be held impermissible and thus be waived. *See Bslni, Inc. v. Russ T. Diamonds, Inc.*, 293 P.3d 598, 2012 COA 214 (Colo. App. 2012); *Jenkins v. Haymore*, 208 P.3d 265, 269 (Colo.App.2007); *People v. Czemyrnski*, 786 P.2d 1100, 1107 (Colo.1990); *etc.* Indeed, even

the Colorado Rules Of Civil Procedure itself explicitly states that “**upon the court's own initiative AT ANY TIME**, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper.” *C.R.C.P. Rule 12(f)*. As such, and because no prior cases have ever required a MOTION TO STRIKE or a SURREPLY be filed to attain such a result, this Court has an ethical obligation to strike, **on its own initiative**, any and all wholly impermissible “shopkeeper's privilege” and “receipt possession” arguments and evidence offered by Defendant *for the first time* in its MOTION FOR SUMMARY JUDGMENT **REPLY** brief only.

Next, Defendant claims that “[because] the exhibits at issue were also submitted in the briefings for Plaintiff’s Cross-Motion for Summary Judgment[,] Plaintiff had the opportunity to respond to and rebut the exhibits in Plaintiff’s Reply submitted in the Cross Motion for Summary Judgment.” *Def's Resp. To Ptf's MFR at page 3*. The problem here is that Defendant's MSJ and Plaintiff's CROSS-MSJ **are not two halves of the same coin**. They are two completely separate documents, each requiring their own independent arguments and evidence to support them. “When a [Plaintiff's] motion for summary judgment is overruled, their admission of facts under their legal theory terminates, **and it is error for a trial court to give any consideration thereto in connection with its determination of [Defendant's] motion**. This leaves [Defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial.” *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). In other words, just because **PLAINTIFF'S** CROSS-MSJ was overruled in this matter [by way of Defendant introducing evidence in its RESPONSE to the CROSS-MSJ so as to create a “genuine dispute of material fact” in the matter] **DOESN'T MEAN DEFENDANT NOW GETS TO AUTOMAGICALLY HAVE ITS MSJ GRANTED!** *It's* “motion for summary judgment [is still] completely unsupported by anything except such as it had itself placed in the record.” *Id.* And of course, in the instant case, Defendant's *****I-N-I-T-I-A-L***** MSJ “placed in the record” **absolutely nothing** to *even begin to* legally support it, thus rendering the

motion **DENIED** in its entirety. Also, on this note, Plaintiff's CROSS-MSJ REPLY **isn't even an appropriate vehicle to use** as some SURREPLY to Defendant's MSJ REPLY, because it would be a *completely futile endeavor* to “rebut” any evidence provided by Defendant in its RESPONSE to the CROSS-MSJ [as Defendant otherwise claims Plaintiff must do], because at that point, Defendant has already created its own “genuine dispute of material fact” in its RESPONSE, upon which there is absolutely nothing Plaintiff could even do to “refute” such, as that would in effect be making, ***whaddayaknow***, A FACTUAL DETERMINATION THAT IS SQUARELY UP TO THE JURY TO DECIDE. *Seriously, it should not be this difficult for a Court and attorneys to understand this stuff.* **FIRST**, Defendant filed an evidence-less, conclusory-statement-only MSJ, and Plaintiff either responded **WITHOUT** sufficiently particular evidence of his own [but whereby the MSJ gets denied anyways for being independently based on evidence-less, conclusory statements only], **OR** he responded **WITH** sufficiently particular evidence of his own [but whereby the MSJ still gets denied because of how such evidence created a “genuine dispute of material fact” in the matter]. **THEN**, Plaintiff filed his own CROSS-MSJ, upon which Defendant responded **WITH** evidence of its own¹ [which causes the CROSS-MSJ to get denied as well because of how such evidence also created a “genuine dispute of material fact” in the matter]. THAT'S IT. **Both** motions were filed. **Both** motions are [supposed to be] denied. **Again, the law is not such that if one party happens to have their motion denied, the other party now automagically gets to have theirs granted!**

