

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

Plaintiff, proceeding *pro se*, hereby submits to the Court his AMENDED REPLY to Defendant's RESPONSE to his CROSS-MSJ, and in support thereof, states as follows:

**INTRODUCTION**

Defendant has frantically supplied this Court with nothing but **purely conclusory statements**, **categorically inadmissible hearsay**, and **blatant contradictions** to support its utterly unsubstantiated position that it is somehow not liable for its actions in the matter. However, *as will quickly be seen*, **literally nothing** that Defendant has said or submitted has any merit *whatsoever*; while Plaintiff has provided *more than sufficient* evidence and argument to fairly and reasonably **GRANT** his C-MSJ.

**PTF'S REPLY TO DEF'S RESPONSE TO  
PTF'S UNDISPUTED MATERIAL FACTS**

*To the extent that Plaintiff fails to respond to every allegation in Defendant's*

*RESPONSE* brief, Plaintiff denies any allegations not explicitly admitted herein.

1. In a desperate attempt to refute *Fact #1* of Plaintiff's Undisputed Material Facts, Defendant has now submitted to the Court a series of receipts, purportedly pulled from its records, one of which (*Def's Exhibit N, pages 18-19*) purportedly establishes that Plaintiff "was in the store," "at 2:20pm," and "made a purchase of Chromecast with Google TV." **However**, said receipt **DOES NOT ACTUALLY ESTABLISH** that any of said "facts" to which Defendant negligently argues are true. First, a receipt showing that a particular purchase is associated with a particular account *only establishes that some person made that purchase, not actually who made it*. Therefore, **anybody who Plaintiff provides authorization to use his credit and debit cards on his behalf**, *see Plaintiff's Second Affidavit (herein "PSA") at ¶ 2*, could have *just as easily* made the associated purchase that day, as Plaintiff.<sup>1</sup> Next, Defendant **never once** identified what Plaintiff held in his hands [or had in his pockets] that day, either. *See PCMSJ Exhibit #1 at timestamp 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave.")*. Therefore, it is still **wholly unknown** if whatever Plaintiff possessed was indeed a "Chromecast with Google TV." Next, Defendant's only purported "evidence" now supplied in this matter – Mahmoud Abu-Shaweesh's affidavit – is **completely bereft** of any mention whatsoever that the employee had observed Plaintiff pay for any particular item [i.e. a "Chromecast with Google TV"] at any particular register. Finally, **and of the utmost critical importance**, the entirety of Defendant's Exhibit N is **CATEGORICALLY INADMISSIBLE HEARSAY**, as it fails to be "accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record."

*Henderson v. Master Klean Janitorial*, 70 P.3d 612, 617 (Colo. App. 2003). *See also C.R.C.P. 56(e)*,

<sup>1</sup> Best Buy has an electronic transaction system in place whereby if a particular credit or debit card is used to pay for a purchase, and that credit or debit card is already linked to a registered Best Buy account, that purchase is then automatically associated with that particular account [and any receipt, either emailed or printed, is then drafted to reflect that particular association]. As such, the receipt **only** shows the associated Best Buy account holder's name on it, **not** the actual person who swipes the credit or debit card (which therefore could be **anybody** who the account holder authorizes to swipe it on their behalf). *See PSA at ¶ 3*.

CRE 803(6), and CRE 902(11). Therefore, Defendant has **STILL** failed to establish that Plaintiff “was [even] in the store” that day of November 25, 2022, **let alone** that he “made a purchase of Chromecast with Google TV.” As such, the Court should find in favor of Plaintiff on *Fact #1*.

2. For the same reasons as above, the Court should find in favor of Plaintiff on *Fact #2*.

3. Defendant admitted to Plaintiff's *Fact #3*. Thus, there is no genuine issue of fact.

4. Defendant attempts to refute Plaintiff's *Fact #4* by submitting to the Court an affidavit prepared by Mahmoud Abu-Shaweesh. This affidavit, however, **blatantly contradicts** Plaintiff's video evidence in the record – namely his pen camera footage of the event. *See PCMSJ Exhibit #1*. “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

First, Mahmoud claims that he “observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store.” *Def's Exhibit P at ¶ 4*. However, this claim **blatantly contradicts** numerous facts already established by Plaintiff's video. One, Mahmoud states that Plaintiff was “wait[ing] for us to come out and get 'em.” *PCMSJ Exhibit #1 at timestamp 8:08*. Here, Mahmoud's use of the term “wait[ing]” indicates that he did not follow Plaintiff out of the store after purportedly personally observing him steal some JLab headphones/earbuds “immediately” prior to.<sup>2</sup> This **strains credulity** for an Assistant Manager of a \$20 billion dollar multinational company to do. Such a high-ranking employee would presumably be aware of his own loss prevention policy which customarily requires a merchant [pursuant to shopkeeper's privilege] to maintain uninterrupted visual contact of a suspected shoplifter in order to [lawfully] detain them. Moreover, the act of an assistant manager purportedly **personally** observing a suspect steal, **not immediately follow him out of the**

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<sup>2</sup> It is actually **wholly irrelevant** whether Plaintiff was “waiting on the side of the Best Buy building” for *less than a minute* [as Defendant argues] or *five full minutes* [as Plaintiff argues], as the term “waiting” unambiguously refers to an act that is **mutually exclusive** from the act of “being followed out by somebody.”

