CONSOLIDATED BRIEFING COMPENDIUM

Montgomery *v.* Best Buy Stores, L.P.

JEFFERSON COUNTY DISTRICT COURT · NO. 2023CV226

Motion for Summary Judgment & Cross-MSJ Briefing

All briefs, responses, replies, exhibits, both parties' affidavits, the bodycam transcript, Defendant's reply-only exhibits (theprocedural heart of the petition), and the Order dismissing case.

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.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S MOTION FOR SUMMARY JUDGMENT	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Summary Judgment seeking dismissal of Plaintiff's claims against Best Buy pursuant to C.R.C.P. 56:

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.

I. INTRODUCTION

It is important for this Court to understand that Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado State Courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff seeks to change well established case law and statutes because he simply disagrees with the statute. Because Plaintiff has been told multiple times by numerous courts that his complaints against retailers are not permissible pursuant to the Shopkeeper's Privilege, and Plaintiff yet chose to file this lawsuit against Best Buy, this Court should dismiss the matter summarily and award Best Buy attorney's fees for having to defend this frivolous lawsuit.

II STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On March 31, 2020, Plaintiff filed a Complaint against Walmart alleging false imprisonment claims, similar to the allegations in the matter before this Court (Jefferson County case 2020CV76). See *Exhibit A, Plaintiff's Complaint in 2020CV76 and Order granting Defendant's Motion for Summary Judgment.*

2. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Adams County cases 2020CV067). See *Exhibit B, Plaintiff's Complaint in 2020CV067 and Order granting Defendants motion for summary judgment.*

3. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV148). See *Exhibit C, Plaintiff's Complaint in 2020CV148 and Order granting motion for summary judgment.*

4. On November 27, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment, assault, and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV209). See *Exhibit D, Plaintiff's Complaint in 2020CV209 and Order granting Defendant's Motion for Summary Judgment.*

5. On January 4, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV1/21CV231). See *Exhibit E, Plaintiff's Complaint in 2021CV1 and Order granting Defendant's Motion for Summary Judgment.*

6. On August 6, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court

(Adams County case 2021CV68). See *Exhibit F, Plaintiff's Complaint in 2021CV68 and Order granting Defendant's Motion for Summary Judgment.*

7. On September 3, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Adams County case 2021CV88). See *Exhibit G, Plaintiff's Complaint in 2021CV88 and Order granting Defendant's Motion for Summary Judgment.*

8. On September 20, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV235). See *Exhibit H, Plaintiff's Complaint in 2021CV235 and Order granting Defendant's Motion for Summary Judgment.*

9. On May 12, 2022, the Colorado Court of Appeals issued and Order Affirming the trial court's Order granting Defendants motion for summary judgement set forth in Exhibit A. See *Exhibit I, Order Affirmed, Court of Appeals No. 21CA0359*.

10. On October 26, 2023, the Colorado Court of Appeals issued an Order affirming the Adams County District Court Orders set forth in Exhibits B, F & G. See, *Exhibit J, Judgement Affirmed, Court of Appeals No. 23CA0159.*

11. On June 1, 2023, the Colorado Court of Appeals issued an Order affirming the Arapahoe County District Court Orders set forth in Exhibits C,D, E & H. See *Exhibit K, Judgment Affirmed, Court of Appeals No. 22CA0625.*

Best Buy incorporates, as if fully set forth herein, the above Orders granting defendants' motions for summary judgment, contained in Exhibits A through G and the Colorado Court of Appeals Orders affirming the District Court Orders, contained in Exhibits

12. YOUTUBE VIDEO "I have it all planned" *See Exhibit L, link to Youtube video.* https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY

13. On or about November 25, 2022, Plaintiff targeted the Best Buy store located in Westminster, CO when he exited the store with merchandise in his possession ("the Incident"). The only evidence Plaintiff produced of the encounter was the body cam video captured by Plaintiff. See *Exhibit M, link to Body Cam footage.* https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY

14. As seen on the video, Plaintiff did not show a receipt to Best Buy staff when requested to do so.

15. As seen on the video, Best Buy employees suspected Plaintiff of stealing items from Best Buy and confronted Plaintiff outside the store.

16. In the recording, a Best Buy employee stated that he had "never had someone stand here and wait for us to come get them" in reference to Plaintiff.

17. Best Buy employees repeatedly ask Plaintiff to return the store merchandise.

18. Eventually Best Buy employees leave Plaintiff, tell him to "have a good one."

19. At no time during the interaction did Best Buy employees touch Plaintiff or threaten to harm him.

20. At all times, Plaintiff could have simply shown a receipt and ended the confrontation.

21. On November 21, 2023, Plaintiff filed a complaint against Best Buy, alleging False Imprisonment, Defamation *per se*, and Assault against the Best Buy. See *Exhibit N, Complaint against Best Buy.*

III. LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *American Water Dev., Inc. v. City of Alamosa, 874 P.2d 352, 360* (Colo. 1994). In deciding whether to grant a motion for summary judgment, a court must consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any." *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 466 (Colo. 2003) (quoting C.R.C.P. 56(c)); *AviComm, Inc. v. Colo. Pub. Util. Comm'n*, 955 P.2d 1023, 1029 (Colo. 1998). The burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *Id*.

In determining when summary judgment is proper, the nonmoving party is entitled to all favorable inferences that may reasonably be drawn from the undisputed facts. *Bayou Land Co. v. Talley*, 924 P.2d 136, 151 (Colo. 1996). However, once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes necessary for the nonmoving party to set forth facts by affidavit, or otherwise, showing that there is a genuine issue for trial. *Civil Service Com'n. v. Pinder*, 812 P.2d 645, 649 (Colo.1991).

Shopkeeper's Privilege

C.R.S. § 18-4-407

> affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and

> unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

IV. ARGUMENT

A. Plaintiff has failed to show that the Actions of the Best Buy Employees amounted to False Imprisonment and the actions of the Best Buy employees were further protected by the Shopkeeper's Privilege, pursuant to C.R.S. 18-4-407.

In order to prove a claim for False Imprisonment, Plaintiff must show that 1) the defendant intended to restrict the plaintiff's freedom of movement; 2) the defendant directly or indirectly, restricted the plaintiff's freedom of movement for a period of time, no matter how short' 3) the plaintiff was aware their freedom of movement was restricted. Freedom of movement is restricted when a "person's freedom of movement is actually limited, or he believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him." See CJI-21:2.

"It is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

Plaintiff had the tools of escape and Best Buy cannot be held liable for False Imprisonment. If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not have proof of purchase, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff's

claims. Showing such proof was a minor inconvenience, and Plaintiff cannot claim that inconvenience is insurmountable and thus claim false imprisonment. It is unreasonable for Plaintiff to refuse to show his proof of purchase which would have freed him from the false imprisonment he alleges. Thus, the Court should dismiss Plaintiff's claim of false imprisonment.

Further, Plaintiff's claim necessarily fails as Best Buy's actions were protected by C.R.S. § 18-4-407, the Shopkeeper's Privilege, which provides that:

> under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

Here, Plaintiff intentionally concealed merchandise, exited the Best Buy store, waited to be confronted by employees and then refused to show a receipt for the merchandise. Best Buy acted in good faith and had probable cause to believe Plaintiff may have shoplifted merchandise from Best Buy and acted reasonably in questioning Plaintiff while waiting for police to respond.

Plaintiff's freedom of movement was not restricted, as required for a claim of false imprisonment and his claim is further barred by the Shopkeeper's Privilege and should be dismissed.

B. Plaintiff's claim for Defamation Per Se must be dismissed because Plaintiff has not shown that his reputation was harmed, and the only statements made were by the Plaintiff.

The elements of Defamation are 1) a defamatory statement concerning another; 2) published to a third party; 3) falsity of the statement; 4) special damages caused by publication.

Plaintiff must show that at the time of publication, the defendant knew that the statements were false or the defendant made the statements with reckless disregard as to whether they were false. CJI-22:1. A statement is "published" when it is communicated to and is understood by some person other than the plaintiff. CJI-22:7. A statement is defamatory if it tends to harm the person's reputation by lowering the person in the estimation of at least a substantia and respectable minority in the community. CJI-8.

"Plaintiff alleges in his Complaint that Best Buy employees "falsely, loudly, rudely, and publicly accused me of stealing in front of many others." Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic. At the time Plaintiff was questioned by Best Buy employees they were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy. Further, Plaintiff's claim of defamation is frivolous given that Plaintiff actually publishes via social media and YouTube, his intent and plan to bait store employees into suspecting him of shoplifting and investigating his actions. See *Exhibit L.*

Further, the Shopkeeper's Privilege bars Plaintiff's claim for defamation against Best Buy.

C. Plaintiff has failed to establish that the actions of Best Buy employees constituted assault and the Best Buy employees actions in confronting Plaintiff were protected by the Shopkeeper's Privilege.

For the plaintiff to recover from the defendant, on his claim of assault, he must prove that 1) The defendant intended to cause an offensive or harmful physical contact with the plaintiff or intended to place the plaintiff in apprehension of such contact; and 2) The defendant placed the plaintiff in apprehension of immediate physical contact.

"Mere words alone, unless accompanied by an actual act of hostility [does] not justify an assault." *Goldblatt v. Chase*, 121 Colo. 355, 363, 216 P.2d 435, 440 (1950). "Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault…" Restatement (Second) of Torts § 31 (1965). Indeed, "[t]his is true even though the mental discomfort caused by a threat of serious future harm on the part of one who has the apparent intention and ability to carry out his threat may be far more emotionally disturbing than many of the attempts to inflict minor bodily contacts which are actionable as assaults." *Id*.

Best Buy employees told Plaintiff to "walk away; we'll take this off camera." This is the only statement that could be vaguely construed as a threat. However, this employee makes no other action nor takes any other step to show hostility towards Plaintiff. Even if the statement made caused Plaintiff mental discomfort, the words alone cannot constitute an assault. Once again, it is notable that Plaintiff orchestrated the interaction with Best Buy employees in Order to bait them into confronting him about suspected shoplifting.

D. In addition to Plaintiff's failure to prove the individual claims against Best Buy, the entirety of the encounter between Best Buy employees and Plaintiff is protected by the Shopkeepers' Privilege.

Aside from Plaintiff's failure to prove his claims of false imprisonment, defamation nad assault, Best Buy's actions are protected by the Shopkeeper's Privilege.

Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items. Plaintiff left the store with merchandise that was not in a bag and did not have a receipt to show Best Buy employees. To prevent possible

theft, these employees stopped Plaintiff, questioned him and investigated further. These employees had probable cause to stop Plaintiff and their actions were taken in good faith. The employees, therefore, are protected from any allegation of slander/defamation, false imprisonment/arrest, and assault.

The Court should also note that Plaintiff left the store with the merchandise and then waited outside the store for Best Buy employees to approach him. On November 16, 2023, Plaintiff posted a video on YouTube wherein he stated, in relation to challenging the Shopkeepers' Privilege, he "had it all set up perfectly, a true sting" and that all he had to show was that he was surrounded. Plaintiff waited to get surrounded by Best Buy employees, just like he stated he would in his video. Even though this video was made a year after the initial incident, Plaintiff filed this complaint five days after making this video. Plaintiff was waiting for an opportunity to make these allegations against Best Buy, and this Court should not reward Plaintiff for his entrapment.

V. CONCLUSION

Plaintiff's sting operation was an attempt to bring unsupported allegations against a major corporation to either win a large settlement or to overturn well established case law and statutes. All of Best Buy employees' actions were protected and permissible because Plaintiff took Best Buy inventory and refused to show proof of purchase. He had the keys of escape and refused to use it. The words used by Best Buy employees were both protected and do not rise to the level of assault.

WHEREFORE, for the foregoing reasons, Best Buy respectfully requests that this Court grant its Motion for Summary Judgment and dismiss the claims for relief asserted against Best Buy in Plaintiff's Complaint, as such claims fail to state a state a claim upon which relief can be

granted under the facts presented and existing Colorado law. Best Buy further requests an award of attorney's fees and costs incurred in defending against this matter as the claims were frivolous and such other relief as the Court deems appropriate.

Served July 23, 2024.

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell
Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2024 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/_Abigail Spohn*_____
Abigail Spohn, Paralegal

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendant's MOTION FOR SUMMARY JUDGMENT *(herein "Def's MSJ"),* and in support thereof, states as follows:

INTRODUCTION

Never before in Plaintiff's life has he ever seen a Defendant claim ***so much***, yet offer ***so little*** [read: ***literally nothing***] to otherwise *even begin to* substantiate such bold claim(s) with. Defendant's reliance on Plaintiff's prior cases (filed against a wholly different merchant) is equally unavailing. This is because Defendant has failed to show this Court, with **ANY** tangible, admissible evidence, *whatsoever,* that Plaintiff's instant case *has anything to do with receipts*. Moreover, Courts have certainly been known to "get it wrong," *see U.S. v. Chanthasouxat,* 342 F.3d 1271 (11th Cir. 2003); *and Dred Scott v. Sandford,* 60 U.S. 393 (1856), so this Court should be mindful of that when familiarizing itself with said "prior cases." Let's see just how wrong Defendant also "got it," now...

RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See Plaintiff's Response To Defendant's MSJ (herein "PRTDMSJ") Exhibit #1.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

2. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #2.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

3. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

4. Plaintiff ADMITS that he filed said Complaint. **However, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

5. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

6. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related**

to his instant case that Defendant has failed to show *has anything to do with receipts*.

7. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4.* **Moreover, Plaintiff DENIES that said prior case is, in any way, <u>materially</u> related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

8. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, <u>materially</u> related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

9. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #5 through #7.* **Moreover, Plaintiff DENIES that said prior case is, in any way, <u>materially</u> related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

10. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #8 through #12.* **Moreover, Plaintiff DENIES that said prior case is, in any way, <u>materially</u> related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

11. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #13.* **Moreover, Plaintiff DENIES that said prior case is, in any way, <u>materially</u> related to his instant case** that Defendant has failed to show *has anything to do with receipts*.

Plaintiff incorporates, as if fully set forth herein, the above Briefs, Responses, Replies, Petitions, and Writs – contained in Exhibits #1 through #13 – into his current RESPONSE.

12. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Specifically, Plaintiff's generic use of the phrase "I have it all planned"

means nothing more than him refusing thenceforth to "prove his innocence" [which he thought would surely help him prove a Defendant's guilt; and to which in a fair courtroom, naturally would] as doing so has ultimately shown to not benefit him due to how attorneys and judges have decided to impermissibly twist and warp such "pre-arguments" of his to be *miraculously* used ***against*** him! In other words, no longer will Plaintiff be so kind. Rather, when discussing a Defendant's affirmative defenses, Plaintiff will forevermore be placing the burden of persuasion strictly back to where it belongs – exclusively on the Defendant.

13. Plaintiff DENIES that the asserted material fact – that he "targeted" the Best Buy store located in Westminster, CO – is true. If Defendant wants to call any and all patrons who happen to visit its stores [and who happen to know their rights while doing so] "targeters" of its particular business, it certainly can. But this would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Moreover, Plaintiff DENIES that he "exited" the store, or that he did so with any of the store's "merchandise" in his possession, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, to substantiate the validity of either fact. Moreover, neither of these asserted facts are material to the outcome of Plaintiff's case (i.e. neither are required for him to prove his False Imprisonment claim with / both are strictly tied to Defendant's own affirmative defense of "shopkeeper's privilege" in the matter). However, Plaintiff does ADMIT that he produced bodycam video of the encounter, as captured via his pen camera.

14. Plaintiff DENIES that this asserted material fact is true. Nowhere in Plaintiff's bodycam video does it show that he "did not show a receipt to Best Buy staff," let alone that they "requested [that he] do so." *See Plaintiff's Affidavit (herein "PA") at ¶ 6. Not only should Defendant be charged with violating Colorado Revised Statutes § 18-8-306 [Attempt to influence a public servant by means of deceit] for making this claim, it should be reprimanded, sanctioned, and reported by this Court to the Attorney Regulation Council for violating Colorado Bar*

Association Rules Of Professional Conduct Rule 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] and 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice]. Moreover, this is a perfect example of the downright **flagrant** intellectual dishonesty that Plaintiff has had to endure an umpteen number of times now in Court, whereby attorneys will do just about anything to "win" a case – including breaking the law. *Aren't attorneys supposed to be pretty much the most honest, upstanding members of society?*

15. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Moreover, while said Best Buy employees may certainly have "suspected" Plaintiff of stealing items from their store, the dispositive inquiry is whether or not they **reasonably** suspected him of stealing from it [and to which they categorically **DID NOT** **reasonably** suspect such].

16. Plaintiff ADMITS that this asserted material fact is true. Indeed, Defendant's own self-admitting statement made of, "we haven't had people stand here and wait for us to come out and get 'em though" is substantive evidence that it **lacked** "shopkeeper's privilege" to [lawfully] detain him that day. That is, such a statement made establishes that Defendant **had not** "ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022" prior to approaching him for the very first time on the side of its particular building [and that it likewise **had not** ever been "posted up" at its store's exit, nor "followed" Plaintiff "out" of said store, either]. *See PA at ¶ 5.*

17. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case.

18. Plaintiff ADMITS that this asserted material fact is true. Indeed, after nearly ten minutes of being detained by Defendant, Plaintiff was finally released after it failed in its ***sloppy, backwards, post-hoc, bootstrapped*** investigation to reasonably establish that he stole anything from its store.

19. Plaintiff ADMITS that the asserted fact is true – that "At no time during the

interaction did Best Buy employees touch Plaintiff" – but DENIES that it is material to the outcome of his case. This is because "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). However, Plaintiff DENIES that "At no time during the interaction did Best Buy employees . . . threaten to harm him." Rather, Defendant made ***numerous*** implicit threats to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him**. This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def's Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

20. Plaintiff DENIES that this asserted material fact is true, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff even had a receipt on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated. Moreover, ***EVEN IF*** these facts could be assumed, such "receipt showing" would ***STILL*** be **legally incapable** of being the *a-c-t-u-a-l* *cause* of Plaintiff's release [as will be discussed later].

