

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>WILLIAM MONTGOMERY,</b></p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p><b>BEST BUY, L.P.,</b></p> <p style="padding-left: 40px;">Defendant.</p>	
<i>Attorneys for Best Buy, L.P.:</i> 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 <a href="mailto:lbell@mac-legal.com">lbell@mac-legal.com</a> <a href="mailto:sboutsicaris@mac-legal.com">sboutsicaris@mac-legal.com</a>	Case No.: 2023CV00226  Division: 6
<b>DEFENDANT BEST BUY, L.P.’S RESPONSE TO PLAINTIFF’S CROSS MOTION FOR SUMMARY JUDGMENT</b>	

Defendant, Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response to Plaintiff’s Cross Motion for Summary Judgment, as follows:

**INTRODUCTION**

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff’s factual assertions by way of affidavit. *See, Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party’s version of events when

contradicted by video evidence). The first video, **Ex. L**, demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings with other companies,<sup>1</sup> demonstrates Plaintiff's modus operandi<sup>2</sup> – to engage in behavior that raises suspicion of shoplifting,<sup>3</sup> to get detained, and to not show his receipts<sup>4</sup> or take any other action to end the detention in order to test his perceived “rights.”<sup>5</sup> Based upon this video, combined with the 29 pages of receipts showing Plaintiff's fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable question of material fact that the subject incident followed Plaintiff's modus operandi, which he has previously executed a plethora of times. **Ex. N.** Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the “shopkeepers’ privilege” to detain him to investigate the same created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned any stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing

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<sup>1</sup> **Ex. A-K.**

<sup>2</sup> “That’s the crux of my whole sting operation!” **Ex. M**, 5:55.

<sup>3</sup> **Ex. M**, 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).

<sup>4</sup> Now I don’t show my receipt everywhere I shop.” **Ex. M**, approximately 1:25.

<sup>5</sup> “Refusing to show a receipt is just a refusal to a consent to being searched. Cops don’t get to use to bootstrap with that. Merchants don’t either.” **Ex. M**, 5:40; “By them asking [to see a receipt], which they have a right to do, you have the right say no.” **Ex. M**; 8:09.

unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See, Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).*Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

### **Response to Plaintiff's Statement of Undisputed Material Facts**

1. Defendant Best Buy denies Plaintiff's description of the events. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N**, p. 18-19 (DEF\_0000018-19). Defendant Best Buy notes that during the 29-minute video produced by Plaintiff, his brother does not appear. **Exh. 1**, to PCMSJ (video identified by Plaintiff).

2. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N**, p. 18-19 (DEF\_0000018-19).

3. For purposes of this Motion, only, Defendant will not dispute that "Shane," Mahmoud," and a third employee (James Robinson) encountered Plaintiff outside of the Best Buy Store.

4. Plaintiff's statements contained in paragraph 4 and nonsensical and confusing. However, the receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV **Ex. N**, p. 18-19 (DEF\_0000018-19). While in the Best Buy Store, Plaintiff was observed placing JLab earbuds in his pocket, declining to produce a receipt at the door and exiting the store. **Exh. P** Affidavit of Mahmoud Abu-Shaweesh.

5. Admitted, in part. The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud. See **Exh. 1 to PCMSJ**. However, Plaintiff was asked to show a receipt inside of the store. **Exh. P** (Affidavit of Mahmoud Abu-Shawessh).

6. Defendant does not dispute the contents of the video recoding at **Exh. 1**.

7. Defendant denies that Plaintiff was surprised at being contacted by Best Buy employees. Plaintiff has had numerous encounters with Best Buy stores and its employees. In particular, on the day of the subject encounter, he made nine purchases at three Best Buy stores before arriving at the subject store and then proceeded to four additional Best Buy stores to make five more purchases of the same or similar products. Plaintiff travelled a total of 125 miles visiting various Best Buy stores, in furtherance of his modus operandi. **Exh. N, O** (Map of Plaintiff's travels on November 25, 2022, and purchases at each location).

8. Denied. Plaintiff's alleged facts are speculative and confusing. Plaintiff was observed by Mahmoud Abu-Shaweesh removing JLab earbuds from the display and placing them in his pocket. **Exh. P**. Further, receipts demonstrate that Plaintiff was in fact, in the store, prior to the encounter, at 2:20pm and made a purchase of a Chromecast with Google TV. **Ex. N**, p. 18-19 (DEF\_0000018-19).

9. Defendant does not dispute the contents of the video.

10. Denied. See **Exh. 1**.

11. Defendant does not dispute the contents of the video.

12. Defendant does not dispute the contents of the video.

13. Defendant does not dispute the contents of the video.

14. Defendant Best Buy admits that after being told that officers had been contacted, Plaintiff ended the encounter and returned to the store. Regarding the remaining alleged facts, Best Buy does not dispute the contents of the video.

