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

Plaintiff, proceeding *pro se*, hereby RESPONDS in opposition to Defendant Best Buy's MOTION FOR EXTENSION OF TIME TO FILE, and in support thereof, states as follows:

ARGUMENT

I. DEFENDANT WAS NOT "JUGGLING COMPETING DEADLINES" IN "SIX CASES"

In paragraph 6 of Defendant's MOTION FOR EXTENSION OF TIME TO FILE, it states that "Mr. Montgomery has six cases against Best Buy, in both Colorado trial courts and Colorado appellate courts. Despite all of these cases being factually near identical, all are in different phases of litigation or appeal, each with its own disjointed schedule and deadlines. Undersigned counsel represents Best Buy in all six cases." *Def's MFEOTTF at page 2.* In other words, "we have been juggling competing deadlines in the 4 trial court cases and 2 appellate cases you are currently pursuing against Best Buy."

Exhibit #1 ~ Defendant's MFEOTTF Conferral Email. The problem with these statements, however, is that they are **complete and total hogwash.** Let's break down Defendant's "super major" "six case" "competing deadline" caseload that it claims to be "juggling," to see just how dishonest it is being on this particular issue. *See Exhibit #2 ~ Defendant's Caseload With Plaintiff.*

First, as can quickly be seen, Plaintiff only recently filed a NOTICE OF APPEAL in Cases 2023CV226 and 2024CV241 (on 2025/02/24 and 2025/03/18, respectively), ***such that neither one of their "records on appeal" have even been prepared yet,*** **thus rendering neither case TO HAVE EVEN RELEASED their own briefing schedule yet in the matters.** So right off the bat, **there goes two** of Defendant's "six cases." No "competing deadlines" in those. Indeed, no deadlines AT ALL in them [while we all wait on their appeals]. **Now we're down to four cases.**

Next, in Cases 2024CV132 and 2024CV242, Defendant filed 100% identical MOTIONS TO RECONSIDER in them on 2025/02/10, Plaintiff filed identical RESPONSES to those on 2025/03/03, and Defendant filed identical REPLIES to those on 2025/03/07. Defendant also filed identical ANSWER BRIEFS in both Cases on 2025/02/10, and then served their RULE 26(A)(1) INITIAL DISCLOSURES in 2024CV242 on 2025/03/10 (no initial disclosures are even due yet in 2024CV132 as we continue to wait for that Court to rule on a different Defendant's MOTION TO DISMISS). So **there goes two more** cases right there. No more "competing deadlines" to "juggle" in those two cases **for the next twenty two days** (i.e. until 2025/03/31 when the Proposed CASE MANAGEMENT ORDER was finally due in Case 2024CV242). **Now we're down to two cases.**

Finally, in Case 2024CV241, because the Court dismissed that case prior to Defendant (Best Buy) retaining Council in the matter, Plaintiff mailed a NOTICE OF APPEAL to the unrepresented store only on 2025/03/18. Thus, Plaintiff's NOA (again, mailed directly to the

unrepresented store only) was likely not received by Defendant's yet-to-be-appointed Council (Montgomery | Amatuzio) until sometime around 2025/03/26. This would have put Council for Defendant "on notice" **only at that time** (on 2025/03/26) that any MOTIONS TO RECONSIDER would be due 14 days after the NOA was filed (on 2025/04/01) [and to which is precisely what Council for Defendant did indeed file on that date]. But that would mean that whatever "competing deadline" Case 2024CV241 created, **was only in existence for six whole days** (from 2025/03/26 to 2025/04/01), after which any further deadlines in that particular matter ***were completely and wholly extinguished until after the appeal is processed.*** So **there goes one more** case right there. **Now we're down to one.** One whole case. From "six cases" down to one.

Of course, this one remaining case, Case 2023CV226, **is this here instant case with the 21 day deadline provided by this Court** for Defendant to file its ATTORNEY FEES COMPUTATION within. ***ABSOLUTELY CRITICAL TO NOTE HERE NOW,*** is that this 21 day deadline was provided to Defendant on **2025/03/18**, a date on which **ABSOLUTELY, LITERALLY, NOT A SINGLE DEADLINE AT ALL** [let alone a "competing deadline"] presently existed on the docket, **in literally ANY of Plaintiff's "six cases,"** to otherwise [reasonably] "confuse" a person in Defendant's position into committing some purportedly excusable "calendaring error," or whatever to that effect. Seriously. ***Go look at the spreadsheet Plaintiff prepared.*** LITERALLY NOTHING, **in all six cases,** was going on for nearly a week leading up to the 2025/03/18 deadline creation date, that would cause a reasonably prudent person in Defendant's position to "not correctly pencil in" a 21 day deadline [if that's what even happened]. And only 15 days after the 21 day deadline was created did another document finally become due in another case – Case 2024CV241 – but to which, as explained above, **was addressed and put to rest within six days of Council becoming aware of it**.