21. Plaintiff ADMITS that this asserted material fact is true.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

22. On or about November 25, 2022, at approximately 2:19pm, Plaintiff was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for his brother. *See PA at ¶ 2. See Def's Exhibit M.*

23. Plaintiff had been standing on the east side of said building for about five minutes before he was approached by several Best Buy employees. *See PA at ¶ 3.*

24. Two of the employees, identified by company name tag as "Mahmoud" and "Shane,"

were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this C-MSJ as "John Doe"]. *See PA at ¶ 4. See Def's Exhibit M.*

25. Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022. Said employees had never been "posted up" at the store's exit, nor had they ever "followed" Plaintiff "out" of said store, either. Again, Plaintiff had been standing on the side of the Best Buy building for a full five minutes, "waiting for [them] to come out" (Defendant's words, not Plaintiff's, as Plaintiff was actually waiting for his brother at the time, see *Fact #23* above). *See PA at ¶ 5. See Def's Exhibit M at timestamp 8:08.*

26. Upon approach, Mahmoud told Plaintiff something to the effect of, "I need my stuff back." Plaintiff was never asked to "show a receipt" by Mahmoud, Shane, or John Doe. *See PA at ¶ 6.*

27. Upon hearing Mahmoud's statement, Plaintiff discreetly activated his body-worn pen camera, located in his front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by Plaintiff based on the date/time he started recording it on/at. *See PA at ¶ 7. See Def's Exhibit M.* Later, a transcript of what Plaintiff personally heard that day was also prepared by him. *See Transcript Of Plaintiff's Bodycam Footage Of The Event.*

28. The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him. *See PA at ¶ 8.*

29. Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for *whatever* existed in one of his pant pockets, too. Said employees did not know if what Plaintiff had on him was a) store merchandise, b) stolen store merchandise, c) non-store merchandise, d) previously paid for store merchandise chosen by Plaintiff not to be returned, e) non-store merchandise Plaintiff had

erroneously attempted to return to the wrong store, f) personal items, g) medication, h) etc. Specifically, by their very own admissions, said Best Buy employees ***did not even tell the difference between*** what Plaintiff held in his hands, and what existed in one of his pant pockets, **but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period**. *See PA at ¶ 25. See Def's Exhibit M at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 8:06 ("Oh we'll find out soon enough."), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Moreover, ***EVEN IF*** what Plaintiff had on him was, in fact, stolen merchandise, such would ***STILL*** not have changed the **COMPLETELY-UNKNOWN-TO-THEM-AND-COMPLETELY-UNIDENTIFIED-TO-THEM-AT-ALL-TIMES-AND-PLACES** nature of the item(s), as said employees would not have known literally anything about anything, ABOUT ANYTHING, *regardless of the situation,* and regardless of the pocket, because of how they had only seen Plaintiff **for the very first time standing outside their building** (and thereby would have never seen him take whatever-the-heck-he-may-have-had-on-him-that-day "from any walls, past any points of sale, and out any doors," *whatsoever*, **period**). *See PA at ¶ 5.*

30. At about a minute into the interaction, Plaintiff tried to walk away from where he had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told Plaintiff, "And you're not bigger than any of us." *See PA at ¶ 11. See Def's Exhibit M at timestamps 1:08 and 2:04.*

31. For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so. All three Best Buy employees had physically "corralled" Plaintiff against the building's wall, leaving him with no place to go [without otherwise having to physically touch the

employees in order to move past them, but to which he was unable to do for fear that he would be assaulted in return].[1] *See PA at ¶ 12. See Def's Exhibit M from timestamp 2:05 onward.*

32. At one point, John Doe called Plaintiff a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." These insults and accusations were made in a loud and brash tone, in front of several people walking by who would have also heard them be said to Plaintiff. *See PA at ¶ 13. See Def's Exhibit M at timestamps 2:18 and 2:30.* Later, John Doe continued to insult Plaintiff by repeatedly calling him a "miserable human being." *See Def's Exhibit M at timestamp 10:54.* Toward the end of the interaction, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See Def's Exhibit M at timestamp 12:08.*

33. At another point, all three employees began taunting Plaintiff, telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." *See PA at ¶ 14. See Def's Exhibit M from timestamp 2:51 to 3:20, and 6:06.*

34. Throughout the encounter, as Plaintiff continued to try to step around the Best Buy employees in order to leave the area, Mahmoud repeatedly affirmed his intent to detain him [and to which was accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go]. *See PA at ¶ 15. See Def's Exhibit M at timestamps 2:10 ("Give me my shit, or you're gonna be right fucking here."), 2:40 ("You're not going anywhere, you're giving us our shit back. You're not leaving."), 3:34 ("You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."), 3:51 ("Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit."), 4:03 ("You're not going anywhere, bro."), 5:11 ("You're not moving, dude. You're where*

1 One Appellate Panel **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 purportedly failed. *See Def's Exhibit I at page 8*. However, **such is 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).

you're gonna be until the cops get here. I don't know how else to explain it to you."), 6:00 ("Well then give me my stuff, dude. You're not moving, man. Give me my stuff."), 7:25 ("You're not going anywhere, dude."), and 8:51 ("Okay, then you're gonna stand there until the cops show up.").

35. Finally, after being harassed and bullied by the three Best Buy employees for nearly ten minutes, John Doe finally told Plaintiff that he could leave. But then he immediately said to his fellow employees, "Or he can run off camera." John Doe then confirmed what he meant by that by telling Plaintiff, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera." *See PA at ¶ 18. See Def's Exhibit M from timestamp 9:23 to 9:33.*

36. Plaintiff then said to the three Best Buy employees, "I don't feel safe leaving now," after which Mahmoud told him, "You shouldn't" [followed by some laughter]. John Doe then chimed in and said to Plaintiff, "I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also." *See PA at ¶ 19. See Def's Exhibit M from timestamp 9:48 to 9:52.*

37. After being told once again by John Doe to "Walk away," Plaintiff once again responded to the three Best Buy employees by saying, "Yeah I don't feel like getting jumped off camera." Mahmoud replied by saying, "Then give me my stuff, dude." A few second later, after Plaintiff reaffirmed that he "doesn't feel safe leaving now," Mahmoud once again followed up by saying, "You'll have zero problems if you hand me what's in your pocket, and what's in your coat." *See PA at ¶ 20. See Def's Exhibit M from timestamp 10:07 to 10:48.*

38. Once again, after being told by Mahmoud of his "chance" to leave, Plaintiff told him, "Like I'm just gonna trust him that he's not gonna jump me." Mahmoud then responded by saying, "You shouldn't trust him that he's not. You should give me my stuff. That's what you should do." *See PA at ¶ 21. See Def's Exhibit M from timestamp 11:27 to 11:36.*

39. After Mahmoud told Plaintiff to "Have a good one," all three employees quickly stepped away from Plaintiff and proceeded back into the Best Buy building. Plaintiff then spent

the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would. [Throughout that 14 minutes, no cops ever came, either]. *See PA at ¶ 23. See Def's Exhibit M from timestamp 12:16 to 26:16.*

40. During Plaintiff's detention by the three Best Buy employees, he counted at least 192 people that had walked past him [and who would have thus been within earshot of the conversation that took place between he and the three employees]. *See Def's Exhibit M generally.* Many times, people that were passing by looked directly at Plaintiff and the employees. One person even stopped literally *right* next to Plaintiff and the three employees to explicitly listen to the conversation that had been taking place between them. *See Def's Exhibit M from timestamp 4:36 to 4:53.*

41. At no point in time, on that day of November 25, 2022, had Plaintiff ever once "concealed" anything in front of [let alone not in front of] anybody, ever, period.[2] *See PA at ¶ 24.*

42. At no point in time, on that day of November 25, 2022, had Plaintiff 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. *See PA at ¶ 25.*

43. At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere has Plaintiff ever seen such a policy posted in any Best Buy store, nor spoken to him by any Best Buy employee, nor available for

2 Such "concealing" is **precisely** what a District Court Judge *miraculously* **[but impermissibly]** held Plaintiff do in *Montgomery v. Walmart, Inc.,* Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235). *See Def's Exhibits C / D / E / H, Order at page 25* ("Further, the undisputed facts show 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."). **OF COURSE,** Plaintiff has obviously **never** "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! Moreover, in all those cases, Plaintiff was FIRST asked to show his receipt, THEN detained. **Not the other way around!** Indeed, as Plaintiff argued, it was the mere refusal to show the receipts **that was the cause of** the detentions [i.e. "bootstrapping"].

him [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, Plaintiff still has literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place]. *See PA at ¶ 26.*

44. On November 25, 2022, Defendant made no "calls for service" to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store. *See PRTDMSJ Exhibit #15.*

45. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant. Such manifestations include (but are not limited to): helplessness, anger, frustration, shock, disappointment, inconvenience, embarrassment, humiliation, severe indignity, devastation, reputational damage, apprehensiveness, anxiety, mistrust in authority, marked diminishment in quality of life, bitterness, insomnia, and overwhelming grief. *See PA at ¶ 27.*

ARGUMENT

I. DEFENDANT FALSELY IMPRISONED PLAINTIFF, AND LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

a. Defendant misinterpreted and abused the relevant jury instructions at issue

Defendant begins its argument by listing off the various elements of a False Imprisonment claim, but then it fixates on the definition of "Restriction Of Freedom Of Movement" as defined in Colorado Civil Jury Instruction 21:2(1). Of course, it is surely doing this in high hopes of "piggy backing" off of previous arguments made on the subject. As will be discussed next, however, such arguments are **wholly without merit**, as they not only warp the English Language into nonsensical mumbo jumbo, they create "absurd" results not intended for by the Colorado Legislature.

Let's begin by reviewing the Colorado Civil Jury Instruction at issue, **21:2(1)**. When reviewing the interpretation of a statute [or in this case, a jury instruction], "A court's primary goal in interpreting [it] is to determine and give effect to the intent of the legislature, and a court should first look to the plain and ordinary meaning of the statutory language." *Ball Corp. v.*

Fisher, 51 P.3d 1053, 1056 (Colo. App. 2002). Moreover, when a court construes a [jury instruction], it should read and consider the [jury instruction] "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts." *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003); *see also People v. Andrews,* 871 P.2d 1199, 1201 (Colo. 1994) ("Legislative intent is the linchpin of statutory construction."). Most importantly, a court should not interpret a [jury instruction] in ways that defeat the legislature's obvious intent or render part of the [jury instruction] either "meaningless" or "absurd." *Reg'l Transp. Dist. v. Lopez,* 916 P.2d 1187, 1192 (Colo. 1996).

Colorado Civil Jury Instruction 21:2(1) states that "A person's freedom of movement has been restricted when . . . A person's freedom of movement is actually limited, or he or she believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him or herself or to property."

First, the phrase "physical barriers" is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it "defeats the legislature's obvious intent" of the use of such a phrase [and to which, then, renders such interpretation manifestly "absurd"]. The Merriam-Webster Dictionary defines "barrier" as "something material that blocks or is intended to block passage" and/or "a natural formation or structure that prevents or hinders movement or action." These definitions traditionally include things like "highway," "concrete," and "tree root" barriers, as the Dictionary suggests. Moreover, said Dictionary then goes on to suggest several synonyms that can be used in place of the word "barrier," like "barricade," "fence," "hedge," and "wall." Thus, **it strains credulity** that the Legislature would have intended to include ***ACTUAL PEOPLE*** as some "physical barrier," **especially when said Legislature already specifically refers to *PEOPLE* as a source of "restriction of freedom of movement" IMMEDIATELY NEXT in their list of possible ways to achieve a false imprisonment.** *See CJI 21:2(2)* (defining "the person is restrained by physical force" as a method of restriction); *and CJI 21:2(5)* (defining "the

person submits to another" as a method of restriction). Therefore, including ***actual people*** as a "physical barrier" would be duplicitous, at best [and intellectually dishonest, at worst].

Next, the phrase "unreasonable risk of harm" is being equally misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a phrase [and to which, then, also renders such interpretation manifestly "absurd"]. This is **ESPECIALLY** true when "reading and considering" the phrase **in conjunction with** its "physical barrier" counterpart [see above] "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts." *Welby Gardens v. Adams County Bd. of Equalization,* 71 P.3d 992, 995 (Colo. 2003). The Merriam-Webster Dictionary defines "harm" as "physical or mental damage." Thus, **it strains credulity** that within the definition of "harm" the Legislature would have intended to include anything other than *physical or mental acts of violence*. **This is especially true considering that said Legislature further defines specific types of harm *INFLICTED BY PEOPLE* in its following three instructions.** *See CJI 21:2(2–4).* Indeed, Plaintiff wholeheartedly *agrees* with Defendant that "showing a valid receipt" would not subject him to "physical or mental damage." OF COURSE IT WOULDN'T! A store employee simply holding a receipt in their hands while cross-referencing it against a patron's purchases is not a physically or mentally violent act at all. **Thus, the Legislature would never have intended to mean as much when drafting said jury instruction.** *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking a patron's only path out of a store until they forcefully verify their receipt against their merchandise* ***will practically always involve "an unreasonable risk of harm."*** *In other words, this particular situation would be the only way to make meaningful sense of the jury instruction at issue, as presented, based on the specific use of its attendant phrase, "limited to a certain area."*

Next, ***but equally as important on this issue***, is that the definition of "escape" is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise "defeats the legislature's obvious intent" of the use of such a word. To begin, there is a BIG difference

between having one's path **PARTIALLY blocked**, but whereby they can still **see** and **are able to use** "other avenues open to [them]" *(see Colorado Civil Jury Instruction 21:2, Notes On Use #3)* in order to **avoid altogether** some **ATTEMPTED** confinement of them **from occurring in the first place** *(see Merriam-Webster Dictionary definition of "escape" as meaning "to get away (as by flight)" or "to issue from confinement")*[3] and having **one's ONLY path FULLY blocked IN ALL DIRECTIONS**, **after which** they are merely **given the option** to **subsequently** be **SET FREE** by the imprisoner **AFTERWARDS if** (and only if) **they give into the imprisoner's demands** *(see Merriam-Webster Dictionary definition of "release" as aptly meaning "to set free from restraint, confinement, or servitude").* Specifically, the ***latter*** definition is what Defendant [and prior Courts] are attempting to apply when discussing their term "escape," *but whereby such is not *actually* an intellectually honest use of the term* [because the ***former*** definition is].[4] In other words, "detention for / after failing to provide a receipt" is strictly a **COMPLETED** and **CONTINUING**

3 Specifically, the definition of "escape" naturally and logically hinges on the notion that a person "escaping" is doing so single-handedly and of their own volition (i.e. "to [self] issue from confinement," not "to [be issued] from confinement."

4 One Appellate Panel even went so far as to preposterously hold that Plaintiff has some unwritten legal obligation to **"pre-escape"** all detentions (i.e. "prevent" them occurring in the first place) by otherwise requiring him to now literally keep *all* receipts on him, at *all* times, on *all* shopping occasions, in order to show them upon leaving "should the need *[if ever!?]* arise." *See Def's Exhibit J at page 10* ("Similarly, no reasonable juror could conclude that it was an unreasonable burden to expect Montgomery, under these circumstances, **to retain his receipt** and show it to the Walmart employee as he exited. Simply put, Montgomery had a reasonable means of both **avoiding** confinement and "escaping" confinement by using a receipt."). **Of course, neither Plaintiff, nor any other person in this country, versed in the law or not, has any legal obligation, *whatsoever*, to actually keep *all* possible receipts on them in order "prevent" *all* possible detentions.** "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." *Mora v. People,* 172 Colo. 261, 262 (Colo. 1970). This is because **merchants** are the ones who ultimately have the **"last clear chance"** to avoid or prevent false imprisonments from occurring, **not patrons!** ***Moreover***, because Defendant's choice to interact with Plaintiff took him by surprise [whereby he didn't start recording until just after the confrontation began], it cannot even be said that Plaintiff had been "acting" in some disingenuous "premeditated" manner, either [not that starting recordings ahead of time is disingenuous behavior in the first place]. *Compare PA at ¶ 8 to Def's Exhibit J at page 10* ("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."). ***Of critical importance on this subject, however,*** is that this whole **"pre-escape"** argument **IS ACTUALLY AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.* Specifically, Defendant had no earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when it approached him [and whereby Plaintiff could have very easily been holding "non-store merchandise he had erroneously attempted to return to the wrong store"]. *See Plaintiff's Additional Material Fact #29, above.* Under such a circumstance, it would be unreasonable to assume that Plaintiff was ever "provided a receipt" by Defendant, in the first place [for which he might have otherwise been "required to retain" as the Appellate Panel impermissibly argued].

imprisonment [now subject to requiring lawful justification for] coupled with a **CONDITIONAL RELEASE** of the patron that has **YET** to occur **UNTIL AFTER** the merchant's demands (i.e. the receipt has been handed over **AND** it has been cross-referenced with the patron's purchases) are satisfactorily met.[5] This means that, *even if* satisfactorily "showing a receipt" results in the **RELEASE** [again, not escape] of a patron, doing such **would not nullify** their **prior** confinement **from having occurred in the first place** – any more than satisfactorily blowing into a breathalyzer at a DUI checkpoint would nullify a motorist's prior confinement from having occurred in the first place, satisfactorily posting bail at the local jail would nullify a prisoner's prior confinement from having occurred in the first place, etc. ***Most importantly on this topic,*** is that Section 36 of the Restatement (Second) Of Torts – on which Colorado Civil Jury Instruction 21:2(1) relies – contains a Comment to the provision that **SPECIFICALLY** and **EXPLICITLY** clarifies the Legislature's plain and unambiguous intent to define "escape" **as applying strictly to PRE-CONFINEMENT situations only** (and not to post-confinement ones, once they have occurred). *See Restatement (Second) Of Torts § 36 Comment A* ("[I]t is unreasonable for one whom the actor ***INTENDS TO*** *imprison* to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience."). *Note the Legislature's specific use of the phrase "**intends to** imprison." That's not "has [already] imprisoned," that's "intends to [but has not actually done so yet] imprison."* OF COURSE, this is not to say that a person, **POST-confinement**, who **subsequently** discovers a way to escape his **already completed** imprisonment, should not utilize such a means. [It would certainly be incumbent upon him to do so, and he would presumably not be able to recover damages beyond this point in time, either]. However, like previously mentioned, such a **SUBSEQUENTLY discovered** avenue of escape, *even*

5 Specifically, Plaintiff has ***never*** claimed that the ***act itself*** of him being ***ASKED*** to show a receipt is what has constituted his confinement. Rather, he has ***always*** claimed that the ***act of physically blocking all available pathways of his through all available exits*** is what has actually constituted his confinement. However, this is **precisely the exact opposite** of what one Appellate Panel impermissibly held on the subject. *See Def's Exhibit I at page 8* ("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.").

if taken, **DOES NOT NULLIFY the prior, COMPLETED, initial, OUTRIGHT confinement of him FROM HAVING OCCURRED IN THE FIRST PLACE** [and to which, again, now requires some affirmative defense like "shopkeeper's privilege" to lawfully justify it with].

It should also be worth noting, at this point, that such a ***double standard*** proffered by Defendant [and prior Courts] impermissibly strips patrons of their rights, *regardless of the situation.* Obviously, Courts that have ruled against Plaintiff in the past have all held that by a patron REFUSING to show their receipt, they purportedly "fail to avail themselves" of some "escape" path, thereby "forfeiting their right to sue for false imprisonment." Yet, other Courts **have already held** that a patron's act of SHOWING a receipt *already* forfeits their right to sue for false imprisonment, as such behavior *already* constitutes "voluntarily giving consent to the detention" in order to "establish their innocence," as *Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) puts it, or to "vindicate themselves," as *Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966) puts it. *See also Anderson v. Wal-Mart,* 675 So. 2d 1184 (La. Ct. App. 1996). So which is it? Does one forfeit their right to sue for false imprisonment by SHOWING a receipt, or by NOT SHOWING it? It can't be both, as such an "unlucky position" would be manifestly unfair to the regular customer. Indeed, Plaintiff has gone shopping in the past [at Walmart, for example] WITH such personalized knowledge – after having read *Broadnax, Grayson,* and *Anderson* prior to – that if he *voluntarily* showed his receipt he would indeed be "consenting to the detention" [and would thus be forfeiting his right to sue should he be detained in the alternative].[6] **THAT'S WHY HE ALWAYS REFUSES TO**

6 One Appellate Panel *miraculously* **[but impermissibly]** held **precisely the exact opposite** on this subject, negligently ruling that because Plaintiff "was fully aware of the Walmart **receipt policy**, [and] had been subjected to the **receipt policy** on numerous prior occasions," his false imprisonment claim purportedly failed. *See Def's Exhibit J at page 10.* However, it has always been Walmart's **very own official receipt checking policy** to only ***ASK*** patrons to see their receipts, **NEVER to detain them if they choose to refuse to show one.** *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."). As a result, what the Appellate Panel did was actually **pull a full-on bait and switch on Plaintiff,** whereby he went shopping and followed one store policy [the official one] of refusing to show his receipt "in order to pass," but then was expected to, *after-the-fact*, abide by some new, *retroactively-applied*, **unofficial**, rogue-store-employee-proffered "policy" that purportedly *does* require him to

SHOW HIS RECEIPT! Plaintiff, like any reasonable person, has *already* been made aware that SHOWING a receipt is the act that constitutes "consenting to a detention," not REFUSING to show it!