store, but then all of a sudden, mere moments later, **change his mind entirely** to then meet up with the suspect right outside the store, **strains even more credulity**. Two, throughout his entire 12 minute confrontation with Plaintiff, Mahmoud only mentions wanting to recover the contents of Plaintiff's pocket **three whole times**. See PCMSJ Exhibit #1 at timestamps 0:28, 10:22, and 10:48. Meanwhile, he mentions wanting to recover what Plaintiff held in his hands **a whopping 31 times**. See PCMSJ Exhibit #1 at timestamps 0:00, 0:02, 0:04, 0:05, 0:10, 0:11, 0:52, 1:01, 1:13, 1:44, 1:48, 2:01, 2:10, 2:16, 2:30, 2:40, 2:45, 2:51, 3:34, 3:51, 4:38, 4:53, 6:00, 8:51, 9:17, 10:11, 10:19, 10:47, 11:31, 11:43, and 12:08. Thus, it **strains credulity** that an assistant manager would be **so much more interested** in recovering merchandise that he admittedly [by way of his own affidavit] **did not** observe Plaintiff walk out of the store with, than merchandise that he purportedly did observe him walk out with.<sup>3</sup> Indeed, Mahmoud even began his conversation with Plaintiff by using the word "it" [a singular term] to describe what he wanted to recover [i.e. what he presumably noticed Plaintiff holding in his hands upon first confronting him], **which meant that he wasn't even interested in the contents of Plaintiff's pocket** until later on in the conversation. See PCMSJ Exhibit #1 at timestamp 0:05. Then, when Mahmoud finally **does** mention Plaintiff's pocket, he only uses the word "too" to describe its contents, **which meant that such contents weren't even the primary reason for the confrontation** in the first place. See PCMSJ Exhibit #1 at timestamp 0:28. **This is just not the typical, believable, or even plausible behavior of an assistant manager** who purportedly personally observes a shoplifting suspect steal something from its store. Three, throughout Plaintiff's entire 12 minute detention, Mahmoud **never once** mentions to him that he observed him place something [or things] into his pocket. It **strains credulity** that an assistant manager would not let a shoplifting suspect know right away how surely he got caught, especially when another employee freely offers a similar [utterly unsubstantiated of course] explanation. See PCMSJ Exhibit #1 at timestamp 4:46.

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<sup>3</sup> Most shockingly here, as the video incontrovertibly shows, is that Mahmoud **didn't even bother to use the word "pocket" for nearly ten consecutive minutes of the encounter**. See PCMSJ Exhibit #1 from timestamp 0:28 to 10:22.

Four, Mahmoud, **by way of his very own captured statements, already admitted** that he didn't *even remotely* know the identity of *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets]. See PCMSJ Exhibit #1 at timestamps 0:28 (“I want what's in your pocket, too.”), 7:58 (“Let me see the shit you grabbed, dude. What do you even got in there?”), 10:22 (“You have something in your pocket, you have something in your coat, just give it to me, and you can leave.”), and 10:48 (“You'll have zero problems if you hand me what's in your pocket, and what's in your coat.”). Considering that Plaintiff's video incontrovertibly shows that he **never once** handed anything held in his hands over to Mahmoud, his fellow employees, or the police [let alone emptied his pockets in front of them], Mahmoud never learned identity of Plaintiff's possessions, and therefore, **would have never identified them as “JLab headphones/earbuds.”** Moreover, it **strains credulity** that Mahmoud would have identified Plaintiff's possessions as “JLab headphones/earbuds” *from afar*, either, by way of having purportedly observed him “on the store security video” as he claims next in his affidavit. As such, the entirety of ¶ 4 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that he “observed the same activity on the store security video.” *Def's Exhibit P at ¶ 5*. First, Plaintiff was told during his detention that Best Buy had ***already*** [purportedly] observed him “on video” shoplifting from the store. See PCMSJ Exhibit #1 at *timestamp 4:46*. Yet, Mahmoud claims [in his affidavit] that a) he “observed [Plaintiff] remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store,” b) he observed Plaintiff, “as [he] was exiting the store, [be] asked by a loss prevention employee to show his receipt, which he declined to do,” and c) he “exited the store to request that [Plaintiff] return the product from his pocket.” *Def's Exhibit P at ¶¶ 4 through 6*. In other words, if Mahmoud ***really did*** “observe Plaintiff steal something, exit the store, and then [under Defendant's version of the event, directly thereafter] confront him outside about it,” **he would have never had time to go review any security video footage of the same** [that again, was *already*

claimed to have been purportedly reviewed by the store *prior to* the confrontation].<sup>4</sup> This leaves Mahmoud with but one remaining logical possibility: that he had [purportedly] “observed the same activity on the store security video” ***AFTER*** he and his fellow employees ended their confrontation with Plaintiff. But then this scenario begs an even bigger question: *why on earth were the police never contacted?* **EVER.** As Plaintiff showed both in his REPLY to Defendant's MSJ and in his own C-MSJ, “Defendant made no 'calls for service' to Westminster Police, *whatsoever*, in reference to Plaintiff purportedly shoplifting from its store.” *Ptf's Response To Def's MSJ at ¶ 44; Ptf's C-MSJ at ¶ 24. Defendant doesn't even dispute this fact.*<sup>5</sup> *See Def's Reply To Ptf's Response To Def's MSJ at ¶ 24.* Indeed, Defendant even claims [and Plaintiff doesn't dispute] that “Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols.” *Def's Response To Ptf's C-MSJ at ¶ 24.* Therefore, **Defendant certainly had an active and ongoing relationship with the police at the time, and would have surely called them** *within the SEVERAL HOURS it had remaining that day*, to **EVENTUALLY** turn over said purported “video footage” of a shoplifter that it had purportedly ***positively caught red handed.*** Yet *not one single* “call for service” was made that day regarding Plaintiff. **EVER.** One could only presume that such would be a clear violation of Best Buy's loss prevention policy [that an assistant manager, such as Mahmoud, would presumably have knowledge of and be following]. As such, because the statement contradicts the record, *and is utterly illogical in its own right*, the entirety of ¶ 5 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that “As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do.” *Def's Exhibit P at ¶ 6.*

<sup>4</sup> Indeed, it would have been ***just as preposterous***, under Plaintiff's version of the event, for Mahmoud to have [purportedly] observed Plaintiff steal something, *run to the security office within the five minutes that Plaintiff had been waiting on the side of the building* [to go view him on video], but then *run back outside after viewing the video* [to then personally confront him about it]. It **strains serious credulity** that a merchant would need to go view something on video, *from afar*, **right after** they *already* purportedly *personally* saw it happen *right in front of them* [nor would they likely have sufficient enough time to perform the research necessary *to even locate* the suspect within the video system].