Therefore, after that other document was filed in Case 2024CV241 on 2025/04/01, another full week went by WITH LITERALLY NO OTHER DOCUMENTS NEEDING TO BE FILED IN ANY OTHER CASE [that would otherwise cause a reasonably prudent person in Defendant's position to "overlook" a 21 day deadline, if that's what alternatively happened]. **Of course,** if you pay close attention, Plaintiff just said "in any *other* case," as there actually ***WAS*** one, single, other document that became due that ***did*** temporarily create a "competing deadline" within that 21 day period, but to which was simply a REPLY to a RESPONSE to a MOTION TO RECONSIDER that Defendant filed, *in whaddayaknow,* **THIS HERE CASE OF 2023CV226!** Indeed, probably the most shocking part of this whole situation is that in said REPLY, filed on 2025/03/28, Defendant **LITERALLY** referenced its recently granted MOTION FOR ATTORNEY FEES on **Page 2** of this document, **COMPLETE WITH THE EXACT DATE ON WHICH IT WAS RECENTLY GRANTED!** *See Exhibit #3 ~ Def's RIS Of MTR Order Re Court Fees at page 2, point 1 ("This Court has already ruled upon the identical issue of whether this lawsuit was filed vexatiously and in bad faith. See, Order Re: Defendant's Motion for Attorney's Fees (entered March 18, 2025).").* As if Defendant couldn't be ANY MORE reminded of its upcoming 21 day deadline. **DEFENDANT ***L-I-T-E-R-A-L-L-Y*** REMINDED ITSELF *OF THE VERY DEADLINE* TEN DAYS INTO IT!!!**

As such, this Court should **SUMMARILY REJECT** Defendant's proffered excuse that "it has been juggling competing deadlines in the 4 trial court cases and 2 appellate cases Plaintiff is currently pursuing against Best Buy." **Such a bold, haughty statement is simply not true.** During its 21 day ATTORNEY FEES COMPUTATION deadline period, Defendant had only one REPLY due, which it addressed in a **seven day** window, and one MOTION TO RECONSIDER due, which it addressed in a **six day** window [both documents of which were nearly identical to previous ones

filed in Plaintiff's other cases, BTW, thus requiring, at most, a few minutes each to produce]. It strains credulity that such a [purportedly heavy] "competing deadline juggled" workload would be too much for FOUR seasoned attorneys (and TWO paralegals!) **with over 81 years combined experience** to handle. "As a matter of law, the defendants' motion for an extension of time does not show any excusable neglect. The general rule is that the press of work or other activities of an attorney do not constitute excusable neglect." *Cox v. Adams,* 171 Colo. 37, 464 P.2d 513 (1970).

II. DEFENDANT DID NOT HAVE "DIFFICULTIES IN KEEPING CASES ORGANIZED AND SEPARATE"

Next, Defendant claims that "Plaintiff's vexatious and never-ending lawsuits against Best Buy has created difficulties in keeping cases organized and separate." *Def's MFEOTTF at page 3.* However, this Court should also **SUMMARILY REJECT** this proffered excuse as having any merit. This is because Defendant *itself* has **already** admitted that it has "prepared" an entire "lawsuit database" of Plaintiff's cases, to **explicitly** "keep them organized and separate." *See Def's Computation Of Attorney Fees Exhibit A, page 14, date 11/04/2024 ("Prepare a lawsuit database with all pertinent information regarding plaintiff's previous lawsuits to be able to reference during plaintiff's deposition.").* Thus, **it strains serious credulity** that Defendant would not have likewise created a similar "lawsuit database" of all of Plaintiff's *current* lawsuits to also keep them "organized and separate." **Even Plaintiff has a "lawsuit database" of all his cases against all his Defendants,** and he's just a pipsqueak, indigent, *pro se* pauper!

