

<b>Jefferson County District Court</b> 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
<b>WILLIAM MONTGOMERY</b> Plaintiff  vs.  <b>BEST BUY STORES, L.P.</b> Defendant	
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 RESPONSE TO DEFENDANT'S  MOTION FOR ATTORNEY FEES</b>	

Plaintiff, proceeding *pro se*, hereby submits to the Court his RESPONSE to Defendant's MOTION FOR ATTORNEY FEES, and in support thereof, states as follows:

**ARGUMENT**

**I. PLAINTIFF DID NOT HAVE SUFFICIENT, MEANINGFUL KNOWLEDGE THAT HIS CLAIMS AGAINST DEFENDANT WOULD NOT PREVAIL**

In Defendant's Motion For Attorney Fees, it begins its **deluge of intellectually dishonest arguments** by claiming that “After having numerous previous lawsuits thrown out based upon the same or similar facts and legal arguments, Plaintiff continues to assert the same failed arguments.” *Def's Mtn For Atty Fees at page 3*. However, as will be discussed next, ***each and every one*** of Plaintiff's previous cases [filed against Walmart] were unquestionably and irrefutably **NOT** “based upon the same or similar facts and legal arguments” that he has now

presented, *for the very first time*, in his instant case against Defendant [Best Buy]. Therefore, it is nothing short of a LIE that Plaintiff “continues to assert the same failed arguments.”

a. **The FACTS in Plaintiff’s instant case are entirely different**

First, in all of Plaintiff’s previous cases against Walmart, **he was a customer of the stores that detained him**. The same is not even remotely true today, where Plaintiff *wasn’t even a customer of Best Buy*, but rather “a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store.” *See Ptf’s Resp To Def’s MSJ at page 22*. Next, in all of Plaintiff’s previous cases against Walmart, **he utilized back registers and/or did not use plastic bags**.<sup>1</sup> However, once again, **the same is not even remotely true today**, where “back registers” *don’t even exist inside Best Buy* [i.e. they have universal registers littered all throughout their stores], the major retail chain phased out “plastic bag use” *in July of 2022, six months BEFORE Plaintiff was even detained* in the instant case, and again, *Plaintiff wasn’t even a customer that day to EVEN USE* “back registers” and/or “not use plastic bags.”<sup>2</sup> Next, in all of Plaintiff’s previous cases against Walmart, **he “knew” about the store’s receipt checking policies**.<sup>3</sup> However, once again, **the same is not even remotely true today**, where Plaintiff *still has no earthy idea if Best Buy EVEN HAS a receipt checking policy on its books, in the first place*, let alone a compulsory one. *See Ptf’s Affidavit Of The Event at ¶ 26*. The only “receipt policy” of Best Buy that Plaintiff is aware of, *is one in which the major retain chain EMAILS RECEIPTS to its patrons*, in lieu of giving them a paper one. *See Ptf’s Reply In Support Of His C-MSJ at page 10, footnote 8*. Of course, such a policy **only supports** Plaintiff’s instant case, rather than hurt it. Next, in all of Plaintiff’s previous cases against Walmart, **store employees made explicit requests to see his receipt**. However, once again, **the same is not even remotely true today**, where no such explicit requests *were ever made to Plaintiff*, whatsoever,

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1 Not that either would supply a merchant with “shopkeeper’s privilege” *anyways*, as argued elsewhere by Plaintiff.  
2 Indeed, this Court **FAILED** to allow the veracity of these facts *to even be developed, in either direction, in the first place*, before it tendentiously, summarily, and **impermissibly** dismissed Plaintiff’s instant case in its entirety.  
3 Not that such would invalidate a patron’s valid false imprisonment claim *anyways*, as also argued by Plaintiff.

by any store employees that day. Finally, in all of Plaintiff's previous cases, **Plaintiff anticipated his potential detentions**, and so, began recordings ahead of time.<sup>4</sup> However, once again, **the same is not even remotely true today**, where Plaintiff did not begin recording his interaction with Defendant ***until after the surprise confrontation occurred.***<sup>5</sup> As such, ***absolutely none*** of Plaintiff's previous cases against Walmart can be fairly and reasonably compared to his instant case against Best Buy.