<sup>5</sup> Interestingly, Defendant contradicts itself by vaguely denying this fact in its *Response To Ptf's C-MSJ at ¶ 24.* However, it then fails in said *Response* to lay any foundation to support said denial, **so such a denial holds no weight.**

Here, because this statement refers to *what some other employee supposedly said*, the entirety of this paragraph is **categorically inadmissible hearsay**. “Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination.” *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003). *See also C.R.C.P. 56(e)*. Moreover, such a statement is **blatantly contradictory** in its own right, in that a loss prevention employee, *claimed by Mahmoud himself to have been “posted up” at the store’s exit, would not have had the capacity to witness Plaintiff purportedly “remove two boxes of JLab headphones/earbuds from the shelf [and] place them in his pocket” for that employee to even know, in the first place, whether or not to “ask Plaintiff to show his receipt for them.”* *Employees just don’t ask random people exiting a store to see receipts for whatever random, unidentified contents may exist inside their random pockets / purses / etc.* Indeed, it **strains credulity** that a “loss prevention” employee *would even bother asking for a receipt at all at that point*, if they alternatively *did* personally observe a shoplifter steal something *right in front of them*. They would likely just jump right to demanding that the person give the product back. As such, because it is **categorically inadmissible hearsay** and **blatantly contradicts** the record, the entirety of ¶ 6 of Mahmoud’s affidavit cannot be considered by the Court when ruling on Plaintiff’s C-MSJ.

Finally, Mahmoud claims that “Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery.” *Def’s Exhibit P at ¶ 9*. Here, *even this* statement **blatantly contradicts** the record, in which AN ABSOLUTE PLETHORA of claims were *already* made during the confrontation – both by Mahmoud *and* by his fellow employees – that a) police were **already** contacted **prior** to Plaintiff’s detention, and b) Plaintiff **would be actively detained in the mean time** until they arrived [as is typical and customary to have happen when police are called out to an active shoplifting detention]. *See PCMSJ Exhibit #1 at timestamps 0:13, 0:15, 1:05, 1:33, 1:44, 1:48, 2:51, 3:17, 4:46, 5:11, and 8:51*. Of course, the police **were never actually contacted**, *in the first place*, prior to Plaintiff’s detention,

**let alone even later on THAT ENTIRE DAY after Plaintiff was released** [and Defendant doesn't even dispute this]. So *even that* portion of Mahmoud's statement, "that police had been contacted," has no truth to it. *See PCMSJ Exhibit #2*. As such, the entirety of ¶ 9 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Ultimately, it appears that Defendant, having **gotten caught** failing to perform a lawful detention of Plaintiff, thought that it could "coach" some employee into producing some "affidavit" for it that might otherwise "save" it from liability. But such affidavit, *having been loaded up with what looks to be quite literally everything the employee could possibly think of to conjure up justification for its actions*, actually produced ***nothing more than lies*** premised on **categorically inadmissible hearsay** and **blatant contradictions** instead. Thus, the Court should find in favor of Plaintiff on *Fact #4*.

5. Defendant admitted that "The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud." Thus, there is no genuine issue of fact on that particular claim. However, Defendant attempts to refute Plaintiff's remaining claim – that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" – by pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay and blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #5* that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" [or by any other Best Buy employee, for that matter, that day].

6. Defendant admitted to Plaintiff's *Fact #6*. Thus, there is no genuine issue of fact.

7. Defendant attempts to refute Plaintiff's *Fact #7* by once again pointing to a series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay**. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #7*.

8. Defendant attempts to refute Plaintiff's *Fact #8* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh, and its series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record, and the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay**. As such, neither cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #8*.

9. Defendant admitted to Plaintiff's *Fact #9*. Thus, there is no genuine issue of fact.

10. Defendant attempts to refute Plaintiff's *Fact #10* by pointing to *Exhibit #1* of Plaintiff's C-MSJ.<sup>6</sup> However, Defendant's denial is but one word long, purely generic in nature, and points to no specific timestamps in the video that otherwise clarify its position. **As such, Defendant's general denial holds no weight.** Thus, the Court should find in favor of Plaintiff on *Fact #10*.

11-19. Defendant admitted to Plaintiff's *Facts #11 through #19*. Thus, there is no genuine issue of fact regarding any of these particular facts.

20. While Defendant claims that it “can neither admit nor deny the allegation regarding the number of people Plaintiff counted,” Plaintiff's video footage of the event speaks for itself. Thus, the Court should find in favor of Plaintiff on *Fact #20*.

21. Defendant attempts to refute Plaintiff's *Fact #21* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #21*.

22. Defendant attempts to refute Plaintiff's *Fact #22* by once again<sup>7</sup> pointing to its supplied

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6 Interestingly, Defendant contradicts itself here by **NOT** later refuting Plaintiff's *Undisputed Material Fact #13*, which makes essentially the same claim – that “Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go).”

