<table>
<tr><td>COLORADO COURT OF APPEALS
2 East 14th Ave
Denver, CO 80203
(720) 625-5150</td><td rowspan="3">▲ Court Use Only ▲</td></tr>
<tr><td>Appeal From: Jefferson County District Court
District Court Judge: The Honorable Christopher Zenisek
District Court Case Number: 2023CV226</td></tr>
<tr><td>WILLIAM MONTGOMERY
Plaintiff / Petitioner-Appellant

vs.

BEST BUY STORES, L.P.
Defendant / Respondent-Appellee</td></tr>
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Case No: 2025CA327

Jefferson County District
Court Case No: 2023CV226</td></tr>
<tr><td colspan="2">MOTION TO EXCEED WORD COUNT IN PETITION FOR REHEARING / EN BANC</td></tr>
</table>

Plaintiff, proceeding *pro se*, humbly requests that this Court allow him to exceed the 1,900 word limit of his COMBINED PETITION FOR PANEL REHEARING AND/OR REHEARING EN BANC, and in support thereof, states as follows:

C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION

Plaintiff certifies that he has conferred in good faith with Counsel for Defendant concerning this MOTION. Defendant states that it OPPOSES the relief sought herein.

ARGUMENT

I. APPLICABLE RULES AND WORD COUNT

C.A.R. Rule 40(b) provides that, "[e]xcept by permission of court, a petition for rehearing must not exceed 1,900 words, excluding material not counted under C.A.R. 28(g)(1)." C.A.R. Rule 32 and related rule changes expressly contemplate that a party may move to exceed applicable word limits upon a showing of need, and that such a motion must be filed with the document at issue.

Plaintiff's Combined Petition For Panel Rehearing And/Or Rehearing En Banc (the "Combined Petition"), filed contemporaneously with this motion, contains **3,041 words**, as reflected in its Certificate of Compliance.

II. NATURE AND COMPLEXITY OF THE ISSUES

The Combined Petition presents several interrelated but distinct grounds for rehearing that cannot be fairly developed within 1,900 words without sacrificing clarity or omitting critical legal points. In particular, it explains that the February 19, 2026 Opinion:

a. Upholds summary judgment based on factual grounds and evidentiary materials (Defendant's receipts and the Mahmoud affidavit) first presented in a **reply** in support of Defendant's motion for summary judgment, notwithstanding *Wallman v. Kelley's* rule that a nonmovant is entitled to notice in the *opening* motion of the

specific issues on which it must present evidence to avoid judgment.

b. Endorses the District Court's treatment of the parties' cross-motions for summary judgment as "two halves of the same coin," contrary to *Morlan v. Durland Trust Co.* and *Central Bank & Trust Co. v. Robinson,* which require that each motion "stand on its own" and not be "aided" by the opponent's motion or supporting documents.

c. Mischaracterizes Plaintiff's response to Defendant's MSJ by treating his insistence that Defendant had not carried its initial evidentiary burden as actual factual "denials" of store entry, merchandise, and receipt possession, and then uses that mischaracterization to justify treating reply-only exhibits as mere rebuttal—effectively inverting the Rule 56 burden structure and providing a way around *Wallman's* notice requirement.

d. Treats the mere possibility that Plaintiff *could* have responded somewhere in the combined briefing as a forfeiture of his right to insist on proper *Wallman*-compliant notice in Defendant's opening MSJ, creating direct tension with *Wallman's* express language.

These issues involve **multiple published Colorado authorities**, including *Wallman, Morlan, Central Bank, Suncor,* and others, as well as a structural interaction between Rule 56 burdens, reply-only evidence, and cross-motions.

Compressing all of this into 1,900 words would either (1) prevent Plaintiff from identifying with particularity "each point of law or fact [he] believes the court has overlooked or misapprehended," as C.A.R. Rule 40 requires, or (2) reduce his arguments to bare citations without sufficient explanation to aid the Court.

III. COMBINED PANEL AND EN BANC REQUEST

The Combined Petition is a **single document** seeking both *panel rehearing* under C.A.R. Rule 40 and, to the extent necessary, *rehearing en banc* under C.A.R. Rule 35. To meet the standards for both forms of relief, Plaintiff must:

- Identify the points of law and fact the panel misapprehended or overlooked; and
- Explain why those errors create an **intra-court conflict** with *Wallman, Morlan,* and *Central Bank* that warrants en banc consideration if the panel does not correct them.

Doing both in one document necessarily requires more space than a straightforward, panel-only petition limited to a single discrete issue. The additional approximately 1,141 words are used to articulate the specific conflicts and their doctrinal significance, not to re-argue the entire appeal.

IV. ACCESS-TO-JUSTICE AND FEE-AWARD CONSIDERATIONS

This case also carries outsized practical consequences for Plaintiff as an indigent, self-represented litigant. In addition to granting Defendant's motion for summary judgment, the District Court awarded Defendant **$36,124.50 in attorney fees** against him, which he has no realistic ability to pay absent reversal. The Combined Petition explains how the structural errors in the summary-judgment process—particularly the use of reply-only grounds and conflated cross-motions—directly underlie that fee award. Given the magnitude of the financial consequences for a *pro se* pauper, a modest expansion of the word limit is warranted to ensure the Court fully understands the Rule 56 and due-process issues at stake.

V. NO PREJUDICE TO ANY PARTY OR TO THE COURT

The requested expansion—from 1,900 to 3,041 words—is relatively modest in absolute terms (approximately five additional pages). Under C.A.R. Rule 40(a)(3), no answer to a petition for rehearing is permitted unless the Court requests one, so the expanded word count imposes no automatic additional briefing burden on Defendant. The record is already before the Court, and the additional words are used to clarify the procedural conflicts and supporting authority, which should assist, rather than burden, the Court in resolving the petition.

VI. GOOD CAUSE SHOWN

Under C.A.R. Rule 32 and related rule changes, a motion to exceed word

limitations should explain "why additional words are necessary." For the reasons above —multiple intertwined procedural issues; the need to address specific conflicts with *Wallman, Morlan,* and *Central Bank;* the combined panel / en banc posture; and the significant fee award against an indigent, pro se litigant—Plaintiff respectfully submits that good cause exists to permit the modest word-count extension requested here.

CONCLUSION

WHEREFORE, Plaintiff humbly requests that the Court **GRANT** this Motion and accept for filing his Combined Petition For Panel Rehearing And/Or Rehearing En Banc, containing 3,041 words, notwithstanding the 1,900-word limit in C.A.R. Rule 40(b), and grant such further relief as it deems just and proper.

Respectfully submitted on this, the 5th day of March, 2026.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 5th day of March, 2026, the foregoing **MOTION TO EXCEED WORD COUNT IN PETITION FOR REHEARING / EN BANC** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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