

Montgomery v. Best Buy Stores, L.P.

JEFFERSON COUNTY DISTRICT COURT · NO. 2023CV226

Attorney Fees Briefing · The \$36,124.50 Award Below

The complete District Court attorney-fees briefing — motions, responses, replies, affidavits, exhibits, computations, and orders.

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DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 31, 2024 2:54 PM FILING ID: AE8C1B44FE6D0 CASE NUMBER: 2023CV226
<p>WILLIAM MONTGOMERY,</p> <p>Plaintiff,</p> <p>v.</p> <p>BEST BUY, L.P.,</p> <p>Defendant.</p>	<p>▲ COURT USE ONLY ▲</p>
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
<p align="center">BEST BUY’S MOTION FOR ATTORNEYS’ FEES</p>	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Attorneys’ Fees, pursuant to C.R.S. § 13-17-102 and C.R.C.P. 11(a). As grounds, Best Buy states as follows:

CERTIFICATE PURSUANT TO C.R.C.P. 121 § 1-15

Undersigned Counsel conferred with Plaintiff concerning this motion. Plaintiff is opposed to the relief requested herein.

LEGAL STANDARD AND AUTHORITY

Under C.R.C.P. 11(a), a party's signature on pleadings certifies that the party conducted a reasonably inquiry into the fact and law relating to the pleading and that, based on this investigation, the signer reasonably believes the pleading is well grounded in fact. *See Maul v. Shaw*, 843 P.2d 139 (Colo. App. 1992). Furthermore, a party's signature certifies that the pleading was not filed for the purpose of causing delay, harassment, or an increase in the cost of litigation. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc.*, 70 P.3d 629 (Colo. App. 2003). Rule 11 focuses primarily on conduct prior to a pleading being filed. *See Switzer v. Giron*, 852 P.2d 1320 (Colo. App. 1993). If a pleading is signed in violation of Rule 11, the court, upon motion or upon its own initiative, shall impose an appropriate, which may include an order to pay the other party's reasonable attorney's fees. C.R.C.P. 11(a).

C.R.S. § 13-17-102(4) states in relevant part that a court "shall assess attorney fees" if a party brings or defends an action, or any part thereof, "that lacked substantial justification...." As applied here, the lack of substantial justification is defined as "substantially groundless" (the other grounds of substantially frivolous or vexatious are not applicable to these facts).

Rule 11(a) as applied in this case focuses mostly on the requirement for investigation and a "good faith argument" prior to signing and filing a pleading, while C.R.S. § 13-17-102(4) only requires an action, claim or defense found to be, in hindsight, "substantially groundless." These inquiries do not require a finding of subjective bad faith but merely the disregard of either the investigation responsibilities in litigation or the actual facts supporting the asserted claims and defenses. *E.g., In re Trupp*, 92 P.3d 923, 930 (Colo. 2004). However, "[i]f an action is brought or

continued vexatiously or in bad faith, the basis for an award of fees would be even stronger.” *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984).

Sanctions, including an award of reasonable attorneys’ fees, pursuant to C.R.C.P. 11 or pursuant to C.R.S. § 13-17-102 is a decision committed to the discretion of the trial court, whose ruling will not be disturbed on appeal absent an abuse of discretion. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc.*, 70 P.3d 629, 633 (Colo. App. 2003).

MOTION

I. Plaintiff had knowledge that his claims would not prevail.

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. **Ex. A-K**;¹ *see also*, Best Buy’s Motion for Summary Judgment. Because of the outcome of these previous lawsuits, Plaintiff had actual knowledge that this lawsuit would likewise fail, and yet, proceeded with this vexatious litigation.

Apparently, no previous litigant has requested attorney’s fees from Plaintiff, and thus, Plaintiff believes his actions are vindicated. **Ex. Q**, Plaintiff’s Deposition, 90:1-18. Plaintiff also testified that an award of attorney’s fees would potentially deter future lawsuits, provides that such an order was well-reasoned. *Id.* at 90:19-92:14. 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. **Ex. Q**, 92:15-20.

II. Plaintiff’s filing of this lawsuit was in bad faith.

¹ To avoid duplicitous submissions, Best Buy will be utilizing the same exhibits and labels for such exhibits as its Motion for Summary Judgment briefings.

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. **Ex. N-O; Ex. Q**, 107:13-109:11. Many of these purchases were duplicitous, purchasing the same items over and over again in order to "audit" Best Buy and to see if Best Buy would detain Plaintiff. **Ex. Q**, Plaintiff's Deposition, 85:4; *see also*, **Ex. Q**, 110:13-111:25. In fact, Plaintiff repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. Q**, 35:23-37:5; 45:16-46:9.

This conduct trying to stir up lawsuits was accompanied by Plaintiff's display of animosity toward Best Buy during the pendency of this litigation. **Ex. Q**, 87:5-10; **Ex. R**, Plaintiff's Emails to Best Buy. Plaintiff went as far to say that everyone else involved in the suit should "go find the nearest bridge and jump off of it." *Id.* While Plaintiff's animosity toward Best Buy is not required to grant an award of attorney's fees, this animosity and bad faith reinforce the need and the justification for an award of attorney's fees. *Isaacs*, 679 P.2d at 1069.

III. Plaintiff maintained this lawsuit in bad faith.

Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule 26(a)(1) disclosure requirements and deliberately providing evasive discovery responses. In his YouTube video that was posted prior to the filing of this lawsuit, Plaintiff plainly stated his intention of not cooperating with discovery:

"I thought showing my receipt or telling the Court that I had it after the fact was an easy way to, like, prove my innocence and therefore prove their guilt. I'm not going to be so nice next time. I've already got cases where I have it all set up a perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going

to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man. Screw that, man!"

Exhibit L, 17:15-17:55.

In keeping with his word, Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures, even though Plaintiff is now claiming in his Motion for Reconsideration that his brother was present at Best Buy during the alleged incident and made a purchase close in time to the alleged false imprisonment. *See*, Motion for Reconsideration, p. 8-10, *compare with* **Ex. S**, Plaintiff's Rule 26(a)(1) Initial Disclosures (omitting Plaintiff's brother). This failure to identify Plaintiff's brother in disclosures was not an accident or oversight. 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." **Ex. T**, Plaintiff's Response to Def's First Set of Discovery Requests. In fact, Plaintiff claims to not be able to recall whether or not he made a purchase at the subject Best Buy, and then – suddenly – in his Motion for Reconsideration, Plaintiff can remember the occasion and vehemently denies making the purchase. *See*, Plaintiff's Motion for Reconsideration, p. 9-10.

Prior to filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure. Thereafter, his actions spoke even louder than his words, as his conduct demonstrated no intention to cooperate in good faith by feigning a lack of memory of the incident in sworn responses to written discovery. **Ex. T**. As such, the Court is required under both Rule 11 and C.R.S. § 13-17-102(4) to impose appropriate sanctions, and the Court should impose reasonable attorney's fees.

Wherefore, for the forgoing reasons, Best Buy respectfully requests that this Court grant this Motion and award reasonable attorney's fees to Best Buy.

Filed on December 31, 2024.

MONTGOMERY | AMATUZIO

By: s/ Stephanie E. Boutsicaris
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2024, a true and correct copy of the foregoing **BEST BUY'S MOTION FOR ATTORNEYS' FEES** was prepared for service to the following in the manner indicated below:

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

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**.¹ 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.”² Next, in all of Plaintiff’s previous cases against Walmart, **he “knew” about the store’s receipt checking policies**.³ 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,

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.⁴ 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.***⁵ 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.⁶ **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!⁷ 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.⁸ 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.”

⁸ *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.⁹ **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.¹⁰ **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

⁹ 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."

¹⁰ 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,¹¹ 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**

¹¹ 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).¹²

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

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.”¹⁴

¹² 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.**”

¹³ 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.*

¹⁴ 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).¹⁵

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).¹⁶ 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).¹⁷ 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**

[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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William Montgomery
William Montgomery

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Pkwy Golden, CO 80401	
<p>WILLIAM MONTGOMERY</p> <p>Plaintiff,</p> <p>v.</p> <p>BEST BUY STORES, L.P.,</p> <p>Defendant.</p>	<p>▲ COURT USE ONLY ▲</p>
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV226 Division: 11 Courtroom: 140
<p>DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEYS’ FEES</p>	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, submits its Reply in Support of Its Motion for Attorneys’ Fees as follows:

Notice of Clerical Error

It appears that there was a clerical error that led to Plaintiff’s Response getting filed in the same entry as Plaintiff’s Second Motion for Reconsideration (filed January 21, 2025). Plaintiff’s Response begins on page 7 of the filing. To the extent that the Court wishes to correct this error pursuant to C.R.C.P. 60 and treat Plaintiff’s Response as if it was filed on January 21, 2025, Defendant will not object.

Motion

I. Plaintiff had constructive or actual knowledge his claims would fail.

Plaintiff argues that he did not have knowledge that the present lawsuit would fail because the present claim differs from his previous lawsuits and previous claims of false imprisonment. However, Plaintiff fails to *meaningfully* differentiate between the present claim and his prior claims of false imprisonment and defamation. For instance, Plaintiff points to the fact that he was allegedly not a paying customer at Best Buy in the present case but he was allegedly a customer in previous cases. This fact would have had no bearing on the Court's analysis. The shopkeeper's privilege and the elements for false imprisonment are the same regardless if the claimant is a paying customer. The facts that allegedly differentiate the present claim from the previous claims are insignificant and irrelevant.

Furthermore, Plaintiff argues that "Prior Courts also got several facts WRONG in Plaintiff's previous cases." This section in Plaintiff's Response, in and of itself, is a prime example of Plaintiff rehashing the same failed legal argument. Because his claims failed previously and he continues to argue that the multiple prior court judgments were wrong, Plaintiff has constructive knowledge that he is asserting claims and arguments that will once again fail.

II. Plaintiff's Response is a thinly veiled request for reconsideration of the Court's orders.

Keeping in line with Plaintiff's pattern of rehashing previously failed arguments, Plaintiff uses his Response to try to re-litigate the motions for summary judgment and his *first* motion for reconsideration, including when he asserts, "Numerous LEGAL ARGUMENTS have never even been addressed by the court." Plaintiff's repeated attempts to get a first, second, and third bite at

the apple should not be permitted or tolerated. In fact, Plaintiff has filed a *second* motion for reconsideration seeking to overturn the Court’s order on summary judgment. These repetitive motions and requests for reconsideration “unnecessarily expand[] the proceeding by [] improper conduct” and thus warrant an award of attorney’s fees. C.R.S. § 13-17-102 (4).

III. Plaintiff has filed three additional lawsuits against Best Buy.

Plaintiff states that “Defendant has no earthly idea what kinds of cases Plaintiff has yet to bring against it.” However, Best Buy was recently served with three additional lawsuits by Plaintiff, apparently alleging claims of false imprisonment: Case No. 2024CV000132 (Adams County District Court), Case No. 2024CV000241 (Jefferson County District Court), and Case No. 2024CV000242 (Jefferson County District Court). Plaintiff’s actions and bad faith litigation will continue until he is sufficiently deterred, which is why attorney’s fees are necessary here, pursuant to C.R.C.P. 11 and C.R.S. § 13-17-102.

IV. Plaintiff maintained his lawsuit in bad faith.

Plaintiff claims that his discovery conduct was excusable and that his “I do not recall” responses to written discovery were in good faith. However, the explanation for his discovery conduct is not credible, particularly given the comments in his YouTube video stating that he was not going to even tell the store whether he was a customer or not. **Exhibit L**, 17:15-17:55. Plaintiff’s lack of cooperation with discovery was pre-meditated and intentional.

In his Response, Plaintiff attempts to conduct a C.R.C.P. 37 analysis for his discovery behavior, but Defendant did not request C.R.C.P. 37 sanctions. Defendant sought sanctions under C.R.C.P. 11 and C.R.S. § 13-17-102. In particular, C.R.S. § 13-17-102 (4) would be applicable here: “The court shall assess attorney fees if . . . it finds . . . that the action, or any part thereof,

was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure.” (Emphasis added). Discovery conduct can be sanctionable under C.R.S. § 13-17-102, and no C.R.C.P. 37 is needed or requested at this time.