**b. Prior Courts also got several facts WRONG in Plaintiff's previous cases**

It is also worth noting that prior Courts got several facts patently WRONG in Plaintiff's previous cases, ***which only further invalidates their holdings.*** Specifically, in *Montgomery v. Walmart, Inc.*, Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235), a District Court Judge *miraculously [but impermissibly]* held that Plaintiff “concealed” merchandise on his way out of each store.<sup>6</sup> **OF COURSE**, Plaintiff has obviously **NEVER, NOT ONCE** “concealed” *anything*, from *anybody*, on *any* shopping occasion, **ever, period, in the history of his existence**, for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter!<sup>7</sup> See *Ptf's Affidavit Of The Event at ¶ 24* (“At no point in time, on that day of November 25, 2022, had I ever once 'concealed' anything in front of [let alone not in front of] anybody, ever, period.”) and *¶ 25* (“At no point in time, on that day of November 25, 2022, had I ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in my pant pockets remained there before, throughout, and after my interaction with the Best Buy employees.”). Then, in *Montgomery v. Walmart Inc.*, Adams County

4 Not that doing such would invalidate a patron's valid false imprisonment claim *anyways*, as also argued by Plaintiff.

5 See *Def's MSJ Exhibit J at page 10*, where the Court **[impermissibly]** held that “Given Montgomery’s repetitive interactions with Walmart, *coupled with his recorded contemplation of his anticipated detention*, the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision.”).

6 See *Def's MSJ Exhibits C / D / E / H, Order at page 25*, where the Court **[impermissibly]** held that “Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was *concealing* property of the store, which he knew would lead to being detained and asked for his receipts.” BTW, the Court also got the sequence wrong, as Plaintiff was **FIRST** asked to show his receipts, **THEN** detained. **Not the other way around.** Indeed, **it was the very refusal to show the receipts that was the sole cause of his detentions** [i.e. “bootstrapping”].

7 Not to mention ***that it's an actual crime*** to steal merchandise from a store, **and Plaintiff isn't that freaking stupid.**

District Court Case No. 2021CV68 (Consolidated: 2021CV88), an Appellate Panel *miraculously* [but impermissibly] held that it was even Walmart's official receipt checking policy to “confine” patrons “if they chose not to produce [a receipt].” *See Def's MSJ Exhibit J at page 10.* **OF COURSE**, it has always been [and still is] Walmart's **OFFICIAL** receipt checking policy to only **ASK** patrons to see their receipts, **NEVER** to actually *detain* them if they choose to refuse to show one.<sup>8</sup> As such, *each and every* one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

**c. The LEGAL ARGUMENTS in Plaintiff's instant case are entirely different**

First, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that he was a non-patron who failed to return non-store merchandise he had erroneously attempted to return to the wrong store.* *See Ptf's Resp To Def's MSJ at page 22.* This is a **new** and **novel** legal argument that Plaintiff has now presented, *for the very first time*, “in a good faith attempt to establish a new theory of law in Colorado.” *See C.R.S. § 13-17-102 (7).* Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that the store he visited has a policy in which receipts are emailed to patrons instead of printed out and given to them.* *See Ptf's Reply In Support Of His C-MSJ at page 10, footnote 8.* This is also a **new** and **novel** legal argument that Plaintiff has now presented, *for the very first time*, “in a good faith attempt to establish a new theory of law in Colorado.” Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that being \*fully stopped\* to show one's receipt is not the same as merely \*changing directions\* toward an \*always open\* window.* *See Ptf's Resp To Def's MSJ at page 19, footnote 8.* This is a “good faith argument” that Plaintiff has now presented, *for the very first time*, “for the extension, modification, or reversal of existing law.”

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<sup>8</sup> *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000) (“If a customer refused to have his or her bag checked, **the policy allowed the person to pass.**”). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed*, TheWrightStuff, <https://tinyurl.com/yc8d59aj> (Jun 2, 2023) (“The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.”).