7 Elsewhere in Defendant's RESPONSE, it further addresses Plaintiff's *Fact #22*. See *Def's Response To Ptf's C-MSJ at page 8, footnote 6* (“Plaintiff’s assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets.”). However, Plaintiff **DID** deny “that he placed something in his pant pockets.” **He literally said so right there in his Undisputed Material Facts.** See *Ptf's C-MSJ at ¶ 21* (“At no point in time, on that day of November 25, 2022, **had Plaintiff ever**

affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #22*.

23. Defendant attempts to refute Plaintiff's *Fact #23* by claiming that "Plaintiff's allegations are statements of opinion rather than fact." However, Plaintiff has every right to establish facts – by way of producing an affidavit on the subject. Indeed, what Plaintiff claims to be aware or not aware of, is a "fact" like any other, that the Court can [and should] consider. Thus, the Court should find in favor of Plaintiff on *Fact #23*.<sup>8</sup>

24. Defendant attempts to deny Plaintiff's *Fact #24*, **but already admitted to it** in its *Reply To Ptf's Response To Def's MSJ at ¶ 44*. Thus, the Court should find in favor of Plaintiff on *Fact #24*.

25. Defendant attempts to refute Plaintiff's *Fact #25* by once again pointing to its series of receipts that it purportedly pulled from its records. However, as previously discussed,

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**once 'concealed' anything** in front of [let alone not in front of] anybody, ever, period.") and ¶ 22 ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever once placed into, or removed, anything** from any pant pocket in front of **LET ALONE NOT IN FRONT OF, as extrapolated from the previous fact** anybody, ever, period. Whatever was located in his pant pockets remained there **BEFORE**, throughout, and after his interaction with the Best Buy employees."). That is, such statements were not meant to be interpreted [read: twisted] to read that "Plaintiff didn't put anything in his pockets *when he thought somebody was looking* [but then he **DID** put something in his pockets *when he thought nobody was looking!*]." Rather, they were meant to be interpreted to read that "Plaintiff didn't put anything in his pockets, **EVER, AT ALL, throughout that day, after getting up, while out in public, both in front of AND NOT IN FRONT OF other people, whether he believed they were looking, OR NOT.**" **Geez, does Plaintiff really have to spell this stuff out?** Nowhere in his lawsuit did he ever say something like: "no one could have seen me place anything in my pant pockets." That's nothing but a factual fabrication on the part of Defendant. **SOOORRRRY Plaintiff forgot to mention the phrase "let alone not in front of" he mentioned in Fact #21, when he drafted Fact #22 on the subject!**

8 Plaintiff actually knows of **one** "receipt" policy [if one could even call it that] to which Best Buy has made him aware of. See *PRTDRTPCMSJ Exhibit #1 at page 2, paragraph 5*. **Such a long-standing, environmentally-friendly, "email only" policy allows patrons of Best Buy stores to "request a digital receipt" upon completion of a transaction, in lieu of having one be printed in the matter.** However, this would obviously be of no help to Defendant, as under such circumstances [if we were to assume, *arguendo*, that Plaintiff was even a customer that day] it has **STILL** failed to provide any evidence, *whatsoever*, that Plaintiff was ever "provided a physical receipt" [for which he might have otherwise been "required to retain" as an Appellate Panel once impermissibly argued]. In other words, **not even the Appellate Panel could fault Plaintiff for requesting that such a "digital-only receipt" be issued to him, that the very store at issue LITERALLY ENCOURAGES the issuing of, that any employees posted up at the store's exit would also undoubtedly know gets regularly issued [and would likewise know inherently lacks the ability to be presented upon leaving].** ONCE AGAIN, though, **it must be repeated that** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has **STILL** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*. Specifically, Defendant had no earthly idea, *whatsoever*, the nature or identity of *whatever* Plaintiff possessed that day [and whereby he could have *just as easily* possessed "**non-store** merchandise he had erroneously attempted to return to the wrong store"]. See *Ptf's C-MSJ Undisputed Material Fact #8*.

the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay**. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #25*.

**PTF'S RESPONSE TO DEF'S STATEMENT  
OF ADDITIONAL MATERIAL FACTS**

26. Plaintiff DENIES that this asserted material fact is true. As previously discussed, the entirety of Defendant's Exhibit N is **categorically inadmissible hearsay**. As such, the Court should **REJECT** Defendant's proffered *Fact #26* when ruling on Plaintiff's C-MSJ.

27. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Here, Defendant seems to think that Plaintiff's YouTube video is some sort of *bona fide* taped confession. Yet, such video **utterly fails** to *even begin to* support **any** of the alleged “facts” to which Defendant negligently argues. Moreover, Defendant's *ad nauseam* attempt to defame Plaintiff as some “lawsuit scammer” holds no merit, either.<sup>9</sup> Plaintiff, *being literally no different than any other customer who shops in public while simultaneously knowing their rights*, is no more or less of a “secret shopper” than they could potentially be. **Clearly, Plaintiff is not alone with regards to the legitimate concerns he has developed over the years regarding unlawful bootstrapped detentions occurring of unreasonably suspected shoplifters for merely refusing to answer questions upon leaving stores directly after shopping.** See *PRTDMSJ Exhibit #14*. Are each and every one of the “receipt refusers” referenced in those news articles all “lawsuit scammers” executing “sting operations” just so that they can “sue for false arrest?” What an emphatic, laughable, **NO**.<sup>10</sup> Rather, **like any other merchant**, *Defendant needs to stop scapegoating and victim-shaming those whom it unreasonably falsely imprisons*, and own up to its transgressions. As such, the Court should

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<sup>9</sup> Funny how elsewhere in this case Defendant will cry out that Plaintiff has lodged *ad hominem* attacks against it, **right after** it has hypocritically lodged **one giant ad hominem attack against Plaintiff** [that he's a lawsuit scammer].