WHEREFORE, for the forgoing reasons, Defendant Best Buy respectfully requests that this court enter an award of attorney’s fees against Plaintiff.

Filed January 28, 2025.

MONTGOMERY | AMATUZIO

By: s/ Stephanie Boutsicaris

Lori K. Bell

Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

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U.S. Mail Email CCES

s/ Stephanie Boutsicaris _____

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
Plaintiff: WILLIAM MONTGOMERY v. Defendant: BEST BUY STORES, L.P.	DATE FILED March 18, 2025 1:15 PM CASE NUMBER: 2023CV226 ▲ COURT USE ONLY ▲ Case Number: 2023CV00226 Division: 06 Courtroom: 520
ORDER RE: DEFENDANT’S MOTION FOR ATTORNEY FEES	

THIS MATTER comes before the Court on Defendant Best Buy Stores’ motion for attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff’s claims. The Court granted summary judgment for, among other things, Shopkeeper’s Privilege. The Court also received body camera footage of the alleged detainment from Plaintiff, which showed Defendant’s employees asking Plaintiff to return the purported stolen merchandise while they stood near him for several minutes outside the store.

Additionally, the Court received a YouTube video from Defendant that Plaintiff had recorded and uploaded. In this video, Plaintiff explains how he gets “free lawsuits” by going into stores and conducting himself in a manner that could be reasonably construed as suspicious and then suing when employees confront him upon believing he is stealing. Plaintiff has also filed numerous nearly identical cases against other stores around Colorado.¹

Since the time the Court granted Defendant’s motion for summary judgment, Plaintiff has filed at least three additional lawsuits against Best Buy, also alleging claims of false imprisonment: Case No. 2024CV00132 (Adams County District Court), Case No. 2024CV000241 (Jefferson

¹ See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

County District Court), and Case No. 2024CV000242 (Jefferson County District Court).

Defendant filed this motion for attorney fees on December 31, 2024. Plaintiff filed a response and Defendant replied.

II. LEGAL STANDARD

A Colorado court shall award reasonable attorney fees “against any attorney or party who has brought or defended a civil action . . . that the court determines lacked substantial justification” or “was interposed for delay or harassment,” or who has “unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures.” C.R.S. § 13-17-102(2), (4). “Lacked substantial justification” means “substantially frivolous, substantially groundless, or substantially vexatious.” C.R.S. § 13-17-102(9)(a).

Parties appearing pro se shall not be assessed attorney fees “unless the court finds that the party clearly knew or reasonably should have known that the party’s action or defense . . . was substantially frivolous, substantially groundless, or substantially vexatious[.]” C.R.S. § 13-17-102(6).

“A claim is frivolous if the proponent has no rational argument to support it based on evidence or the law. A claim is groundless if there is no credible evidence to support the allegations in the complaint. A vexatious claim or defense is one brought or maintained in bad faith.” Zivian v. Brooke-Hitching, 28 P.3d 970, 974 (Colo. App. 2001).

“Meritorious actions that prove unsuccessful and good faith attempts to extend, modify, or reverse existing law are not frivolous.” City of Aurora v. Colo. State Eng’r, 105 P.3d 595, 620 (Colo. 2005). However, awarding attorney fees is an important sanction against an attorney or party who brings unjustified litigation. Sifton v. Stewart Title Guar. Co., 259 P.3d 542, 546 (Colo. App. 2011).

III. ANALYSIS

Defendant argues that Plaintiff’s action was substantially vexatious and that Plaintiff knew or should have known his action was substantially vexatious. The Court agrees.

An action is “substantially vexatious” if “brought or maintained in bad faith to annoy or harass another, and vexatiousness includes conduct that is arbitrary, abusive, stubbornly litigious, or disrespectful of the truth.” In re Parental Responsibilities of I.M., 410 P.3d 488, 492 (Colo. App. 2013).

The Court finds that Plaintiff planned this lawsuit before bringing it. (See Defendant’s Ex. L, YouTube Video at 17:13, “I’ve already got cases where I’ve got it all set up perfectly—a true sting.”) On the date of the incident, Plaintiff sought to engage Best Buy in a situation that would result in a lawsuit. To do so, Plaintiff drove more than a hundred miles over the course of eight hours to various Best Buy locations to make numerous purchases, many of which were duplicitous. (Defendant’s Ex. O, Google Maps). These purchases were made, at least in part, with the hopes of

baiting the Best Buy stores into confronting Plaintiff. (Defendant's Ex. Q, Deposition at 109:16-111:17). When speaking about his actions on that day, Plaintiff analogized his conduct to that of a police bait car. (Defendant's Ex. Q, Deposition at 35:23-37:5, 45:16-46:9).

Once the lawsuit was underway, the Court finds that Plaintiff continued to maintain the lawsuit in bad faith. Before filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure:

I'm not going to be so nice next time [I file a lawsuit]. I've already got cases where I have it all set up perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man.

(Defendant's Ex. L, YouTube Video at 17:15-17:55).

During discovery, Plaintiff failed to comply with his Rule 26(a)(1) disclosure requirements and provided evasive discovery responses. Plaintiff omitted his brother from his 26(a)(1) Initial Disclosures, despite stating that his brother spent the entire day of the incident with him. (Defendant's Ex. S, Initial Disclosures; Defendant's Ex. Q, Deposition at 107:13-18). Plaintiff responded to many of Defendant's discovery requests with "I do not recall," despite in later pleadings making definite statements about the same subject matter. (Defendant's Ex. T). This all appears to be purposeful by Plaintiff to provide Defendant with as little information as possible, especially given the context of his earlier statement plotting to refuse to cooperate with opposing counsel.

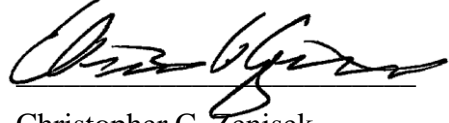
The above facts lead the Court to conclude that Plaintiff brought and maintained this suit in bad faith and, based on his statements in his deposition and YouTube video, knowingly did so. Plaintiff's planning and searching for a lawsuit and failure to cooperate honestly with the discovery process are stubbornly litigious, disrespectful of the truth, and abusive of the court system. For this reason, the Court concludes that attorney fees are justified under C.R.S. § 13-17-102. Additionally, the Court hopes a sanction of attorney fees may deter Plaintiff from repetitively bringing nearly identical vexatious lawsuits to other courts, which he currently appears determined to continue.

IV. CONCLUSION

For the reasons discussed above, Defendant's motion for attorney fees is **GRANTED**. Defendant will be awarded reasonable attorney fees. Defendant Best Buy shall submit its computation within 21 days. Plaintiff may object to reasonableness within the 14 days that follow.

Done in Golden, Colorado this 18th day of March, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Chris Zenisek", written over a horizontal line.

Christopher C. Zenisek
District Court Judge

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED April 10, 2025 4:05 PM FILING ID: 9FE0579D1CA15 CASE NUMBER: 2023CV226
WILLIAM MONTGOMERY, Plaintiff, v. BEST BUY, L.P., Defendant.	▲ COURT USE ONLY ▲
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie E. Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
BEST BUY’S MOTION FOR EXTENSION OF TIME	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Extension of Time. Best Buy respectfully requests that this Court permit it to submit its attorney’s fees computation on or before April 17, 2025. As grounds, Best Buy states as follows:

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

Undersigned counsel conferred with pro se Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

MOTION

1. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. Colo. R. Civ. P. 6 (b).
2. A trial court's decision to grant an extension of time will not be disturbed upon appeal absent an abuse of discretion. *E.g., Mitchell v. Espinosa*, 125 Colo. 267, 277, 243 P.2d 412, 417 (Colo. 1952).
3. Defendant's computation of attorney's fees was due on April 8, 2025.
4. Best Buy is hereby requesting a one-week extension of time from today to submit this computation, with a new deadline of April 17, 2025.
5. Because this case has been ongoing for more than a year, Best Buy's bills consist of hundreds of pages of documents and must be re-formatted in such a way to remove privileged and sensitive information, particularly in light of the pending appeal in this matter.
6. Best Buy notes 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.

7. Plaintiff's vexatious and never-ending lawsuits against Best Buy has created difficulties in keeping cases organized and separate. This regrettably resulted in calendaring errors by Best Buy regarding the deadline for this computation.
8. Based on the foregoing, Best Buy's actions constitute *excusable* neglect.
9. Best Buy respectfully requests that the Court grant Best Buy grace in responding to the chaos that Plaintiff has stirred up through his litigation practices.
10. Best Buy requests that this Court permit a brief extension to April 17, 2025. Upon information and belief, such extension will not prejudice Plaintiff.
11. Best Buy fully expects Plaintiff to appeal any adverse order of the Court, including if this Court finds in Best Buy's favor on this motion for extension of time.

WHEREFORE, for the foregoing reasons, Best Buy respectfully request that this Court permit Best Buy to submit its computation of attorney's fees on or before April 17, 2025.

Filed on April 10, 2025.

MONTGOMERY | AMATUZIO

By: s/ Stephanie E. Boutsicaris
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on April 10, 2025, a true and correct copy of the foregoing **BEST BUY'S MOTION FOR EXTENSION OF TIME** was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

U.S. Mail Email CCES

s/ Samantha Trujillo

Samantha Trujillo, Legal Assistant

Jefferson County District Court 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	▲ Court Use Only ▲
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	
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 “calendar 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 "calendar error" of such magnitude **that a 21 day deadline would be overlooked entirely**. That is, the only type of "calendar 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]alendar 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 actual 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”
WITH ANY DETAIL 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:

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

Attorneys for Defendant


William Montgomery

GRANTED BY COURT
05/05/2025

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED May 5, 2025 12:10 PM CASE NUMBER: 2023CV026  CHRISTOPHER CLAYTON ZENISEK District Court Judge
WILLIAM MONTGOMERY, Plaintiff, v. BEST BUY, L.P., Defendant.	▲ COURT USE ONLY ▲
	Case No.: 2023CV00226 Division: 6
ORDER REGARDING BEST BUY'S MOTION FOR EXTENSION OF TIME	

THIS COURT, having reviewed Best Buy's Motion for Extension of Time and finding good cause, hereby GRANTS this Motion. Best Buy is permitted to submit its computation of attorney's fees on or before April 17, 2025.

So ordered on _____, 2025.

Presiding Judge, District Court for Jefferson
County, Colorado

DISTRICT COURT, JEFFERSON COUNTY, STATE OF
COLORADO
100 Jefferson County Parkway
Golden, CO 80401

WILLIAM MONTGOMERY,

Plaintiff,

v.

BEST BUY, L.P.,

Defendant.

▲ COURT USE ONLY ▲

Attorneys for Best Buy, L.P.:
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Case No.: 2023CV00226

Division: 6

AFFIDAVIT OF STEPHANIE BOUTSICARIS CONCERNING ATTORNEY'S FEES

My name is Stephanie Boutsicaris, and I am over the age of 18. I have personal knowledge of the statements contained herein:

1. I am an attorney licensed to practice in Colorado.
2. On this particular case, Best Buy, L.P. was billed for my law firm's services.
3. Upon reviewing billing records, billable employees at our firm worked the

following amount of hours on this case:

- a. **Lori K. Bell: 76.9 hours**
- b. **Katie I. Salazar (Paralegal): 4.3 hours**

- c. **Glenn D. Germany: 36.6 hours**
- d. **Jaime I. Gress (Paralegal): 1.6 hours**
- e. **Abigail L. Spohn (Paralegal): 5.1 hours**
- f. **Stephanie E. Boutsicaris: 36.3 hours**
- g. **Mary B. Pucelik: 7.2 hours**

4. **Exhibit A** provides additional detail on the tasks performed by each billable employee described above.

5. I, Stephanie Boutsicaris, have been licensed to practice law since 2017. I graduated from University of Virginia School of Law in 2017, and during my career as an attorney, I have tried more than twenty jury trials, often as a first chair. I am a senior attorney at Montgomery Amatuzio.

6. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with five to nine years' experience would be at least \$225 per hour. *See*, 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B**, p. 52. However, I am aware of a federal court awarding attorney's fees for as much as \$450 per hour for a Denver-area attorney with less experience than myself. *See*, Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera*, 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

7. Therefore, reasonable attorney's fees for myself on this matter would total at least **\$8167.50**.

8. Glenn D. Germany has been practicing law since 2011. He obtained his bar license in California in 2011 and his bar license in Colorado in 2023. He graduated from Santa Clara University School of Law in 2011.

9. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with ten to nineteen years' experience would be at least \$250 per hour. *See*, 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B**, p. 52. However, I am aware of a federal court awarding attorney's fees for as much as \$450 per hour for a Denver-area attorney with less experience than Mr. Germany. *See*, Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera*, 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

10. Therefore, reasonable attorney's fees for Mr. Germany on this matter would total at least **\$9150.00**.

11. Mary B. Pucelik has been practicing law since 1992. She was admitted to practice law in California in 1992. She was admitted to practice law in Oregon in 1993 and admitted to Colorado in 2013. Ms. Pucilek graduated from Lewis and Clark, Northwestern School of Law where she was on law review.

12. For purposes of this motion for attorney's fees, a reasonable market rate for an attorney in the Colorado with thirty to thirty-nine years' experience would be at least \$275 per hour. *See*, 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B**, p. 52. However, I am aware of a federal court awarding attorney's fees for as much as \$450 per hour for a Denver-area attorney with less experience than Ms. Pucilek. *See*, Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera*, 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

13. Therefore, reasonable attorney's fees for Ms. Pucelik on this matter would total at least **\$1980.00**.

14. Lori K. Bell is an equity partner at our firm, and she has been licensed to practice law in Colorado since 1999. Ms. Bell graduated from University of Denver's Sturm College of Law in 1999 and during her career as an attorney, she has tried dozens of jury trials.

15. For purposes of this motion for attorney's fees, a reasonable market rate for a partner at a private law firm in Colorado would be at least \$295 per hour. *See*, 2017 Economic Survey prepared by the Colorado Bar Association (2017), **Ex. B**, p. 8. However, I am aware of a federal court awarding attorney's fees for as much as \$750 per hour for a Denver-area attorney with less half the level of experience as Ms. Bell. *See*, Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera*, 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021).

16. Therefore, reasonable attorney's fees for Ms. Bell on this matter would total at least **\$22,685.50**

17. For purposes of this motion for attorney's fees, a reasonable market rate for a paralegal would be between \$95 and \$125 per hour. *See*, 2017 Colorado Bar Association Economic Survey, **Ex. B**, p. 42. However, I am aware of a federal court awarding paralegal fees for as much as \$125 per hour for a Denver-area paralegal who also billed for clerical tasks. *See*, Order on Attorney's Fees, *Ahmed v. Lyft, Inc and Herrera*, 21-cv-00782-MEH (Colo. Dist. Aug. 24, 2021). Ms. Wolfe does not bill for strictly clerical tasks. Our firm has legal assistants for strictly clerical tasks, and they are not asked to keep track of hours by task or by case.

18. Based on the above hours, reasonable fees for the paralegal services of Ms. Salazar, Ms. Spohn, and Ms. Gress (totaling 11 hours) would amount to at least **\$1100.00**, based upon a rate of \$100 per hour.

19. Based upon the above information, a reasonable amount of attorney's fees and other costs and fees would total at least \$43,083.00.

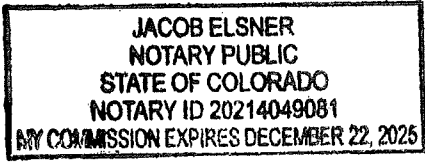
20. The reasonable market rates above likely reflect underestimates of the current market rate, given that the survey referenced herein is from eight years ago.

Stephanie Boutsicaris
Stephanie Boutsicaris (signature)
Attorney for Defendant Best Buy, LP

STATE OF COLORADO)
)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 16th day of April
2025, by Stephanie Boutsicaris

Witness my hand and official seal. My commission expires: December 22, 2025



[Signature]
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that, on April 16, 2025, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

Pro se Plaintiff:

William Montgomery
2443 S University Blvd #129
Denver, CO 80210
zoinbergs@gmail.com

U.S. Mail Email CCES

s/ Stephanie Boutsicaris _____

EXHIBIT A- Computation of Attorney's Fees

Lori K. Bell

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
12/14/2023	0.40	Confer with Ms. Castner regarding new claim and investigation strategy.
12/19/2023	0.30	Analysis of pleadings and orders submitted by Plaintiff and Court to assess status of case.
12/19/2023	0.40	Consider scope of plaintiff's prior and pending claims to determine strategy for researching resulting lawsuits.
12/19/2023	0.40	Examination of other lawsuits and charges against Mr. Montgomery located in Court website and determine cases to recommend to client to obtain.
12/21/2023	0.70	Examination of register of actions for district court, Court of Appeals and Colorado Supreme Court to determine potentially relevant cases to obtain.
12/21/2023	0.20	Receipt and analysis of documents from client pertaining to employees working on date of incident.
12/29/2023	0.20	Correspond with Ms. Castner regarding the status of the case.
01/02/2024	0.30	Receipt and analysis of claim notes pertaining to investigation.
01/02/2024	1.20	Examination of background search results by Best Buy and determine further investigation and follow up to conduct.
01/02/2024	0.80	Examination and analysis of internal investigation of plaintiff's history of lawsuits.
01/23/2024	0.20	Correspond with Ms. Castner regarding the status of the case.
01/23/2024	0.20	Receipt of documents evidencing service of process on Best Buy and confirm sufficiency of the same.
01/24/2024	0.50	Consider status of ongoing investigation and positive results and utilization of the same in defense of case.
02/02/2024	0.30	Finalize Answer to Plaintiff's Complaint.
02/02/2024	0.30	Consider scope of court order to attach to Best Buy's answer to complaint in support of its affirmative defenses.
02/09/2024	0.20	Receipt of delay prevention order from client and confirm status of the same on the court's docket.
02/20/2024	0.30	Confer with Plaintiff regarding claims and defenses and preparation of the case management order.
02/21/2024	1.00	Consider representations from Plaintiff during Rule 16 conferral and consider potential counterclaims and additional defenses and investigation.
02/26/2024	0.30	Confer with Ms. Morschen to plan strategy for case handling.
02/26/2024	0.20	Consider action to take in response to court's delay prevention order.
02/28/2024	0.80	Work on and expand initial case evaluation to clients.
03/10/2024	0.40	Finalize Best Buy's Rule 26 Initial Disclosures and Privilege Log.
03/10/2024	0.20	Consider plaintiff's identification of Best Buy in complaint and civil cover sheet and confirm accuracy thereof with client.

03/28/2024	0.30	Consider statements by plaintiff during scheduling conference and whether the same constitute admissions for which the transcript should be requested.
03/29/2024	0.30	Consideration of plaintiff's proposed additions to the case management order and determine further modifications to Defendant's statement.
04/22/2024	0.60	Analysis of video of plaintiff's interaction with Best Buy employees in consideration of scope of detention and protection by shopkeeper's act.
04/22/2024	0.20	Receive and consider mandates by Court in regard to case procedures.
04/23/2024	0.20	Consider whether substantive Rule 26 disclosures can be made at this time.
05/07/2024	0.30	Consider alternative avenues to identify and locate Best Buy employees who confronted the plaintiff.
05/07/2024	0.40	Consider scope of testimony and evidence necessary to support a motion for summary judgment.
05/08/2024	0.40	Analysis of plaintiff's current online presence on social media and YouTube.
05/08/2024	0.80	Receipt and analysis of additional motions for summary judgment and corresponding orders in cases initial by plaintiff in consideration of burden to which Judges holding plaintiff as a pro se litigant.
05/09/2024	1.00	Examination of elements of a claim for defamation and determine evidence necessary to establish the same to incorporate into a motion for summary judgment.
05/09/2024	0.80	Analysis of the elements of a civil assault claim necessary to establish a claim to use in motion for summary judgment on false imprisonment.
05/09/2024	1.30	Examination of case law to determine elements of false imprisonment necessary to establish a claim and to support motion for summary judgment on the issue.
05/09/2024	1.40	Begin preparing legal standard section for motion for summary judgment on each of plaintiff's claims for relief.
05/15/2024	0.20	Confer with plaintiff regarding amended case management order to reflect new trial.
05/28/2024	0.20	Consider correspondence from Khay regarding identification of former employees involved in the incident.
05/28/2024	0.60	Conference call and interview of Mahmoud Abu Shaweesh regarding his involvement and recollection of the alleged incident.
05/28/2024	0.50	Confer with Mr. Rusch regarding his recollection of Plaintiff and the alleged incident.
05/28/2024	0.30	Consider further investigation following employee interviews.
05/28/2024	0.20	Correspond with Khay regarding ongoing investigation.
05/29/2024	0.20	Correspond with Khay regarding ongoing investigation.
06/04/2024	0.20	Consider correspondence from clients regarding explanation of ongoing investigation efforts.
06/11/2024	0.30	Examination of Court docket to determine status of rulings on procedural and substantive issues necessary to move case forward.

06/13/2024	2.40	Analysis and consideration following original CMR and provided updated CMR to address investigation, case status and evaluation of liability and damages.
06/14/2024	0.20	Receive and consider court order regarding trial date and case management modifications.
06/20/2024	0.20	Confer with pro se Plaintiff Montgomery regarding amendments to the case management order.
07/15/2024	0.30	Assess impending deadlines for experts and dispositive motions in advance of hearing to continue trial and consider whether to comply with deadlines prior to conference.
07/16/2024	0.20	Correspond with Khay regarding case progress with discovery, dispositive motions and upcoming hearing with the court.
07/22/2024	1.80	Expand legal standard section of motion for summary judgment to address statutes and case law analysis for plaintiff's three claims for relief against Best Buy.
07/22/2024	1.00	Examination of State Court orders granting motions for summary judgment as to Mr. Montgomery's claims to determine Orders to include as exhibits to instant motion for summary judgment.
07/22/2024	0.50	Consider means of supporting undisputed facts section of motion and whether to rely on statements by plaintiff or to obtain an affidavit from the Best Buy employees.
07/22/2024	0.80	Modify undisputed facts section of motion for summary judgment to tie facts to details of plaintiff's body cam video.
07/22/2024	1.00	Modify and finalize motion for summary judgment in advance filing.
07/23/2024	1.50	Analysis of plaintiff's YouTube videos describing planned stings on retailers to identify video to identify in motion for summary judgment.
07/23/2024	1.00	Assess appellate court orders affirming district courts' dismissal of plaintiff's claims to incorporate the same into motion for summary judgment.
07/23/2024	0.40	Confer with Plaintiff regarding forthcoming motion to dismiss and plaintiff's planned motion to dismiss Best Buy's shopkeeper's privilege defense.
07/24/2024	0.40	Analysis of plaintiff's responses to written discovery and consider means of using in support of motion for summary judgment.
07/24/2024	0.80	Examination and analysis of Federal court orders regarding plaintiff's similar claims against large retailers.
08/01/2024	0.30	Consider plaintiff's motion to expand plaintiffs' deadline to respond to motion for summary judgment and submit his own motion and whether to respond to the same.
08/12/2024	0.30	Receipt of correspondence from Plaintiff regarding and proposing modification of the case management order to address expanded motions timelines and respond with compromise to Plaintiff's proposal.
08/12/2024	0.20	Further conferral with Plaintiff regarding his alleged impediments to timely submitting a motion for summary judgment and response to Best Buy's motion.