See C.R.C.P. Rule 11(a). Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that merely affording a person an opportunity to commit an offense is not entrapment (i.e. entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed)*. See *Ptf's Resp To Def's MSJ at pages 15, footnote 4, and 27*. This is another "good faith argument" that Plaintiff has now presented, ***for the very first time***, "for the extension, modification, or reversal of existing law." See C.R.C.P. Rule 11(a). Next, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that merchants don't simply get \*carte blanche\* authority to indiscriminately detain whomever they wish (i.e. a merchant listing off literally all possible actions that are purportedly required for a patron to perform in order to end 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)*. See *Ptf's Reply In Support Of His C-MSJ at page 17, footnote 19*. Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time***, "for the extension, modification, or reversal of existing law." See C.R.C.P. Rule 11(a). Finally, in all of Plaintiff's previous cases against Walmart, **Plaintiff never once argued** before the Court *that the Defendant has offered nothing more than \*purely conclusory statements\* to support its shopkeeper's privilege position (and that "conclusory statements made without supporting documentation or testimony are insufficient to create an issue of material fact")*. See *Ptf's Resp To Def's MSJ at page 28, footnote 10*. See also *Ptf's Reply In Support Of His C-MSJ at pages 15 through 20*. Again, this is another "good faith argument" that Plaintiff has now presented, ***for the very first time***, "for the extension, modification, or reversal of existing law." See C.R.C.P. Rule 11(a). As such, an award of attorney fees against Plaintiff for attempting in good faith to establish or reverse all these theories of law in Colorado would be an inappropriate and gross miscarriage of justice.

d. Prior Courts also made several **BAD** legal arguments in Plaintiff's previous cases

It is also worth noting that prior Courts made several patently AWEFUL legal arguments in Plaintiff's previous cases, *which only further invalidates their holdings*. Specifically, in *Montgomery v. Walmart Inc.*, Jefferson County District Court Case No. 2020CV76, an Appellate Panel *miraculously [but impermissibly]* held that Plaintiff's false imprisonment claim failed because he purportedly only sued over being "asked" to show proof of purchase.<sup>9</sup> **HOWEVER**, Plaintiff has **ALWAYS AND ONLY** ever argued **that the act of physically blocking all available pathways of his through all available exits** is what has **specifically** constituted his false imprisonment claims. Thus, the Court's tendentious holding was a profoundly inaccurate ruling in the matter. Then, in the same case, the Appellate Panel also *miraculously [but impermissibly]* held that "being taken to a secluded room," "being forcibly moved within the store," and/or "being arrested," are all purportedly required elements of a valid false imprisonment claim.<sup>10</sup> **HOWEVER**, such is clearly not the law, as the Court has long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). That is, "Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment." *Ibid.* See also *McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437 (1969). As such, *each and every* one of Plaintiff's subsequent cases that **impermissibly** relied on such **improper** holdings [i.e. all of them] are **ALL** inapposite to Plaintiff's instant case.

e. **Numerous LEGAL ARGUMENTS have never even been addressed by the Court**

In all of Plaintiff's previous cases against Walmart, **Plaintiff made numerous legal arguments THAT THE COURT LITERALLY FLAT OUT NEVER ADDRESSED** [and still, to this day, has yet to even begin to address]. Specifically, Plaintiff has made relevant legal arguments surrounding his claims that **a)** a very real and constitutionally significant difference exists between

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<sup>9</sup> See *Def's MSJ Exhibit I at page 8*, where the Court [**impermissibly**] held that "No reasonable juror could conclude that being asked to show proof of purchase before leaving a store would constitute confinement for purposes of false imprisonment."