Finally, ***but of absolute paramount and critical importance on this subject***, is that all this talk about "receipt showing" **IS AN ENTIRELY MOOT POINT.** This is because Plaintiff's instant case *has nothing to do with receipts*. **Defendant has failed to show this Court that it asked Plaintiff to show a receipt, let alone that he refused to show one upon request, let alone that he had one on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated.**[7] Moreover, Plaintiff has never been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." *See Plaintiff's Additional Material Fact #43, above.*

b. The amount of time that a person is detained for is not what defines their imprisonment, the raw "outrightness" of their detention is

Next, Defendant attempts to argue that Plaintiff was never confined because of how "being asked to show a receipt" is purportedly, *at most*, "a slight inconvenience." The problem with this position, however, **is that it is a purely subjective one**, without a single iota of support from the actual law on the subject. The ACTUAL law is already clear that an "imprisonment" **OBJECTIVELY** occurs when a person is detained "for any amount of time, **no matter how short.**" S*ee Colorado Civil Jury Instruction 21:1(2).* Therefore, *even if* it only takes "but a fleeting moment" for some patron to merely "show their receipt," **a full-blown, objectively-held detention of them has**

show his receipt "in order to pass." **So which is it?** Does a patron have to show their receipt "in order to pass," **OR NOT?!?**

7 This last point is **especially** important, because *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was **a customer** of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have "had a receipt on him" that day, in the first place [for which he might have otherwise been "required to show" as merchants and Courts have impermissibly argued]. In other words, **it can never legally be assumed, IN EITHER DIRECTION** (i.e. that Plaintiff was either a customer, or he was a thief) just because he was merely located "near" [and thus potentially at one point in time "inside"] a store, **because of how such an argument is simply a false dichotomy.**

already, BY LAW, occurred.[8] Indeed, assuming *arguendo* that Defendant's position were correct, a private investigator would then have the right to lawfully detain unidentified citizens until they "simply tell them their name." Or, a security would then have the right to lawfully detain unidentified neighborhood residents until they "simply show them their ID." In both examples, it would surely only take "but a fleeting moment" for the people to comply. BUT SUCH IS NOT THE LAW. The law, as written, is objectively **outright** driven, **not merely time-constraint driven [nor do merchants enjoy any "extra special privileges" to see receipts, either, *just because they're merchants*].**

Moreover, it only takes but one example to show precisely how faulty Defendant's exclusively-subjectively-driven position is on the subject: a mother of seven with a full cart of groceries. It's obviously no longer a mere "slight inconvenience" for the mother to wait 10+ minutes to have ***her*** entire cart of purchases verified [and who would thus likely enjoy the full protections available against false imprisonments, according to Defendant's position], **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?** Sorry, but again, SUCH IS NOT THE LAW. The law, as written, applies equally to every U.S. citizen, **no matter the size of their shopping cart.**

Once again, though, ***it cannot be stressed enough,*** all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.*

c. A receipt is legally incapable of being the "key" to a patron's release; rather, a merchant's personal decision to release him is the actual "key"

Next, Defendant attempts to argue that because Plaintiff purportedly "had the tools of escape, [] Best Buy cannot be held liable for False Imprisonment." This is yet another recycled [but failed] argument on the subject. As mentioned earlier, receipts themselves aren't the *a-c-t-u-a-l*

8 This is **precisely the opposite** of some "open window" to which prior merchants and Courts have **impermissibly** argued. Specifically, an "open window" is something that **always** exists [such that any attempted imprisonment, *from beginning to end*, **never** occurs because of it]. However, showing a receipt is [a consent to] an *actual* detention, (*followed by* a release). In other words, ***fully stopping*** to show one's receipt **is not the same as** merely ***changing directions*** toward an open window.

"tool" or "key" or "cause" of a patron's release, **a merchant's own, personal, INDEPENDENT act of satisfactorily cross-referencing the receipt against the merchandise is** [but to which is obviously **OUTSIDE** the control of the patron]. Assuming *arguendo* that Plaintiff *did* have a receipt on him, and that he *did* show it to Defendant. Does Defendant *ACTUALLY* believe that it would not continue to detain Plaintiff, ***outright****, in the mean time*, until *AFTER* it had completed its *OWN* independent verification of his purchases at hand? **HARDLY SO.** Fortunately, Courts have **already explicitly ruled on this exact issue**, so this argument isn't even a novel one. *See Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44, 57 (D. Mass. 2000) (held that "a reasonable person would have apprehended that he or she was not free to leave until Mr. Harris concluded his inspection of Ms. Ball and permitted her and the others behind her to leave." Read that again. That's **MR. HARRIS** concluding **HIS** inspection of Ms. Ball, that resulted in her eventually being **PERMITTED, BY HIM**, for her and the others behind her to leave. That's not some lone receipt simply being autonomously flashed in front of a door like some ID to a badge scanner. Or a turnstile at a subway. That's a ***person***, who ***personally*** chose to detain someone, ***OUTRIGHT***, EVEN **AFTER** A RECEIPT **WAS** SHOWN TO THEM, but who was ***STILL*** nevertheless appropriately held accountable for their unlawful actions in the matter).

ONCE AGAIN, though, ***it absolutely has to be repeated,*** all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.*

d. Merchants do not enjoy *carte blanche* authority to detain their patrons

Next, ***but by far the most disturbing of Defendant's arguments***, is its statement made of "If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not have proof of purchase, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff's claims."

Let's take a step back and analyze what Defendant is ultimately saying here. Somebody

please correct Plaintiff if he's mistaken, but it looks like Defendant is literally making the argument, "If Plaintiff paid, we're not liable. If he stole, we're also not liable." **WOW.** It looks like Defendant is simply *unsuable* then! **Completely untouchable.** Completely legally immune, *in literally all capacities*, ***from even being CAPABLE of being held accountable for its actions***, regardless of the situation. It doesn't even need to show up to Court with a single affidavit! Just throw down this legal argument, and BAM, it's not liable. **YEAH, NO.** Not only is this quite possibly the most arrogant statement Plaintiff has ever seen a Defendant make, it's obviously not how the law works.

First, Plaintiff has already discussed that *even if* he was a customer of Defendant's, showing such "proof of purchase" *after the fact* **does not nullify** the prior, **COMPLETED**, initial, **OUTRIGHT** confinement of him **from having occurred in the first place** [and to which, again, requires some affirmative defense like "shopkeeper's privilege" to lawfully justify it with, but to which Defendant has still utterly failed to (read: *even begun to*) provide this Court with].

Next, regarding the second half of Defendant's statement, it appears that Defendant is unaware that **even criminals have rights, too.** That is, for somebody who even *does* steal, a merchant is *still* required to have "shopkeeper's privilege" in order to initially detain them. See *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) ("The test of liability is not based on the store patron's **actual guilt** or innocence, **but rather on the reasonableness of the store employee's action** under the circumstances."). Indeed, criminal defendants are routinely granted "motions to suppress" actual contraband found on them when it is unlawfully seized by police officers who lack "probable cause" for their actions in the matter. Perhaps Defendant is thinking of the affirmative defense, "Guilt Of Person Arrested," Colorado Civil Jury Instruction 21:18? Problem there is that Defendant has failed to show this Court that Plaintiff was ever convicted of any shoplifting offense in this matter, **let alone that it even called the cops that day of November 25, 2022, in the first place!** *See Plaintiff's Additional Material Fact #44, above.*

Last, Defendant's haughty statement made is nothing more than **a false dichotomy**, as

Plaintiff just discussed in a footnote, earlier. That is, *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was ***either*** a customer, ***or*** a thief, of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have "had a receipt on him" that day, in the first place [for which he might have otherwise been "required to show" as merchants and Courts have impermissibly argued].

e. Merchants, just like police, are not allowed to "bootstrap" their detentions

Finally, ***and equally important on this subject***, is that a request to see a receipt is "a request for consent to search, [and] the customer . . . always retain[s] the right to refuse that consent, or refuse to hand over the receipt." *Victoria S. Salzmann,* Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!, 4 Fla. A&M U. L. Rev. (2009)). This is because "receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege." *Id.* Indeed, "without ***particularized*** facts to reasonably justify a stop, ***systematic*** detention ***of most or all customers*** may implicate false imprisonment." *Id.*

Law enforcement officers are in no better position, as Courts have repeatedly held that they, too, "may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police."[9] *Brief of the United States as*

9 Such "bootstrapping" is **precisely** what a District Court Judge **impermissibly** did in *Montgomery v. Walmart, Inc.*, Adams County District Court Case No. 2021CV68 (Consolidated: 2021CV88). *See Def's Exhibits F / G, Order at page 5* ("No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for

Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick, No. 89-1717. This is because "[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary." *United States v. Hunnicutt,* 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993) (**"The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary."**).

Therefore, because "shopkeeper's privilege" is the same exact legal standard as "probable cause" *(see Colorado Revised Statutes § 18-4-407)*, and "probable cause" is rooted **STRICTLY** in ***individualized*** and ***particularized*** suspicions, a merchant can **NEVER**, **by law and by logic**, achieve lawful justification to detain a patron by simply pointing to their mere "refusal to show a receipt" to them. **This is *especially* true because of how they are the ones who control who they ask.** Indeed, to argue the opposite would be to allow all merchants to ***SYSTEMATICALLY*** detain **literally all patrons** whom they ask to see a receipt (which would mean *everybody*), **thus effectively subjecting literally 100% of the population to "compulsory" detentions** [that is, through either voluntary consent, or forced detention otherwise]. THAT'S ILLEGAL, and not what the Legislature would have envisioned *in the least* when drafting the law of the land as it stands. "It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish **fixed checkpoints**, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts **or be subject to arrest** everytime they go shopping?

preventing a person from leaving their store with goods **for which the person refuses to show a receipt.**").

The potential for abuse is apparent." *State v. Smith,* 674 P.2d 562 (Okla. Crim. App. 1984).

ONCE AGAIN, though, ***it forever has to be repeated*****,** all this talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

f. Because "shopkeeper's privilege" cannot be based on "mere conjecture or suspicion," Defendant is 100% liable for falsely imprisoning Plaintiff

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [ ] that somebody did or did not do something."** *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person **that saw enough to justify [their] belief** that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, **no matter how sincere it may be**, is not enough, since it must be based on circumstances which make it reasonable.").

Here, today, in Plaintiff's instant case, Defendant has failed to provide this Court with **LITERALLY ANY EVIDENCE**, *whatsoever*, to support it's affirmative defense of "shopkeeper's privilege." Defendant has not shown that it saw Plaintiff *enter its store*. It has not shown that it saw him *anywhere in its store*. It has not shown that it saw him *shop [or not shop]*. It has not shown that it saw him *take anything off a shelf*. It has not shown that it saw him *pay [or not pay]*. It has not shown that it saw him *conceal [or not conceal] anything on his person*. It has not shown that it saw

him *use [or not use] a plastic bag*. It has not shown that it saw him *leave its store*. It has not shown that it *called the police*. It has not shown that it *even asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place,* let alone that *whatever he had been holding in his hands that day was even store merchandise for which one might have been associated*]. In the end, it is painfully apparent that Defendant has failed to show this Court, *with literally ANY evidence at all,* that it **ever once** saw – be it by way of personal affidavit or by video surveillance otherwise – Plaintiff **do literally anything** "until the confrontation occurred" outside its particular building. **Absolutely ZERO evidence has been provided by Defendant to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store.** Therefore, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than **unfounded naked suspicion**. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996). As such, because Defendant completely and wholeheartedly lacked "shopkeeper's privilege" to detain Plaintiff – **by way of failing to satisfy EVEN A SINGLE IOTA of EVEN ONE of its critical elements of its affirmative defense on the subject** – it is indisputably liable for falsely imprisoning him.

II. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

Defendant claims that because "Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic," his defamation claim purportedly fails. ***However,*** Plaintiff didn't lodge a claim of Defamation, he lodged a claim of Defamation ***Per Se*****.** *See Plaintiff's Complaint.* **This is because accusing someone of being A THIEF, when such accusation is untrue and is overheard and understood by a third person, is defamation "actionable *per se.*"** Restatement (Second) Of Torts § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). "Actionable *per se*" means that without adducing any evidence that he has in fact been

harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. P.H. Winfield, A Text-Book Of The Law Of Tort § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. **The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed.** 2 Harper et al, supra note 2, § 5.11, at 118.

As such, because Defendant made statements that Plaintiff stole **"with knowledge that they were false, or with reckless disregard for whether they were true or false,"** it is indisputably liable for defaming him. This is because Defendant **utterly lacked** "shopkeeper's privilege" to **fairly** and **reasonably** believe that Plaintiff had stolen anything from its store that day. *See Section II (f), above.*

III. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

Defendant claims that it purportedly [only] told Plaintiff [once] to "walk away; we'll take this off camera." ***However,*** Defendant made ***numerous*** implicit threats to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him**. This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def's Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

Defendant also claims that it "[made] no other action nor [took] any other step to show hostility towards Plaintiff." ***However,*** Defendant made ***numerous*** PHYSICAL ACTS **[that accompanied its threats]** to *actively* and *repeatedly* step in front of Plaintiff in order to *actually* prevent him from leaving the area. *See Plaintiff's Additional Material Facts #31 and #34, above.*

As such, Defendant is indisputably liable for assaulting Plaintiff.

IV. PLAINTIFF NEVER "ENTRAPPED" DEFENDANT [NOR ANY OTHER MERCHANT FOR THAT MATTER, EITHER]

a. Entrapment requires inducement [and reluctance to that inducement]

Throughout Defendant's MSJ, it attempts to skirt liability for its actions by having the audacity to claim that **it** was actually the *victim* of Plaintiff's **"entrapment"** [so as to not look like the *perpetrator* of his false imprisonment, otherwise]. It uses all the same "hot words" that previous merchants have attempted to use on the subject – that Plaintiff inexorably "targeted," "orchestrated," and "baited" it into detaining him – all in high hopes of obfuscating the facts and the law so as to sway them in its favor. As will be discussed next, however, Defendant's "entrapment" argument **utterly fails to pass constitutional muster** [not to mention that it's a callow form of *victim shaming*].

In Colorado, the entrapment defense is governed by Colorado Revised Statutes § 18-1-709, which states, in part, that "an offense is not criminal if the defendant engaged in the proscribed conduct because he was induced to do so . . . and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, **but for such inducement**, would not have conceived of or engaged in conduct of the sort induced." *Critically,* the Legislature then completes its definition of entrapment by emphasizing that "**Merely affording a person an opportunity to commit an offense is not entrapment** even though representations or inducements calculated to overcome the offender's fear of detection are used."

Now, under Colorado Revised Statutes § 18-1-710, entrapment is a considered an affirmative defense. "Accordingly, once a defendant has presented some credible evidence on the issue, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped." *People v. Sprouse,* 983 P.2d 771, 775 (Colo. 1999). "Depending upon the particular circumstances of the case, the prosecution may offer a wide variety of evidence and testimony in an attempt to demonstrate that a defendant was predisposed to commit a particular crime." *Id.* "The most commonly invoked forms of proof include . . . whether [the defendant] evidenced reluctance to commit the offense; the amount of persuasion the government was required to employ in order to overcome any reluctance; [and] the nature of the defendant's ability to

perform the illegal acts." *Id.* "Courts and commentators have noted that of these types of evidence, the defendant's response to the inducement, that is, whether he or she demonstrates strong reluctance, mild reluctance, indifference, or eagerness, is often the most persuasive evidence of his or her state of mind just prior to the governmental inducement." *Id.*

Here today, in Plaintiff's instant case, his bodycam footage of the event indisputably shows **that literally no inducement of any kind, at all, took place by him** prior to his detention by Defendant. Specifically, Plaintiff didn't do *anything* – other than say to such strangers he had never met before, "Don't touch me," and "I'm trying to leave," neither statement of which could ever reasonably be construed as intending to induce such a detention.[10] It cannot be stressed here enough: **Plaintiff didn't *ask* Defendant to detain him that day. He did *coax* it into detaining him. He didn't *pressure* it into detaining him, *in any way, shape, or form*.** Moreover, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff *even refused to show it some receipt* [let alone that it *even asked him to show one in the first place*] prior to hastily detaining him that day.[11] As such, Defendant has failed to show not only that Plaintiff **ever once** even *intended* to induce it into detaining him, but that it **had any reluctance whatsoever to detain him otherwise** [and in fact, it appears from the video footage that it actually had genuine ***indifference*** and quite possibly even ***eagerness*** to otherwise detain him].

Of absolute critical importance on this subject, however, is that "Because entrapment is an affirmative defense, it does not apply where a defendant denies committing the crime." *People v. Hendrickson,* 45 P.3d 786, 791 (Colo. App. 2002). "Thus, we view the rule in

10 Alternatively, Defendant offers but a single fleeting sentence on this subject to purportedly justify its actions. *On page 10 of its MSJ,* it states "Plaintiff left the Best Buy store with merchandise **in a manner** that caused Best Buy employees to suspect Plaintiff did not pay for said items." This statement, however, suffers from the classic **"conclusory statement"** logical fallacy. That is, Defendant is *actually* just saying, "we detained him, because he got us to detain him." Yet within such a statement there obviously exists no *actual* independent evidence that *even begins to* describe precisely "how" Plaintiff "acted" in order to [lawfully] "cause" Defendant to detain him.

11 Of course, the act of merely refusing to show a receipt is not a valid form of inducement anyways, as discussed *supra*, because of how such "bootstrapping" is **patently illegal.** That is, "The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary." *U.S. v. Carter,* 985 F.2d 1095, 1097 (D.C. Cir. 1993).