Next, Defendant claims that “The Court ruled upon both summary judgment motions simultaneously and considered all evidence and arguments submitted with both briefings before ruling in Defendant’s favor.” *Def's Resp. To Ptf's MFR at page 3.* The problem here is that both summary judgment motions **were obviously not filed “simultaneously.”** They were filed

¹ Well, not really. Plaintiff still reserves the right to challenge, via appeal if necessary, that Mahmoud's affidavit “blatantly contradicts” the record [and as such, is **impermissible**]. Same goes for the affidavit-less business records (i.e. receipts) that were also **impermissibly** entered into the record. Disregarding both pieces of “evidence,” as this Court should have done, rendered Plaintiff's CROSS-MSJ unrefuted, upon which it really should have been **GRANTED** in this matter.

separately, and more importantly, *independently* from each other. Again, the Court is not allowed to consider “evidence and arguments” submitted with *one* briefing, during the ruling of *another* briefing. *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). Indeed, Defendant's following statement – that Plaintiff was purportedly “incentivized to provide stronger evidence in his cross-motion for summary judgment briefing, and yet, he still failed to present evidence sufficient to survive Defendant’s motion for summary judgment,” – underscores *just how fried* it is making this situation out to be. What is Defendant *even doing* trying to use evidence supplied [or not supplied] in a CROSS-MSJ, in another party's MSJ? *The Defendant itself even admits that the standards (i.e. burden levels) of each briefing are different from each other.* Indeed, Plaintiff *agrees* with Defendant that he “has a *higher* burden in proving his cross-motion for summary judgment.”² **THAT MEANS HE HAS A LOWER BURDEN IN DISPROVING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT!** And that is exactly what he did. Defendant supplied evidence-less, conclusory-only argument in its MSJ, and Plaintiff 100% refuted such by simply pointing that out. Indeed, because Defendant didn't supply ANY evidence, *whatsoever*, with its initial MSJ, Plaintiff's burden to disprove its arguments was literally at the floor! *Plaintiff didn't have to do ANYTHING AT ALL in order for Def's MSJ to be fairly denied in this matter*, as the Court has consistently held that “A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008).

II. DEFENDANT IS NOT ALLOWED TO BOOTSTRAP DETENTIONS, NOR IS IT ALLOWED TO HAVE CARTE BLANCHE AUTHORITY TO DETAIN ALL CITIZENS WHO DON'T COOPERATE WITH IT

In Defendant's RESPONSE to Plaintiff's MOTION FOR RECONSIDERATION, it also claims that “The Court did not need to consider Exhibits N, O and P of the motions for summary

2 This likewise means that *Defendant* also has an equally “high” burden when proving *its* MSJ. That is, Defendant was required to provide “stronger” evidence IN ITS INITIAL MSJ [in order to have *it* granted] than it was required to provide in Plaintiff's CROSS-MSJ [in order to have *it* denied]. Yet Defendant failed to provide such evidence IN ITS INITIAL MSJ. Why did Defendant fail to INITIALLY provide such evidence? Go ask Defendant. That's not Plaintiff's problem.

judgment in order to find in Best Buy's favor [because] [i]n the video of the incident, submitted as Exhibit M in Defendant's Motion for Summary Judgment, Best Buy employees repeatedly request that Plaintiff return the product in his possession, and Plaintiff remains silent. He does not deny that he has product in his possession nor did he make any effort to show the Best Buy employees that they were mistaken in believing Plaintiff had stolen product – perhaps by revealing whatever object was in his pockets.” *Def's Resp. To Ptf's MFR at page 3*. The problem here is that this is LITERALLY, **word-for-word** what Courts have **unanimously** held as **utterly impermissible “bootstrapping.”** “Moreover, it is clear that law enforcement officers may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police.” *Brief of the United States as Amicus Curiae Supporting Petitioner at 25*, *Florida v. Bostick*, No. 89-1717 (). “Any other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary.” *United States v. Hunnicutt*, 135 F.3d 1345 (10th Cir. 1998). “The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.” *U.S. v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993). “We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.” *Florida v. Bostick*, 501 U.S. 429, 437 (1991). “[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment.” *United States v. Wood*, 106 F.3d 942, 946 (10th Cir. 1997). **Seriously, does Defendant truly not comprehend what “bootstrapping” is?** Does it *really* believe that merchants