<sup>10</sup> See *Def's MSJ Exhibit I at page 8*, where the Court [**impermissibly**] held that because "Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested," his false imprisonment claim had failed.

the definition of “escape” and the definition of “release” (and that the term “escape” applies to pre-confinement situations only and **not** to post-confinement ones once they have occurred), **b)** the phrases “physical barriers” and “unreasonable risk of harm” have been misinterpreted and abused by the Court in such a way that doing so “defeats the legislature's obvious intent” of the use of such phrases (and to which, in turn, renders such interpretations manifestly “absurd”), **c)** *merchants* are the ones who ultimately have the “last clear chance” to avoid or prevent false imprisonments from occurring, *not patrons*, **d)** showing a receipt and not showing a receipt cannot \*both\* be considered consent (and whereby “showing a receipt” has already been held by Courts to constitute “voluntarily consenting” to the detention), **e)** a receipt itself is never the “key,” but rather the merchant's own, personal, *independent* act of satisfactorily cross-checking the receipt against the merchandise is the actual “key” (i.e. it is unreasonable to believe that a merchant would **not** continue to detain a patron, **OUTRIGHT**, in the mean time, until *after* it completes its *own* independent verification of the purchases at hand, even after the patron hands over the receipt), **f)** if “showing a receipt” is a viable “escape” path, such literally renders the detention to have **paradoxically** never existed in the first place (i.e. it eliminates any capacity to justify the now **non**-detention with affirmative defenses like “shopkeeper's privilege” which are only available in false *imprisonment* claims), **g)** showing a receipt is not merely some “slight inconvenience,” but rather the law is already clearly established that any imprisonment, **“no matter how short,”** already qualifies as compensable, **h)** private investigators don't have the right to lawfully detain unidentified citizens until they simply tell them their name / security guards don't have the right to lawfully detain unidentified neighborhood residents until they simply show them their ID, **i)** a mother of seven cannot reasonably be expected to wait 10+ minutes to have *her* entire cart of purchases verified, yet somehow Plaintiff purportedly does not have that same right against false imprisonments just because he can only afford to buy one or two items at a time, **j)** lack of plastic bag use **does not** reasonably indicate that merchandise is “unpurchased,” **k)** coming from a “back register” **is not any more suspicious than** coming from a

“front register” (because of how merchants know *full-well* that they personally installed *both* registers at *both* locations for the *express* convenience of their customers), **l**) merchants, **just like police**, are not allowed to “bootstrap” mere refusals to cooperate (i.e. refusals to answer questions and/or refusals to consent to searches) into *the very justification* to detain patrons that they otherwise don't have the lawful right to detain, and finally, *but just as importantly*, **m**) that it is **statistics fraud** to not acknowledge that many other people are mindless lemmings who “assuage the perceived evil” by way of voluntarily showing *their* receipts (thus making Plaintiff's behavior look deliberate, when it's really not), as well as that Plaintiff has gone shopping *thousands of times, at hundreds of merchants*, nearly all without issue (thus showing that Defendant is the real exception, not Plaintiff). **Every single one** of these legal arguments has been thoroughly prepared by Plaintiff, *in at least two dozen of his briefings by now*, **giving the Court MORE THAN ENOUGH time to prepare reasonable holdings against**. Yet NO such holdings have EVER been made that EVEN REMOTELY address ANY of these CRITICALLY IMPORTANT arguments, **thus making Plaintiff [and any reasonable person in his position] legitimately question the validity of all such holdings**. As such, one cannot reasonably blame Plaintiff for continuing to do what any other person would do under the circumstances: *keep shopping, or keep leaving stores without shopping, while refusing wholly non-compulsory requests to answer questions and/or be searched by complete and total strangers, then rightfully sue anybody who violates his constitutional right to not be falsely imprisoned absent a clear and reasonable showing of shopkeeper's privilege in the matter*.

**f. Plaintiff's future cases against Defendant have no bearing on his current one**

Finally, Defendant claims that “Because Plaintiff has already voiced his intent to proceed with more lawsuits against Best Buy, a strong sanction of attorney's fees is necessary here to deter future groundless, frivolous, and/or vexatious lawsuits.” *Def's Mtn For Atty Fees at page 3*. The problem here is that **Defendant has no earthly idea what kinds of cases Plaintiff has yet to bring against it**, and therefore, has no earthly idea whether or not they are “groundless, frivolous, and/or

vexatious.” As such, a sanction of attorney fees based on *the mere prospect* that future lawsuits warrant them **is a clear violation of due process** [not to mention being totally preposterous].