08/12/2024	0.20	Consider correspondence from Khay regarding case status and advise pending MSJ and resulting issues and new trial date and amended case management order.
08/12/2024	0.20	Analysis of prior CMR and consider case activity requiring updated report.
08/12/2024	0.20	Ongoing conferral with Plaintiff regarding forthcoming and pending motions and details of amended CMO.
08/14/2024	0.50	Prepare updated CMR report to client.
08/14/2024	0.30	Confer with Mr. Montgomery regarding outstanding discovery requests from Best Buy and his basis for delaying and objecting to responses.
08/14/2024	0.40	Receive and consider call from plaintiff regarding forthcoming arguments in favor of his motion for summary judgment and alleged facts supporting his motion.
08/21/2024	0.20	Consider implications or Court order regarding plaintiff's alleged medical conditions necessitating expanded time to deal with lawsuit.
09/11/2024	0.20	Correspond with Khay regarding case status and mediation potential.
09/11/2024	0.30	Correspond with Sedgwick about our motion for summary judgment and settlement negotiation strategy.
09/12/2024	0.20	Correspond with Khay regarding pros and cons to mediation.
09/12/2024	0.20	Receive follow up correspondence from plaintiff confirming lack of interest in mediation and advise Khay of the same.
09/12/2024	0.20	Confer with plaintiff regarding ADR Order and mediation.
09/16/2024	0.10	Correspond with Khay regarding ADR Order and plaintiff's position on the same.
09/17/2024	0.20	Confer with Plaintiff regarding his motion for summary judgment and scope of response to our motion.
09/19/2024	0.30	Confer with plaintiff regarding his forthcoming motion for summary judgment including exhibits for which he wishes to confer.
09/20/2024	0.30	Confer with plaintiff regarding forthcoming motion and response and his explanation for filings and arguments made therein.
09/23/2024	1.90	Examination of plaintiff's 30-page response to motion for summary judgment and attached affidavits, exhibits and transcriptions in consideration of strategy for responding thereto.
09/23/2024	1.30	Examination of Plaintiff's motion for summary judgment to determine means of refocusing the issues.
09/23/2024	0.30	Consider plaintiff's conflicting responses to written discovery and self serving MSJ affidavit to use in support of response and reply to pending MSJs.
09/23/2024	0.40	Consider facts incident recalled by Best Buy employees and consider having employees provide an affidavit detailing encounter.
09/26/2024	0.30	Correspond with Khay regarding status of mediation and motions for summary judgment.
09/26/2024	3.30	Examination of receipts of plaintiff's purchases and returns around the date in question and create chronology and map of purchases and returns throughout the Denver metro area and how to present the same in Best Buy's defense.

09/27/2024	0.20	Exchange correspondence with Khay regarding investigation into plaintiff's activities on day of encounter and subsequent days.
09/27/2024	2.00	Examination of cases cited by plaintiff in his motion for summary judgment to determine scope of response to legal arguments.
09/27/2024	0.20	Correspond with Best Buy employees regarding the need for an affidavit to support motion for summary judgment.
09/30/2024	0.40	Analyze Plaintiff's assertions in his motion for summary judgment.
10/03/2024	0.40	Receipt and analysis of additional social media and online postings by Plaintiff documenting his plans to sue for alleged violations.
10/03/2024	0.20	Confer with Plaintiff regarding modification of briefing schedule for summary judgment motions.
10/03/2024	0.70	Conference call with clients to discuss case strategy.
10/03/2024	0.40	Analysis of Plaintiff's you tube video regarding stings in consideration of the use of the same in the dispositive briefing.
10/04/2024	0.20	Correspond with Mahmoud regarding basis for the interaction with Mr. Montgomery.
10/08/2024	0.40	Conference call with Shane to discuss additional details of encounter with Plaintiff in consideration of affidavit needs.
10/08/2024	0.50	Conference call with Mahmoud regarding pending motion for summary judgment and to obtain additional details regarding encounter with plaintiff.
10/08/2024	0.40	Consider plaintiff's misrepresentation of alleged undisputed facts an scope of rebuttal needed to include in affidavit.
10/08/2024	0.60	Work on affidavit to include in reply for motion for summary judgment.
10/08/2024	0.90	Receipt and analysis of additional appellate decisions in cases brought by Mr. Montgomery and relied upon by him in regard to motions.
10/09/2024	1.50	Examine plaintiff's undisputed facts set forth in his cross motion for summary judgment and outline admissions to plaintiff's facts and denials with documented evidence refuting Plaintiff's claims.
10/09/2024	0.20	Follow up with Mahmoud to obtain assistance with his affidavit.
10/10/2024	1.50	Work on and finalize Best Buy's response to Plaintiff's cross motion for summary judgment.
10/10/2024	1.70	Work on and finalize Best Buy's reply in support of motion for summary judgment.
10/10/2024	2.50	Work on response to plaintiff's alleged undisputed facts contained in his cross motion for summary judgment.
10/10/2024	1.00	Identify and work on Best Buy's undisputed facts for use in response to Plaintiff's cross motion for summary judgment.
10/10/2024	0.70	Determine means of distinguishing Plaintiff's nonbinding case law contained in his response to Best Buy's motion for summary judgment.
10/11/2024	0.20	Receive and consider correspondence from Plaintiff regarding criticism of MSJ response and reply.
10/11/2024	0.20	Consider further to conduct of plaintiff.
10/21/2024	0.20	Consideration correspondence from pro se plaintiff regarding pending and future motions and respond accordingly.

10/22/2024	0.20	Receipt and consideration of plaintiff's motion for extended time to submit a reply in support of his cross MSJ and consider whether to respond to the motion.
10/25/2024	0.30	Confer with plaintiff regarding his opposition to new facts raised in Defendant's response to cross motion for summary judgment and purported problems with reply in opposition.
10/25/2024	0.20	Consider correspondence from plaintiff regarding issues with MSJ briefing, extended pages and forthcoming motion to modify limitations on motion.
10/29/2024	0.10	Receive and consider court order regarding plaintiff's motion to exceed page limit.
10/30/2024	1.20	Receipt and examination of plaintiff's 30-page reply in support of his cross motion for summary judgment and accompanying affidavits and consider whether to file sur reply based on erroneous arguments.
10/31/2024	0.20	Correspond with Khay regarding the status of dispositive motions.
11/01/2024	0.30	Receive call from pro se plaintiff regarding discovery requests and inability to produce without hearing.
11/04/2024	0.50	Examination of Plaintiff's discovery responses and affidavits in consideration of issues to be addressed during plaintiff's deposition.
11/05/2024	2.00	Analysis of plaintiff's deposition testimony and consider further investigation and discovery to propound and possible supplemental briefing on motions for summary judgment.
11/05/2024	0.40	Consider means of addressing and/or stopping plaintiff's alleged forthcoming lawsuits against Best Buy.
11/13/2024	0.30	Consider Plaintiff's purchase and return history for Black Friday 2023 and benefits of disclosing in current case.
11/19/2024	0.40	Receipt and analysis of Court Order granting Best Buy's MSJ and denying Plaintiff's Cross MSJ.
11/19/2024	0.10	Advise Best Buy of Court Orders on MSJs.
11/19/2024	0.20	Analysis of preliminary bill of costs to determine additional costs to include therein.
11/19/2024	0.20	Confer with Mr. Montgomery regarding forthcoming appeal of MSJ Orders.
11/25/2024	0.40	Analysis of case law and jury instructions regarding vexations and frivolous lawsuits and standard for proving the same.
11/27/2024	0.30	Strategize regarding overcoming impediments to service of notice of trespass.
11/27/2024	0.20	Consider scope of support for no trespass and whether to expand the same.
12/02/2024	0.20	Consider Plaintiff's forthcoming motion for reconsideration of the Judge's interpretation of the facts and law and viability of the same.
12/04/2024	0.20	Correspond with Khay regarding Plaintiff's motion for reconsideration of summary judgment orders.
12/04/2024	0.80	Examination of plaintiff's motion for reconsideration of order granting Best Buy's motion for summary judgment and denying plaintiff's motion and consider scope of response thereto.

12/04/2024	0.40	Examination of voluminous emails from Plaintiff attacking claim for costs and attorney's fees and arguing for his motion for reconsideration.
12/20/2024	0.40	Work on and finalize Best Buy's Response to Plaintiff's Motion for Reconsideration.
12/31/2024	0.30	Work on and finalize motion for attorney's fees, pursuant to order granting Summary Judgment.
12/31/2024	0.20	Correspond with Khay regarding plaintiff's post trial motions.
01/02/2025	0.70	Examination of plaintiff's reply in support of motion for reconsideration and consider whether further briefing is warranted via a sur reply.
01/06/2025	0.20	Consider advisement from plaintiff of intent to continue to pursue reconsideration and whether we stop such efforts.
01/06/2025	0.20	Receipt and consideration of order denying plaintiff's motion for reconsideration of MSJ rulings.
01/07/2025	0.20	Consider Court order granting bill of costs and means of pursuing the same.
01/08/2025	0.20	Compare original and amended bill of costs orders to determine modifications made by the Court.
01/22/2025	0.50	Receipt and analysis of plaintiff's second motion for reconsideration and consider whether a legal basis exists to stop repeated motions for reconsideration after final judgement.
01/22/2025	0.50	Receipt and analysis of plaintiff's belated response to motion for attorney's fees and consider whether a response is necessary.
01/28/2025	0.20	Work on and finalize reply in support of motion for attorneys fees.
01/28/2025	0.30	Confer with plaintiff regarding pending and forthcoming motions and appeals.
02/07/2025	0.40	Correspond with Khay Harris to advise them about responding to Plaintiff's second motion for reconsideration and also to discuss the motion for attorney's fees.
02/07/2025	0.30	Work on map exhibit to dispositive motion.
02/07/2025	0.10	Finalize response to second motion for reconsideration.
02/07/2025	0.20	Confer with Mr. Montgomery regarding pending motions and Rule 121 conferral requirements.
02/14/2025	0.20	Analysis of plaintiff's reply in support of second motion for reconsideration.
02/18/2025	0.20	Receipt of Court order denying plaintiff's second motion for reconsideration and consider further options plaintiff may pursue.
Total	76.9	

Katie I. Salazar (Paralegal)

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
12/14/2023	1.50	Analysis of initial communications with client and claim file materials for initial case assessment.

12/19/2023	0.50	Analysis of initial communications with client and claim file materials for initial case assessment.
12/19/2023	2.60	Investigation into Plaintiff Montgomery to include CBI and COCOURTS and ICCCESS and Pacer and Bankruptcy Court and Westlaw and Instant Checkmate and Lien search and Social Media to gather information on Plaintiff.
12/22/2023	0.30	Analysis of all prior court documents in this case for relevance and deadlines for our client and defense obligations.
12/27/2023	6.30	Analysis and organization of any and all court proceedings the plaintiff has been involved in prior to this case for defense litigation purposes.
01/08/2024	0.40	Modify previous court proceeding document files to organize documents to prepare for our defense.
01/09/2024	0.60	Analyze case activity and progress to identify any upcoming defense obligations or deadlines.
01/17/2024	0.30	Analyze recent case activity and progress to identify any upcoming defense obligations or deadlines.
01/17/2024	0.10	Author communication to our client to determine if service has been made in order for our firm to file an answer.
01/24/2024	2.00	Analysis of plaintiffs you tube accounts and possible TikTok accounts with analysis of posted videos of plaintiff.
02/05/2024	0.60	Begin authoring defendants initial disclosure statement.
02/05/2024	0.50	Analysis of claim file documents to supplement defendants initial disclosure statement to include all individuals likely to have discoverable information and include details regarding knowledge of incident.
02/22/2024	0.10	Author communication to our client Lucy in order to obtain the policy information for disclosure purposes.
02/27/2024	0.20	Continue authoring defendants initial disclosure statement.
02/29/2024	0.20	Correspond with the court regarding the case management conference to advise of issues to be resolved among counsel with the court.
02/29/2024	0.20	Author communication to plaintiff to determine setting case management conference.
02/29/2024	0.10	Correspond with plaintiff regarding the upcoming case management conference to advise of issues to be resolved with the court.
02/29/2024	0.20	Author the Notice of Case Management Document.
03/05/2024	0.20	Obtain web ex information from Jefferson County website for upcoming case management conference.
03/05/2024	0.10	Complete the notice of case management document.
03/11/2024	0.40	Author defendants privilege documents for bates stamps for our privilege log disclosure.
03/11/2024	0.70	Author defendants initial privilege log document.
03/21/2024	0.30	Author communication to plaintiff to observe proposed case management order prior to filing.
03/27/2024	0.40	Analysis of case management conference that provided updated information for trial date and new case management conference date.
04/12/2024	0.80	Analysis of plaintiffs initial disclosure video to observe certain activities and words said for memorandum.