can simply walk up to complete strangers, **collect absolutely ZERO inculpatory evidence prior to doing so**, and expect to justify their actions if their detainees simply “don't do” what they ask of them!? **Sorry, but no matter how you slice it, LACK OF EXCULPATORY DOES NOT EQUAL (AND WILL NEVER EQUAL) INCULPATORY!** In other words, because “shopkeeper's privilege” is the same exact legal standard as “probable cause” (*see Colorado Revised Statutes § 18-4-407*), and “probable cause” is rooted **STRICTLY** in ***individualized*** and ***particularized*** suspicions, a merchant can **NEVER, by law and by logic**, achieve lawful justification to detain a person by simply pointing to their mere “refusal to cooperate” with them. **This is especially true because of how they (the merchants) are the ones who control who they ask.** Indeed, to argue the opposite would be to allow all merchants to **SYSTEMATICALLY** detain **literally all people** whom they ask to cooperate (which would mean *everybody!*), **thus effectively subjecting literally 100% of the population to “compulsory” detentions** [that is, through either voluntary consent, or forced detention otherwise]. THAT'S ILLEGAL, and not what the Legislature would have envisioned *in the least* when drafting the law of the land as it stands. “It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish **fixed checkpoints**, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts **or be subject to arrest** everytime they go shopping? **The potential for abuse is apparent.**” *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984).

Finally, on this note, **listing off literally ALL possible actions** that are purportedly required for a person to perform in order to end [read: **undo**, as Defendant and prior Courts argue] their detention **effectively renders ALL detentions of people literally NON-EXISTENT**, and the bar to which merchants are required to have “shopkeeper's privilege” under *obviously cannot be set at the floor*. In other words, if there is **ALWAYS** something that **ALL** detainees can do, “in order to shorten

or end their detention,” then there exists **NOT A SINGLE SITUATION** in which a merchant **WOULD** be liable for unlawfully detaining a person. *Which, of course, begs the question: why does “shopkeeper's privilege” even exist then? Why does the false imprisonment tort even exist? WHY DOES COURT EVEN EXIST? Seriously!?!?!?!?* First, it was argued that Plaintiff must “show his receipt.” Then, it was argued that he must “not throw away his receipt.” Now, it is being argued that he must “not remain silent,” must “deny he has product,” must “empty his pockets.” Seriously, is there *anything* left for him TO NOT DO upon leaving a store [customer or not]? **Defendant has now included it all.** Yet doing such, *if it isn't obvious already*, has LITERALLY created a “bright line” rule where there literally exists **EVIDENTLY NOTHING** that a person **CANNOT** do to “end their own detention” – which, *if one hasn't comprehended this already, perhaps they never will*, **SETS THE BAR AT THE ACTUAL FLOOR**, literally giving ALL merchants **CARTE BLANCHE** authority to **indiscriminately** detain ALL people (YEAH, THAT MEANS **EVERYBODY!**) they so wish. All they gotta do now is walk up to complete strangers, perform no investigations beforehand, ask them whatever the heck they want, get them to do whatever the heck they want, and detain them if they don't follow every command made. YEAH, RIGHT! Such is obviously, emphatically, indisputably not the law. **Because it's called shopkeeper's PRIVILEGE, not shopkeeper's RIGHT.** And despite Defendant's incessant efforts to argue otherwise – a privilege, by definition, **CAN BE LOST**. **Most importantly**, is that if such *was* a right, then literally all people in this country “would in effect have no way of declining to participate in a 'consensual' encounter” with them. ***Such is not the law!***