Of course, ***even if*** Plaintiff's "never-ending lawsuits" actually ***did*** "create difficulties in keeping cases organized and separate," such a circumstance would be **extremely unlikely, if not outright impossible** to actually cause a "calendaring error" of such magnitude **that a 21 day deadline *would be overlooked entirely.*** That is, the only type of "calendaring error" that would

be possible in this "six case" scenario would be to accidentally calendar the 21 day deadline under the wrong case [not fail to calendar it at all!]. But Defendant didn't accidentally file their ATTORNEY FEES COMPUTATION in the wrong case. **Defendant failed to file it in the first place.** Indeed, *by its very own implicit admissions,* Defendant **only started** working on its COMPUTATION **two days after** the 21 day deadline **had already passed** (i.e., on 2025/04/10, when it filed its MOTION FOR EXTENSION OF TIME TO FILE). Had Defendant ***at least started*** preparing its COMPUTATION ***prior to*** the 21 day deadline, it would have surely been aware of the upcoming deadline as it was fast approaching, sufficient to prompt itself to request an extension of time to file the document before the deadline were to pass. But because, again, Defendant evidently ***didn't even start working*** on the COMPUTATION until ***after*** the deadline ***had already*** passed, **the only logical conclusion that can be reached is that Defendant simply failed to "pencil in" the deadline into its calendar *in the first place*, on 2025/03/18, when the Order was originally issued.** But, as previously discussed, because **THERE WAS LITERALLY NOT A SINGLE THING GOING ON**, in **LITERALLY ANY** of Plaintiff's "six cases" with it, *for about a week at that point,* there were simply no "competing obligations" of Defendant's at the time that would otherwise cause a reasonably prudent person in its position to ***literally fail to even pencil in*** a simple 21 day calendar deadline, **outright.** Such negligent behavior is wholly inexcusable, especially given that [again] FOUR attorneys **with over 81 years combined experience** have been assigned to this case. "Excusable neglect involves a situation where the failure to act results from circumstances which would cause a reasonably careful person to neglect a duty. It is impossible to describe the myriad situations showing excusable neglect, but in general, most situations involve unforeseen occurrences such as

personal tragedy, illness, family death, destruction of files, and other similar situations which would cause a reasonably prudent person to overlook a required deadline date in the performance of some responsibility. Failure to act due to carelessness and negligence is not excusable neglect." *Farmers Ins. Group v. District Court,* 181 Colo. 85, 507 P.2d 865 (1973). *See also Estep v. People,* 753 P.2d 1241 (1988) ("Failure to calendar the filing deadline was precisely the sort of carelessness this court and the court of appeals have condemned repeatedly in a variety of circumstances."). *See also Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (2024) ("We conclude that the lawyer's failure in this case constitutes mere 'garden-variety attorney inattention,' which does not rise to the level of excusable neglect." "If such inattention were sufficient to establish excusable neglect, it would be 'hard to fathom the kind of neglect that we would not deem excusable.'"). *See also Farm Deals, LLLP v. State,* 300 P.3d 921 (2012) ("These assertions are inadequate to show excusable neglect because they show mere carelessness."). *See also Nickerson v. Network Solutions, LLC,* 339 P.3d 526 (Colo. 2014) ("The trial court expressly rejected Network Solutions' 60(b)(1) claim, finding that its argument regarding miscalendaring the answer deadline was 'without merit.'"). *See also Cummings v. United States,* No. CV 12-00081 WJ/RHS (2014) ("[C]alendaring errors will not rise to the level of excusable neglect if they are the result of poor lawyering."). *See also Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007) ("The district court concluded that the <u>actual</u> reason why the notice of appeal was not timely filed was counsel's error in calendaring the deadline."). *See also Reed v. Gautreaux,* CIVIL ACTION NO. 19-130-SDD-RLB (2019) (Explaining that Courts "have routinely held that calendaring errors do not constitute excusable neglect.").