04/16/2024	0.40	Analysis of amended case management order to determine newest dates issued by the court.
04/24/2024	0.10	Analyze and evaluate disclosures plaintiff and defendant in order to prepare a production database to include all pertinent information regarding produced and disclosed documents.
04/24/2024	0.30	Communication with the court clerk in order to obtain pre-trial availability for our calendar and plaintiffs.
04/25/2024	0.10	Author communication with the plaintiff to provide information regarding the required in person for pre trial conference.
04/25/2024	0.10	Communication with the court on in person pre trial conference information.
04/25/2024	0.10	Prepare the notice of pre trial conference to notify the plaintiff and court of required attendance.
Total	4.3	

Glenn D. Germany

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
01/24/2024	0.20	Engaged in email communication with claim rep regarding complaint filing and answer.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's lawsuit against Walmart and the appellate court decision regarding same to help craft answer to current complaint.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's lawsuits against law enforcement officers and the courts written decisions regarding the same to help author answer to current complaint.
01/24/2024	1.30	Reviewed and analyzed Plaintiff's social media and online posts/videos to help craft answer to current complaint.
01/24/2024	1.30	Authored answer to plaintiff's complaint.
01/25/2024	1.20	Reviewed and analyzed court ruling in Plaintiff's current lawsuit against city police for unlawful detention at Walmart.
01/25/2024	1.20	Reviewed and analyzed court ruling in Plaintiff's lawsuit against Fort Collins city police for 4 th Amendment violations at city park.
01/25/2024	1.20	Continued work authoring Answer to Plaintiff's Complaint.
02/05/2024	0.10	Made revisions to Answer.
02/06/2024	0.50	Reviewed and analyzed Plaintiff's court cases against Walmart to find similarities.
02/06/2024	0.20	Engaged in email communication with claim rep regarding proposed Answer.
02/08/2024	0.10	Finalized Answer before filing.
02/20/2024	0.20	Engaged in email communication with Plaintiff regarding case conferral as required by court.
02/20/2024	0.50	Considered and analyzed benefits of staying under CRCP 16.1 rules vs CRCP 16.

02/20/2024	0.50	Considered and analyzed claim file to determine what witnesses and information is needed for defense.
02/21/2024	1.00	Engaged in telephone communication with Plaintiff as required by court conferral conferences.
02/21/2024	0.10	Engaged in email communication with claim rep regarding discussions with Plaintiff and evidence needed for case.
02/26/2024	1.00	Reviewed and analyzed claim notes to help author case management report for claim rep's review.
02/26/2024	1.00	Reviewed and analyzed Plaintiff's filings and videos to help author case management report for claim rep's review.
02/26/2024	1.00	Considered Shopkeeper's Privilege, attorneys fees statute, and other statutes to help author case management report for claim rep's review.
02/27/2024	0.20	Received and analyzed email communications between Sedgwick and Best Buy store.
02/27/2024	0.10	Finalized notice for hearing setting to set Case Management Conference.
02/27/2024	0.50	Considered and analyzed Shopkeeper's Privilege and how that might affect our defense and provided analysis to claim rep regarding the same.
02/27/2024	0.50	Considered and analyzed Plaintiff's complaint and other court cases and how that might affect our defense and provided analysis to claim rep regarding the same.
02/27/2024	0.60	Authored case analysis to claim rep providing opinions on strategies, settlement possibilities, and available defenses.
03/05/2024	0.30	Authored initial disclosure statement.
03/05/2024	1.00	Reviewed and analyzed claim file for documents that should or should not be produced in initial disclosures.
03/19/2024	0.80	Authored proposed Case Management Order.
03/27/2024	0.80	Appeared at Case Management Conference.
03/27/2024	0.10	Engaged in email communication with client regarding summary of case management conference.
04/09/2024	0.80	Reviewed and analyzed claim file for documents that need to be disclosed pursuant to CRCP 26
04/09/2024	0.40	Reviewed and analyzed Plaintiff's inputs into proposed case management order.
04/12/2024	0.30	Engaged in communication with claim rep providing summary of Plaintiff's body cam footage.
04/12/2024	0.50	Reviewed and analyzed Plaintiff's body cam footage from the date of the incident.
04/16/2024	0.40	Appeared virtually at Case Management Conference.
04/16/2024	0.10	Finalized initial disclosure statement before serving.
04/25/2024	0.10	Received and analyzed email from claim rep regarding Plaintiff's body cam footage.
04/26/2024	0.20	Engaged in email communication with new claim rep regarding Plaintiff's body cam footage and the employees we need to find.
05/08/2024	0.20	Engaged in email communication with Plaintiff regarding trial dates and moving the same.

05/14/2024	0.40	Authored motion to continue trial date.
05/28/2024	0.10	Received and analyzed email from claim rep regarding locating potential witnesses and their need for depositions.
05/28/2024	0.30	Reviewed claim file, court filings, and communication with court to determine whether court has yet to rule on our motion to continue.
05/28/2024	0.50	Engaged in telephone communication with Best Buy employee who stopped Plaintiff outside store to get better picture of the incident.
05/28/2024	0.10	Engaged in email communication with Best Buy employees regarding Plaintiff's video.
05/29/2024	0.60	Reviewed and analyzed text messages from Best Buy manager regarding Montgomery's attempts to take items without showing receipt in November 2023 at multiple Best Buys and reviewed court cases to see if Montgomery has filed other lawsuits against other stores recently.
06/03/2024	0.70	Began work authoring written discovery to Plaintiff.
06/04/2024	0.10	Received and analyzed email from store manager regarding security reports and sharing amongst stores.
06/14/2024	0.10	Reviewed and analyzed court's order on our motion to continue trial.
06/18/2024	1.30	Reviewed and analyzed Plaintiff's lawsuits against a shopping mall and University of Denver to see if Plaintiff employed similar tactics and arguments.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's court of appeals documents to build a motion for summary judgment.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's district court documents to build a motion for summary judgment.
06/19/2024	1.10	Reviewed and analyzed Plaintiff's other court documents to help draft discovery request to Plaintiff.
06/20/2024	0.20	Analyzed and considered what information we can get from Plaintiff in order to build argument for summary judgment motion.
06/21/2024	0.90	Continued work authoring written discovery to Plaintiff.
07/16/2024	1.30	Reviewed and analyzed Plaintiff's previous filings to help draft MSJ.
07/19/2024	3.00	Authored Motion for Summary Judgment.
07/23/2024	0.20	Continued making revisions to MSJ.
07/29/2024	0.20	Reviewed and analyzed Plaintiff's response to our first set of written discovery.
08/09/2024	0.20	Reviewed case file and considered current litigation position and what steps need to be taken moving forward in order to put client in best position.
Total	36.6	

Jamie L. Gress (Paralegal)

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
05/15/2024	0.10	Correspondence to pro se plaintiff regarding motion to continue trial and reset.

05/28/2024	0.20	Communication to court clerk regarding pre trial conference and our motion to continue trial
06/20/2024	0.20	Correspondence to pro se plaintiff regarding Order regarding resetting Jury Trial and in person status conference for the same.
06/20/2024	0.20	Prepare Notice of Status Conference.
06/20/2024	0.20	Correspondence with pro se plaintiff regarding mandatory in person status conference to reset trial.
08/02/2024	0.20	Prepare notice of status conference
08/02/2024	0.10	Correspondence to pro se plaintiff regarding status conference to reset trial.
08/02/2024	0.20	Communication with court clerk regarding status conference to reset trial.
08/09/2024	0.20	Analyze case pleadings filed to date and our motion for summary judgment to determine future litigation needs.
Total	1.6	

Abigail L. Spohn (Paralegal)

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
06/20/2024	1.00	Conduct background search to include driving history and criminal history and social media history and court history and current relevant liens in order to obtain pertinent information in regard to our plaintiff.
06/21/2024	0.30	Modify document for a written discovery request for William Montgomery to be filed with the court.
07/22/2024	0.30	Gather documents form trial court case 2020CV000076 from ICCES involving Montgomery and Walmart.
07/22/2024	1.50	Prepare exhibits to be served with motion of summary judgment.
07/23/2024	0.50	Further research and locate CO district court cases to potentially include in upcoming motion.
07/23/2024	1.00	Locate and update exhibits to be filed with Motion for Summary Judgment, as well as analyze and download William Montgomery Youtube video, relevant to this case.
07/29/2024	0.20	Analyze initial disclosure documents from both plaintiff and defendant and update production log.
08/02/2024	0.20	Conduct correspondence with plaintiff regarding upcoming status conference hearing.
08/09/2024	0.30	Analyze CMO in light of new trial dates to identify future litigation and discovery needs.
08/09/2024	0.30	Conduct correspondence with plaintiff regarding Motion for Summary Judgment as well as print and mail MSJ document and exhibits to him.
08/13/2024	0.10	Conduct correspondence with plaintiff regarding service of MSJ and his expected form of service for future needs.
08/15/2024	0.10	Conduct correspondence with pro se plaintiff regarding the court's order to his previously filed motion.
09/17/2024	0.10	Conduct correspondence with pro se plaintiff about his own document/

		motion production.
09/23/2024	0.50	Analyze and evaluate Plaintiff's Transcript of Bodycam Footage which was produced with his Cross MSJ and compare to audio to ensure the transcript is accurate.
10/02/2024	1.30	Prepare first supplemental disclosure documents to include Bates Stamps and update supplemental disclosure statement accordingly.
10/02/2024	0.50	Prepare first supplemental disclosure statement to represent documents and information being produced in first supplemental disclosures.
10/03/2024	1.70	Analyze YouTube video posted by Plaintiff and create a word for word transcript to potentially use in response to cross MSJ.
10/03/2024	0.20	Analyze and evaluate plaintiff's other open lawsuits for the purposes of comparing these similar lawsuits to this current one.
10/03/2024	0.20	Conduct correspondence with client in order to share a video link to crucial footage regarding the investigation.
10/03/2024	0.30	Finalize first supplemental disclosure statement and documents and send to legal assistant to be served.
10/03/2024	2.10	Analyze and evaluate all documents and information that have been produced by plaintiff and take notes on each specifically noting any discrepancies between his stated facts.
10/04/2024	1.00	Continue to analyze YouTube video regarding plaintiff discussing similar cases in order to finish transcribing and add in time stamps for future needs and litigation purposes.
10/04/2024	0.30	Prepare second supplemental disclosure statement for newly found documents in preparation for supplemental disclosure.
10/07/2024	1.20	Analyze and evaluate Plaintiff's claimed facts and determine whether they can be denied based on the video evidence we received from plaintiff.
10/09/2024	0.40	Begin background search on third witness to the incident to try and locate him or contact him for the purposes of gaining more information on the incident.
10/10/2024	0.30	Continue to prepare second supplemental disclosure statement by adding three individuals contact information as they have discoverable information on the incident since they were witnesses.
10/10/2024	0.40	Prepare and label exhibits to be attached to reply to plaintiff's response to our motion for summary judgment.
10/14/2024	0.10	Conduct correspondence with Pro se Plaintiff regarding Notice of Deposit filed with the court today as well as sending a link to the Exhibit mentioned in the Notice for his records.
10/14/2024	0.40	Prepare a notice of deposit in order to submit a video exhibit to the court that was mentioned in the response to plaintiff's cross MSJ as well as prepare flash drive to be sent to court.
10/21/2024	0.80	Analyze and evaluate state and federal e-filing systems in order to locate new cases that plaintiff is involved in and download filings to examine for the purposes of this litigation.
10/21/2024	0.30	Prepare notice of deposition of plaintiff William Montgomery.
10/29/2024	0.10	Conduct correspondence with plaintiff in order to send him the documents filed in court today.