Colorado to require a defendant to admit committing acts that would otherwise constitute an offense before being entitled to assert an affirmative defense of entrapment." *Id.*

Here today, Defendant has chosen to **outright deny** that it ever committed the crime of False Imprisonment against Plaintiff [by way of claiming that it either didn't conceptually detain him in the first place, or that it had "shopkeeper's privilege" for its actions in the alternative]. As such, Defendant is, **BY LAW,** not even "entitled to assert an affirmative defense of entrapment" in this matter.

b. Defendant [and prior Courts] are guilty of committing statistics fraud

Finally, on this subject, is that somehow because of Plaintiff's "prior history" of "lodging similar false imprisonment claims," he ***must*** be "instigating" and "targeting" Best Buy [his next victim] with yet another "failed sting operation." The problem with this position, is that it is **profoundly intellectually dishonest** and **completely statistically frauded.**

The first part of this statistics fraud has to with the ***pool*** from which such statistics are being gathered. Sadly, in today's day and age, more and more **mindless lemmings** are choosing to voluntarily answer whatever questions are put to them and/or show whatever proofs of purchase are asked of them, by whomever may be "posted up" at a store's exit, in order to "assuage the perceived evil" of shoplifting. **But that doesn't mean *Plaintiff* has to now give up *his* right to not be accosted when *he* exits those same stores after shopping.** "Moved by whatever momentary evil has aroused their fears, officials — perhaps even supported by a majority of citizens — may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of 'the right to be let alone — the most comprehensive of rights and the right most valued by civilized men.'" *New Jersey v. T. L. O,* 469 U.S. 325, 361-62 (1985) (*citing Olmstead v. United States,* 277 U.S. 438, 478 (1928)). **In other words, Plaintiff merely exercising his constitutional right "to be let alone" when shopping is only beginning to look like he is "targeting" stores because of how *everybody else has chosen to NOT exercise that same***

right of theirs. If everybody else began refusing to be accosted when exiting stores after shopping, this Court [and many others] would likely get INUNDATED with [equally as valid as Plaintiff's] False Imprisonment claims stemming directly from such accostings. Fortunately, correcting for such statistics fraud is not beyond reach, as it takes but a few moments to look online to see just how rampant unlawful "receipt checkpoints" are becoming in today's society. *See PRTDMSJ Exhibit #14.*

The second part of this statistics fraud has to do with Plaintiff's ***intuition***. Over the years, Plaintiff [like anybody] has become keenly aware that torts may be committed against him when leaving certain business establishments. As a result, he has resorted to using audio (and now video) recording devices to protect himself / ensure that his rights remain intact. Over time, with increasingly violative merchants [Walmart for example] he has learned to begin recordings *before he even enters the store,* in order adequately to protect himself. This is not to say that he is now *intentionally* "acting" a certain way when he shops at these stores – because such would be as preposterous as saying that "all drivers who start their dashcams upon leaving each morning are *intentionally* seeking to be hit on the road." Other times [this instant case for example] Plaintiff was not expecting to be torted, and thus, did not think to start his recording device ahead of time. *See Plaintiff's Additional Material Fact #28, above.* Nevertheless, absent from all prior Court analyses on this subject is the fact that **Plaintiff has gone shopping thousands of times, at hundreds of merchants, nearly all without issue,** and whereby whatever recordings he may have started prior to were simply deleted after each mundane encounter (much like how police delete whatever bodycam footage they may have started prior to after each uneventful shift). Therefore, to label Plaintiff as some *intentional* "targeter" / "baiter" / "lawsuit scammer" / [insert all other synonyms here] for simply a) shopping, b) knowing his rights, and c) protecting himself with recording devices, would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Technically every car parked on the side of the road for which an owner has placed a GPS tracker and camera system inside is a "bait"

car, but it would be preposterous to call such owners *intentional* "targeters" of car thieves. Same goes with people who go shopping who want to also protect themselves from being potentially falsely imprisoned. Case in point: a police officer of 20 years merely refusing to show his receipt on his way out of a Walmart, only to be detained for nearly half an hour before he was finally let go. *See Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010). Seriously, one cannot reasonably refer to such benign buyer behavior as anything resembling "entrapment." **Rather, that's just good police work,** and whereby*, "Merely affording a person an opportunity to commit an offense is not entrapment."*

Therefore, what has happened in Plaintiff's instant case is nothing more than a common situation where some merchant got "fat and happy" accosting its droves of lemmings at its doors – by way of them all choosing to "assuaging the perceived evil" – but whereby Plaintiff simply came along and promptly exposed said merchant for candidly committing *routine* violations of the law. **In other words, Defendant forgot that it needs to perform *actual investigatory homework* before detaining its patrons, and is simply butthurt that it got "secret shopped" [but failed the audit miserably].** *Meanwhile, countless other stores that Plaintiff has visited over the years have all had no trouble, whatsoever, with following the law, otherwise.*

ONCE AGAIN, though, ***it must be repeated one last time*****,** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that Plaintiff's case *has anything to do with receipts.*

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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NON-EXHAUSTIVE LIST OF RECENT NEWS ARTICLES CONDEMNING RECEIPT CHECKPOINTS AS UNLAWFUL

Cop Records Himself Detained At Walmart Receipt Check, The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010) ("[S]tores cannot legally prevent you from leaving if you decide to not show your receipt.");

Walmart is found not liable after detaining a customer who refused to show receipts at the door, Business Insider, https://tinyurl.com/yvzax7m2 (Jun 5, 2023) ("Shoppers are not legally required to show receipts.");

Walmart Can't Be Sued For Wrongly Disdaining Customer William Montgomery, He Lost His Lawsuits, NewsOnyx, https://tinyurl.com/2p9ecf4x (Jun 2023) ("It is not legally required for one to show their receipts.");

I refused to show my receipt at Walmart and was detained even though it's not illegal – a judge ruled in store's favor, The U.S. Sun, https://tinyurl.com/24pxecm4 (Oct 24, 2023) ("A lawyer revealed that it is not mandatory by law for customers to show receipts at stores like Walmart.");

I'm a lawyer – retailers like Walmart can't legally check your receipt if you refuse but Costco has found a loophole, The U.S. Sun, https://tinyurl.com/43cm6fzm (Oct 23, 2023) ("They can ask you to show your receipt and you can consensually allow them to do it. But there is no power or authority to detain you if you say no." "Stores like Walmart [] could risk legal issues if they attempt to enforce these checks." "[I]f non-membership stores attempted to detain customers for this consumers would be able to sue for false imprisonment if they did not commit a crime.");

I'm a criminal attorney – there's a big problem Walmart & Target staff ignore when they demand to see your receipt, The U.S. Sun, https://tinyurl.com/mrxzw248 (Oct 31, 2023)

("[E]mployees can still ask for your receipt but a customer doesn't have to show it if they don't want to. 'Even the police, they have no right to stop you and force you to show a receipt without reasonable suspicion to stop you and probable cause to search you.'");

Walmart 'cannot come after you' for refusing to show receipt at self-checkout unless they spot key details, expert warns, The U.S. Sun, https://tinyurl.com/yfhnn5xc (Dec 31, 2023) ("[Y]ou can invoke your rights and refuse to show your receipt to the worker at the door when asked.");

'You can walk on by,' cop tells Walmart shoppers about receipt checks – but a specific law makes things 'tricky,' The U.S. Sun, https://tinyurl.com/3chf9xwh (Jan 3, 2024) ("Failing to show a receipt at a store's exit isn't enough of a reason for a store like Walmart to detain a suspected stealer.");

Walmart can't force you to show receipt or have bag checked at the door unless they have a vital excuse, lawyer warns, The U.S. Sun, https://tinyurl.com/mu8cnysf (Jan 17, 2024) ("[W]ithout probable cause to establish Shopkeeper's Privilege," – i.e. "suspicion of shoplifting through other behaviors or actions," – "a receipt check inquiry can be refused legally at Walmart.");

'That's false imprisonment,' lawyer insists as he warns Walmart and major retailers about unnecessary receipt checks, The U.S. Sun, https://tinyurl.com/ycj27x7a (Jan 20, 2024) ("If you haven't done anything wrong and they can't confirm with video cameras or eyewitnesses…and they detain you without consent, that's false imprisonment.");

Walmart needs to remember customer rights before receipt checks – expert advises walk away if they don't have evidence, The U.S. Sun, https://tinyurl.com/u3577pss (Jun 29, 2024) ("If the customer has done nothing wrong, the store would then be engaged in unlawfully confining the innocent customer, resulting in a sort of false imprisonment.").

Public Records Menu

- Home
- FAQs
- Submit a Request
- My Records Center
- Public Records Archive
- Search by Reference Number

For more information on submitting a Public Records Request call the City Clerk's Office at 303-658-2161.

For general service questions **other than public records**, please visit Access Westminster.

FAQs

See All FAQs

- Purchase a Traffic Accident Report
- Is there a fee?
- What is a public record?
- Need more

View File(s) | View Message(s)

Request Type:	Police Records Request
Contact E-Mail:	zoinbergs@gmail.com
Reference No:	Z000422-090424
Status:	Full Release
Balance Due:	$0.00
Payments:	$0.00

DOWNLOAD ALL

Files:	UPLOAD DATE	
	09/10/2024	WPD2022-103788.pdf
	09/10/2024	WPD2022-103786.pdf

Police Records Request

24-72-301 Colorado Criminal Justice Records Act
All records requests are processed in accordance with the Colorado Criminal Justice Records Act (CCJRA). Some reports may not be released or may have redactions as required by law.

24-72-305.5 Access to Records - denial by custodian - use of records to obtain information for solicitation.
Records of Official Actions and Criminal Justice Records and the names, addresses, telephone numbers and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The Official custodian shall deny any person access to records of Official Actions and Criminal Justice Records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

24-72-309 Violation - penalty.
Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a

submitting a Public Records Request?

Can I get the fees waived?

imprisonment.

Are You Representing An Agency?:
No

Type of Report Requested:
Address Search / Calls for Service
Incident/Offense Report

PLEASE NOTE
The following information is necessary to process your request. Please fill out all sections. Colorado law and department procedures require you identify the record requested by supplying information that is specific enough to identify the exact record/person/report sought.

Case Report Number or Event Number:

Date of Incident:
11/25/2022

Location of Incident:
Best Buy @ 9369 Sheridan Blvd, Westminster, CO, 80031

Subject Involved:
Last Name, First Name, Middle Initial

Date of Birth:

Describe the Record(s) Requested:
Greetings! I am looking to obtain a record of all calls for service originating from this location on November 25, 2022. Specifically, I am looking for any calls for service that any Best Buy employees may have made, that might show up as a "shoplifting" incident, that might have been called in by said employees (if they even made such a call in the first place) and to which would have likely been made by them around 2:19pm that day. Ultimately, if no such calls for service were made on the date, around that time, an "empty" record report showing that no such calls were made on that date, around that time, is what I am alternatively seeking. Thanks!

Please be specific with your request to narrow our search and respond to you quickly and efficiently.

Preferred Method to Receive Records:
Electronic via Records Center

Acknowledgment

I have read the statute above and do hereby affirm and attest that the records requested by me shall not be used for the direct solicitation of business for pecuniary gain and that the information obtained in the reports requested and/or copies of said reports shall not be further disseminated by me except for as allowed by law.

Type Your Name To Sign:

William Montgomery

New Message | ✖ Return to List

Messages 3

Print Messages (PDF)

On 9/10/2024 8:42:09 AM, Westminster CORA Request wrote:

Subject: [Records Center] Police Records Request :: Z000422-090424
Body:
Attached is the completed calls for service that you requested last week.
Please note, we usually charge $30.00 per hour for redaction on requests, but since there was only 2 calls for service and no redactions necessary I am not adding the charge to this request.

Thank you
Dawn Neelands

On 9/4/2024 5:22:26 PM, Westminster CORA Request wrote:

On 9/4/2024 5:22:26 PM, William Montgomery wrote:

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PRTDMSJ Exhibit #15.04

CAD Incident Number	Case Number
WPD2022103786	

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Location	Commonplace Name	Beat
9369 N SHERIDAN BLVD Westminster, CO 80031	**BEST BUY**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:14**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **471** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched:	Unit Arrived:	Unit Cleared:
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Comments

Location: BEST BUY

11/25/2022 8:15:11 AM, Performed By: TS

Comment: [1] 131 - C4

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PRTDMSJ Exhibit #15.05

CAD Incident Number	Case Number
WPD2022103788	

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:15**	**11/25/2022 08:33**

Call Location	Commonplace Name	Beat
9369 N Sheridan Blvd Westminster, CO 80031	**Best Buy**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:15**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **131** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched	Unit Arrived	Unit Cleared
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:33**

Person(s) Involved

Last Name	First Name	Phone Number
Herring	**Justin**	

Vehicle(s) Involved

License Plate	Plate State	Year	Make	Model	Color
AXDZ04	**CO**	**2005**	**Chevrolet**	**Silverado**	**White**
BGC010	**CO**				

Call Comments

Location: Best Buy

11/25/2022 8:19:00 AM, Performed By: TS

Comment: [1] [Query] 131, QP Combo Query: USRID/2061.LIC/AXDZ04.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:22:57 AM, Performed By: TS

Comment: [2] [Query] 131, QP Combo Query: USRID/2061.LIC/BGC010.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:33:27 AM, Performed By: TS

Comment: [3] 131 - C4

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.: Lori K. Bell, Reg. No. 31714 Montgomery | Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY L.P.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its reply brief in support of its Motion for Summary Judgment. In support thereof, Best Buy states as follows:

INTRODUCTION

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff's factual allegations asserted by way of affidavit. *See, Scott v. Harris,* 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party's version of events

when contradicted by video evidence). The first video, **Ex. L,** demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation that often involves a brief detention, and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings against other companies,[1] demonstrates Plaintiff's modus operandi[2] – to engage in behavior that raises suspicion of shoplifting,[3] to get detained, and to not show his receipts[4] in order to test his perceived "rights."[5] Based upon this video, combined with Plaintiff's receipts showing fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable questionable of material fact.[6] Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the "shopkeepers' privilege" created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned the stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See,*

[1] **Ex. A-K.**
[2] "That's the crux of my whole sting operation!" **Ex. M,** 5:55.
[3] **Ex. M,** 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[4] Now I don't show my receipt everywhere I shop." **Ex. M,** approximately 1:25.
[5] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. M,** 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. M;** 8:09.
[6] **Ex. N;** *see also,* **Ex. O** (a Google map demonstrating the travel required to complete such purchases).

Montgomery v. Walmart, Inc., No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The Colorado Court of Appeals held summary judgment is properly granted on either theory – (1) that Plaintiff was not confined because he knew he could escape without causing unreasonable harm to himself, or (2) that Plaintiff's intended to provoke store employees into believing he was concealing property of the store in order to induce detention. *Id.* Likewise, the Court can find summary judgment here on either grounds, or both grounds. Thus, summary judgment is warranted here.

REPLY TO MATERIAL FACTS

To the extent that Best Buy fails to respond to every allegation in Plaintiff's lengthy response brief, Best Buy denies any allegations not explicitly admitted herein.

1-11. Plaintiff's partial denials of each paragraph rest upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Facts Nos. 1 through 11 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

12. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 12 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

13. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 13 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

14. Plaintiff presents no evidence demonstrating that he showed a receipt to Best Buy employees during the alleged false imprisonment. As such, the Court should find that there is no

genuine issue of fact that Plaintiff did not show a receipt. *See,* C.R.C.P. 56(e). However, Best Buy concedes there is a question of fact whether Best Buy employees made an explicit request to see Plaintiff's receipt[7] and that the Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

15. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 15 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

16. Plaintiff's partial denial rests upon a paragraph in Plaintiff's Affidavit that appears wholly unrelated to the corresponding fact at issue in Best Buy's Motion. As such, the Court should find in favor of Best Buy on Fact No. 16 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

17. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 17 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

18. Plaintiff admitted Fact No. 18; thus, there is no genuine issue of fact.

19. Plaintiff admits that Best Buy employees did not physically touch Plaintiff; thus, there is no genuine issue of fact. Best Buy disputes Plaintiff's allegations in ¶¶18 through 21 of his affidavit to the extent that they contradict the video submitted as **Ex. M.** *See, Scott v. Harris,* 550 U.S. 372 (2007) (on summary judgment, a court is not required to rely upon a party's version of events when discredited by video evidence). Best Buy concedes that there is a genuine issue of fact concerning whether there was an "implicit" threat to Plaintiff and that the Court can find in

[7] *See,* **Ex. P,** ¶ 6.

favor Plaintiff for this fact for purposes of determining this Motion. Plaintiff's remaining allegations concern Plaintiff's personal opinion, subjective commentary on the incident, or unsupported allegations and should not be considered by the Court in determining this Motion. *See,* C.R.C.P. 56(e).

20. Plaintiff's denial rests upon mere allegations, or are statements of opinion rather than fact. Furthermore, Plaintiff understood that stores will cease As such, the Court should find in favor of Best Buy on Facts No. 20 and find that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

21. Plaintiff admitted Fact No. 21; thus, there is no genuine issue of fact.

RESPONSES TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS

22. Best Buy will not dispute this fact for purposes of this Motion only. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

23. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19). Based on this objective evidence, the Court should find in favor of Best Buy that Plaintiff had been inside the Best Buy making a purchase within the five minutes prior to Best Buy employees approaching him. *See, Scott v. Harris,* 550 U.S. 372 (2007) (where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.)

24. For purposes of this Motion only, Best Buy will not dispute this fact that "Shane," "Mahmoud," and a third employee (James Robinson) were involved in the alleged incident. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

25. Best Buy denies that Plaintiff correctly quoted the video. **Ex. M.** Furthermore, there is objective documentation that Plaintiff had been inside Best Buy shortly before the Plaintiff's recording of the incident began. **Ex. N,** p. 18-19 (receipt for William Montgomery at 14:20, compared to timestamps for **Ex. M** beginning at 2:19pm). In light of this objective evidence, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on this fact. *Scott v. Harris,* 550 U.S. 372 (2007).

26. Best Buy admits that Mahmoud told Plaintiff something to the effect of "I need my stuff back." **Ex. M.** Best Buy concedes that there is a genuine issue of fact concerning whether Best Buy employees made an explicit request to see a receipt; thus, the Court can find in favor Plaintiff for this fact for purposes of determining this Motion. *See,* **Ex. P, ¶** 6.

27. Best Buy will not dispute this fact for purposes of determining this Motion only.

28. Best Buy has no way of confirming or denying whether Plaintiff "had any adverse interactions with Best Buy or its employees in the past." However, for purposes of this Motion only, the Court can find in favor of Plaintiff on this fact. Best Buy denies that the "employees' choice to interact with Plaintiff took him by surprise," as Plaintiff deliberately elicited this type of interaction and it was not a "surprise." On the date of the incident, Plaintiff made fourteen purchases across eight Best Buy locations, traveling approximately 124 miles to do so, all with the purpose of eliciting the precise response he received from the three Best Buy employees. **Ex. N-O;** *see also,* **Ex. L** (describing Plaintiff's modus operandi for eliciting theft investigations from stores). Best Buy denies that the interaction can be characterized as Best Buy employees "accosting" Plaintiff. *See,* **Ex. M.** In light of the objective evidence in the record, because no

rational trier of fact would find for the nonmoving party on these remaining facts in paragraph 28, the Court should find in favor of Best Buy. *Scott v. Harris,* 550 U.S. 372 (2007).

29. Best Buy admits that Plaintiff had an object in his pockets. *See also,* **Ex. M,** 0:38. 10:25; **Ex. P**. The remaining facts alleged here are based upon Plaintiff's speculation and are insufficient to summary judgment. *People v. Hernandez & Assocs., Inc.,* 736 P.2d 1238, 1240 (Colo. App. 1986). Plaintiff is merely speculating about what Best Buy knew or did not know about the object in Plaintiff's pockets and has no personal knowledge of this fact. A sworn affidavit by Mahmoud Abu-Shaweesh states that he had personal knowledge of the items in Plaintiff's pockets. **Ex. P.** Thus, the Court should find that Best Buy had information about the nature of objects in Plaintiff's pockets. *See,* **Ex. P, ¶** 4.