<sup>10</sup> ONCE AGAIN, though, as mentioned in *Ptf's Response To Def's MSJ*, **it must be repeated evidently forever that** any talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has **STILL** failed to show this Court, with **any** tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*.

**REJECT** Defendant's proffered *Fact #27* when ruling on Plaintiff's C-MSJ.

28. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. As just discussed, Plaintiff's purported "modus operandi" **is not a legally cognizable argument**. It is a statement of opinion, rather than fact, and does not address that Defendant has STILL failed to provide this Court with **ANY actually admissible** evidence to legally justify its detention of Plaintiff for purportedly shoplifting from its store. Moreover, it can hardly be considered some *disingenuous* "modus operandi" for a police officer to set out a "bait car" for an unsuspecting car thief – because in the end, that officer is *technically* just parking his car, **just like any other car owner would**, thus rendering **all** car owners effective "bait car" owners.<sup>11</sup>

Next, there are PLENTY of things that "provoke suspicion," as Defendant claims, **but do not actually rise to the level of providing LAWFUL JUSTIFICATION yet to begin actually detaining a patron over**. For example, the patron in *Coblyn v. Kennedy's Inc.*, 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) walked out of the store with an untagged ascot around his neck. The existence of such an ascot, *being available for sale at that very store*, was certainly enough to "provoke suspicion" of the store employee who stopped him to investigate into its potentially stolen nature. However, the Court still held that "The absence of any indication that the merchandise was 'unpurchased' justified the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." *Henry v. Shopper's World*, 200 N.J. Super. 14, 18 (App. Div. 1985).<sup>12</sup> The same holds true with regard to Plaintiff's purported "sting" operations, **in which he merely leaves**

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11 In other words, the whole point of a "sting" operation **is to NOT act or be different than any other person**. Therefore, Plaintiff's long running "sting" operation [if one could even call it that] **of being identical to every other shopper who uses whatever registers are available to them and who don't use plastic bags for environmental reasons** *is not a legally cognizable argument*. The only thing Plaintiff might do different is "refuse to cooperate" on his way out of stores, **which is not a concrete enough justification yet to begin lawfully detaining a patron over**. "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick*, 501 U.S. 429, 437 (1991). "[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment." *United States v. Wood*, 106 F.3d 942, 946 (10th Cir. 1997).

12 See also *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) where the Court held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [the patron] had stolen anything" where the store employee "never saw [the patron] anywhere in the store until they were walking out of the store.").

stores after shopping while likewise carrying out items in which there exists the same “absence of any indication that the merchandise is unpurchased.” OF COURSE using whatever registers are available to him and not using plastic bags “provokes suspicion.” **However**, such “suspicion” [read: hunches] **does not** provide *enough* suspicion **YET** to begin lawfully detaining a patron over.<sup>13</sup> Moreover, such “provoked suspicion” is something that the patron in *Coblyn v. Kennedy's Inc.* would have undoubtedly learned about. Does that then mean that said patron, having won his case and therefore gaining said knowledge of what unreasonably triggers detentions-purportedly-premised-on-shopkeeper's-privilege-but-not-actually-so, *can never shop at Kennedy's in the same way ever again?* **Hardly so.** Seriously, if Coblyn chose to go back and do the exact same thing again [that triggered his first lawsuit] *would he not be allowed to sue again should he happen to get unlawfully detained again?* Again, hardly so. **A false imprisonment is a false imprisonment, no matter how many times that it occurs [and no matter how much intuition a victim has that it may potentially happen, perhaps again, to them].** Thus, it is truly insulting that Defendant [and prior Courts] would attempt to distinguish Plaintiff from the patron in *Coblyn* **just because he has the intuition that he *\*might\* be tortured, just like the patron in *Coblyn* would have after having it happen to him.***<sup>14</sup>

Finally, on the topic of supposedly “failing to mitigate circumstances,” the patron in *Coblyn* obviously didn't void his right to not be falsely imprisoned by failing, as Defendant states, to “take any reasonable action such as show a receipt and/or otherwise prove that he owns the item.” **This is because such actions are not dispositive of whether or not a false imprisonment, *premised outright on a lack of shopkeeper's privilege, has already occurred in the matter.*** As such, the Court should **REJECT** Defendant's proffered *Fact #28* when ruling on Plaintiff's C-MSJ.

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<sup>13</sup> This is because *using alternate registers* and/or *not using a plastic bag* “in no way distinguishes the person to be stopped from other law abiding citizens.” *Whitfield v. Bd. of Cty. Com'rs of Eagle*, 837 F. Supp. 338, 344 (D. Colo. 1993). Moreover, employees working at stores in which such “alternate registers” are installed *would undoubtedly be aware of their existence*, thus rendering said “provoked suspicion” **a self-fulfilling prophecy**. Same goes with lack of plastic bag use, which employees *would also undoubtedly be aware of happens* for customers who purchase single and/or large items.

<sup>14</sup> **Technically, anybody who reads *Coblyn v. Kennedy's Inc.* would develop the same intuition as Plaintiff!** Does that then mean every person who becomes educated on the law now voids their right to not be falsely imprisoned should they choose to shop in the same way as *Coblyn* did in his particular case? Again, an emphatic, laughable, **NO**.

29. Plaintiff DENIES that this asserted material fact is true. Defendant attempts to support this claim by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record.<sup>15</sup> As such, the Court should **REJECT** Defendant's proffered *Fact #29* when ruling on Plaintiff's C-MSJ.