CONCLUSION

“Where the record has not been adequately developed on a material factual issue, summary judgment is not proper.” *Moore v. 1600 Downing St., Ltd.*, 668 P.2d 16 (Colo. App. 1983). “In passing upon a motion for summary judgment, it is no part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried.” *Morlan v. Durland Trust Co.*, 127 Colo. 5, 252 P.2d 98 (1952). “Any issue of fact must be

determined by the court or jury at a trial and should not be determined by the court on a motion for summary judgment.” *Primock v. Hamilton*, 168 Colo. 524, 452 P.2d 375 (1969). “An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue.” *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999). “A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its most recent ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 31st day of December, 2024.


William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of December, 2024, a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO		DATE FILED January 6, 2025 2:05 PM CASE NUMBER: 2023CV226
Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002		
Plaintiff(s) WILLIAM MONTGOMERY v. Defendant(s) BEST BUY STORES L.P.		<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2023CV226 Division: 6 Courtroom:
Order:Plaintiff's Motion for Reconsideration		

The motion/proposed order attached hereto: DENIED.

For purposes of analysis, the Court sets aside Plaintiff's pejoratives toward the Court and considers the merits of his motion.

Plaintiff raises many of the same arguments he raised in summary judgment briefing. In resolving the conflated summary judgment motions, the Court considered all briefs and exhibits presented in connection with Defendant's motion and also Plaintiff's cross-motion. Plaintiff's reply was filed after the exhibits about which he complains, giving him opportunity to respond to them. Of note, he also presented an additional affidavit, after Defendant's reply, which the Court also considered. (See 10/28/24 "Plaintiff's second affidavit").

Regardless, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is thus denied.

Issue Date: 1/6/2025



CHRISTOPHER CLAYTON ZENISEK
District Court Judge

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	
Party Without Attorney: William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: 2023CV226 Division: 6 Courtroom: 520
PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his SECOND MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

INTRODUCTION

Plaintiff recently filed a MOTION FOR RECONSIDERATION in this matter. In the MOTION, Plaintiff argued that numerous errors of both **FACT** and **LAW** were made. In the Court's most recent ORDER denying the MOTION FOR RECONSIDERATION, it **failed** to address **LITERALLY ANY** errors of FACT *or* LAW pointed out by Plaintiff.¹ Instead, to circumvent having to cure the well-pointed-out errors, the Court introduced a *brand new* holding encompassing a *brand new* theory of law. As such, Plaintiff has a right to challenge the *brand new* legal theory, and to which in turn, tolls the statute of limitations for filing a NOTICE OF APPEAL in this action.

¹ As such, the Court has **confessed** that all such errors of FACT *and* LAW pointed out by Plaintiff **were indeed curable**.

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Defendant concerning this MOTION. Defendant indicates that it opposes the relief sought herein.

ARGUMENT

I. THE COURT IMPERMISSIBLY CONSIDERED PLAINTIFF'S C-MSJ REPLY AS SOME SORT OF SURREPLY TO DEFENDANT'S MSJ REPLY

In the Court's ORDER denying Plaintiff's MOTION FOR RECONSIDERATION, it held that that because "Plaintiff's reply was filed after the exhibits about which he complains," he purportedly had an "opportunity" to "respond" to them. This was not the complaint Plaintiff made in his MOTION, however,² **and this is still not how the law works in Colorado.**

First, in *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999), the dispositive issue was not whether the Plaintiff had the mere "opportunity" to respond to the fresh, reply-only arguments and evidence, it was whether she was "given NOTICE that she NEEDED to" respond it [and the Court held that she was not]. **This is because nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does any rule or law explain to litigants that REPLY briefs are meant to provide such "notice" of such "need."** As such, Plaintiff could not, and did not fairly and reasonably "know" that he "needed" to use his MSJ's *reply* as some *surreply* to Defendant's MSJ reply.