10/29/2024	0.10	Conduct correspondence with plaintiff in order to send him the court's order from today on his earlier motion.
10/31/2024	0.30	Analyze and finalize 2nd supplemental disclosure document and attached documents and serve to plaintiff via email.
11/01/2024	0.20	Conduct correspondence with the court of clerks office in Jefferson County in order to obtain discovery dispute hearing dates.
11/04/2024	1.50	Prepare documents to be used as exhibits in the deposition of plaintiff as well as create binder and cover sheet for organization purposes of attorney's line of questioning.
11/04/2024	0.10	Conduct correspondence with court reporting group in order to confirm details and scheduling of deposition for tomorrow.
11/04/2024	0.10	Conduct correspondence with plaintiff in order to send over details about the zoom deposition to occur tomorrow.
11/04/2024	0.50	Prepare a lawsuit database with all pertinent information regarding plaintiff's previous lawsuits to be able to reference during plaintiff's deposition.
11/04/2024	0.30	Analyze and evaluate all recent discovery and disclosures from plaintiff and defendants in order to update production database to include all pertinent information regarding produced and disclosed documents.
11/05/2024	0.10	Locate and prepare a few more exhibits to add in plaintiff's deposition occurring now.
11/05/2024	0.30	Prepare and update 3rd set of written discovery document in order to be able to serve discovery during deposition.
11/05/2024	0.50	Analyze MSJ and Cross-MSJ for locations of specific statements made by plaintiff that contradict each other for use in depo.
11/07/2024	0.50	Gather and prepare documents used in plaintiff's deposition including finding emails sent by plaintiff that were used as exhibits in order to send to court reporter.
11/07/2024	0.10	Conduct correspondence with court reporter in order to send over all exhibits used in the deposition of plaintiff.
11/13/2024	0.40	Author third supplemental disclosure statement to include new documents being produced and associated Bates Stamps as well as prepare documents to be disclosed.
11/14/2024	0.10	Finalize and email defendant's third supplemental disclosures to pro se plaintiff via his preferred serving method.
11/14/2024	0.30	Author subpoena for plaintiff's brother in preparation for serving prior to deposition.
11/18/2024	0.10	Conduct correspondence with pro se plaintiff and plaintiff's brother regarding deposition taking place in two days.
11/19/2024	1.10	Begin to prepare a Bill of Costs after case was dismissed without prejudice in order to determine amount for attorney's fees.
11/21/2024	0.40	Continue to prepare a Bill of Costs after receiving further expense information regarding background and investigation costs.

11/25/2024	0.20	Analyze Colorado Courts E-Filing to determine lawsuits plaintiff filed over the weekend and download the ones not already sent regarding Best Buy.
12/31/2024	0.10	Correspond with William Montgomery about his reply brief in support of the motion for reconsideration.
02/28/2025	0.90	Prepare exhibits to be filed with Motion to Reconsider Order regarding Court Fees.
Total	5.1	

Stephanie E. Boutsicaris

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
08/12/2024	0.50	Correspond with Plaintiff about his response to the motion for summary judgment and the issues with service of our motion for summary judgment.
08/12/2024	0.20	Correspond with Sedgwick about our pending motion for summary judgment.
08/13/2024	0.10	Correspond with Sedgwick about Plaintiff's request for an extension on his response brief for Best Buy's motion for summary judgment.
08/13/2024	0.20	Correspond with Plaintiff about his response to Best Buy's motion for summary judgment.
08/14/2024	0.20	Correspond with Plaintiff about his responses to written discovery.
08/15/2024	0.10	Analyze Plaintiff's responses to Best Buy's first set of written discovery requests.
08/15/2024	0.20	Correspond with Plaintiff about Best Buy's motion for summary judgment and Plaintiff's motion for extension of time.
09/11/2024	0.30	Correspond with Sedgwick about our motion for summary judgment and settlement negotiation strategy.
09/12/2024	0.20	Correspond with Sedgwick about mediation.
09/12/2024	0.20	Correspond with Plaintiff about mediation.
09/13/2024	0.10	Correspond with Sedgwick about mediation.
09/13/2024	0.30	Analyze Best Buy's motion for summary judgment to strategize about how to present the shopkeepers' privilege as a defense.
09/16/2024	0.10	Correspond with Sedgwick to discuss strategy for motions for summary judgment.
09/17/2024	0.20	Correspond with Plaintiff about the motion to exceed the page limit.
09/17/2024	0.10	Analyze whether to object to Plaintiff exceeding the page limit given his history of prior claims.
09/19/2024	0.10	Correspond with Plaintiff about his response brief to Best Buy's motion for summary judgment and his own cross-motion for summary judgment.
09/19/2024	0.30	Correspond with Plaintiff about Best Buy's position concerning his motion to submit video evidence.
09/20/2024	0.10	Correspond with Plaintiff about his exhibits for his response to our motion for summary judgment.

09/23/2024	1.00	Analyze Plaintiff's 32-page response to Best Buy's motion for summary judgment.
09/23/2024	0.10	Analyze Plaintiff's motion to exceed the page count for his response brief for Best Buy's motion for summary judgment.
09/23/2024	0.50	Analyze Plaintiff's 22-page cross-motion for summary judgment.
09/23/2024	0.10	Analyze Plaintiff's motion to submit video evidence.
09/23/2024	0.20	Analyze Plaintiff's affidavit in support of his response to Best Buy's motion for summary judgment.
09/25/2024	0.30	Strategize about additional information needed to respond to Plaintiff's motion for summary judgment and his response to Best Buy's motion for summary judgment.
09/26/2024	0.30	Correspond with Sedgwick about Plaintiff's likely strategy in filing a motion for summary judgment.
09/26/2024	0.70	Correspond with Sedgwick about receipt evidence available to produce demonstrating the purchase Plaintiff made.
09/26/2024	0.10	Analyze receipts of Plaintiff's purchases to potentially produce.
09/27/2024	0.20	Analyze the internal summary of Plaintiff's receipt data showing repetitive purchases all over the greater Denver metro area in a small amount of time and consider how the same will fit into dispositive motion strategy.
09/27/2024	0.50	Correspond with Khay Harris about receipt data for Plaintiff's Best Buy purchases and how to interpret the same.
09/27/2024	0.10	Correspond with Best Buy employees about the need for affidavits from them to support our dispositive motions.
09/30/2024	0.40	Analyze Plaintiff's assertions in his motion for summary judgment and assess rebuttal arguments.
10/02/2024	0.40	Strategize about how to argue the shopkeepers doctrine and present supporting legal authority in our reply brief for our motion for summary judgment.
10/02/2024	0.60	Strategize about summary judgment briefs and exhibits to include and utilizing legal doctrines that could rebut Plaintiff's exhibits.
10/02/2024	0.10	Strategize about additional documents to disclose pursuant to Rule 26.
10/02/2024	0.10	Correspond with Mahmoud about information that could be helpful in responding to Plaintiff's motion for summary judgment.
10/03/2024	0.20	Correspond with Plaintiff about Defendant's motion for extension of time to file a reply brief.
10/03/2024	0.20	Correspond with Best Buy and Sedgwick about the YouTube videos by Plaintiff discussing his plans to frame stores for false imprisonment.
10/03/2024	0.20	Analyze dozens of Reddit posts and comments concerning Plaintiff's lawsuits and plans to frame stores with false imprisonment and consider additional discovery needed in relation to these posts.
10/03/2024	0.30	Strategize about responding to facts from Plaintiff's motion for summary judgment briefs that may be depicted in the videos of the incident.
10/03/2024	0.30	Strategize about how to incorporate new evidence into a reply brief for Best Buy's motion for summary judgment.

10/04/2024	0.20	Correspond with Mahmoud about his recollection of the subject incident.
10/04/2024	0.10	Strategize about additional information to include in supplemental Rule 26 disclosures in light of recent investigations.
10/04/2024	0.10	Analyze the Court's order granting the motion for extension of time to submit a reply brief for Defendants' motion for summary judgment.
10/07/2024	0.80	Analyze the pen camera video from the incident in order to identify excerpts to cite in summary judgment briefing.
10/07/2024	0.50	Analyze the YouTube video concerning Mr. Montgomery's motive in refusing to provide receipts in order to identify excerpts to cite in summary judgment briefing.
10/08/2024	0.20	Phone call with Shane to determine additional facts to support our summary judgments briefings.
10/08/2024	0.20	Phone calls to James concerning his recollection of the incident in order to use in summary judgment briefing.
10/08/2024	0.20	Phone calls with Mahmoud concerning his recollection of the incident in order to use in summary judgment briefing.
10/08/2024	3.50	Draft replies to Plaintiff's responses to our factual assertions in the reply brief for motion for summary judgment including an analysis of what is supported by reasonably reliable evidence.
10/08/2024	0.20	Consider factual information to include in a draft of an affidavit that will be executed and attached to summary judgment briefings.
10/08/2024	0.20	Analyze publicly available records and information for James Robinson in anticipation of contacting him to draft an affidavit.
10/09/2024	0.20	Correspond with Sedgwick about strategies for deterring Mr. Montgomery from future conduct that could result in liability or lawsuits for Best Buy.
10/09/2024	0.20	Correspond with Sedgwick about our conversation with Mahmoud and Shane and our attempts to locate James Robinson.
10/09/2024	0.20	Strategize about additional witness disclosures including James Robinson.
10/09/2024	3.50	Continue drafting the reply brief in support of motion for summary judgment by responding to Plaintiff's statement of additional facts and amending the introduction section to synchronize with these responses.
10/09/2024	0.20	Correspond with Sedgwick about obtaining information about the registers Plaintiff used for his in-store purchases in order to determine if it was consistent with his modus operandi of using back checkout counters to induce suspicion of shoplifting.
10/09/2024	0.30	Strategize about locating and interviewing former Best Buy employee James Robinson.
10/10/2024	9.20	Finish drafting the reply brief for the Motion for Summary Judgment by drafting the argument section and amending the factual responses based upon Mahmoud's affidavit and to synchronize with the factual responses in our response to the cross motion for summary judgment.
10/10/2024	0.30	Correspond with Mahmoud about executing an affidavit in support of our summary judgment briefings.
10/10/2024	0.20	Strategize about submitting a motion for extension of time for our response to Plaintiff's cross-motion for summary judgment.

10/10/2024	0.60	Strategize about arguments to assert in response to the cross-motion for summary judgment.
10/10/2024	0.30	Correspond with Plaintiff to confer on a motion for extension of time.
10/11/2024	0.10	Strategize about ensuring service requirements are met for the motion for summary judgment briefings given Plaintiff's prior complaints of late notice of motions.
10/11/2024	0.20	Strategize about what written discovery could besought from Mr. Montgomery.
10/11/2024	0.10	Correspond with Plaintiff about his deposition.
10/11/2024	0.10	Correspond with Plaintiff about his counterarguments to our allegations in the motion for summary judgment.
10/11/2024	0.20	Strategize about deposing Mr. Montgomery.
10/14/2024	0.10	Finalize the notice of deposit in order to submit additional video evidence into summary judgment briefings.
10/14/2024	0.10	Analyze the Court's order granting Plaintiff's motion to submit video evidence to the Court.
10/17/2024	0.10	Correspond with Plaintiff about his upcoming deposition.
10/18/2024	0.10	Correspond with Plaintiff about his upcoming deposition.
10/20/2024	0.20	Correspond with Plaintiff about the other lawsuits he is citing in his conferral for an extension on summary judgment briefing.
10/21/2024	0.50	Correspond with Plaintiff about his request for additional time to submit a reply brief to his motion for summary judgment.
10/21/2024	0.30	Correspond with Plaintiff about his upcoming deposition.
10/21/2024	0.30	Strategize about whether to oppose Plaintiff's request for additional time to file his reply brief for his motion for summary judgment.
10/22/2024	0.10	Analyze Plaintiff's motion for extension of time and consider the need to submit a response.
10/22/2024	0.10	Correspond with Plaintiff about the motion for extension of time to submit his reply brief for his motion for summary judgment.
10/25/2024	0.10	Correspond with Plaintiff about his request to exceed the page limit on his reply brief for the cross motion for summary judgment.
10/28/2024	0.30	Analyze Plaintiff's reply to his cross motion for summary judgment.
10/28/2024	0.90	Draft opposition in response to Plaintiff's motion to exceed the page count.
10/28/2024	0.30	Strategize about written discovery needed to rebut Plaintiff's affidavit allegations.
10/28/2024	0.20	Analyze the exhibits and affidavit submitted with Plaintiff's reply brief on summary judgment and consider the need for motions practice to address the same.
10/28/2024	0.30	Confer regarding Plaintiff's request to exceed the page limit on his reply brief to the motion for summary judgment.
10/28/2024	0.10	Analyze the Court's order granting Plaintiff's motion for extension of time to file a reply brief.
10/29/2024	0.60	Draft second set of written discovery requests.