30. For purposes of this Motion only, Best Buy does not dispute this fact.

31. For purposes of this Motion only, Best Buy will admit that Plaintiff tried to leave the area. Best Buy denies Plaintiff's remaining characterization of the Best Buy employees' actions to the extent that it is contradicted by the video attached as **Ex. M.** Best Buy denies that Plaintiff had "no place to go without otherwise having to physically touch the employees," as Plaintiff knew he could have left upon showing proof of purchase or by returning any allegedly stolen merchandise. **Ex. A-M.**

32- 39. Best Buy denies Plaintiff's characterization of the Best Buy employees' actions to the extent that it is contradicted by the video of the incident, attached as **Ex. M.** *See, Scott v. Harris,* 550 U.S. 372 (2007).

40. For purposes of this Motion only, Best Buy does not dispute this fact.

41. Best Buy denies this fact. **Ex. A-L.** Plaintiff visibly had an object in his pocket during the interaction. **Ex. M**, 0:38. 10:25; **Ex. P.** In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris,* 550 U.S. 372 (2007).

42. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. However, Plaintiff made a purchase shortly before he began recording the video of the subject incident, and Plaintiff visibly had an object in his pocket during the interaction. **Ex. M**, 0:38. 10:25; **Ex. N**.

43. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. To the extent Plaintiff is denying knowledge of Best Buy's practices and policies concerning "receipt showing," Best Buy denies this. Plaintiff is generally aware that stores will allow suspected shoplifters to leave upon showing proof of purchase. **Ex. L.**

44. For purposes of this Motion only, Best Buy will not dispute this fact.

45. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 80 miles to do so. **Ex. N,** p. 18-29; **Ex. O.** He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N,** p. 19, 23, 27. In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris,* 550 U.S. 372 (2007).

ARGUMENT

I. Plaintiff's freedom of movement was not restricted here.

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad indisputable material facts, including but not limited to Plaintiff's YouTube video,[8] receipts from the date of the incident,[9] and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed.[10] The record unquestionably proves that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident. Further, once the detention occurred, Plaintiff took no reasonable action such as showing his receipts, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. **Ex. M; Ex. P.**

As such, Plaintiff cannot prove the elements of his cause of action for false imprisonment because (1) Best Buy did not restrict Plaintiff's freedom of movement, as this can only happen when Plaintiff "does not know anyway to escape without causing an unreasonable risk of harm to himself;" and (2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention, i.e., intended to be in one place for a period of time. *See,* CJI 21:2; *Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023). There is overwhelming evidence that Plaintiff acted with an intent to be detained by Best Buy employees and failed to avail himself of a reasonable means of escape; thus, Best Buy is entitled to summary judgment here.

II. Real or perceived threats by Best Buy employees do not void the shopkeeper's privilege

[8] **Ex. L.**
[9] **E. N.**
[10] **Ex. A-K.**

C.R.S. § 18-4-407 codifies the "shopkeeper's privilege" and provides a complete affirmative defense to false imprisonment, slander, false arrest, malicious prosecution, or unlawful detention if a "merchant . . . acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft." To prove a claim of false imprisonment, one must prove the element of restriction of freedom of movement. CJI 12:1. While this element can be met by an array of conduct, two ways of meeting this element are to demonstrate (1) that the claimant is "restrained by physical force, however slight, which overpowered the person or to which the person submitted," or (2) that the claimant "complied with actual or apparent threats that he . . . will be immediately harmed if he . . . moves beyond . . . a certain area." CJI 21:2 (2)-(3).

Because false imprisonment by nature often involves some level of physical force or the threat of physical force, the shopkeeper's privilege inherently provides a defense even when there are threats of physical force – or even actual physical force[11] – provided that such force or threat of physical force is reasonable. *See, Guijosa v. Wal-Mart Stores, Inc*., 101 Wash. App. 777, 792, 6 P.3d 583, 591 (Wash. App. 2000) (the authority to detain under the shopkeeper's privilege must necessarily carry with it the privilege of using all reasonable force); *Huynh v. Wal-mart Stores Texas, LLC*, No. CV 18-4257, 2020 WL 8300520, at *6 (S.D. Tex. Oct. 8, 2020) ("Shopkeeper's privilege is not vitiated when there is *any* use of force Instead, it is the reasonableness of a defendant's conduct . . . that controls."); *In re Sienna B*., No. D079535, 2022 WL 2712116, at *3 (Cal. Ct. App. July 13, 2022) (shopkeeper's privilege permits a merchant to use reasonable force);

[11] No actual physical force is alleged by any party here. *See,* Plaintiff's response to Fact No. 19.

Cruz v. Johnson, 823 A.2d 1157, 1160 (R.I. 2003) (merchant may use non-deadly force when the force is necessary to prevent escape or to prevent loss of property).

Here, Best Buy employees detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets. Best Buy employees allegedly threatened to use force on Plaintiff if he attempted to escape.[12] Thus, shopkeeper's privilege is a complete affirmative defense because Best Buy had reasonable grounds to detain Plaintiff and only used reasonable threats of force in the event that Plaintiff attempted to escape. As such, summary judgment is warranted under the shopkeeper's privilege affirmative defense.

CONCLUSION

Wherefore, for the forgoing reasons, Best Buy requests that this Court grant summary judgment in favor of Best Buy.

Filed **October 10, 2024.**

MONTGOMERY | AMATUZIO

By: *s/ Lori K. Bell*
Lori K. Bell

Attorney for Best Buy Stores, L.P.

[12] "Defendant made numerous implicit threats to 'jump' Plaintiff 'off camera' should he attempt to leave in that direction." Plaintiff's Response Brief, ¶ 6; "For the next several minutes Plaintiff tried to step around [the Best Buy employees] in order to leave the area." *Id.* at ¶ 31.

CERTIFICATE OF SERVICE

I hereby certify that, on **DEFENDANT BEST BUY L.P.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, 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

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.: 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
AFFIDAVIT OF MAHMOUD ABU-SHAWEESH	

Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits the Affidavit of Mahmoud Abu-Shaweesh:

Affidavit of Mahmoud Abu-Shaweesh

1. My name is Mahmoud Abu-Shaweesh. I am over the age of 18 and competent to make this affidavit based on personal knowledge of the facts of the encounter at issue in this lawsuit, as set forth below.

2. I am currently employed as the General Manager of Best Buy Store Number 447, located at 17364 Southcenter Pkwy, Tukwila, Washington.
3. On November 25, 2022, I was the Assistant Manager of Best Buy Store Number 209, located at 9369 Sheridan Blvd, Westminster, CO 80031.
4. On November 25, 2022, I was working on the sales floor and observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store.
5. I observed the same activity on the store security video.
6. As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do.
7. I exited the store to request that Mr. Montgomery return the product from his pocket.
8. Mr. Montgomery refused to return the product.
9. Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery.

I, Mahmoud Abu-Shaweesh, declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Signed by:
54BDD2EBFBE5409...

Mahmoud Abu-Shaweesh

EXHIBIT P

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800302263917976250785776950

********* Duplicate Receipt *********

```
          Welcome to Best Buy #164
        8682 PARK MEADOWS CENTER DR
                  LONE TREE, CO 80124



Val:100001-498003-022639-179762-507857-76950
        0164 024 3401 11/25/22 10:15

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

```
6480937    B08XVYZ1Y5              24.99
       FIRE TV STICK 4K
               49.99  Was Price
             25.00- Sale Discount
        Sales Tax              1.94
                               ----------
                       Subtotal    24.99
                     Sales Tax     1.94
                               ==========
                          Total    26.93
**********1264   ChipRead USD$    26.93
              Debit - DEBIT
        MONTGOMERY/WILLIAM K
              Approval 001273
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000042203
    Reference Number: 24410154554009
                Other Savings:    25.00
                Total Savings:    25.00
             My Best Buy
          Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/10/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 14, 2023. Activatable devices have a
    14-day return policy (30 days for
   Verizon activatable devices). Major
 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
       go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           0164 024 3401 112522
```


EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900407057476214141085

********* Duplicate Receipt *********

Welcome to Best Buy #164
8682 PARK MEADOWS CENTER DR
LONE TREE, CO 80124

Val:100001-498003-249004-070574-762141-41085
0164 057 6368 11/25/22 10:28

Duplicate Receipt
****

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 21251HFDE4T3RR
Sales Tax 3.12

Subtotal 39.99
Sales Tax 3.12

Total 43.11
**********1264 ChipRead USD$ 43.11
Debit - DEBIT
MONTGOMERY/WILLIAM K
Approval 000434
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000042203
Reference Number: 57710281200320
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/10/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0164 057 6368 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800697736625832442282315410

********* Duplicate Receipt *********

```
          Welcome to Best Buy #164
        8682 PARK MEADOWS CENTER DR
                  LONE TREE, CO 80124



Val:100001-498006-977366-258324-422823-15410
        0164 060 1540 11/25/22 10:45

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

```
6501931    43UQ9000PUD           299.99
       LG 43UQ9000 4K UHD SMART WEBO
             349.99  Was Price
           50.00- Sale Discount
        Sales Tax             23.44
                                ----------
                        Subtotal   299.99
                       Sales Tax    23.44
                                ==========
                           Total   323.43
**********4073   ChipRead USD$   323.43
         Mastercard - MASTERCARD
           MONTGOMERY/WILLIAM K
              Approval 02573B
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    50.00
                Total Savings:    50.00
              My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/10/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 14, 2023. Activatable devices have a
    14-day return policy (30 days for
   Verizon activatable devices). Major
 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           0164 060 1540 112522
```


EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800323568844076127689373350

********* Duplicate Receipt *********

Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-440761-276893-73350
1171 019 8947 11/25/22 11:19

Duplicate Receipt
****

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 2.70

Subtotal 39.99
Sales Tax 2.70
===
Total 42.69
**********4073 ChipRead USD$ 42.69
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02531B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
1171 019 8947 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800323568849535514596563661

********* Duplicate Receipt *********

Welcome to Best Buy #1171
6707 S VINE ST
CENTENNIAL, CO 80122

Val:100001-498003-235688-495355-145965-63661
1171 060 4620 11/25/22 11:25

Duplicate Receipt
****

EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 27141HFDE75CP9
        Sales Tax              2.70
                                ----------
                       Subtotal    39.99
                     Sales Tax      2.70
                                ==========
                          Total    42.69
**********4073   ChipRead USD$    42.69
         Mastercard - MASTERCARD
           MONTGOMERY/WILLIAM K
              Approval 02590B
              Verified By PIN
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
             My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/25/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
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    14-day return policy (30 days for
   Verizon activatable devices). Major
 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           1171 060 4620 112522
```


EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                   LAKEWOOD, CO 80123



Val:100001-498002-956061-336886-954203-97330
       0210 064 2607 11/25/22 12:02

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

6517336 GA03131-US 19.99
STREAMING SNOW
29.99 Was Price
10.00- Sale Discount
Sales Tax 1.59
6453900 DIGITAL ITE 0.00
GET 3 MONTHS OF YOUTUBE PREMI
Sales Tax 0.00

Subtotal 19.99
Sales Tax 1.59

Total 21.58
**********4073 ChipRead USD$ 21.58
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02535B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

Enjoy 3 months free to YouTube Premium
with your Best Buy purchase.
To redeem your YouTube Premium offer,
go to:
youtube.com/redeem
and enter the code below.

TONQ2VVRIFFX

Or follow the emailed instructions emailed
to You

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
Return and Exchange promise and most
purchases may be returned through
Jan. 14, 2023. Activatable devices have a
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Verizon activatable devices). Major
appliances have a 15-day return policy.
For details, go to BestBuy.com/Returns.
To learn about our privacy practices,
go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0210 064 2607 112522

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*See Price Match Details in store or online at BestBuy.com/PMG.

Best Buy 7601 Penn Avenue South, Richfield, MN 55423-3645

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View: Web

Member ID: 4552643388

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Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900407989627512143086

********* Duplicate Receipt *********

```
          Welcome to Best Buy #210
           5395 S WADSWORTH BLVD
                   LAKEWOOD, CO 80123



Val:100001-498003-249004-079896-275121-43086
        0210 064 2616 11/25/22 12:25

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.17

Subtotal 39.99
Sales Tax 3.17
===
Total 43.16
**********4073 ChipRead USD$ 43.16
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM K
Approval 02545B
Verified By PIN
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0210 064 2616 112522

EXHIBIT N

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View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800411451671905758504420805

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1224
             384 S WADSWORTH BLVD
                     LAKEWOOD, CO 80226


Val:100001-498004-114516-719057-585044-20805
        1224 056 6368 11/25/22 13:19

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

```
6498806    E410MA-TB.C            99.99
       ASUS E410MA-TB.CL464BK SMB
             249.99  Was Price
          150.00- Sale Discount
       Public Improvement     2.50
       Sales Tax              5.62
                              ----------
                      Subtotal    99.99
        Public Improvement Fee     2.50
                    Sales Tax      5.62
                              ==========
                         Total   108.11
**********0527    USD$           108.11
         Mastercard - MASTERCARD
             Approval 32431B
  CARD ENTRY: Contactless MODE: Issuer
           AID: A0000000041010
                Other Savings:   150.00
                Total Savings:   150.00
              My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
    purchases may be returned through
Jan. 14, 2023. Activatable devices have a
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 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           1224 056 6368 112522
```


EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900408522249982315411

********* Duplicate Receipt *********

```
          Welcome to Best Buy #209
             9369 SHERIDAN BLVD
                 WESTMINSTER, CO 80031



Val:100001-498003-249004-085222-499823-15411
        0209 068 7367 11/25/22 14:20

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 26291HFDE6USKP
Sales Tax 3.34

Subtotal 39.99
Sales Tax 3.34

Total 43.33
**********0527 ChipRead USD$ 43.33
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72572B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
0209 068 7367 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

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We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900401732911599493232

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1416
               104 W 104TH AVE
                      DENVER, CO 80234



Val:100001-498003-249004-017329-115994-93232
        1416 017 6112 11/25/22 15:35

                    Duplicate Receipt
                  ******************
```

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
===
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 69102B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
1416 017 6112 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900402131930321463765

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1079
              210 KEN PRATT BLVD
                     LONGMONT, CO 80501



Val:100001-498003-249004-021319-303214-63765
        1079 020 6714 11/25/22 16:59

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

```
6425976    GA01919-US              39.99
       CHROMECAST WITH GOOGLE TV
              49.99  Was Price
            10.00- Sale Discount
          Serial # 29011HFDE7AW8C
        Sales Tax              3.40
                                ----------
                       Subtotal    39.99
                     Sales Tax     3.40
                                ==========
                          Total    43.39
**********0527   ChipRead USD$    43.39
         Mastercard - MASTERCARD
         MONTGOMERY/WILLIAM
              Approval 38951B
      CARD ENTRY: Chip MODE: Issuer
           AID: A0000000041010
                Other Savings:    10.00
                Total Savings:    10.00
             My Best Buy
           Member ID 4552643388

                WILLIAM,
  Thanks for shopping at Best Buy today!
 Your My Best Buy balance as of 11/25/2022
             Posted points: 0
     Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022
and Dec. 31, 2022 qualify for our Holiday
   Return and Exchange promise and most
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   Verizon activatable devices). Major
 appliances have a 15-day return policy.
 For details, go to BestBuy.com/Returns.
  To learn about our privacy practices,
        go to BestBuy.com/Privacy.

      Your Customer Service PIN is:
           1079 020 6714 112522
```


EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

Keep this email for your records. If you need to make a return or exchange, please review our Return and Exchange Policy.

We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900408523856908813914

********* Duplicate Receipt *********

```
          Welcome to Best Buy #1416
               104 W 104TH AVE
                      DENVER, CO 80234



Val:100001-498003-249004-085238-569088-13914
        1416 068 5385 11/25/22 17:43

                    Duplicate Receipt
                  ******************
```

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.50

Subtotal 39.99
Sales Tax 3.50
Total 43.49
**********0527 ChipRead USD$ 43.49
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 72872B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

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Your Customer Service PIN is:
1416 068 5385 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

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We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

10000149800324900401865691905617118

********* Duplicate Receipt *********

Welcome to Best Buy #1134
3511 N SALIDA CT
AURORA, CO 80011

Val:100001-498003-249004-018656-919056-17118
1134 018 6211 11/25/22 18:40

Duplicate Receipt
****

EXHIBIT N

6425976 GA01919-US 39.99
CHROMECAST WITH GOOGLE TV
49.99 Was Price
10.00- Sale Discount
Serial # 27121HFDE7AB6Q
Sales Tax 3.40

Subtotal 39.99
Sales Tax 3.40
===
Total 43.39
**********0527 ChipRead USD$ 43.39
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 46618B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
Other Savings: 10.00
Total Savings: 10.00
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

Your Customer Service PIN is:
1134 018 6211 112522

EXHIBIT N

Please keep this email for your records.

View: Web

Member ID: 4552643388

Thank you for shopping at Best Buy®.

View My Purchases

Thank you for requesting an email copy of your receipt. The details of your purchase are below.

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We appreciate your business and look forward to seeing you again soon.

Sincerely,

Your Customer Care Team

Your Best Buy Receipt

Keep for your records

********* Duplicate Receipt *********

```
          Welcome to Best Buy #217
          13801 E MISSISSIPPI AVE
                    AURORA, CO 80012



Val:100001-498003-249004-018644-709014-91231
        0217 018 6470 11/25/22 20:01

                  Duplicate Receipt
                 ******************
```

EXHIBIT N

6449512 3941R 39.99
ROKU EXPRESS 4K+
Sales Tax 3.20

Subtotal 39.99
Sales Tax 3.20
===
Total 43.19
**********0527 ChipRead USD$ 43.19
Mastercard - MASTERCARD
MONTGOMERY/WILLIAM
Approval 63864B
CARD ENTRY: Chip MODE: Issuer
AID: A0000000041010
My Best Buy
Member ID 4552643388

WILLIAM,
Thanks for shopping at Best Buy today!
Your My Best Buy balance as of 11/25/2022
Posted points: 0
Go to BestBuy.com for more info

Most purchases made between Oct. 24, 2022 and Dec. 31, 2022 qualify for our Holiday Return and Exchange promise and most purchases may be returned through Jan. 14, 2023. Activatable devices have a 14-day return policy (30 days for Verizon activatable devices). Major appliances have a 15-day return policy. For details, go to BestBuy.com/Returns. To learn about our privacy practices, go to BestBuy.com/Privacy.