## **II. PLAINTIFF DID NOT FILE A FRIVOLOUS LAWSUIT IN BAD FAITH**

### **a. Plaintiff simply shops, and nothing more, at many different stores**

Defendant claims that “Plaintiff’s conduct on the date of the subject incident demonstrates that he was deliberately trying to engage Best Buy in a situation that would result in a lawsuit. To achieve this goal, Plaintiff drove more than a hundred miles over the course of about eight hours to make numerous purchases at various Best Buy locations on one of the busiest retail shopping days of the year, Black Friday.” *Def’s Mtn For Atty Fees at page 4. OH MAN*, there are so many things wrong with this statement, Plaintiff [almost] doesn't know where to begin. First, as far as Plaintiff can tell [please correct him if he's wrong!] it's not against the law to “drive more than a hundred miles” to “make numerous [even 'duplicitous'] purchases” at *wherever the heck* he wants to go shopping in life. Seriously, is Defendant *really* arguing this? Is Plaintiff *missing* something here? Does Defendant *actually* not understand how monumentally BAD of an argument this is? [More on this topic later.] Second, completely absent from such a [loaded] statement is any mention whatsoever *to any and all of the other stores* that Plaintiff may have visited and/or made purchases at that day. Therefore, without knowing how many total stores Plaintiff shopped at on Black Friday [let alone any other day], one cannot reasonably conclude that he was “**deliberately** trying to engage Best Buy” [only]. *Defendant sure loves to make it all about them, don't they!* Indeed, this goes **right back** to Plaintiff’s argument regarding **statistics fraud**. Does Defendant *really, actually believe* that Plaintiff only “targets” / “provokes” / “insert all other conclusory, meaningless hot words here” just **its** stores? That's a little bit of a narcissistic position to take there. Especially when Plaintiff, *for literally the last decade now*, has merely “refused to cooperate” (i.e. refused to answer questions and/or refused to consent to searches) at probably over 300 stores on probably over 1,000 shopping experiences at this point. Yet you don't see *any other* lawsuits brought by

him, against *any other* merchants,<sup>11</sup> do you? *Hmm, I wonder why.* Maybe because Best Buy [and Walmart] are the only two “Big Box Bullies” in town willing to [read: brazen enough to, overzealous enough to, and stupid enough to] “Bust Benign Buyer Behavior” of patrons who merely leave its stores after shopping at them. In layman's terms: it's getting old [and Plaintiff is getting tired of hearing] that he is supposedly “deliberately” “trying to stir up” “lawsuits” when he goes shopping, **when all he does in the end is what countless other customers do when they go shopping: decline to participate in [what are by law supposed to be, but evidently not anymore] wholly non-compulsory encounters with complete and total strangers, and whereby the true cause of his lawsuits are the few and far between overzealous merchants like Best Buy who happen to overstep their legal boundaries on a very select few number of occasions.**

**b. Defendant's evidence that Plaintiff acted “deliberately” literally contradicts itself**

Next, on this topic, is quite easily the most downright LAUGHABLE part of Defendant's argument. Evidently Defendant doesn't understand that presenting evidence that Plaintiff “made numerous purchases at various Best Buy locations” all throughout the state, **BUT WHEREBY HE DIDN'T GET DETAINED AND DIDN'T SUE OVER ANY DETENTIONS THAT DIDN'T OCCUR AT ANY SINGLE ONE OF THESE OTHER STORE LOCATIONS,** is LITERALLY evidence that IT was the exception this whole time, and not the norm! Indeed, quoting this very Court, if Plaintiff *truly does* “act in a manner that could reasonably be construed as suspicious,” *truly does* “intentionally create misunderstandings for purposes of his later lawsuits,” and *truly does* “design his conduct to inspire this belief,” **THEN WHY ON EARTH DOES HE NOT HAVE A BUNCH MORE FRIVOLOUS LAWSUITS COLLECTED BY NOW THAT WOULD BE A DIRECT RESULT OF HIS OSTENSIBLY PROVOCATIVE BEHAVIOR UNDERTAKEN AT ALL THESE OTHER BEST BUY LOCATIONS!?!?** Oh yeah, that's right. Because **each and every one** of these *other* Best Buy stores acted *reasonably* in **NOT** detaining him, **while Defendant in the**

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<sup>11</sup> Except Walmart, of course.