Second, it is **utterly inappropriate** to require a Plaintiff to use *their Reply* "In Support Of *Their* Cross-MSJ" as some sort of **Surreply** "In Response To A *Defendant's* MSJ Reply." Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are**

2 The **specific** argument Plaintiff made in his MOTION FOR RECONSIDERATION was that the Court made verifiable errors of **FACT** that **a)** Defendant supposedly submitted [**WITH ITS INITIAL MSJ**] a store employee's affidavit and some affidavit-less business records, thereby purportedly "satisfying its **initial** burden as the movant" in the matter [when no such evidence was *actually* filed with Defendant's **initial** MSJ], and **b)** that Plaintiff supposedly, [**IN RESPONSE TO DEFENDANT'S INITIAL MSJ**], "provided no evidence of his actions in the store to **counter** this" [when Plaintiff was never put on *actual* notice of the **NEED** to **counter** such *non-existent* evidence]. Side note: Plaintiff actually **DID** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively **INFERRED** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

severely limited by page number and file-by date. Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant in this matter [that it should have presented in its *initial* MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support his own* Cross-MSJ.

Third, conflating one MSJ's *reply* as another MSJ's *surreply* creates an insurmountable “uncertainty of fact” that is manifestly impossible to overcome, because of how easily a party's “concessions,” “admissions,” and/or “legal theories” made *in one line of briefing* can be abused and misinterpreted *in the other line of briefing*. In other words, a party's offense argued *in support of their own* motion cannot be used as their defense argued *in opposition of the other party's* motion. “Where both parties to a legal action file motions for summary judgment, is the court restricted against denying both motions and requiring the production of additional evidence, or is it obligated under the rules to grant one or the other of the motions and enter judgment accordingly? The answer is no. If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits. **Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties.** The fact that each side in moving for summary judgment in his or its favor, respectively, assert 'that there is no genuine issue as to any material fact' **does not necessarily make it so, and does not bar the court from determining otherwise.** 'It does not follow that, merely because each side moves for a summary judgment, there is no issue of material fact. For, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, **he may be able and should always be allowed to show that,** if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists.'” *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952) (quoting *Walling v. Richmond Screw Anchor Co.*, 154 F.2d 780, 784 (1946)).

“This legal presumption of admission of fact, however, is not general **but extends only to consideration of the defendants' pending motion.** It may not be applied in connection with plaintiff's similar motion. 'The fact that both parties make motions for summary judgment, and each contends in support of his respective motion that no genuine issue of fact exists, does not require the Court to rule that no fact issue of fact exists. Each, in support of his own motion, may be willing to concede certain contentions of his opponent, **which concession, however, is only for the purpose of the pending motion. If the motion is overruled, the concession is no longer effective.** Appellants' concession that no genuine issue existed was made in support of its own motion for summary judgment. **We do not think that the concession continues over into the Court's separate consideration** of appellee's motion for summary judgment in his behalf after appellants' motion was overruled.” *Id.* (quoting *Begnaud v. White*, 170 F.2d 323, 327 (1948)). “It is manifest **that when defendants' motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of plaintiff's motion.** This leaves plaintiff's motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial.” *Id.*

In layman's terms, Plaintiff made a “concession” under his own “legal theory” that “no genuine issue existed” [and that his MSJ should be granted]. He presented legal argument that Defendant's affidavit of Mahmoud Abu-Shaweesh was **inadmissible** because it “blatantly contradicted the record,” *Scott v. Harris*, 550 U.S. 372, 380 (2007), and that the business records (i.e. receipts) it submitted were likewise **inadmissible** because they failed to be “accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record.” *Henderson v. Master Klean Janitorial*, 70 P.3d 612, 617 (Colo. App. 2003). In other words, Plaintiff was arguing **offensively**, whereby his REPLY brief was appropriately tailored to