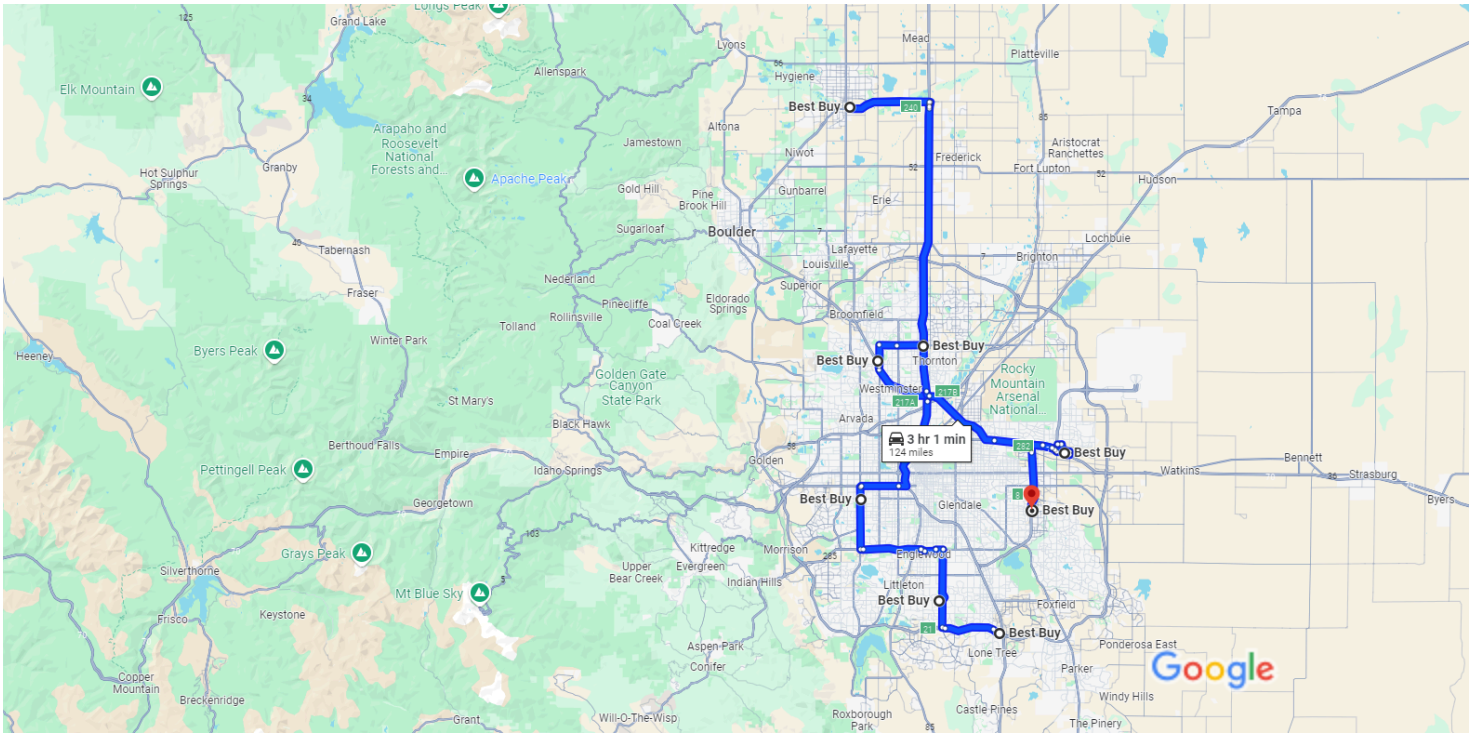
Your Customer Service PIN is:
0217 018 6470 112522

EXHIBIT N

Google Maps

Best Buy, 8682 Park Meadows Center Dr, Lone Tree, CO 80124 to Best Buy, 13801 E Mississippi Ave, Aurora, CO 80012

Drive 124 miles, 3 hr 1 min



Map data ©2024 Google 5 mi

Best Buy
8682 Park Meadows Center Dr, Lone Tree, CO 80124

Get on CO-470 W from Park Meadows Center Dr

4 min (0.8 mi)

1. Head northeast toward Park Meadows Center Dr

7 ft

2. Turn right toward Park Meadows Center Dr

161 ft

3. Turn left toward Park Meadows Center Dr

177 ft

4. Turn right toward Park Meadows Center Dr

269 ft

5. Turn left onto Park Meadows Center Dr

0.3 mi

6. Use the middle 2 lanes to take the ramp onto CO-470 W

0.3 mi

Follow CO-470 W to CO-177 N/S University Blvd in Highlands Ranch. Take exit 21 from CO-470 W

4 min (4.2 mi)

7. Merge onto CO-470 W

EXHIBIT O

3.9 mi

8. Use the right lane to take exit 21 to merge onto CO-177 N/S University Blvd

0.3 mi

Continue on CO-177 N/S University Blvd to your destination in Centennial

6 min (2.5 mi)

9. Merge onto CO-177 N/S University Blvd

Pass by Chase Bank (on the right in 1.9 mi)

2.1 mi

10. Use the left lane to turn left onto E Arapahoe Rd

0.2 mi

11. Turn left onto S Vine St

0.1 mi

12. Turn right

230 ft

13. Turn right

256 ft

14 min (7.4 mi)

Best Buy
6707 S Vine St d, Centennial, CO 80122

Take E Arapahoe Rd to S University Blvd

2 min (0.3 mi)

14. Head south toward S Vine St

184 ft

15. Turn left toward S Vine St

243 ft

16. Turn left onto S Vine St

459 ft

17. Turn right onto E Arapahoe Rd

0.2 mi

Continue on S University Blvd. Take US Hwy 285 S and CO-121 N/S Wadsworth Blvd to W Alameda Ave in Lakewood

27 min (14.7 mi)

18. Use the left 2 lanes to turn left onto S University Blvd

4.1 mi

19. Use the left 2 lanes to turn left onto E Hampden Ave

EXHIBIT O

20. Continue onto Hampden Bypass/E Jefferso... 0.6 mi

0.9 mi

21. Continue straight to stay on Hampden Bypass/E Jefferson Ave
Continue to follow Hampden Bypass

0.3 mi

22. Continue onto W Hampden Ave/US Hwy 285 S
Continue to follow US Hwy 285 S
Pass by Taco Bell (on the left)

4.6 mi

23. Take the CO-121/Wadsworth Blvd exit

0.2 mi

24. Keep right at the fork and merge onto CO-121 N/S Wadsworth Blvd
Pass by McDonald's (on the right in 2.1 mi)

4.0 mi

Take S Vance St to your destination

1 min (0.2 mi)

25. Turn right onto W Alameda Ave

325 ft

26. Turn right onto S Vance St

423 ft

27. Turn right
Destination will be on the left

308 ft

30 min (15.3 mi)

Best Buy
384 S Wadsworth Blvd, Lakewood, CO 80226

Get on US-6 E from S Wadsworth Blvd

4 min (1.3 mi)

28. Head east toward S Vance St

308 ft

29. Turn left onto S Vance St

328 ft

30. Turn left onto W Alameda Ave

417 ft

31. Turn right onto S Wadsworth Blvd

0.9 mi

32. Use the right lane to take the ramp onto US-6 E

0.1 mi

EXHIBIT O

Continue on US-6 E. Take I-25 N and US-36 W to Sheridan Blvd in Westminster. Take the CO-95 S/Sheridan Blvd exit from US-36 W

17 min (16.2 mi)

33. Merge onto US-6 E

2.9 mi

34. Use the right 3 lanes to merge onto I-25 N

8.1 mi

35. Use the left 2 lanes to take exit 217A to merge onto US-36 W toward Boulder

4.9 mi

36. Take the CO-95 S/Sheridan Blvd exit toward 92nd Ave

0.2 mi

37. Slight right onto the ramp to Sheridan Blvd

138 ft

38. Take the ramp onto Sheridan Blvd

243 ft

Continue on Sheridan Blvd to your destination in Jefferson County

3 min (0.5 mi)

39. Merge onto Sheridan Blvd

0.3 mi

40. Use the left 2 lanes to turn left onto 9300 N

276 ft

41. Turn right

367 ft

42. Turn left

390 ft

43. Turn right

75 ft

25 min (18.0 mi)

Best Buy
9369 Sheridan Boulevard, Westminster, CO 80031

Continue to Sheridan Blvd

2 min (0.2 mi)

44. Head north

112 ft

45. Turn right

EXHIBIT O

404 ft

46. Turn left toward 9400 N

446 ft

47. Continue onto 9400 N

230 ft

Follow Sheridan Blvd and W 104th Ave to Northglenn

10 min (4.6 mi)

48. Turn left onto Sheridan Blvd

0.1 mi

49. Keep left to stay on Sheridan Blvd

1.1 mi

50. Turn right onto W 104th Ave

1.4 mi

51. Keep right to stay on W 104th Ave

Pass by Panda Express (on the right in 0.4 mi)

2.0 mi

Drive to your destination

1 min (410 ft)

52. Turn right

354 ft

53. Turn left

56 ft

14 min (4.9 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 N from W 104th Ave

3 min (0.5 mi)

54. Head west toward Bannock St

249 ft

55. Turn right onto Bannock St

335 ft

56. Turn right onto W 104th Ave

Pass by Applebee's Grill + Bar (on the right)

0.2 mi

57. Use the 2nd from the left lane to turn left to merge onto I-25 N

0.3 mi

Follow I-25 N to CO-119 in Weld County. Take exit 240 from I-25 N

16 min (18.9 mi)

58. Merge onto I-25 N

18.5 mi

59. Take exit 240 for CO-119 W toward Firestone/Longmont

0.3 mi

Follow CO-119 to your destination in Longmont

11 min (6.6 mi)

60. Turn left onto CO-119 (signs for Longmont)

6.5 mi

61. Turn right

138 ft

62. Turn left

69 ft

63. Turn right

233 ft

64. Turn right

62 ft

30 min (26.0 mi)

Best Buy
210 Ken Pratt Blvd Suite 100, Longmont, CO 80501

Get on I-25 S in Weld County from CO-119

12 min (6.9 mi)

65. Head east toward S Martin St

0.2 mi

66. At the traffic circle, take the 1st exit onto S Martin St

312 ft

67. Use the left 2 lanes to turn left onto CO-119

6.1 mi

68. Turn right onto W I-25 Frontage Rd (signs for I-25 S)

0.2 mi

69. Use any lane to merge onto I-25 S via the ramp to Denver

0.4 mi

Follow I-25 S to W 104th Ave in Northglenn. Take exit 221 from I-25 S

16 min (18.6 mi)

70. Merge onto I-25 S

18.4 mi

71. Take exit 221 to merge onto W 104th Ave

0.2 mi

Take Bannock St to your destination

2 min (0.2 mi)

72. Merge onto W 104th Ave

325 ft

73. Turn left onto Bannock St

404 ft

74. Turn left

249 ft

30 min (25.7 mi)

Best Buy
104 W 104th Ave, Denver, CO 80234

Get on I-25 S

2 min (0.4 mi)

75. Head west toward Bannock St

249 ft

76. Turn right onto Bannock St

335 ft

77. Turn right onto W 104th Ave
Pass by Applebee's Grill + Bar (on the right)

308 ft

78. Turn right to merge onto I-25 S

0.2 mi

Follow I-25 S, I-270 and I-70 E to N Airport Blvd in Aurora. Take exit 285 from I-70 E

17 min (15.8 mi)

79. Merge onto I-25 S

3.4 mi

80. Use the left 2 lanes to take exit 217B for I-270 E toward Airport/Aurora/Limon

0.5 mi

81. Merge onto I-270

6.6 mi

82. Merge onto I-70 E

4.5 mi

83. Take exit 285 for Airport Blvd

0.3 mi

EXHIBIT O

84. Use the left lane to take the Airport Blvd N ramp

0.5 mi

Continue on N Airport Blvd to your destination

4 min (1.8 mi)

85. Merge onto N Airport Blvd

0.6 mi

86. Turn right onto E 40th Ave

0.3 mi

87. Turn right onto Salida St

0.7 mi

88. Turn right onto N Salida Ct/Waco Wy

0.1 mi

89. Turn right
Destination will be on the left

121 ft

24 min (17.9 mi)

Best Buy
3511 N Salida Ct Ste 10, Aurora, CO 80011

Get on I-70 W from Salida St and Tower Rd

4 min (0.9 mi)

90. Head southeast toward Waco Wy

121 ft

91. Turn left toward Waco Wy

331 ft

92. Continue onto Waco Wy

364 ft

93. Turn right onto Salida St

0.3 mi

94. Turn right onto Tower Rd

0.3 mi

95. Use the right lane to take the ramp onto I-70 W

0.2 mi

Continue on I-70 W. Take I-225 S to E Alameda Ave in Arapahoe County. Take exit 8 from I-225 S

8 min (7.1 mi)

96. Merge onto I-70 W

2.1 mi

97. Use the right 2 lanes to take exit 282 for I-225 S toward Colorado Springs/Aurora

1.4 mi

98. Continue onto I-225 S

3.3 mi

99. Use the right 2 lanes to take exit 8 for Alameda Avenue

0.4 mi

Take S Abilene St to your destination

4 min (1.2 mi)

100. Use the middle lane to turn left onto E Alameda Ave

0.1 mi

101. Turn right at the 1st cross street onto S Abilene St

1.1 mi

102. Turn right

371 ft

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT	

Plaintiff, proceeding *pro se*, hereby submits to the Court his CROSS-MOTION FOR SUMMARY JUDGMENT, and in support thereof, states as follows:

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

Plaintiff certifies that he has conferred in good faith with Defendant concerning this CROSS-MSJ. Defendant indicates that it is opposed to the relief sought herein.

INTRODUCTION

One day Plaintiff was standing on the side of a Best Buy building, waiting for his brother, when Defendant decided to accost him. Having never met Defendant before in his entire life, Plaintiff was taken by surprise, and so he decided to start a video recording of the encounter with his body-worn pen camera. Throughout the encounter, Defendant – in front of many others – loudly and rudely accused Plaintiff of stealing, said to him that it had contacted the police, called him foul names, and even taunted him, all while repeatedly and incessantly begging for him to "return its

merchandise" to it. Of course, Plaintiff knew that Defendant was bluffing (and was resorting to petty bullying tactics to compensate for its lack of investigation) as he knew full-well that it had not collected even a single iota of actual information to reasonably suspect him of shoplifting in the matter (let alone that he was a customer, or even browser, of its establishment). In fact, Defendant was so clueless, that it didn't even tell the difference between what Plaintiff had been holding in his hands, and what had existed in one of his pant pockets (but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period). As Plaintiff continued to try to peacefully leave the area, Defendant continued to stop him – both physically by way of stepping in front of him, and conceptually by way of threatening to "jump" him "around the corner" should he leave in that direction. Eventually, after hastily performing its failed investigation completely literally backwards, Defendant finally left the area so that Plaintiff could leave too, and to which he finally did 14 minutes later after feeling safe enough to do so. This here false imprisonment / defamation *per se* / assault lawsuit naturally followed.

LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *American Water Dev., Inc. v. City of Alamosa,* 874 P.2d 352, 360 (Colo. 1994). In deciding whether to grant a motion for summary judgment, a court must consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any." *Cary v. United of Omaha Life Ins. Co.,* 68 P.3d 462, 466 (Colo. 2003) (quoting C.R.C.P. 56(c)); *see also AviComm, Inc. v. Colo. Pub. Util. Comm'n,* 955 P.2d 1023, 1029 (Colo. 1998). The burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *Id.* In determining when summary judgment is proper, the nonmoving party is entitled to all favorable inferences that may reasonably be drawn from the undisputed facts. *Bayou Land Co. v. Talley,* 924 P.2d 136, 151 (Colo. 1996). However, once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes

necessary for the nonmoving party to set forth facts by affidavit, or otherwise, showing that there is a genuine issue for trial. *Civil Service Com'n. v. Pinder,* 812 P.2d 645, 649 (Colo.1991).

TABLE OF AUTHORITIES

CASES

JURY INSTRUCTIONS

OTHER AUTHORITIES

PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On or about November 25, 2022, at approximately 2:19pm, Plaintiff was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for his brother. *See Plaintiff's Affidavit (herein "PA") at ¶ 2. See Plaintiff's Cross-Motion For Summary Judgment (herein "PCMSJ") Exhibit #1, which is available for download here: https://www.mediafire.com/folder/hwh3yxn2hu7uj [which is the same as Def's MSJ Exhibit M].*

2. Plaintiff had been standing on the east side of said building for about five minutes before he was approached by several Best Buy employees. *See PA at ¶ 3.*

3. Two of the employees, identified by company name tag as "Mahmoud" and "Shane," were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this C-MSJ as "John Doe"]. *See PA at ¶ 4. See PCMSJ Exhibit #1.*

4. Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near

Plaintiff on that day of November 25, 2022. Said employees had never been "posted up" at the store's exit, nor had they ever "followed" Plaintiff "out" of said store, either. Again, Plaintiff had been standing on the side of the Best Buy building for a full five minutes, "waiting for [them] to come out" (Defendant's words, not Plaintiff's, as Plaintiff was actually waiting for his brother at the time, see *Fact #1* above). *See PA at ¶ 5. See PCMSJ Exhibit #1 at timestamp 8:08.*

5. Upon approach, Mahmoud told Plaintiff something to the effect of, "I need my stuff back." Plaintiff was never asked to "show a receipt" by Mahmoud, Shane, or John Doe. *See PA at ¶ 6.*

6. Upon hearing Mahmoud's statement, Plaintiff discreetly activated his body-worn pen camera, located in his front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by Plaintiff based on the date/time he started recording it on/at. *See PA at ¶ 7. See PCMSJ Exhibit #1.* Later, a transcript of what Plaintiff personally heard that day was also prepared by him. *See Transcript Of Plaintiff's Bodycam Footage Of The Event.*

7. The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him. *See PA at ¶ 8.*

8. Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for *whatever* existed in one of his pant pockets, too. Said employees did not know if what Plaintiff had on him was a) store merchandise, b) stolen store merchandise, c) non-store merchandise, d) previously paid for store merchandise chosen by Plaintiff not to be returned, e) non-store merchandise Plaintiff had erroneously attempted to return to the wrong store, f) personal items, g) medication, h) etc. Specifically, by their very own admissions, said Best Buy employees ***did not even tell the difference between*** what Plaintiff held in his hands, and what existed in one of his pant pockets, **but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period.** *See PA at*

¶ *25. See PCMSJ Exhibit #1 at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 8:06 ("Oh we'll find out soon enough."), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Moreover, ***EVEN IF*** what Plaintiff had on him was, in fact, stolen merchandise, such would ***STILL*** not have changed the **COMPLETELY-UNKNOWN-TO-THEM-AND-COMPLETELY-UNIDENTIFIED-TO-THEM-AT-ALL-TIMES-AND-PLACES** nature of the item(s), as said employees would not have known literally anything about anything, ABOUT ANYTHING, *regardless of the situation,* and regardless of the pocket, because of how they had only seen Plaintiff **for the very first time standing outside their building** (and thereby would have never seen him take whatever-the-heck-he-may-have-had-on-him-that-day "from any walls, past any points of sale, and out any doors, *whatsoever*, **period**). *See PA at ¶ 5.*

9. At about a minute into the interaction, Plaintiff tried to walk away from where he had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told Plaintiff, "And you're not bigger than any of us." *See PA at ¶ 11. See PCMSJ Exhibit #1 at timestamps 1:08 and 2:04.*

10. For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so. All three Best Buy employees had physically "corralled" Plaintiff against the building's wall, leaving him with no place to go [without otherwise having to physically touch the employees in order to move past them, but to which he was unable to do for fear that he would be assaulted in return]. *See PA at ¶ 12. See PCMSJ Exhibit #1 from timestamp 2:05 onward.*

11. At one point, John Doe called Plaintiff a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." These insults and accusations were made in a loud and brash tone, in front of several people walking by who would have also heard them be said to Plaintiff. *See*

PA at ¶ 13. See PCMSJ Exhibit #1 at timestamps 2:18 and 2:30. Later, John Doe continued to insult Plaintiff by repeatedly calling him a "miserable human being." *See PCMSJ Exhibit #1 at timestamp 10:54.* Toward the end of the interaction, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See PCMSJ Exhibit #1 at timestamp 12:08.*

12. At another point, all three employees began taunting Plaintiff, telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." *See PA at ¶ 14. See PCMSJ Exhibit #1 from timestamp 2:51 to 3:20, and 6:06.*