**instant case obviously couldn't live up to the same.** Indeed, to argue otherwise, would be to LITERALLY say that *dozens and dozens* of employees, staffed *at over a dozen* Best Buy locations, scattered *all across* the front range, **WERE \*ALL\* WILDLY INCOMPETENT, INTERNAL POLICY VIOLATING, SHOPKEEPER'S PRIVILEGE IGNORANT EMPLOYEES WHO \*ALL\* LET A BONA FIDE THIEF WALK STRAIGHT OUT OF THEIR STORES, RED HANDED, WITH MERCHANDISE NOT PAID FOR, ON THE BIGGEST SHOPPING DAY OF THE YEAR!?!?!?** Plaintiff has never laughed so hard in his life!!!! Of course, merely refusing to answer questions and/or refusing to consent to searches is still not much of an “audit” anyways. Indeed, Defendant's subsequent claim that “Plaintiff repeatedly analogizes his conduct to a police bait car trying to catch people committing auto theft,” is yet another downright laughable argument. Did Defendant not hear Plaintiff when he mentioned that “the whole point of a sting operation is to be *not* different than anybody else,” *Ptf's Dep at page 36, line 18*, “people just park their cars, whether they're cops or not,” *Ptf's Dep at page 35, line 25*, “[he's] just like any other person who parks their car on the road,” *Ptf's Dep at page 36, line 22*, and that, therefore “every car is a bait car on the road,” *Ptf's Dep at page 36, line 1*? **Thus, the argument that a “bait car” is in any way, shape, or form, “deliberate” [entrapment] is absolutely downright laughable.** All Plaintiff does is “go shopping and leave.” *Ptf's Dep at page 45, line 6*. **THAT'S IT.** When are merchants [and the Court] going to **give it up** that Plaintiff doesn't actually **\*\*DOOOO\*\*** anything that any other customer doesn't **DOOOO** when going shopping. “Everybody's a secret shopper technically.” *Ptf's Dep at page 85, line 11*. Sadly, most other patrons simply don't know their rights to decline to participate in **non-compulsory** encounters with complete and total strangers after shopping [and indeed, most are alternatively mindless lemmings who would rather “assuage the perceived evil” by way of voluntarily consenting to any detentions in favor of ostensibly lower prices]. **In the end though,** it's just not Plaintiff who is “provoking” his lawsuits, **its a few overzealous merchants who are.** “And if there weren't people out there willing to bootstrap merely refusing to show a receipt, or answer questions, or

be searched, there wouldn't be any of these false imprisonments out there. So, it's all your guys' fault. Best Buy, Walmart, any other store out there that does this.” *Ptf's Dep at page 46, lines 11-16*. As such, it's time to stop *victim-shaming* and *scapegoating* patrons **for what merchants actually do**.

**c. Defendant is the one who is truly “displaying animosity” in this case**

Finally, Defendant claims that Plaintiff’s “conduct trying to stir up lawsuits was accompanied by [his] display of animosity toward Best Buy during the pendency of this litigation.” *Def's Mtn For Atty Fees at page 4*. **Of critical importance here**, however, is that Plaintiff did not start on the foot of “displaying animosity.” He only became upset **AFTER** Defendant started breaking rules, lying to the Court, not acknowledging facts, twisting legal arguments, defaming Plaintiff as a lawsuit scammer, impermissibly submitting affidavit-less business records, etc. etc. etc. etc. etc. **So who's really the disingenuous, “bad faith” actor here?** Even now, Defendant *continues* to omit critical information and lie to the Court [as will be discussed next]. Thus, any reasonable person in Plaintiff's position would be understandably upset, **if not downright infuriated** that *bar-licensed* attorneys are evidently willing to *straight up racketeer* to get out of committing actual crimes against them. Yet nobody bats an eye, because they're attorneys. Because they represent a billion dollar company. Because that's evidently *business as usual* to act that way in tossing all morals and ethics completely to the side.