10/29/2024	0.10	Correspond with Plaintiff about the order partially granting Plaintiff's motion to exceed the page count.
10/29/2024	1.50	Draft discovery conferral letter to Plaintiff concerning his deficient and evasive discovery in order to tee up a potential Rule 37 motion that could provide a back up plan if motion for summary judgment is unsuccessful.
10/29/2024	0.10	Analyze the Court's order partially granting Plaintiff's motion to exceed the page count.
10/29/2024	0.30	Strategize about questions to ask at Plaintiff's deposition rather than asking by way of interrogatory.
10/30/2024	0.10	Correspond with Plaintiff about his deficient discovery responses and the likelihood for the need to go to discovery dispute on the issues.
10/30/2024	0.10	Correspond with Plaintiff about his proffered motion to strike his previous reply brief.
10/31/2024	0.10	Strategize about using Plaintiff's statements about the Reddit comments in future Rule 26 disclosures.
10/31/2024	0.20	Correspond with Plaintiff about Best Buy's 2 nd Supplemental Disclosures.
10/31/2024	0.20	Amend supplemental disclosure statement to include additional witnesses.
10/31/2024	0.40	Correspond with Khay Harris about the forthcoming disclosures and discovery expected from Plaintiff concerning authorized users and Plaintiff's second attempt at a reply brief for his motion for summary judgment.
10/31/2024	0.20	Correspond with Plaintiff about his deficient discovery responses and disclosures and the likelihood of a discovery dispute hearing.
11/01/2024	0.10	Correspond with Plaintiff about his reply brief for his cross motion for summary judgment.
11/01/2024	0.10	Analyze Plaintiff's motion to strike his previous reply brief for his cross motion for summary judgment.
11/01/2024	0.20	Analyze Plaintiff's amended reply to his motion for summary judgment.
11/01/2024	0.60	Strategize about Plaintiff's bad faith and evasive discovery responses in light of the recent amended disclosures and discovery responses and consider what potential discovery motions.
11/01/2024	0.90	Correspond with Plaintiff about curing his deficient written discovery responses.
11/01/2024	0.20	Analyze Plaintiff's amended responses to the first set of written discovery and consider how they compare and contradict the previous responses.
11/01/2024	0.10	Analyze Plaintiff's responses to Best Buy's second set of written discovery.
11/01/2024	0.20	Analyze Plaintiff's untimely produced documentation of authorized users and Best Buy purchases.
11/01/2024	0.20	Analyze the Court's orders to determine the Court's discovery dispute procedure.
11/01/2024	0.40	Phone calls with Plaintiff about his deficient discovery requests.
11/01/2024	0.10	Correspond with Plaintiff about his reply brief for his cross motion for summary judgment.
11/02/2024	0.20	Strategize about how to address Plaintiff's evasive and contradictory responses to written discovery.

11/02/2024	0.30	Strategize whether a discovery dispute before Plaintiff's deposition is necessary.
11/03/2024	0.20	Strategize about Rule 37 remedies and the timing of requesting the same and how to utilize Plaintiff's YouTube video to show that he deliberately withheld information.
11/03/2024	0.70	Draft a third set of written discovery to serve upon Plaintiff.
11/04/2024	0.20	Consider whether Plaintiff complied with the Court's order to shorten his reply brief by just moving arguments to footnotes.
11/04/2024	0.20	Strategize about documents and materials to use at Plaintiff's deposition.
11/05/2024	5.20	Depose William Montgomery.
11/05/2024	0.20	Correspond with the court reporter to confirm the exhibit list used for the deposition of William Montgomery.
11/05/2024	1.20	Prepare for the deposition of William Montgomery by analyzing exhibits to be used and formulating lines of questioning.
11/05/2024	0.50	Amend 3rd set of written discovery to Plaintiff to take into account the information learned at deposition concerning other documentation available for production.
11/05/2024	0.40	Correspond with Sedgwick about the likelihood of Plaintiff filing a Complaint concerning additional incidents at Best Buy for November 2023.
11/05/2024	0.10	Correspond with Plaintiff about Best Buy's third set of written discovery requests to Plaintiff.
11/05/2024	0.10	Consider whether meta data will be helpful in determining whether Plaintiff edited the videos that were provided in Rule 26 disclosures.
11/13/2024	0.10	Finalize the draft of the Third Supplemental Disclosures.
11/13/2024	0.30	Correspond with Khay Harris about banning Plaintiff from Best Buy properties and receipt information for Black Friday 2023.
11/13/2024	0.10	Correspond with Plaintiff about producing David Montgomery for a deposition.
11/14/2024	0.20	Finalize deposition subpoena and waiver in order to confirm it is compliant with Rules 30 and 45.
11/14/2024	0.20	Correspond with Plaintiff and David Montgomery about deposing David Montgomery and obtaining a waiver of subpoena.
11/15/2024	0.10	Reformat the subpoena to appear for deposition at the request of David Montgomery.
11/15/2024	0.30	Correspond with David Montgomery about the subpoena duces tecum and waiver and appearing a deposition.
11/15/2024	0.10	Correspond with William Montgomery about the need for a subpoena waiver from David Montgomery to proceed with scheduling his deposition.
11/15/2024	0.20	Strategize about the need to hire a process server for the deposition subpoena for David Montgomery and consider the timing of the same to ensure cooperation from Plaintiff and David Montgomery.
11/17/2024	0.10	Correspond with William Montgomery about procuring a waiver of service for David Montgomery's deposition subpoena.

11/17/2024	0.10	Analyze the waiver of service for David Montgomery's deposition subpoena to confirm it was properly executed and complies with Rule 30 and Rule 45.
11/18/2024	0.20	Correspond with William Montgomery to confer on his motion to add punitive damages.
11/18/2024	0.20	Strategize about rebuttal arguments to assert against a motion to add punitive damages.
11/18/2024	0.10	Correspond with Plaintiff about deposing his brother.
11/19/2024	0.20	Strategize about prejudice arguments to assert to rebut Plaintiff's motion to amend the Complaint.
11/19/2024	0.60	Correspond with Sedgwick and Best Buy about the Court's order dismissing Plaintiff's claims and the likelihood of an appeal.
11/19/2024	0.30	Strategize about information to elicit from David Montgomery that could provide a basis for motions practice.
11/19/2024	0.10	Correspond with David Montgomery about the cancellation of his deposition in light of the Court's dismissal of the Plaintiff's claims.
11/19/2024	0.20	Correspond with William Montgomery about the Court's order on summary judgment and his intent to appeal the order.
11/19/2024	0.30	Analyze and consider the impact of the Court's order for motion for summary judgment and consider the odds of success upon appeal.
11/19/2024	0.10	Strategize about obtaining a Bill of Costs in light of the unlikelihood Best Buy will be able to recoup such costs.
11/20/2024	0.10	Correspond with Sedgwick and Best Buy about the likelihood of Plaintiff filing another lawsuit against Best Buy for 2023 incidents.
11/21/2024	0.10	Strategize about expenses to include in a Bill of Costs.
11/26/2024	0.10	Strategize about additional information to include in a Bill of Costs.
11/26/2024	0.20	Strategize about whether it would be appropriate to request attorney's fees given the Court's ruling on summary judgment.
11/27/2024	0.30	Amend draft of Bill of Costs to reflect additional costs that were recently discovered.
12/02/2024	0.10	Correspond with Plaintiff about the proposed bill of costs to meet the Court's conferral requirements.
12/02/2024	0.40	Correspond with Sedgwick and advise as to the procedure for Plaintiff submitting an appeal in light of Plaintiff stating that he would do so.
12/02/2024	0.20	Correspond with Plaintiff to confer about Plaintiff's motion to reconsider the Court's order of summary judgment dismissing all of Plaintiff's claims.
12/02/2024	0.20	Strategize about objecting to the motion to proceed in forma pauperis.
12/03/2024	0.30	Analyze Plaintiff's motion for reconsideration and consider rebuttal arguments to assert.
12/03/2024	0.20	Correspond with Plaintiff about his objections to the Bill of Costs to be filed with the Court.
12/03/2024	0.20	Amend the Bill of Costs to include a paragraph concerning conferral edits and noting that Plaintiff did not provide his position before the Bill of Costs was filed.
12/04/2024	1.10	Correspond with Khay Harris to advise Sedgwick concerning Plaintiff's motion for reconsideration and to advise regarding the Bill of Costs and a

		Motion for Attorney's including a discussion of the collectability of such monetary awards.
12/04/2024	0.50	Correspond with Plaintiff to confer in advance of filing a motion for sanctions and attorney's fees.
12/19/2024	5.80	Draft Best Buy's Response in Opposition to Plaintiff's Motion to Reconsider
12/23/2024	3.20	Analyze Plaintiff's 200-page deposition transcript and identify excerpts to potentially use in a motion for attorney's fees or other future motions.
12/24/2024	0.60	Analyze Plaintiff's YouTube video to identify excerpts and quotes to reference in a motion for attorney's fees.
12/24/2024	0.10	Correspond with Plaintiff about Best Buy's response to Plaintiff's Motion for Reconsideration.
12/30/2024	0.30	Correspond with Plaintiff about the case law cited in Best Buy's response to the motion for reconsideration.
12/30/2024	6.20	Draft the motion for attorney's fees at the request of Khay Harris.
12/31/2024	0.70	Finalize the motion for attorney's fees by including additional citations to quotes from Mr. Montgomery highlighting the sting he set up for Best Buy.
12/31/2024	0.30	Analyze Plaintiff's reply brief in support of his motion for reconsideration and consider what steps to take if the motion is granted.
12/31/2024	0.20	Draft a proposed order for the motion for attorney's fees.
12/31/2024	0.20	Correspond with Khay Harris to advise about the procedural posture of dispositive motions and the likelihood of Plaintiff appealing.
12/31/2024	0.60	Draft Rule 60 Notice to address legal authority citations.
12/31/2024	0.30	Analyze exhibits to be submitted with the Court to confirm that the correct emails and the correct deposition excerpts are submitted with Best Buy's response to the motion for reconsideration.
12/31/2024	0.10	Correspond with William Montgomery about his reply brief in support of the motion for reconsideration.
01/02/2025	0.20	Correspond with William Montgomery about the motion for attorney's fees and the Rule 60 notice filed with the Court.
01/02/2024	0.10	Correspond with Plaintiff on the motion for attorney's fees.
01/06/2025	0.30	Correspond with Plaintiff about the Court's order denying Plaintiff's motion for reconsideration and confer about Plaintiff's forthcoming second motion for reconsideration.
01/06/2025	0.20	Correspond with Khay Harris about the court's order rejecting Plaintiff's motion for reconsideration and the recently submitted motion for attorney's fees.
01/06/2025	0.10	Analyze the Court's order denying Plaintiff's motion for reconsideration.
01/06/2025	0.30	Strategize about whether Rule 121 imposes and deadlines and procedures on Plaintiff's ability to contest the bill of costs.
01/07/2025	0.20	Strategize about and anticipate Plaintiff contesting the Court's order on the bill of costs and how Best Buy will respond.
01/07/2025	0.10	Correspond with Plaintiff about the Court's order on Best Buy's bill of costs.
01/07/2025	0.10	Correspond with Khay Harris about the court's order on the bill of costs.