13. Throughout the encounter, as Plaintiff continued to try to step around the Best Buy employees in order to leave the area, Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go). *See PA at ¶ 15. See PCMSJ Exhibit #1 at timestamps 2:10 ("Give me my shit, or you're gonna be right fucking here."), 2:40 ("You're not going anywhere, you're giving us our shit back. You're not leaving."), 3:34 ("You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."), 3:51 ("Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit."), 4:03 ("You're not going anywhere, bro."), 5:11 ("You're not moving, dude. You're where you're gonna be until the cops get here. I don't know how else to explain it to you."), 6:00 ("Well then give me my stuff, dude. You're not moving, man. Give me my stuff."), 7:25 ("You're not going anywhere, dude."), and 8:51 ("Okay, then you're gonna stand there until the cops show up.").*

14. Finally, after being harassed and bullied by the three Best Buy employees for nearly ten minutes, John Doe finally told Plaintiff that he could leave. But then he immediately said to his fellow employees, "Or he can run off camera." John Doe then confirmed what he meant by that by telling Plaintiff, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera." *See PA at ¶ 18. See PCMSJ Exhibit #1 from timestamp 9:23 to 9:33.*

15. Plaintiff then said to the three Best Buy employees, “I don't feel safe leaving now,” after which Mahmoud told him, “You shouldn't,” followed by some laughter. John Doe then chimed in and said to Plaintiff, “I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also.” *See PA at ¶ 19. See PCMSJ Exhibit #1 from timestamp 9:48 to 9:52.*

16. After being told once again by John Doe to “Walk away,” Plaintiff once again responded to the three Best Buy employees by saying, “Yeah I don't feel like getting jumped off camera.” Mahmoud replied by saying, “Then give me my stuff, dude.” A few second later, after Plaintiff reaffirmed that he “doesn't feel safe leaving now,” Mahmoud once again followed up by saying, “You'll have zero problems if you hand me what's in your pocket, and what's in your coat.” *See PA at ¶ 20. See PCMSJ Exhibit #1 from timestamp 10:07 to 10:48.*

17. Once again, after being told by Mahmoud of his “chance” to leave, Plaintiff told him, “Like I'm just gonna trust him that he's not gonna jump me.” Mahmoud then responded by saying, “You shouldn't trust him that he's not. You should give me my stuff. That's what you should do.” *See PA at ¶ 21. See PCMSJ Exhibit #1 from timestamp 11:27 to 11:36.*

18. Eventually, after nearly ten minutes of being detained by the three Best Buy employees, Mahmoud told Plaintiff to “Have a good one dude. See ya later.” All three employees then quickly stepped away from Plaintiff and proceeded back into the Best Buy building. *See PA at ¶ 22. See PCMSJ Exhibit #1 at timestamp 12:15.*

19. Plaintiff then spent the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would. [Throughout that 14 minutes, no cops ever came, either]. *See PA at ¶ 23. See PCMSJ Exhibit #1 from timestamp 12:16 to 26:16.*

20. During Plaintiff's detention by the three Best Buy employees, he counted at least 192 people that had walked past him [and who would have thus been within earshot of the conversation

that took place between he and the three employees]. *See PCMSJ Exhibit #1 generally.* Many times, people that were passing by looked directly at Plaintiff and the employees. One person even stopped literally *right* next to Plaintiff and the three employees to explicitly listen to the conversation that had been taking place between them. *See PCMSJ Exhibit #1 from timestamp 4:36 to 4:53.*

21. At no point in time, on that day of November 25, 2022, had Plaintiff ever once "concealed" anything in front of [let alone not in front of] anybody, ever, period. *See PA at ¶ 24.*

22. At no point in time, on that day of November 25, 2022, had Plaintiff 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. *See PA at ¶ 25.*

23. At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere has Plaintiff ever seen such a policy posted in any Best Buy store, nor spoken to him by any Best Buy employee, nor available for him [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, Plaintiff still has literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place]. *See PA at ¶ 26.*

24. On November 25, 2022, Defendant made no "calls for service" to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store. *See PCMSJ Exhibit #2.*

25. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant. Such manifestations include (but are not limited to): helplessness, anger, frustration, shock, disappointment, inconvenience, embarrassment, humiliation, severe indignity, devastation, reputational damage, apprehensiveness, anxiety, mistrust in authority, marked diminishment in quality of life, bitterness, insomnia, and overwhelming grief. *See PA at ¶ 27.*

ARGUMENT

I. DEFENDANT FALSELY IMPRISONED PLAINTIFF, AND LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

a. Defendant is liable for falsely imprisoning Plaintiff

In order to succeed on a claim for False Imprisonment, a Plaintiff must prove the following elements:

1) The Defendant intended to restrict the Plaintiff's freedom of movement;

2) The Defendant, directly or indirectly, restricted the Plaintiff's freedom of movement for a period of time, no matter how short; and

3) The Plaintiff was aware that their freedom of movement was restricted.

See Colorado Civil Jury Instruction 21:1. Additionally, regarding the second and third elements,

> A person's freedom of movement has been restricted when . . . the person complies with actual or apparent threats that he or she or a member of his or her family will be immediately harmed if he or she moves beyond or refuses to go to a certain area.

See Colorado Civil Jury Instruction 21:2(3).

Regarding the first element, it is emphatically indisputable that the three Best Buy employees at issue here today ***intended to*** – specifically *and* explicitly [by way of their very own words *and* actions] – "restrict Plaintiff's freedom of movement." *See Plaintiff's Undisputed Material Facts #9, #10, and especially #13, above.*

Regarding the second element, it is equally indisputable that said employees ***did,*** in fact, "restrict Plaintiff's freedom of movement" – for over ten minutes – by way of their continuing to step in front of him every time he tried to leave the area. *See Plaintiff's Undisputed Material Facts #9, #10, and #13, above. See PCMSJ Exhibit #1 from timestamp 1:08 to 12:15.* Moreover, Colorado Courts have long held that "Physical force is not required to complete a false imprisonment." *Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (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).

Regarding the third element, it is also indisputable that a reasonable person in Plaintiff's position would be "aware that their freedom of movement was restricted" – every time they were denied permission to leave [as Plaintiff was] upon every attempt made to do so [as Plaintiff did].[1]

b. Defendant lacked "shopkeeper's privilege" for its actions

Under certain circumstances, a Defendant is not legally responsible to a Plaintiff on a claim of False Imprisonment if the affirmative defense of a "privilege to detain for investigation" is proved. This defense is **only** proved if **all** of the following elements are met:

1) The Defendant was an owner or employee of a business establishment selling merchandise;

2) The Defendant acted in good faith and had probable cause based upon reasonable grounds to believe that the Plaintiff:

   a) Triggered an alarm or a theft detection device, or

   b) Concealed upon their person any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise, or

   c) Otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise; and

3) The Defendant detained and questioned the Plaintiff in a reasonable manner for the purpose of determining whether the Plaintiff committed theft.

See Colorado Civil Jury Instruction 21:7 (see also Colorado Civil Jury Instruction 21:8).

Regarding the first element, Plaintiff is not disputing that the three people who detained him on November 25, 2022 were employees of the business establishment known as Best Buy.

Regarding the second element, however, it is **categorically indisputable** that said three

1 It it wholly irrelevant that Plaintiff was initially "waiting" for his brother [or even for the Best Buy employees, for that matter] on the side of the building that day. This is because once he actively *tried* to leave the area [and was actively *denied* permission to do so] his false imprisonment was complete. "The fact that a plaintiff merely believes she is not free to leave is not enough to support a claim of false imprisonment. A plaintiff must make some 'attempt to determine whether his belief that his freedom of movement has been curtailed has basis.' This can be done, for instance, **by making a failed request to leave**." *Caswell v. BJ's Wholesale Co.,* 5 F. Supp. 2D 312, 319 (E.D. Pa. 1998) (citing *Chicarelli v. Plymouth Garden Apartments,* 551 F.Supp. 532, 540-41 (E.D. Pa. 1982)).

Best Buy employees **DID NOT** act in "good faith," **DID NOT** have "probable cause," and **DID NOT** act based upon "reasonable grounds" to fairly believe that Plaintiff stole merchandise from their business establishment [as will be discussed next]. Moreover, ***EVEN IF*** the three Best Buy employees at issue here today did, in fact, have "probable cause" (i.e. "shopkeeper's privilege" as we'll henceforth call it) to *initially* detain Plaintiff, they indisputably **LOST** that privilege once they began to question him **in an unreasonable manner** [as will also be discussed next], thereby rendering them unable to satisfy the third and final element of their affirmative defense, as well.

First, before delving into the various sub-elements of the second element, it cannot be stressed here enough that, when discussing civil False Imprisonment claims, **once a Plaintiff shows that a detention has occurred, THE BURDEN OF PROOF SHIFTS TO THE DEFENDANT who must then prove the existence of probable cause**. *See Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935); *see also Goodboe v. Gabriella,* 663 P.2d 1051 (Colo. App. 1983). This is because "The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification." *People v. Agnew,* 16 Cal.2d 655, 107 P.2d 601 (Cal. 1940).

Now, regarding the sub-elements of the "shopkeeper's privilege" affirmative defense, let's begin with sub-element (2)(a). Here, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "triggered an alarm or a theft detection device."

Next, regarding sub-element (2)(b), Defendant has likewise failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "concealed upon his person any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise." Indeed, not only has Defendant failed to provide this Court with any evidence whatsoever of "concealment" (such as a witness affidavit attesting to such),[2] Plaintiff *has* provided

2 In fact, Defendant **can't even get its own facts straight** on this particular subject. *Compare its statement made*

definitive evidence to the exact contrary (via his own witness affidavit attesting to such) that he "had **[NOT]** ever once 'concealed' anything in front of (let alone not in front of) anybody, ever, period," that day. Additionally, regarding the contents of Plaintiff's pant pockets, Plaintiff likewise "had **[NOT]** ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period," that day. *See Plaintiff's Undisputed Material Facts #21 and #22, above. See also Chelette v. Wal-Mart Stores, Inc., 535 So. 2d 558, 561 (La. Ct. App. 1989)* (held that because Plaintiff made no "effort to conceal" the merchandise that he had recently purchased, Defendant lacked "facts justifying a belief (a reasonable belief) on [their] part [] that Plaintiff intended to commit a theft.").

Next, regarding sub-element (2)(c), Defendant has likewise failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff ever "otherwise carried away any unpurchased goods, wares, or merchandise held or owned by the store or business establishment selling merchandise." This is because Defendant has failed to provide this Court with any evidence, whatsoever, ***that Plaintiff was even located inside its store in the first place, EVER – customer, browser, *or* thief – that day of November 25, 2022***. Remember, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that it had "ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022" prior to approaching him for the very first time, ***outside***, on the side of its particular building. *See Plaintiff's Undisputed Material Fact #4, above.* Nor has Defendant shown this Court that it had ever been "posted up" at its store's exit, or that it had "followed" Plaintiff "out" of its store, either, as evidenced by its very own self-admitting statement made of, "we haven't had people stand here and wait for us to come out and get 'em though." *See PCMSJ Exhibit #1 at timestamp 8:08*. Thus, ***even if*** it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that

on page 8 of its MSJ ("Here, Plaintiff intentionally concealed merchandise...") *with its statement made on page 10 of its MSJ* ("Plaintiff left the store with merchandise that was not in a bag...").

Plaintiff **was even a customer, let alone a thief, of it.** Indeed, Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person,* i.e. one who might have been holding "previously paid for store merchandise chosen by him not to be returned," or one holding "non-store merchandise he had erroneously attempted to return to the wrong store." *See Plaintiff's Undisputed Material Fact #8, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have been EITHER "a shopper" OR "a thief" that day [for which Defendant might have some argument for in one direction or the other]. In other words, **it can never legally be assumed, IN EITHER DIRECTION** (i.e. that Plaintiff was either a customer, or he was a thief) just because he was merely located "near" [and thus potentially at one point in time "inside"] the store, **because of how such an argument is simply a false dichotomy.** Moreover, ***EVEN IF*** it could be assumed that Plaintiff had, *in fact*, entered [then exited] the store, **AND** that Defendant had, *in fact*, been "posted up" at its exit, such would ***STILL*** do absolutely nothing to even begin to substantiate that Plaintiff "otherwise carried away any **unpurchased** goods" from the store. This is because when merely carrying out of a store unbagged merchandise located on one's person, "The absence of any indication that the merchandise [is] 'unpurchased' justifies the conclusion of the court that there [is] no reasonable grounds for believing that [a customer] [is] shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985). *See also Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 320 (Mass. 1971); *see also Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) (held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [Plaintiff] had stolen anything" where Defendant "never saw [Plaintiff] anywhere in the store until they were walking out of the store.").

Finally, regarding element (3) of the "shopkeeper's privilege" affirmative defense, Defendant has failed to satisfy this element, as well, due to the **patently unreasonable manner** in which they executed their 10+ minute detention of Plaintiff. "In other words, the qualified privilege under the statute does not give the merchant the right to **embarrass** or **harass** individuals suspected, in public

view of every one, **in a rude manner**." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 12-13 (Miss. 1963). Specifically, Plaintiff's detention involved John Doe calling him a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." His detention also involved John Doe repeatedly calling him a "miserable human being." At one point, all three employees publicly taunted Plaintiff by telling him that it will be "fun" for them to watch the cops "jump him," "tase him," and "fuck him up." Then, toward the end of his detention, Mahmoud said to Plaintiff, "You might be the dumbest motherfucker I ever met in my life." *See Plaintiff's Undisputed Material Facts #11 and #12, above.* Additionally, ***and perhaps more importantly***, were the implicit threats made by Defendant to "jump" Plaintiff "off camera" should he attempt to leave in that direction. While the three Best Buy employees didn't personally use the word "jump" in their correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **they actively chose to not correct him.** This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See Plaintiff's Undisputed Material Facts #14 through #17, above. See more specifically PCMSJ Exhibit #1 from timestamps 10:17 to 10:19, 10:44 to 10:47, and 11:28 to 11:31.* In the end, under the totality of the circumstances, such flagrantly vulgar and inappropriate insults and threats – made in full view and earshot of over 192 people that passed by that day – rendered Defendant's detention of Plaintiff, *even if justified at the outset*, ultimately unlawful due to the **"unreasonable manner"** in which it was executed. No human being deserves to be treated like Plaintiff was that day, *regardless* of whether or not he may have stolen something [which, again, Defendant has failed to provide this Court with any tangible, admissible evidence for, *whatsoever,* that that would have even been – *or not* – the case].

Now, when analyzing "shopkeeper's privilege," Courts have long held that "The test of liability is not based on the store patron's actual guilt or innocence, but rather on the reasonableness of the store employee's action under the circumstances." *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). "And whether reasonable belief is established, is

usually an issue of fact to be determined by the trier of facts from a full and thorough consideration of all of the evidence bearing on the question." *Id.* However, when the facts are not in dispute (as appears to be the situation in Plaintiff's instant case), "reasonable belief," or "probable cause" as Colorado Revised Statutes § 18-4-407 codifies it, "is not a question of fact for the jury, but one of law for the court, to be decided in accordance with the circumstances at the time of the detention." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963).

"A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken." *J. C. Penney Co. v. Cox,* 246 Miss. 1, 10 (Miss. 1963). **"Probable cause," however, "cannot be based on mere belief [ ] that somebody did or did not do something."** *Id.* "The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person **that saw enough to justify [their] belief** that a theft had been made, and that a person was guilty of shoplifting." *Id. See also Mullins by Mullins v. Friend,* 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court's finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff's direction but "admitted to [manager] that she never saw plaintiff conceal anything"). *See also Zenik v. O'Brien,* 137 Conn. 592 (Conn. 1951) ("Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, **no matter how sincere it may be**, is not enough, since it must be based on circumstances which make it reasonable.").

Here, today, in Plaintiff's instant case, Defendant has failed to provide this Court with **LITERALLY ANY EVIDENCE**, *whatsoever*, to support it's affirmative defense of "shopkeeper's privilege." Defendant has not shown that it saw Plaintiff *enter its store*. It has not shown that it saw him *anywhere in its store*. It has not shown that it saw him *shop [or not shop]*. It has not shown that it saw him *take anything off a shelf*. It has not shown that it saw him *pay [or not pay]*. It has not shown that it saw him *conceal [or not conceal] anything on his person*. It has not shown that it saw

him *use [or not use] a plastic bag*. It has not shown that it saw him *leave its store*. It has not shown that it *called the police*. It has not shown that it even *asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place,* let alone that *whatever he had been holding in his hands that day was even store merchandise for which one might have been associated*]. In the end, it is painfully apparent that Defendant has failed to show this Court, *with literally ANY evidence at all,* that it **ever once** saw – be it by way of personal affidavit or by video surveillance otherwise – Plaintiff **do literally anything** "until the confrontation occurred" outside its particular building. **Absolutely ZERO evidence has been provided by the Defendant to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store.** Therefore, "When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than **unfounded naked suspicion**. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything." *Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996). As such, because Defendant completely and wholeheartedly lacked "shopkeeper's privilege" to detain Plaintiff – **by way of failing to satisfy EVEN A SINGLE IOTA of EVEN ONE of its critical elements of its affirmative defense on the subject** – it is indisputably liable for falsely imprisoning him.

II. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

In order to succeed on a claim for Defamation *Per Se*, a Plaintiff must prove that the Defendant "published a defamatory statement concerning him." *See Colorado Civil Jury Instruction 22:4*. A statement is "published" when it is communicated – either orally or in writing – to [and is understood by] some person other than the Plaintiff. *See Colorado Civil Jury Instruction 22:7.* A statement is "defamatory" if it tends to harm the person's reputation by lowering the person in the estimation of at least a substantial and respectable minority of the community. *See Colorado Civil Jury Instruction 22:8.* ***HOWEVER*, accusing someone of being A THIEF, when such accusation is untrue and is overheard and understood by a third person, is defamation**

"actionable *per se.*" Restatement (Second) Of Torts § 570; *Denver Publ'g Co. v. Bueno,* 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.,* 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). "Actionable *per se*" means that without adducing any evidence that he has in fact been harmed by the accusation, the Plaintiff may recover general damages for injury to his reputation. P.H. Winfield, A Text-Book Of The Law Of Tort § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove "special damages" in order to establish a cause of action. **The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed.** 2 Harper et al, supra note 2, § 5.11, at 118. Moreover, while "[a] store manager may have [] a perfect right to question [a] plaintiff whom he suspected of shoplifting . . . the rights and qualified privilege granted by the statute do not clothe the storekeeper with immunity when [the] manager resort[s] to slander. The accusation of theft against [a] plaintiff made in the presence of other persons [is] at the risk of the storekeeper if the suspicion of shoplifting prove[s] baseless." *Chretien v. F.W. Woolworth Company,* 160 So. 2d 854, 856 (La. Ct. App. 1964). In other words, the affirmative defense of privilege is lost if the Plaintiff proves the Defendant "abused the privilege." This can be proven by showing that the statement in question was made "**with knowledge that the statement was false" [or that Defendant acted with reckless disregard for whether the statement was true or false].** *See Colorado Civil Jury Instruction 22:18*.