**III. PLAINTIFF DID NOT MAINTAIN HIS LAWSUIT IN BAD FAITH**

Defendant claims that “Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule26(a)(1) disclosure requirements and deliberately providing evasive discovery responses.” *Def's Mtn For Atty Fees at page 4*. It then continues to claim that “Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures.” *Id.* **However, no such “deliberate” behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff did not initially include his brother in his Rule 26(a)(1) disclosures, this was an oversight on his part, as he reasonably did not consider him to be “likely to have discoverable information relevant to the claims and defenses of a party.” This is because, while Plaintiff's brother did enter the Westminster Best Buy store on

November 25, 2022 with him, he did not browse the store with him, make purchases with him, or leave with him, nor did he (upon Plaintiff speaking with him later that day) observe Plaintiff's detention by the store employees. To Plaintiff, his brother had [and still has] nothing relevant to provide to the case. Nevertheless, Plaintiff **did** provide Defendant with his First Supplemental Rule 26(a)(1) Disclosures, that cured the aforementioned deficiency, but to which Defendant [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #1 ~ Plaintiff's Rule 26(a)(1) First Supplemental Disclosures.*

Defendant also claims that "Plaintiff's discovery responses demonstrate that Plaintiff was determined to provide as little information as possible in this lawsuit by responding to most discovery requests with "I do not recall." *Def's Mtn For Atty Fees at page 4.* **However, once again, no such "deliberate" behavior was ever undertaken by Plaintiff.** While it is true that Plaintiff initially responded to most initial discovery requests with "I do not recall," this was done out of an abundance of caution, as it was difficult for Plaintiff to recall with a very high level of specificity what exactly occurred that day, and he didn't want to say anything that he didn't remember for sure was true. Plaintiff had visited many different stores that Black Friday, and his interaction with Defendant occurred over two years prior to the making of the discovery requests at issue. However, after Plaintiff spent a fair amount of time working backwards to remember the event, as well as discussing the details of that day with his brother, Plaintiff **did** respond to Defendant's Deficient Discovery Allegations, that cured the aforementioned deficiencies, but to which Defendant once again [conveniently, intentionally, disingenuously, maliciously?] omitted entirely from its Motion For Attorney Fees. *See PRTDMFAF Exhibit #2 ~ Plaintiff's Response To Def's Deficient Discovery Allegations.*

Ultimately, Plaintiff complied with the aforementioned discovery procedures, Defendant was not required to seek assistance from the Court to compel his compliance, and Defendant never bothered to even request sanctions relating to said deficiencies until now, several months later after they were already cured. "Generally, sanctions under C.R.C.P. 37 'should be applied in a manner that

effectuates proportionality between the sanction imposed and the culpability of the disobedient party.” *Pinkstaff v. Black Decker*, 211 P.3d 698, 702 (Colo. 2009) (quoting *Kwik Way Stores, Inc. v. Caldwell*, 745 P.2d 672, 677 (Colo. 1987)). “If Rule 37 sanctions are warranted in a case, ‘the trial judge must craft an appropriate sanction by considering the complete range of sanctions and weighing the sanction in light of the full record in the case.’” *Id.* (quoting *Nagy v. Dist. Court*, 762 P.2d 158, 161 (Colo. 1988)). “When discovery abuses are alleged, courts should carefully examine whether there is any basis for the allegation and, if sanctions are warranted, **impose the least severe sanction** that will ensure there is full compliance with a court’s discovery orders **and is commensurate with the prejudice caused** to the opposing party.” *Id.* Here today, in Plaintiff’s instant case, Plaintiff is unaware of any prejudice caused by his initial discovery deficiencies, nor has Defendant bothered to voice any. As such, any sanction given to Plaintiff should be commensurate with the [little to no] prejudice caused, and an award of attorney fees *for his whole case, from beginning to end*, would undoubtedly not be “commensurate” with the few non-dispositive discovery delays that were cured shortly thereafter.

