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

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s/ Stephanie Boutsicaris\_\_\_\_\_