support his MSJ – by way of arguing, via *Scott and Henderson*, **that no dispute of fact existed in the case**. His reply brief *was not the place, nor the time*, to **defend** against Defendant's belated, reply-only evidence that it had introduced in *its* MSJ. Indeed, to hold otherwise would be to require Plaintiff to create a dispute of fact in his own MSJ, which is not his obligation in his own MSJ [his obligation in his own MSJ is to only **defend** against *Defendant's* attempts to create a dispute of fact]. As such, Plaintiff, **if unable to have his own Cross-MSJ granted**, “may be able *and should always be allowed to show* that, if [defendant's] legal theory be adopted, a genuine dispute as to a material fact exists.” *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952). Plaintiff is allowed to argue “alternative and inconsistent defenses.” *M. Snower Co. v. United States*, 140 F.2d 367, 370 (7th Cir. 1944). He is allowed to argue in his Cross-MSJ that no genuine dispute of fact exists, while also arguing in Defendant's MSJ that a genuine dispute of fact exists. And because Defendant **failed** to provide Plaintiff with sufficient “**notice**” of his “**need**” to defend against such not-submitted-with-its-**initial**-MSJ-briefing evidence, **Defendant's MSJ should have been denied**. “It is manifest that when [plaintiff's] motion for summary judgment was overruled, their admission of facts under the legal theory terminated, and it was error for the trial court to give any consideration thereto in connection with his determination of [defendant's] motion. This leaves [defendant's] motion for summary judgment completely unsupported by anything except such as it had itself placed in the record, and which definitely discloses uncertainty of fact and disputable issues for trial.” *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952).

CONCLUSION

“An issue not raised by the moving party in the motion or brief cannot serve as the basis for summary judgment because the non-moving party is not put on notice as to the need to present evidence concerning that issue.” *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999).

“If, upon considering the then state of the record, it should appear, or be the opinion of the court, that there remained in the case for determination factual issues upon which there might

or could be produced further evidence, or upon which the evidence is incomplete, it is the duty of the court to deny both motions and require the parties to proceed regularly to trial on the merits.” *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952).

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his SECOND MOTION FOR RECONSIDERATION, so that it may then **REVERSE** its ORDER impermissibly GRANTING Defendant's MSJ, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 21st day of January, 2025.


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CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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<p>DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>WILLIAM MONTGOMERY,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p>BEST BUY, L.P.,</p> <p style="padding-left: 40px;">Defendant.</p>	
<p>Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com</p>	<p>Case No.: 2023CV00226</p> <p>Division: 6</p>
<p>BEST BUY’S RESPONSE IN OPPOSITION TO PLAINTIFF’S SECOND MOTION FOR RECONSIDERATION</p>	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response in Opposition to Plaintiff’s Second Motion for Reconsideration. Best Buy respectfully requests that this Court deny Plaintiff’s Second Motion for Reconsideration. As grounds, Best Buy states as follows:

1. A motion to reconsider must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. C.R.C.P. 121 § 1-15 (11).
2. Plaintiff did not meet his burden in proving a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.
3. Plaintiff uses this Second Motion for Reconsideration to re-hash arguments that previously failed; he is impermissibly trying to get a second bite at the apple.
4. A party moving to reconsider must show more than a disagreement with the court's decision. *Id.*
5. Plaintiff's Second Motion for Reconsideration fails to show more than mere disagreement with the Court's decision.
6. A motion to reconsider must be submitted within 14 days from the date of the Court's order. *Id.*
7. Plaintiff submitted his motion fifteen days after the Court's order; thus, his Second Motion for Reconsideration is untimely and should be denied on that basis alone.

WHEREFORE, for the forgoing reasons, Best Buy respectfully requests that this Court deny Plaintiff's Second Motion for Reconsideration.

Filed on February 7, 2025.