15. Defendant does not dispute the contents of the video.

16. Defendant does not dispute the contents of the video.

17. Defendant does not dispute the contents of the video.

18. Defendant does not dispute the contents of the video.

19. Defendant does not dispute the contents of the video.

20. Defendant can neither admit nor deny the allegation regarding the number of people Plaintiff counted.

21. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

22. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

23. Plaintiff's allegations are statements of opinion rather than fact. As such, the Court should find in favor of Defendant on Fact No. 23 and hold that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

24. Denied. Defendant Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols. **See Exh. 2 to Plaintiffs' PCMSJ.**

25. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 83.6 miles

to do so. **Ex. N**, p. 18-29; **Ex. O**. He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N**, p. 19, 23, 27. Further, prior to the encounter at issue herein, Plaintiff made six similar purchases and two identical purchases at three other Best Buy Stores. See **Exh. N** and **Exh. O** (Map of Plaintiff's travels on November 25, 2022 and purchases at each location).

### **Defendant's Additional Undisputed Material Facts**

26. Plaintiff was present inside the Best Buy store located at 9369 Sheridan Blvd., Westminster, CO 80031 ("store") on November 25, 2022, the date of the incident, where he purchased Chromecast with Google TV. **Ex. N**, p. 18-19 (Plaintiff's store receipts dated November 25, 2022).

27. Plaintiff has a long history of attempting to "sting" stores "so he can sue them for false arrest." **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

28. Plaintiff's modus operandi is to buy or appear to steal an item[s] from a store; not place the item[s] in a bag; all of which he knows is likely to provoke a suspicion that he has stolen and lead to his detention or arrest; and to not take any reasonable action such as show a receipt, produce the item[s] and/or otherwise prove that he owns the item to end the detention or arrest. **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

29. On the date of the incident, Best Buy employee, Mahmoud, observed Plaintiff inside the store and observed him to appear to steal store merchandise by placing it in his pocket and walking out of the store without paying for it. **Exh. P**.

30. After Mahmoud Abu-Shaweesh and other employees, Shane Rusch and James Robinson, stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store

merchandise. Plaintiff never showed a receipt for merchandise upon exiting the store and did not return the merchandise when asked to do so.

31. Plaintiff also did not take any other reasonable action, such as proving his pockets were empty and/or proving whatever was in his pockets belonged to him, that would have ended the detention because it was his intent to provoke to the detention.

32. Plaintiff was not damaged by any derogatory allegations related to the belief that he stole from the store because Plaintiff intentionally created the impression that he had stolen from the store. See, **Exh. P and R.**

33. During the subject incident, no employees of Best Buy ever touched Plaintiff.

**Exh. 1.**

## **RESPONSE TO ARGUMENT**

### **A. Plaintiff Cannot Prove False Imprisonment as a Matter of Law Because He Intentionally Provoked the Detention and Knew of a Way to Escape That Would Not Cause an Unreasonable Risk of Harm to Him.**

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the “facts are undisputed and reasonable minds can draw but one inference from them,” the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad undisputed material facts, including but not limited to Plaintiff’s YouTube video footage of the subject incident and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed Courts that indisputably prove that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident. Best Buy’s Additional Undisputed Material Facts (“AUMF”), nos. 2-3. Further, because Plaintiff intended to provoke the detention, once the detention occurred, he took no reasonable

action such as showing his receipts from the store that he undeniably possessed, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. Best Buy's AUMF, nos. 26, 27, 28 and 31.

As such, Plaintiff cannot prove two elements of his cause of action for False Imprisonment and he is not entitled to summary judgment regarding the same: 1) Best Buy did not restrict Plaintiff's freedom of movement, as this can only happen when Plaintiff "does not know anyway to escape without causing an unreasonable risk of harm to himself;" (CJI-21:2) and 2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention i.e., intended to be in one place for a period of time. *Id.*

**B. Defendant is Entitled to The Shopkeeper's Privilege Because Plaintiff Intended to Create the Appearance That He Had Stolen From the Store, He Did Create Such Appearance and Plaintiff Admits the Detention was for Less Than 10 Minutes.**

Where the evidence is not in dispute, the Court shall determine as a matter of law that Best Buy's employees "acted in good faith and upon probable cause based upon reasonable grounds" in their detention of Plaintiff pursuant to the Shopkeeper's Privilege. *J.S. Dillon & Sons Stores Co. v. Carrington*, 455 P.2d 201, 204 (CO 1969). In the instant case, as set forth above, the facts are undisputed that Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store. Best Buy's AUMF, nos. 27-28. Furthermore, Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen; Mahmoud observed Plaintiff take store merchandise (directly and on camera), place it in his pocket and leave the store without showing a receipt when requesting or attempting to pay for it.<sup>6</sup> Best

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<sup>6</sup> Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets. Plaintiff's Undisputed Material Fact, no. 8, pg. 5.

