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 ▲
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 initial[2] 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 counter[4] 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.[10][11] 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 indisputably[12] 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. Salzmann, *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.

William Montgomery
William Montgomery
2443 S University Blvd # 129
Denver, CO 80210
H: (970) 412-5463
C: (970) 232-0369
zoinbergs@gmail.com

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:

Lori K. Bell
Stephanie E. Boutsicaris
Montgomery | Amatuzio
4100 E Mississippi Ave, 16th Floor
Denver, CO 80246
T: (303) 592-6600
F: (303) 592-6666
lbell@mac-legal.com
sboutsicaris@mac-legal.com

Attorneys for Defendant

William Montgomery
William Montgomery