#### **IV. THE COURT VIOLATED NUMEROUS RULES AND LAWS, AND SHOULD NOT HAVE DISMISSED PLAINTIFF’S LAWSUIT IN THE FIRST PLACE**

First, the Court **impermissibly** accepted and adopted *purely conclusory statements* made by Defendant during its briefing that Plaintiff is some undeserving-of-due-process “lawsuit scammer” in direct violation of *Suncor v. Aspen*, 178 P.3d 1263, 1269 (Colo. App. 2008).<sup>12</sup>

Next, the Court **impermissibly** held that Plaintiff explicitly “denies having been in Best Buy.”<sup>13</sup>

Next, the Court likewise **impermissibly** held that “Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.”<sup>14</sup>

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<sup>12</sup> In *Suncor*, the Court held that when ruling on a Motion For Summary Judgment, “**A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact.**”

<sup>13</sup> Rather, all Plaintiff did was present proper legal argument that *Defendant* failed to show that he was ever inside the store. *Merely presenting legal argument of the opposite of something is not actually an active denial of it.*

<sup>14</sup> Rather, 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]

Next, the Court **impermissibly** accepted a blatantly contradictory affidavit of Mahmoud Abu-Shaweesh in direct violation of *Scott v. Harris*, 550 U.S. 372, 380 (2007).<sup>15</sup>

Next, the Court **impermissibly** accepted affidavit-less business records (i.e. receipts) in direct violation of *Henderson v. Master Klean Janitorial*, 70 P.3d 612, 617 (Colo. App. 2003).<sup>16</sup> Plaintiff has YET to see this Court *even remotely begin to* address this **absolutely critical** argument.

Finally, the Court **impermissibly** allowed Defendant to inject reply-only arguments into its MSJ briefing in direct violation of *Wallman v. Kelley*, 976 P.2d 330, 332 (Colo. App. 1999).<sup>17</sup> The Court even tried to cure this well-pointed-out violation by claiming [in its *Order Denying Plaintiff's Motion For Reconsideration*] that Plaintiff purportedly had an “opportunity” to respond to the belated exhibits. This argument is faulty for several reasons. First, in *Wallman*, the dispositive issue was not whether the Plaintiff had the mere “opportunity” to respond, it was whether she was “given **NOTICE** that she **NEEDED** to” respond. **However, absolutely nowhere in the Colorado Rules Of Civil Procedure or Colorado Case Law does it explain that REPLY briefs provide such “notice” of such “need.”** Second, it is **utterly inappropriate** to require a Plaintiff to use *their Reply* “In Support Of *Their* Cross-MSJ” as some sort of **Surreply** “In Response To *Defendant's* MSJ Reply.” Not only are replies designed to *strictly* and *only* support the initial motions to which they are tied, **they are**

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[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. Moreover, this Court itself has already 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 **was required by law to INFER** that said facts presented by Plaintiff specifically applied to him being INSIDE the store.

15 In *Scott*, the Court held that “When opposing parties tell two different stories, one of which is blatantly contradicted by the record [which in this case, is Plaintiff's pen camera video of the event], 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.”

16 In *Henderson*, the Court held that “business records” are only admissible when “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.”

17 In *Wallman*, the Court 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.”

**severely limited by page number and file-by date.** Hence, Plaintiff could not have reasonably been expected to sacrifice valuable space and time *responding* to **new** allegations made by Defendant [that it should have presented in its **initial** MSJ] when he was already working tirelessly with said limited space and time to prepare the arguments necessary to *support his own* Cross-MSJ. Finally, conflating one MSJ's *reply* as another MSJ's *surreply* creates an insurmountable “uncertainty of fact,” because of how easily a party's “concessions,” “admissions,” and/or “legal theories” made ***in one line of briefing*** can be abused and misinterpreted ***in the other line of briefing***. *See Morlan v. Durland Co.*, 127 Colo. 5, 13 (Colo. 1952) (“Each of such motions is to be considered and ruled upon separately, without regard to whether similar motion has been filed by other parties.”). In other words, a party's **offense** argued in their *own* motion cannot be used as their **defense** argued *in the other party's* motion.

#### **CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR ATTORNEY FEES. Respectfully submitted on this, the 21st day of January, 2025.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this, the 21st day of January, 2025, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ATTORNEY FEES** was sent to the following people, via email:

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