30. Plaintiff ADMITS the fact that three Best Buy employees “stopped Plaintiff outside of the store to investigate Plaintiff’s apparent theft of store merchandise” is true. Obviously, Plaintiff’s unlawful detention is the very subject of his lawsuit. However, Plaintiff DENIES the remaining two portions of Defendant's *Fact #30* as true. First, Defendant attempts to support the claim – that “Plaintiff [refused to show] a receipt for merchandise upon exiting the store” – by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay and blatantly contradicts** the record. Second, Defendant attempts to make the claim – that Plaintiff “did not return the merchandise when asked to do so” – except that here it has, once again, failed to ***ever*** establish that *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets] was, **in fact, stolen merchandise** [let alone *store merchandise*] for which Plaintiff might have otherwise been required to “return.” As such, the Court should **REJECT** the remaining two portions of Defendant's proffered *Fact #30* when ruling on Plaintiff's C-MSJ.

31. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Plaintiff [nor any other patron] has **any legal obligation whatsoever** to “prove his innocence” [in order to succeed in his false imprisonment claim] by way of “proving his pockets were empty and/or proving whatever was in his pockets belonged to him.”<sup>16</sup> As such,

<sup>15</sup> Moreover, such a **bold new claim** that Plaintiff purportedly, *for the first time ever*, actually STOLE from a store **blatantly contradicts** his purported “modus operandi” [according to Defendant] TO SERIALLY PURCHASE from stores! **So which is it?** *Is it Plaintiff's “modus operandi” to purchase from stores, or to steal from them?*

<sup>16</sup> Either Plaintiff ***is not required to*** “prove his innocence” ***in the first place*** in order to succeed in his false imprisonment claim, *see Coblyn v. Kennedy's Inc.*, 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) and *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), ***would succeed anyways as if he were to have*** “proven his innocence” in his false imprisonment claim, *see Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000) and *J. C. Penney Co. v. Cox*, 246 Miss. 1, 11 (Miss. 1963), or ***is not reasonably expected to forfeit his right to succeed***

the Court should **REJECT** Defendant's proffered *Fact #31* when ruling on Plaintiff's C-MSJ.

32. Plaintiff DENIES that this asserted material fact is true. To date, Defendant has ***STILL*** failed to provide this Court with *any* admissible, **non-hearsay, non-contradictory** evidence that Plaintiff “intentionally created the impression that he had stolen from the store.” Moreover, such a statement suffers from the classic “**conclusory statement**” logical fallacy. That is, what Defendant is *actually* just saying, is that “we detained him, because he got us to detain him.” Yet within such a statement there obviously exists no **actual independent evidence** that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff “created the impression that he had stolen from the store” [in order to **lawfully** trigger such a detention]. “A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008). As such, the Court should **REJECT** Defendant's proffered *Fact #32* when ruling on Plaintiff's C-MSJ.

33. Plaintiff ADMITS that the asserted fact is true, but DENIES that it is material to the outcome of his case. This is because “Physical force is not required to complete a false imprisonment.” *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). As such, the Court should **REJECT** Defendant's proffered *Fact #33* when ruling on Plaintiff's C-MSJ.

**PTF'S REPLY TO DEF'S RESPONSE  
TO PTF'S C-MSJ ARGUMENT**

**I. PLAINTIFF HAS PROVEN FALSE IMPRISONMENT AS A MATTER OF LAW**

In Defendant's RESPONSE to Plaintiff's C-MSJ, it begins its argument by claiming that “there are myriad undisputed material facts [that] indisputably prove that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident.” *Def's Response To Ptf's C-MSJ at page 7*.

First, as just discussed, such a statement – that Plaintiff “intended to provoke the detention in

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in his false imprisonment claim by otherwise being required to “prove his innocence” ***which could potentially be interpreted as*** “voluntarily giving consent to a detention,” *see Broadnax v. Kroger Texas*, No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) and *Grayson Variety Store Inc. v. Shaffer*, 402 S.W.2d 424, 425 (Ky. 1966).

the subject incident” – is a **purely conclusory statement**, thus rendering it categorically “insufficient to create an issue of material fact.” *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008). Moreover, police “intend to provoke the stealing of bait cars” *all the time*, except that “**merely affording a person an opportunity to commit an offense is not entrapment.**” *C.R.S. § 18-1-709*.

Next, Plaintiff’s “YouTube video footage of the subject incident” *isn't even video footage of the subject incident*, and as such, doesn't ***even remotely*** establish *any* of the “facts” to which Defendant negligently argues. Likewise, the “vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations” don't establish *any* actual **facts** related to his instant case, either.<sup>17</sup> Moreover, the legal conclusions made in those cases **BLATANTLY VIOLATED THE LAW**.<sup>18</sup>

Next, Defendant claims that Plaintiff “took no reasonable action such as showing his receipts from the store that he undeniably possessed.” However, Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*; that a) Plaintiff ***was even a customer of it*** that day, b) he ***was even asked for a receipt*** upon leaving, c) an actual, tangible receipt ***was printed AND NOT EMAILED***, for which he might have otherwise been “required to retain” in order to

17 Indeed, Plaintiff’s previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, where Plaintiff was found to be located inside those stores, was a customer of those stores, had receipts both printed and provided to him upon shopping those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those stores. However, **NONE** of those facts have ***even remotely*** been fairly and legally established by Defendant in Plaintiff’s instant case.