01/07/2025	0.10	Analyze the Court's order on the bill of costs.
01/08/2025	0.10	Correspond with Plaintiff about the Amended Order regarding Best Buy's bill of costs.
01/08/2025	0.10	Analyze the Court's amended order on Best Buy's bill of costs.
01/08/2025	0.20	Correspond with Khay Harris about the court's order on the bill of costs.
01/21/2025	0.10	Correspond with Plaintiff about his response to Best Buy's motion for attorney's fees and his second motion for reconsideration.
01/22/2025	0.30	Analyze and consider the impact of Plaintiff's response to the motion for attorney's fees.
01/22/2025	0.20	Analyze and consider the impact of Plaintiff's second motion for reconsideration.
01/23/2025	0.30	Correspond with Khay Harris about the ongoing motions practice from the Black Friday 2022 claim including the motion for attorney's fees and motion for reconsideration and the bill of costs granted by the Court.
01/23/2025	0.20	Strategize about how Best Buy should address the other similar lawsuits in its motion for attorney's fees.
01/28/2025	4.20	Draft Reply Brief in support of Defendant's Motion for Attorneys' Fees.
01/28/2025	0.30	Strategize about how to address the lack of a formal filing of Plaintiff's response to the motion for attorney's fees.
01/28/2025	0.30	Correspond with Plaintiff about the briefings for the Motion for Attorneys' Fees and the clerical errors therein.
01/28/2025	0.20	Analyze the Court docket and Plaintiff's other court filings to determine if there is a clerical error with Plaintiff's Response to the motion for attorney's fees that may require correction under Rule 60.
01/28/2025	0.20	Analyze the pleadings in the three new Best Buy lawsuits to determine if false imprisonment was similarly asserted and if that fact should be addressed in the briefing concerning attorney's fees.
02/05/2025	0.40	Correspond with Khay Harris to advise them about responding to Plaintiff's second motion for reconsideration and also to discuss the motion for attorney's fees.
02/07/2025	0.70	Draft Best Buy's Response in Opposition to Plaintiff's Second Motion for Reconsideration.
02/15/2025	0.20	Analyze and consider the impact of Plaintiff's reply to his second motion for reconsideration.
02/15/2025	0.10	Correspond with Plaintiff about his reply in support of his motion for reconsideration.
02/18/2025	0.10	Analyze the Court's order denying Plaintiff's second motion for reconsideration.
02/25/2025	0.10	Correspond with Khay Harris about Plaintiff's second motion for reconsideration.
02/28/2025	0.20	Correspond with Plaintiff about the motion to reconsider court fees for the Black Friday 2022 lawsuit appeal.
02/28/2025	1.80	Draft motion to reconsider the Court's Order regarding court fees.
02/28/2025	0.10	Draft proposed order for the motion to reconsider the Court's Order re Court Fees.
Total	36.3	

Mary B. Pucelik

<u>Date</u>	<u>Time Spent</u>	<u>Task Performed</u>
10/10/2024	7.20	Draft additional undisputed material facts and responsive arguments in Defendant's response to Plaintiff's cross motion for summary judgment.
Total	7.2	

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
Plaintiff: WILLIAM MONTGOMERY v. Defendant: BEST BUY STORES, L.P.	DATE FILED June 3, 2025 1:21 PM CASE NUMBER: 2023CV226 ▲ COURT USE ONLY ▲ Case Number: 2023CV00226 Division: 06 Courtroom: 520
ORDER RE: DEFENDANT’S COMPUTATION OF ATTORNEY FEES	

THIS MATTER comes before the Court on Defendant Best Buy Stores’ computation of attorney fees. The Court, having reviewed the pleadings, the case file, the applicable law, and being otherwise fully advised, rules as follows:

I. BACKGROUND

Plaintiff William Montgomery filed his complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store. Defendant filed a motion for summary judgment on July 25, 2024, seeking summary judgment on all of Plaintiff’s claims. The Court granted summary judgment for, among other things, Shopkeeper’s Privilege.

Defendant filed a motion for attorney fees on December 31, 2024. The Court granted Defendant’s motion and ordered Defendant to submit this computation of attorney fees. (Order re: Defendant’s Motion for Attorney Fees 03.18.2025.) Defendant seeks \$43,083.00 in total attorney fees.

II. LEGAL STANDARD

“An award of attorney fees must be reasonable.” Tallitsch v. Child Support Servs., Inc., 926 P.2d 143, 147 (Colo. App. 1996). “If a statute providing for a fee award does not provide a specific definition of ‘reasonableness,’ the amount of the award must be determined in light of all the circumstances, based upon the time and effort reasonably expended by the prevailing party’s attorney.” Id.

In assessing reasonableness of attorney fees, courts first calculate a lodestar amount “by multiplying the number of hours reasonably expended by a reasonable hourly fee.” Tallitsch, 926 P.2d at 148. A “court then has discretion to make upward or downward adjustments to the lodestar

amount based on factors set forth in Colo. RPC 1.5(a).” S. Colorado Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein, 343 P.3d 1044, 1049 (Colo. App. 2014). Colorado Rule of Professional Conduct 1.5(a) contains a non-exhaustive list of factors that can be utilized to determine the reasonableness of fees.

III. ANALYSIS

The Court granted Defendant’s request for reasonable attorney fees on March 18, 2025. (Order re: Defendant’s Motion for Attorney Fees 03.18.2025.) Defendant now requests \$43,083.00 in attorney fees.

Defendant requests (1) \$22,685.50 for 76.9 hours of work by Lori K. Bell at \$295 per hour; (2) \$9,150.00 for 36.6 hours of work by Glenn D. Germany at \$250 per hour; (3) \$8,167.50 for 36.3 hours of work by Stephanie E. Boutsicaris at \$225 per hour; (4) \$1,980.00 for 7.2 hours of work by Mary B. Pucelik at \$275 per hour; and (5) \$1,100 for 11 hours of work by three paralegals at \$100 per hour. Defendant has provided a 2017 economic survey from the Colorado Bar Association (“CBA Survey”) for reference.

a. Reasonable Hourly Fees

i. *Mary B. Pucelik, Glenn D. Germany, and Stephanie E. Boutsicaris*

Defendant contends that \$275 per hour, \$250 per hour, and \$225 per hour are reasonable for private practitioners with 30-39 years of practicing law, 10-19 years of practicing law, and 5-9 years of practicing law respectively. The CBA Survey does support the contention that these are the average billing rates for Colorado attorneys with similar years of experience. (Defendant’s Exhibit B, CBA Survey at 37.)

However, the CBA Survey also shows that the average billing rate decreases slightly to \$225 per hour for law firms that have 10-19 attorneys, and also decreases to \$225 per hour for attorneys who primarily practice civil litigation. (Defendant’s Exhibit B, CBA Survey at 37, 38.) Additionally, the CBA Survey shows that attorneys located in Denver bill an average of \$250 per hour. (Id. at 37.)

In light of these circumstances, the Court finds that a reasonable hourly rate should be adjusted slightly downward, from \$275, \$250, and \$225, to \$250, \$230, and \$225. This adjustment takes into consideration not only the attorneys’ years of experience, but also field of practice, firm size, and geographic location.

Thus, the Court finds a reasonable hourly rate for Ms. Pucelik to be \$250, for Mr. Germany to be \$230, and for Ms. Boutsicaris to be \$225.

ii. *Lori K. Bell*

Defendant contends that \$295 per hour is a reasonable rate for a partner at a private firm in Colorado.

The CBA Survey supports the contention that \$290 per hour is the average billing rate for a partner at a private firm in Colorado with 20-29 years of practicing law. (Defendant's Exhibit B, CBA Survey at 64.) However, for the reasons explained above, the Court finds it appropriate to adjust slightly downward in consideration of the field of practice, firm size, and geographic location. Accordingly, the Court finds a reasonable hourly rate for Ms. Bell to be \$270 per hour.

iii. *Paralegals*

Defendant contends that \$100 per hour is a reasonable market rate for a paralegal.

Three paralegals worked on this case: Katie Salazar, Jaime Gress, and Abigail Spohn. Defendant does not say how many years of experience any of these paralegals have. As such, the Court will use the average billing rate for paralegals with less than one year of experience. In Denver, the average billing rate for paralegals with less than one year of experience is \$90. (Defendant's Exhibit B, CBA Survey at 85.)

Accordingly, the Court finds a reasonable hourly rate for Ms. Salazar, Ms. Gress, and Ms. Spohn to be \$90 per hour.

b. Hours Reasonably Expended

Defendant contends the attorneys and paralegals involved this action spent a total of 168 hours working on this case, including roughly 77 hours by an equity partner in the firm.

The Court has discretion to adjust the reasonable hours expended based on the complexity of the case. Payan v. Nash Finch Co., 310 P.3d 212, 220-222 (Colo. App 2012). One factor to consider when determining a reasonable fee award is "the novelty and difficulty of the questions involved." Colo. RPC 1.5(a)(1).

Although the Court acknowledges Plaintiff's litigiousness, this case was a relatively straightforward tort case against a pro se plaintiff that was dismissed on summary judgment. The questions involved were not particularly novel, complex, nor difficult. Additionally, Plaintiff has brought substantially this same case repeatedly, several of which have already been dismissed on summary judgment, which Defendant is aware of. (Defendant's Motion for Summary Judgment Exhibits A-K.) This shows a substantial lack of novelty in the present case.

The Court finds the lack of complexity and lack of novelty present in the case to require a downward adjustment in the hours reasonably expended. The Court finds a reduction of 10% in the hours expended to be appropriate.

Accordingly, the Court finds hours reasonably expended for Ms. Bell to be 69.2; for Mr. Germany to be 32.9; for Ms. Boutsicaris to be 32.7; for Ms. Pucelik to be 6.5; and for the paralegals combined to be 9.9.

c. Lodestar Amount

With the adjusted number of hours reasonably expended multiplied by the adjusted reasonable hourly fees, the lodestar amount calculated by the Court is \$36,124.50.

Once the lodestar amount is determined, that amount may be adjusted upward or downward by application of factors such as “the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, and awards in similar cases.” Tallitsch, 926 P.2d at 147. Courts may also consider factors such as public importance and degree of success achieved. Payan, 310 P.3d at 217.

Looking at these factors, the Court finds no further adjustment to be necessary.

1. Complexity

The Court has already made reductions based on the lack of complexity of the case, *supra*. See Payan, 310 P.3d at 220 (ruling that reductions for complexity should be addressed in the court’s determination of the reasonable number of hours expended in calculating the lodestar amount, rather than after the lodestar amount has been calculated.)

2. Amount in Controversy

The amount in controversy purported to be over \$100,000.00, although such recovery was highly doubtful. Regardless, this is not low enough to warrant an adjustment downward nor high enough to warrant an adjustment upward.

3. Length of Time

This case was active from November 21, 2023 through November 19, 2024, when it was dismissed on summary judgment. This is not a particularly long or particularly short case warranting adjustment in either direction.

4. Degree of Success Achieved

Defendant achieved judgment in its favor on all claims in summary judgment. This success supports allowing a full recovery of the adjusted amount.

5. Public Importance

This case is of some public importance. Plaintiff has repeatedly filed nearly identical lawsuits, including this one, on the same or similar allegations. Thus, a downward adjustment is not warranted, and a significant award hopefully dissuades Plaintiff from further vexatious lawsuits. However, this case is not of great public importance, and as such neither is an upward adjustment warranted. See *cf.* Payan, 310 P.3d at 223 (citing Shakopee Mdewakanton Sioux Cmty. v. City of Prior Lake, 771 F.2d 1153, 1160 (8th Cir. 1985) (“In rare circumstances the district court can increase a fee award because of the quality of the work performed or the great public

importance of the case.”))

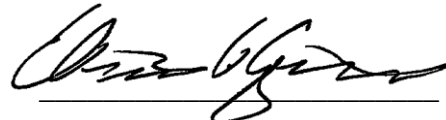
Based on these factors, the Court finds no adjustment to be necessary and finds the lodestar amount of \$36,124.50 to be reasonable.

IV. CONCLUSION

For the reasons discussed above, Defendant is awarded attorney fees in its favor and against Plaintiff in the amount of \$36,124.50.

Done in Golden, Colorado this 3rd day of June, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Chris Zenisek", written over a horizontal line.

Christopher C. Zenisek
District Court Judge