MONTGOMERY | AMATUZIO

By: s/ Stephanie E. Boutsicaris
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on February 7, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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s/ Samantha Trujillo

Samantha Trujillo, Legal Assistant

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	▲ Court Use Only ▲
Party Without Attorney: William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: 2023CV226 Division: 6 Courtroom: 520
PTF'S REPLY TO DEF'S RESPONSE TO PTF'S SECOND MOTION FOR RECONSIDERATION	

Plaintiff, proceeding *pro se*, hereby submits to the Court his REPLY to Defendant's RESPONSE to his SECOND MOTION FOR RECONSIDERATION, and in support thereof, states as follows:

ARGUMENT

In Defendant's RESPONSE, it claims that “Plaintiff did not meet his burden in proving a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.” *Def's Response at* ¶ 2. However, merely reciting the Colorado Rules Of Civil Procedure is not a meaningful legal argument. **It is not substantive, and offers no guidance to the Court on exactly how it should apply the Rule to Plaintiff's instant case.** Nevertheless, to the extent that Defendant's argument could be inferred, it still fails to pass legal muster. Specifically, Plaintiff's argument that his Cross-MSJ's *reply* brief has been **impermissibly** used as some sort of

surreply brief to Defendant's MSJ *reply* brief is about as much of a “manifest error of fact or law” that can possibly exist. Indeed, entire cases have already explicitly described, *in extraordinary detail*, precisely *how* such an error “results in manifest injustice.” See *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952). *Morlan* isn't just some old case Plaintiff picked out of the ethers. It's explicitly mentioned **TWELVE TIMES** in the Annotations of C.R.C.P. Rule 56. As such, it is *critically important* Colorado case law that applies with as much force today as it did 73 years ago.

Next, Defendant claims that “Plaintiff uses this Second Motion for Reconsideration to re-hash arguments that previously failed; he is impermissibly trying to get a second bite at the apple.” *Def's Response at* ¶ 3. **Again, Defendant is sorely mistaken.** Specifically, Plaintiff made the argument in his *First Motion For Reconsideration* that the Court made verifiable errors of **FACT** in its *Order Granting Defendant's MSJ* that **a) Defendant** supposedly submitted ***[WITH ITS INITIAL MSJ]*** a store employee's affidavit and some affidavit-less business records, thereby purportedly “satisfying its ***initial*** burden as the movant” in the matter [when no such evidence was *actually* filed with Defendant's ***initial*** MSJ], and **b) that Plaintiff** supposedly, ***[IN RESPONSE TO DEFENDANT'S INITIAL MSJ]***, “provided no evidence of his actions in the store to ***counter*** this” [when Plaintiff was never put on *actual* notice of the ***NEED*** to ***counter*** such *non-existent* evidence].¹ However, in the Court's *Order Denying Plaintiff's Motion For Reconsideration*, ***IT 100% FAILED TO ADDRESS*** these well-pleaded errors of **FACT**, and instead, simply introduced a *brand new* legal holding encompassing a *brand new* theory of law [that because Plaintiff's Cross-MSJ *reply* brief was filed “after” Defendant's MSJ *reply-only* exhibits were filed, he purportedly had an “opportunity” to “respond” to them]. **Thus, Plaintiff never even got a first “bite of the apple” regarding the addressing of these verified factual deficiencies – the Court never gave him one.** Then, while Plaintiff *did* reference *Wallman v. Kelley*, 976 P.2d 330, 332

¹ Side note: Plaintiff actually ***DID*** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively ***INFERRED*** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