III. DEFENDANT'S FAILURE TO EXPLAIN ITS "CALENDARING ERROR" <u>WITH ANY DETAIL</u> RENDERS IT *AUTOMATICALLY* INEXCUSABLE

Next, Defendant claims that "this regrettably resulted in *calendaring errors* by Best Buy regarding the deadline for this computation" (emphasis added). *Def's MFEOTTF at page 3.* However, without explaining ***with any detail whatsoever*** the actual nature of the "calendaring errors" [if that's what even happened], and instead, *simply saying the magical words* – that "calendaring errors" "resulted" from a "six case" "juggled" caseload, "the Court is unable to determine whether it was the sort of clerical error that might have been excused." *Quarrie v. Wells,* Civ. No. 17-350 MV/GBW (2020). *See also Shearman v. Jorgensen,* 106 Cal. 483, 39 P. 863 ("Inadvertence in the abstract is no plea upon which to set aside a default. The court must be made acquainted with the reasons for the inadvertence; and, if satisfactory, will act upon them and relieve from burdens caused by them; but, if the inadvertence is wholly inexcusable, as if it arises from gross negligence, the court will not look upon it kindly, and will have none of it."). *See also Candelaria,* 2019 WL 4643946, at *10; Quarrie v. Wells, Civ. No. 17-350 MV/GBW, 2020 WL 954177, at *2 n.3 (D.N.M. Feb. 27, 2020) (explaining that "the nature of the [calendaring] error" may determine whether it is excusable or not and stating that it could not determine whether the error was excusable where a detailed explanation for the calendaring error was lacking).

IV. THE COURT PROVIDED DEFENDANT WITH THE REQUISITE 21 DAY DEADLINE "IN A READILY ACCESSIBLE, UNAMBIGUOUS ORDER"

Finally, Defendant's "failure to abide by the correct deadlines was 'simply not excusable' when [this Court] had expressly listed the [April 8, 2025] deadline in 'a readily accessible, unambiguous' order." *Cummings v. United States,* No. CV 12-00081 WJ/RHS (2014). **In other words, such a simple, straightforward 21 day deadline was not some cryptic timeframe to be decoded upon the careful interpretation of some state or federal rule of civil or criminal procedure, it was LITERALLY "expressly listed in a readily accessible, unambiguous order" provided to**

Defendant on March 18, 2025. You basically can't get any more straightforward than that. *See also Riggs Oil & Gas Corp. v. Jonah Energy LLC,* 555 P.3d 90 (2024) ("[W]here 'the rule is entirely clear, we continue to expect that a party claiming excusable neglect will, in the ordinary course, lose under the Pioneer test.'"). *See also Delta Airlines v. Butler,* 383 F.3d 1143, 1145 (10th Cir. 2004) (quotation omitted) ("[C]ounsel's misinterpretation of a readily accessible, unambiguous rule cannot be grounds for relief unless the word excusable is to be read out of the rule."). *See also Mirpuri v. ACT Mfg., Inc.,* 212 F.3d 624, 631 (1st Cir. 2000) ("A misunderstanding that occurs because a party (or his counsel) elects to read the clear, unambiguous terms of a judicial decree through rose-colored glasses cannot constitute excusable neglect."). *See also Halicki v. Louisiana Casino Cruises, Inc.,* 151 F.3d 465, 470 (5th Cir. 1998) ("Although . . . we [leave] open the possibility that some misinterpretations of the federal rules may qualify as excusable neglect, such is the rare case indeed. Where, as here, the rule at issue is unambiguous, a district court's determination that the neglect was inexcusable is virtually unassailable."). See also *Lowry v. McDonnell Douglas Corp.,* 211 F.3d 457, 463 (8th Cir. 2000) ("Notwithstanding the 'flexible' Pioneer standard, experienced counsel's misapplication of clear and unambiguous procedural rules cannot excuse his failure to file a timely notice of appeal.").

CONCLUSION

In the end, a MOTION FOR EXTENSION OF TIME TO FILE "is a simple document to prepare," *Magraff v. Lowes HIW, Inc.,* 217 F. App'x 759 (10th Cir. 2007), in that such failure to file one on time would hardly ever be excusable. Moreover, "Under section (b)(1) of this rule, enlargements of time are so readily obtainable where application is made therefor within apt time that there is rarely an occasion where failure to do so would appear to be excusable." *Smith v. Woodall,* 129 Colo. 435, 270 P.2d 746 (1954). *See also Freeman v. Cross,* 134 Colo. 437, 305 P.2d 759 (1957).

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR EXTENSION OF TIME TO FILE ATTORNEY FEES COMPUTATION in this matter.

Respectfully submitted on this, the 1st day of May, 2025.


William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 1st day of May, 2025, the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE ATTORNEY FEES COMPUTATION** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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