18 Specifically, those Courts erroneously concluded that Plaintiff “***concealed merchandise***” [when he clearly didn’t]. That “***showing a receipt***” is some “***open window***” [that’s clearly not] ***which merely entails a change in direction that Plaintiff purportedly “failed to avail himself of”*** [which he clearly didn’t]. That “***showing a receipt after being detained is an “escape”***” [when it’s only a “release”]. That “***not showing a receipt***” is a ***voluntary consent to a detention*** [when ***showing*** the receipt actually is]. That ***simply refusing to show a receipt provides enough “shopkeeper’s privilege” to begin detaining over*** [when such is nothing more than ***mere bootstrapping***]. That ***keeping a receipt “on hand,” at all times, before even being detained, is now legally mandatory*** [when it’s clearly not]. That ***showing a receipt is, “at most, a slight inconvenience”*** [when the law is already ***clearly established*** that “any imprisonment, ***no matter how short***” qualifies as compensable]. That “***showing a valid receipt***” would not subject a patron to “***physical or mental harm***” [of course it wouldn’t]. That ***anticipating detentions and starting recordings ahead of time voids false imprisonment claims*** [when they clearly don’t]. That ***it’s Walmart’s “official receipt checking policy” to detain patrons who refuse to show their receipts*** [when it’s clearly not]. That ***being “asked” to show a receipt is not a legally cognizable false imprisonment claim*** [when Plaintiff has never argued such, but rather, has ***always and only*** argued that ***the act of physically blocking all available pathways of his through all available exits*** is what has always constituted his false imprisonment claims]. The prior Courts even concluded that “***being taken to a secluded room, forcibly moved within the store, or arrested,***” are all ***required elements of a valid false imprisonment claim*** [when they’re clearly not]. As such, it should be painfully obvious at this point, that ***LITERALLY ZERO*** of Plaintiff’s prior cases were ***fairly and reasonably*** decided by ***fair and impartial*** Courts that were ***fairly and genuinely*** apprised of ***both the facts and the law*** in each particular matter.

show upon leaving, and d) he, **and not just someone else with authorization to use his credit or debit card**, actually *made the purchase* and *received the printed receipt* for which the purchase would have been associated. However, *as can quickly be seen*, **NONE** of these **absolutely critical facts** have **even remotely** been fairly and legally established by Defendant in this case.

Next, Defendant claims that Plaintiff was required “to prov[e] his pockets were empty and/or prov[e] anything that may have been in his pockets belonged to him in order to shorten or end the detention.” However, this claim has already been addressed by Plaintiff earlier.<sup>19</sup> *See ¶ 31, above.*

Finally, Defendant concludes its argument by “threadbare reciting” **unsubstantiated**, **unsupported-by-law**, and **utterly irrational** interpretations of two “elements” that a Plaintiff is purportedly required to address in order to succeed in a valid false imprisonment claim. However, *each and every one* of Defendant's arguments has been *more than sufficiently* addressed [**and refuted**] by Plaintiff throughout the course of his briefing. Moreover, Defendant has **failed completely** to *even begin to* sufficiently address [**let alone refute**] *a single one* of Plaintiff's Undisputed Material Facts in the matter. Rather, it has supplied nothing more than **categorically inadmissible hearsay** and **blatant contradictions** instead. As such, the Court should **REJECT** Defendant's wholly baseless arguments, and **GRANT** Plaintiff's C-MSJ.

## II. DEFENDANT LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

In its next argument section, Defendant claims that “Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store.” *Def's Response To Ptf's C-MSJ at page 8.* However, as previously discussed, such a statement is a **purely conclusory statement** legally incapable of supporting its position. Again, such a statement provides no **actual independent evidence that even begins to** describe precisely [**let alone roughly**] **HOW** Plaintiff “intended to create

<sup>19</sup> Moreover, *listing off literally all possible actions that are purportedly required for a patron to perform in order to end [read: undo, as Defendant and prior Courts argue] their detention effectively renders all detentions of patrons literally uncompensable*, [and the bar to which merchants are required to have “shopkeeper's privilege” under *obviously cannot be set at the floor*]. In other words, if there is *ALWAYS* something that *ALL* detainees can do, “in order to shorten or end their detentions,” can Defendant *please* describe **a single situation** in which a merchant **WOULD** be liable for unlawfully detaining a patron? Merchants don't simply get *carte blanche* authority to **indiscriminately** detain whomever they wish!

the impression that he had stolen from the store” [in order to **lawfully** trigger such a detention]. Seriously, what exactly did Plaintiff **DO** to supply Defendant with “shopkeeper privilege” in this matter? Defendant can't just show up to Court one day and say, “Well, we detained him, so clearly he did *something* to get detained by us!” In other words, **simply pointing to some purported “modus operandi” does not relieve a merchant from the burden they have to satisfactorily develop “shopkeeper's privilege” for their detentions.** Moreover, as previously discussed, it can hardly be considered some “modus operandi” for the *countless other* patrons referenced in *PRTDMSJ Exhibit #14* to have had upon *their* shopping experiences.<sup>20</sup> **Why is Plaintiff being treated any different?**

Next, Defendant claims that “Plaintiff did in fact create that impression on Best Buy’s employee Mahmoud that Plaintiff had stolen.” However, as previously discussed, the entirety of ¶¶ 4 through 6, and 9 of Mahmoud's affidavit contains **categorically inadmissible hearsay** and/or **blatantly contradicts** the record. *See* ¶ 4, *above*. As such, absolutely none of it can be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Defendant claims that “Plaintiff admits that he was detained less than ten (10) minutes.” However, in order to succeed in a false imprisonment claim, a Plaintiff must only show that he was detained “for a period of time, **no matter how short.**” *See Colorado Civil Jury Instruction 21:1(2)*.