Buy's AUMF, no. 29. As such, under the undisputed material facts of this case, it can and should be decided as a matter of law that Best Buy's employees acted in good faith and had probable cause based upon reasonable grounds to believe that Plaintiff concealed upon his person unpurchased goods and/or otherwise carried away unpurchased goods – an element of the Shopkeeper's Privilege. C.R.S 18-4-407.

In regard to the other elements of the Shopkeeper's Privilege, Plaintiff has admitted that the individuals who detained him were Best Buy employees. Plaintiff's Cross-MSJ, pg. 11, ¶6. Further, although Plaintiff takes false umbrage at some of the statements made by the Best Buy employees during his detention, Plaintiff admits that he was detained less than ten (10) minutes and that the interaction ended with Mahmoud telling him to "Have a good one dude. See ya later." Plaintiff's Undisputed Material Facts, no. 18, pg. 8. Plaintiff also does not allege any physical violence or that he was even touched during the detention. As such, the undisputed facts demonstrate that Best Buy detained and questioned the Plaintiff in a reasonable manner for the purpose of determining whether the Plaintiff committed theft – the last element of the Shopkeeper's Privilege. C.R.S 18-4-407. As such, Plaintiff is not entitled to summary judgment on his cause of action for False Imprisonment and it should be dismissed.

**C. Plaintiff Cannot Prove Defamation For Being Called a Thief or Words to That Effect When His Sting Was Executed With The Intention That He Appear To Be a Thief and He Published a Video Wherein He Brags About the Sting.**

In regard to Plaintiff's cause of action for Defamation Per Se, Plaintiff cannot prove that calling him a thief is defamatory under the circumstances; he can not prove any negligence on the part of Best Buy's employees in making such a statement; and he cannot prove actionability of the

statement irrespective of special damages. *Han Ye Lee v. Colorado Times, Inc.*, 222 P.3d 957, 961(Colo. App. 2009)(listing the elements for defamation). As set forth above, Plaintiff created an intentional sting whereby he would cause employees of shop owners such as Best Buy to think he stole and cause them to detain him. Best Buy's AUMF, nos. 27-28. Indeed, Plaintiff posted a YouTube video wherein he bragged of his sting. Best Buy's AUMF, nos. 27-28. On the day of the subject incident, he then executed his sting once again, successfully causing a Best Buy employee to believe he stole. Best Buy's AUMF, no. 29. Under these circumstances, it is not defamatory to call Plaintiff a thief or make statements of a similar ilk.

Additionally, Plaintiff cannot prove any fault on the part of the Best Buy employees, including negligence, as Plaintiff *intended* that the Best Buy employees think he stole from the store. Best Buy's AUMF, nos. 27-28. Finally, even assuming *arguendo* that calling someone a thief when untrue is actionable *per se* as Plaintiff argues (Plaintiff's Cross MSJ, pg. 17-18), it is not actionable *per se* in regard to Plaintiff because, as part of his sting, he wants others to believe he is a thief and he brags about convincing others that he is a thief in his YouTube video. Best Buy's AUMF, nos. 27-28. As such, Plaintiff is not entitled to summary judgment on his cause of action for Defamation *Per Se* and it should be dismissed.

**D. Plaintiff Cannot Meet Any of The Elements of Assault Where Plaintiff Admits Defendants Never Threatened to Harm Him and Plaintiff Intentionally Did Not End the Detention.**

Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to "jump" him they merely did not correct him when he used the word "jump." Plaintiff's Cross MSJ, pg. 20, ¶3. Further, clearly Plaintiff was not placed in "apprehension of immediate physical contact"

wherein the subject incident was a sting he was carrying out and one that he had carried out almost innumerable times before. Best Buy's AUMF, nos. 27-28. In addition, as argued *supra*, if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not. Best Buy's AUMF, no. 31. As such, Plaintiff is not entitled to summary judgment on his cause of action for Assault and it should be dismissed.

### CONCLUSION

WHEREFORE for all of the reasons set forth above, Defendant Best Buy, L.P. respectfully requests that the Court deny Plaintiff's Cross Motion for Summary Judgment in its entirety, along with any other relief deemed appropriate by the Court.

Respectfully submitted October 10, 2024.

MONTGOMERY | AMATUZIO

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

*Attorneys for Best Buy Stores, L.P.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 10, 2024 a true and correct copy of **DEFENDANT BEST BUY, L.P.'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT** was prepared for service to the following in the manner indicated below:

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