(Colo. App. 1999) in his *First MFR*, and even referenced *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952) in his *Reply In Support Of His MFR*, both cases and their attendant legal holdings were again, **100% NOT EVEN REMOTELY ADDRESSED** by the Court. **So what is a reasonable person in Plaintiff's position supposed to do?** Without “findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision,” *In re Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988), **it was more than reasonable, and indeed, absolutely necessary for Plaintiff to seek reversal from the Court [in a Second MFR].** See also *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959) (“[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision.”). See also *Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co.*, 166 Colo. 471, 444 P.2d 633 (1968) (“Findings of fact by a court should respond to and be within the issues, and a finding outside the issues cannot be supported and cannot be used to formulate a judgment.”). Indeed, Plaintiff is *****STILL***** waiting for this Court [let alone Defendant] to **even begin to** address his absolutely valid and *critically important* legal argument that Defendant **impermissibly** submitted to the Court affidavit-less business records (i.e. receipts) **IN DIRECT VIOLATION** of *Henderson v. Master Klean Janitorial*, 70 P.3d 612, 617 (Colo. App. 2003) (holding that a “business record” is only admissible “when accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record. CRE 902(11).”). **No such “custodial affidavit” WAS EVER ONCE SUBMITTED with Defendant's pile of receipts, and as such, THIS COURT WAS NEVER ALLOWED TO ADMIT THEM.** *Yet it continues to pretend [?] that Plaintiff never brought up this argument.* Come on Jefferson County District Court! **These are absolutely primary, elemental, decades old, clearly established laws**

that are being broken, in broad daylight, and Plaintiff isn't receiving *even a peep* from the Court **as to how it is allowed to deviate from them.** As such, Plaintiff absolutely cannot be blamed for filing a first, and a second, *and however many is necessary* Motions For Reconsideration until he either **a)** has the absolutely valid case law he references honored so as to **REVERSE** the Court's Order **impermissibly** granting Defendant's MSJ, or **b)** receives clear, cognizant, and legally supportable reasons **actually explaining** why the aforementioned Order should *not* be reversed. **Seriously.** The factual and legal arguments Plaintiff has made in **both** his Motions For Reconsideration aren't "merely disagreements with the Court's decision." *Def's Response at ¶ 5.* **They are concrete, substantive, well-articulated arguments** backed by case law directly pulled from the Colorado Rules Of Civil Procedure. This Court is in **direct violation** of these *numerous* precedential Colorado cases that Plaintiff has plainly and repeatedly pointed out, and as such, must **BY LAW HONOR THEM** and REVERSE its Order **impermissibly** granting Defendant's MSJ.

Finally, Defendant Claims that Plaintiff's "Second Motion for Reconsideration is untimely and should be denied" due to it not being "submitted within 14 days from the date of the Court's order." *Def's Response at ¶¶ 6 and 7.* **Once again, Defendant is mistaken.** Colorado Rules Of Civil Procedure Rule 6(a)(1) states that [with regard to the computing of filing deadlines] "The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, *or a legal holiday,* in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday." C.R.C.P. Rule 6(a)(2) then states that "the third Monday in January, observed as Martin Luther King Day" is a "legal holiday" for purposes of tolling the deadline. **As such, Plaintiff had until January 21, 2025, the day after Martin Luther King Day, to file his Second Motion For Reconsideration.**

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his **SECOND MOTION FOR RECONSIDERATION**, so that it may then **REVERSE** its **ORDER** impermissibly **GRANTING** Defendant's **MSJ**, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 14th day of February, 2025.


William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of February, 2025, a true and correct copy of the foregoing **PTF'S REPLY TO DEF'S RESPONSE TO PTF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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DISTRICT COURT, JEFFERSON COUNTY, COLORADO Court Address: 100 JEFFERSON COUNTY PARKWAY, GOLDEN, CO, 80401-6002	DATE FILED February 18, 2025 ⚠ COURT USE ONLY ⚠
Plaintiff(s) WILLIAM MONTGOMERY v. Defendant(s) BEST BUY STORES L.P.	
Case Number: 2023CV226 Division: 6 Courtroom:	
Order:Plaintiff's Second Motion for Reconsideration	

The motion/proposed order attached hereto: DENIED.

As noted in the Court's January 6 Order, Plaintiff's arguments do not prevail because he has not met the standards set forth in C.R.C.P. 59, 60 or 121, Section 1-15(11) for relief.

The motion is again denied.

Issue Date: 2/18/2025



CHRISTOPHER CLAYTON ZENISEK
 District Court Judge