Finally, Defendant claims that “Plaintiff also does not allege any physical violence or that he was even touched during the detention.” Obviously, as previously discussed, “Physical force is not required to complete a false imprisonment.” *Crews-Beggs Dry Goods Co. v. Bayle*, 97 Colo. 568, 51 P.2d 1026 (1935). So that issue is put to rest there. However, what Defendant is likely getting at, is that because “shopkeeper’s privilege inherently provides a defense even when there are threats of physical

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<sup>20</sup> Indeed, many of the shoppers referenced in those news articles started recordings of their anticipated detentions ahead of time. Does that show “disingenuous, false-imprisonment-claim-voiding, **premeditated intent** to be detained,” *or does it simply show intuition that anybody can easily gain for an increasingly problematic issue?* *See also Cop Records Himself Detained At Walmart Receipt Check*, *The Consumerist*, <https://tinyurl.com/4npw8cba> (Dec 23, 2010). Indeed, numerous **bar-licensed attorneys** even spoke up in those news articles against the growing legal crisis. *Are they all horribly mistaken, too? Hardly, inconceivably, so.* ONCE AGAIN, though, ***it must be repeated yet again that*** any talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has **STILL** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*.

force,” [and] “Best Buy . . . only used [purportedly] reasonable threats of force in the event that Plaintiff attempted to escape,” *Def’s Reply To Ptf’s Response To Def’s MSJ at pages 10-11*, Defendant’s detention of Plaintiff was carried out “in a [purportedly] reasonable manner.” The problem with such a position is this: threats [implicit *or* explicit] made to “jump” somebody **CLEARLY AND INDISPUTABLY EXCEED** the “force necessary to prevent escape or to prevent loss of property.” *Cruz v. Johnson*, 823 A.2d 1157, 1160 (R.I. 2003). **“Jumping” a person entails physically, often brutally attacking them, without regard for life or limb.** No merchant would *ever* resort to using such crude and violent tactics just to “prevent escape or . . . loss of property.” Rather, [*and only if the situation called for it*], a merchant might say something like, “if necessary, we’ll use physical force to prevent you from escaping!” It would *never* make **actual, unrestricted, disproportionate, egregious** threats to “jump” the person.<sup>21</sup> As such, the Court should **REJECT** Defendant’s wholly baseless arguments that it had “shopkeeper’s privilege” to lawfully detain Plaintiff that day, including that it purportedly detained him “in a reasonable manner,” and **GRANT** Plaintiff’s C-MSJ.

### III. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, ***PER SE***, AS A THIEF

In its next argument section, Defendant spews *even more* **purely conclusory statements** that don’t legally support its position. **SERIOUSLY**, when is Defendant going to actually DESCRIBE, **with real, tangible, meaningful, non-contradictory, non-hearsay, non-conclusory words**, precisely **HOW** Plaintiff “caused employees of shop owners such as Best Buy to think he stole,” “caused a Best Buy employee to believe he stole,” “intended that the Best Buy employees think he stole,” and “wants others to believe he is a thief.” *Plaintiff is still waiting for this.* Meanwhile, Defendant **DOESN’T EVEN DISPUTE** that it made *numerous* implicit **and** explicit accusations of theft *all throughout Plaintiff’s detention, but whereby because it lacked shopkeeper’s privilege for its actions,*

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<sup>21</sup> Notably here, is that **Plaintiff didn’t even exhibit signs calling for the use [let alone threatened use] of physical force during the encounter.** He even *told* the employees that he was not interested in being violent with them. See *PCMSJ Exhibit #1 at timestamps 0:57 (“I’m not gonna touch you, man...”)*, and *2:06 (“Well I’m not touching you.”)*. Thus, **even the making of such physical threats** [let alone implicit or explicit threats to “jump”] **was completely unnecessary for the employees to make** during their confrontation with Plaintiff.

it made such accusations “with knowledge that they were false, or with reckless disregard for whether they were true or false.” As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not defame Plaintiff, *per se*, as a thief, and **GRANT** Plaintiff's C-MSJ.

#### **IV. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF**

In its final argument section, Defendant claims that “Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to 'jump' him they merely did not correct him when he used the word 'jump.” *Def's Response To Ptf's C-MSJ at page 10.* However, **nowhere in the law does it state that “implicit” threats do not qualify as having the same capacity to be as damaging to the listener as “explicit” threats might.** *At the very least, this sort of issue would be left for the jury to decide, as it could be interpreted to be a dispute over what constitutes a “fact” in the matter.* Next, Defendant claims that because “the subject incident was a sting [Plaintiff] was carrying out,” it is somehow not liable for its actions. However, as previously discussed, such a statement is *yet another purely conclusory statement* that holds no value in law. Finally, Defendant claims that “if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not.” However, as previously discussed, not only has Defendant **utterly failed to establish** that Plaintiff *was even a customer of it* that day, for which he might have otherwise had “measures [available to him] to end the detention,” such measures **aren't even legal obligations of patrons in the first place.** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not assault Plaintiff, and **GRANT** Plaintiff's C-MSJ.

#### **CONCLUSION**

Plaintiff has satisfied *each and every* element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has **STILL** failed to provide this Court with *literally any* tangible, admissible, **non-contradictory, non-hearsay, non-conclusory** facts to *even begin to* support its **naked and unfounded** affirmative

defense of “shopkeeper's privilege” to have otherwise lawfully detained him with that day.

Moreover, regarding the whole idea that “receipt showing” is some sort of “escape path” patrons must supposedly not “fail to avail themselves of,” this Court should be mindful that “Courts may not impute their own meaning to otherwise clear statutory language, nor assume a legislative intent that would vary the words used by the General Assembly.” *People v. Gholston*, 26 P.3d 1, 7 (Colo. App. 2001). Then again, it **STILL** has yet to be shown that Plaintiff's case *has anything to do with receipts*.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

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

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 31st day of October, 2024, the foregoing **PLAINTIFF'S AMENDED REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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