As laid out in Plaintiff's instant case, Defendant **impermissibly**, **specifically** and **repeatedly** imputed the crime of larceny onto him. Not only did Defendant loudly and rudely call Plaintiff "fucking a thief," *(PCMSJ Exhibit #1 at timestamp 2:30),* it said to him, "I got you concealing, I have you walking out without paying," *(timestamp 4:46),* "You can steal the rest of the day, just not here," *(timestamp 5:36)*, "Go steal the rest of your life away," *(timestamp 10:54)*, and "You know how much we have to do, to deal with people like you, who just come in and steal from us?" *(timestamp 11:05)*. This isn't even counting the **THIRTY EIGHT** times Defendant told Plaintiff, in

one form or another, to "give us our shit back." *See PCMSJ Exhibit #1 at timestamps 0:22, 0:52, 0:58, 1:01, 1:13, 1:27, 1:36, 1:51, 2:01, 2:10, 2:11, 2:16, 2:20, 2:30, 2:33, 2:43, 2:51, 3:31, 3:40, 3:43, 3:55, 4:38, 5:32, 6:00, 6:05, 8:55, 10:14, 10:19, 10:20, 10:22, 10:29, 10:47, 10:48, 11:42, 11:43, 11:45, 11:47, and 11:49.* Additionally, all these implicit *and* explicit accusations of theft **were made in the presence of OVER 192 PEOPLE that Plaintiff counted had walked past he and Defendant that day.** *See Plaintiff's Undisputed Material Fact #20, above.*

Most importantly on this subject*,** is that Defendant made these baseless accusations **"with knowledge that they were false, or with reckless disregard for whether they were true or false."** This is because Defendant **utterly lacked** "shopkeeper's privilege" to **fairly** and **reasonably** believe that Plaintiff had stolen anything from it that day. *See Section I (b), above.* As such, Defendant is indisputably liable for defaming Plaintiff, ***PER SE*, in front of numerous others*, as a "thief."

III. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

In order to succeed on a claim for Assault, a Plaintiff must prove the following elements:

1) The defendant intended to cause an offensive or harmful physical contact with the Plaintiff or intended to place the Plaintiff in apprehension of such contact; and

2) The Defendant placed the Plaintiff in apprehension of immediate physical contact; and

3) That contact [would be, or would appear to be] harmful or offensive.

See Colorado Civil Jury Instruction 20:1.

The term "apprehension" is defined as "a state of mind experienced when a person anticipates immediate harmful or offensive physical contact." *See Colorado Civil Jury Instruction 20:2.*

The phrase "intends to place another in apprehension of physical contact" is defined as when a person either "acts with the purpose of causing apprehension of physical contact," or they "know that such conduct will probably place the other person in apprehension of physical contact." *See Colorado Civil Jury Instruction 20:3.*

Contact [that would be, or would appear to be] "harmful" is defined as contact that

"[would] cause physical pain, injury, illness or emotional distress," and contact [that would be, or would appear to be] "offensive" is defined as contact that "would offend another's reasonable sense of personal dignity." *See Colorado Civil Jury Instruction 20:6.*

Importantly, while "Mere words alone, unless accompanied by an actual act of hostility [does] not justify an assault," *Goldblatt v. Chase,* 121 Colo. 355, 363, 216 P.2d 435, 440 (1950). "words, []accompanied by some act apparently intended to carry the threat into execution, can[] make the actor liable for an assault." *Restatement (Second) of Torts* § 31 (1965).

Regarding the first element, it is indisputable that Defendant specifically ***intended to*** "cause an offensive or harmful physical contact with Plaintiff [or otherwise] place him in apprehension of such contact." This is evidenced by its ***numerous*** THREATS made to "jump" Plaintiff "off camera" should he attempt to leave the area, s*ee Plaintiff's Undisputed Material Facts #14 through #17, above,* **ACCOMPANIED BY** its ***numerous*** PHYSICAL ACTS made to *actively* and *repeatedly* step in front of him in order to *actually* prevent him from leaving said area, s*ee Plaintiff's Undisputed Material Facts #10 and #13, above.* Moreover, while Defendant never personally used the word "jump" in its correspondence with Plaintiff, every single time that Plaintiff used the word "jump" himself, **it actively chose to not correct him.** This "choice to not correct" only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PCMSJ Exhibit #1 from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

Regarding the second element, it is likewise indisputable that Defendant ***actually did*** "place Plaintiff in apprehension of immediate physical contact." This is evidenced by Plaintiff's ***multiple*** statements made [in direct response to Defendant's ***numerous*** threats and physical acts made], of "I don't feel safe leaving now," (*PCMSJ Exhibit #1 at timestamp 9:48),* "Yeah I don't feel like getting jumped off camera," *(timestamp 10:17),* "Like I said I don't feel safe leaving now, *(timestamp 10:44),* and "Like I'm just gonna trust him that he's not gonna jump me," *(timestamp 11:28). See Plaintiff's Undisputed Material Facts #15 through #17, above.*

Regarding the third element, it is equally indisputable that Defendant's THREATS and PHYSICAL ACTS were [or appeared to be] "harmful" or "offensive." This is evidenced by Plaintiff's reluctant decision made to – *even after* Defendant finally left the area – "spend the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would." *See Plaintiff's Undisputed Material Fact #19, above.*

As such, Defendant is indisputably liable for assaulting Plaintiff.

CONCLUSION

Plaintiff has satisfied each and every element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has failed to provide this Court with **any** tangible, admissible facts, *whatsoever*, to even begin to support its **naked and unfounded** affirmative defense of "shopkeeper's privilege" to otherwise lawfully detain him.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
PLAINTIFF'S AFFIDAVIT OF THE EVENT	

COMES NOW that William Montgomery, proceeding *pro se*, respectfully submits to the Court the following Affidavit:

1. My name is WILLIAM MONTGOMERY. I am a United States citizen, and a permanent resident of Denver, CO. I am over the age of 21 years, and am of sound mind. I am the Plaintiff in this action, and I have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify competently to these particular facts and matters. I submit this Affidavit in support of my Response in Opposition to Defendant's Motion for Summary Judgment, in addition to my own Cross-Motion for Summary Judgment.

2. On or about November 25, 2022, at approximately 2:19pm, I was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for my brother.

3. I had been standing on the east side of said building for about five minutes before I was approached by several Best Buy employees.

4. I saw that two of the employees, identified by company name tag as “Mahmoud” and “Shane,” were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this affidavit as “John Doe”].

5. Prior to being approached by Mahmoud, Shane, and John Doe, at no time whatsoever had I ever once met, seen, identify, pass by, or been located anywhere physically near such Best Buy employees on that day of November 25, 2022. Rather, this was the very first time that I had ever become aware as to the very existence of said Best Buy employees, whatsoever, in the first place.

6. Upon approach, Mahmoud told me something to the effect of, "I need my stuff back." I was never asked to "show a receipt" by Mahmoud, Shane, or John Doe.

7. Upon hearing Mahmoud's statement, of which I felt to be an accusation of theft, I discreetly activated my body-worn pen camera, located in my front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by me as "2022.11.25 @ 2.19pm ~ Detained By Best Buy Employees (Plaintiff's Bodycam)" [Exhibit #1]. Later, a transcript of what I personally heard that day was also prepared by me [Exhibit #2].

8. The three Best Buy employees' choice to interact with me took me by surprise, as I had never had any adverse interactions with Best Buy or its employees in the past. That's why I had activated my body-worn pen camera only upon their initial accusing of me.

9. For the next several seconds into our interaction, Mahmoud repeatedly told me, "I'm gonna need that back," while Shane kept telling me, "The cops are coming."

10. At one point Mahmoud told me, "I want what's in your pocket, too. Let me get that shit, man." John Doe also told me, "Fucking touch me, dude, and I will wreck you, I promise you."

11. At about a minute into our interaction, I tried to walk away from where I had been standing, but was told by Mahmoud that, "You're not going anywhere, dude. You're not going anywhere." About a minute after that, John Doe told me, "And you're not bigger than any of us."

12. For the next several minutes I tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented me from doing so. All three Best Buy employees had physically "corralled" me against the building's wall, leaving me with no place to go [without otherwise having to physically touch the employees in order to move past them, but to which I was unable to do for fear that I would be assaulted in return].

13. At one point, John Doe called me a "dumbfuck," followed shortly thereafter with the statement, "You're fucking a thief." I heard these insults and accusations be made in a loud and brash tone, in front of several people walking by who would have also heard them be said to me.

14. Then, for the next several seconds, all three employees began taunting me, telling me that it will be "fun" for them to watch the cops "jump me," "tase me," and "fuck me up."

15. After that, as I continued to try to step around the Best Buy employees, Mahmoud once again told me, "You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here."

16. About a minute after that, John Doe then asked me, "Who you waiting for?" I responded to him by saying that I was "Trying to fucking leave, man." He then replied back to me with the statement, "you're gonna have to go through me, and I'm not having a good day."

17. Eventually, after several more minutes of taunting, path blocking, and theft accusing, Mahmoud asked me, "What do you even got in there?" This question was followed up with John Doe saying to Mahmoud in front of me, "Oh we'll find out soon enough."

18. About a minute after that, John Doe finally told me that I could leave. But then I heard him say to his fellow employees, in front of me, "Or he can run off camera." He then confirmed what he meant by that by telling me, "Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera."

19. I then said to the three Best Buy employees, "I don't feel safe leaving now," after which Mahmoud told me, "You shouldn't," followed by some laughter. John Doe then chimed in and said to me, "I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also."

20. After being told once again by John Doe to "Walk away," I once again responded to the three Best Buy employees by saying, "Yeah I don't feel like getting jumped off camera." Mahmoud replied by saying, "Then give me my stuff, dude." A few second later, after I reaffirmed that "I don't feel safe leaving now," Mahmoud once again followed up by saying, "You'll have zero problems if you hand me what's in your pocket, and what's in your coat."

21. Once again, after being told by Mahmoud of my "chance" to leave, I told him, "Like I'm just gonna trust him that he's not gonna jump me." Mahmoud then responded by saying, "You shouldn't trust him that he's not. You should give me my stuff. That's what you should do."

22. Eventually, after another minute or so, Mahmoud told me to "Have a good one dude. See ya later." All three employees then quickly stepped away from me and proceeded back into the Best Buy building.

23. I then spent the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe I felt that I might still get jumped, off camera, by the three employees who said to me they would. [Throughout that 14 minutes, no cops ever came, either].

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.

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.

26. At no point in time, in my entire life, have I ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of "receipt showing." Nowhere have I ever seen such a policy posted in any Best Buy store, nor spoken to me by any Best Buy employee, nor available for me [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, I still have literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding "receipt showing" [if such a policy even exists, unofficial or not, in the first place].

27. Overall, this experience triggered numerous manifestations of significant mental anguish and emotional distress in me. During this encounter I felt helpless, angry, and frustrated that I could not leave the side of the building. I also became quite shocked and disappointed that I had become, yet again, subjected to another false imprisonment, this time for reasons completely unbeknownst to me. Honestly, I am getting sick and tired of being illegally detained by random strangers who don't care enough to do their jobs correctly. I also felt very embarrassed and humiliated on this occasion after being so quickly, easily, and publicly accused of being a thief. Even more so, I felt severe indignity, as people were willing to bully and threaten me in front of so many other people. I felt like a second class citizen, a degenerate. Somebody, who perhaps just by the way he looks or acts, deserves to be treated a certain way? Unfortunately, this experience has only fueled my state of perpetual apprehensiveness and anxiety whenever I go out in public. I now have a pervasive mistrust in authority, which only gets worse upon each subsequent adverse encounter. I now walk around with a pen camera almost every where I go, just in case I need to activate it. I feel silly having to do this upon every mundane occasion. But I just can't risk not protecting myself should the need arise. As a result, I now suffer from a marked diminishment in quality of life. This is especially true considering that my estranged parents, family, and the courts continue to believe me less and less that actual crimes keep being committed against me. They don't help me anymore. As a result, I have become quite bitter. My relationship with my brother has become strained. I suffer from insomnia as I lay awake at night thinking about my defenses / obtaining justice for the wrongs committed against me. And when I begin to file my cases in civil court, I get victim-shamed and scapegoated for wrongs that *others* have committed against *me!* Ultimately, while I know I must always "stand my ground" when it comes to exercising my rights, my overall interactions with the various merchants I have met across the front range have left me with overwhelming grief, as I have lost all hope in American culture as a result. I always thought "innocent until proven guilty" actually meant something in this country, but evidently it does not. In the end, after I get my justice, I plan on leaving this area to seek out more wholesome cultures and communities elsewhere in the country (if not world). About the only good thing I can think of regarding this particular experience is that it only serves to reinforce the concerns I have raised in my other adverse experiences. Hopefully once people see that each of my incidents are not isolated in nature, and that a larger problem of discrimination <u>*does in fact*</u> exist in this country, then maybe my other cases, and my caseload as a whole, will get the attention that it deserves.

FURTHER AFFIANT SAYETH NAUGHT.

I, WILLIAM MONTGOMERY, do hereby declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed on this, the 19th day of September, 2024.

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

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S AFFIDAVIT OF THE EVENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
Stephanie E. Boutsicaris
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Attorneys for Defendant

William Montgomery
William Montgomery

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	
WILLIAM MONTGOMERY Plaintiff vs. **BEST BUY STORES, L.P.** Defendant	▲ Court Use Only ▲
Attorney Or Party Without Attorney: **William Montgomery** 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 *zoinbergs@gmail.com*	Case Number: **2023CV226** Division: **6** Courtroom: **520**
TRANSCRIPT OF PLAINTIFF'S BODYCAM FOOTAGE OF THE EVENT	

Plaintiff, proceeding *pro se*, respectfully submits to the Court the following transcript, as prepared by himself, of his bodycam footage that he captured at 2:19pm on November 25, 2022:

TRANSCRIPT

0:00 MAHMOUD I'm gonna need that back, my man.

0:01 WILLIAM Don't you fucking touch me.

0:02 MAHMOUD I'm gonna need that back.

0:03 WILLIAM Don't you touch me.

0:04 MAHMOUD I'm gonna need that back.

0:04 SHANE Hey, the cops are coming, bro.

0:05 MAHMOUD Yeah, you can just give it back to us now, and you can leave...

0:09	WILLIAM	Don't touch me.
0:10	MAHMOUD	I'm gonna need that back.
0:11	WILLIAM	Don't touch me.
0:11	MAHMOUD	I'm gonna need that back.
0:13	WILLIAM	Please.
0:13	SHANE	The cops will be here dude, in one second. I already said something.
0:15	MAHMOUD	Yeah, we'll just hang out here till the cops get here. I'll, I'll come with you. You can walk wherever you want, I'll be here.
0:22	SHANE	Or you can just give us our product back, dude, and you can go on your own way.
0:28	MAHMOUD	I want what's in your pocket, too. Let me get that shit, man.
0:43	MAHMOUD	We got all day, man.
0:43	JOHN DOE	Fucking touch me, dude, and I will wreck you, I promise you.
0:46	WILLIAM	So, so I get mad when he tries to touch me...
0:48	SHANE	Alright, dude.
0:49	WILLIAM	...and then you threaten me, when I'm not trying to touch you?
0:51	SHANE	Hell yeah.
0:52	MAHMOUD	You got my shit? Give it back.
0:54	WILLIAM	I'm trying to leave.
0:56	SHANE	Dude, I promise, I promise, bro.
0:57	MAHMOUD	It'll be a bad decision.
0:57	WILLIAM	I'm not gonna touch you, man...
0:58	JOHN DOE	Then give me my shit back.

0:59 WILLIAM ...but if you won't let me leave?

1:01 MAHMOUD Give me my product.

1:04 WILLIAM Okay, so...

1:05 SHANE It's okay, the cops will be right here, bro.

1:08 MAHMOUD You're not going anywhere, dude. You're not going anywhere.

1:12 JOHN DOE [Laughter]

1:13 MAHMOUD Give me my stuff, dude. We're not gonna play this game with you.

1:17 WILLIAM Oh, man.

1:20 SHANE You think it's okay to fucking steal?

1:26 WILLIAM Leave me alone.

1:27 SHANE Give me the product, and I'll leave you alone, you can go on your way, you can go to, go to Walmart, go somewhere else. We got you. I have camera footage already. I got the cops coming. If you want to leave without any issues, then just give me my product. You want an issue, you're gonna get more and more of it, I promise.

1:40 WILLIAM Do you, do you work here?

1:40 JOHN DOE I do. Yeah, we're all here for ya.

1:43 WILLIAM Cool, cool.

1:44 MAHMOUD Yeah, we'll just, we'll hang out with you until you give us your shit, or until the cops show up.

1:47 WILLIAM Where's your, where's your name tag?

1:48 MAHMOUD Fuck off, dude. You're not asking questions, bro. You're giving us our shit, and leaving, or the cops are gonna take you. That's the options you have, so which option do you want to take?

2:01 MAHMOUD It'd be so much easier to just give me my shit, dude, 'cause you're not going anywhere.

2:04 JOHN DOE And you're not bigger than any of us.

2:06 WILLIAM Well I'm not touching you.

2:08 JOHN DOE This is not the day for it.

2:10 MAHMOUD Give me my shit, or you're gonna be right fucking here.

2:11 JOHN DOE Then give me my shit. It's gonna be a long motherfucking day for you.

2:16 MAHMOUD You can give us the shit, and leave.

2:17 SHANE You picked the wrong store. Go pick a different store, try another day buddy.

2:18 JOHN DOE You can leave without incident. Give me my shit, you can walk away, or, you're going to jail, dumbfuck, let's go.

2:28 JOHN DOE Yes, I'm talking to you.

2:30 MAHMOUD Give me my shit.

2:30 JOHN DOE You're fucking a thief. I don't care what you think of me, give me my shit. Keep staring at me you dumb mother, I'm not assaulting you, nor touching you.

2:40 MAHMOUD You're not going anywhere, you're giving us our shit back. You're not leaving.

2:44 JOHN DOE You're not leaving.

2:45 MAHMOUD You're not leaving with our stuff.

2:51 MAHMOUD You can give it to us now, and get the fuck outta here, the cops are on the way. I would love to see you get arrested, don't get me wrong.

2:57 JOHN DOE We'll just wait until they jump him.

2:57 MAHMOUD Yeah.

2:58 JOHN DOE I'll let him get tased.

2:59 SHANE I like when they put handcuffs on you, and they put you on the ground.

3:01 MAHMOUD That'll be fun for us. Yeah.

3:04 JOHN DOE 'Cause I can't tell you to touch me, so.

3:07	MAHMOUD	You're not going anywhere, bro. He's not going anywhere.
3:12	WILLIAM	I ain't touching you, man.
3:12	JOHN DOE	Yeah, I know you will.
3:13	MAHMOUD	Then you're not going anywhere.
3:13	JOHN DOE	Then you're gonna be right there.
3:17	MAHMOUD	Then you're gonna stay right there until the cops come here and fuck you up. That's your options.
3:20	JOHN DOE	I don't give a fuck what they do to you. They don't either.
3:29	SHANE	You can make it easy, dude, just give me my stuff that you took.
3:34	MAHMOUD	You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here. So are you gonna give me my product, and leave, or are you gonna wait until the cops show up? We'll just make it easy, it's two options, which one are you taking?
3:51	MAHMOUD	Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit.
4:02	SHANE	Alright.
4:03	MAHMOUD	You're not going anywhere, bro.
4:27	MAHMOUD	You're making the wrong decision, bro. You're making the wrong decision.
4:36	JOHN DOE	Who you waiting for?
4:37	WILLIAM	Trying to fucking leave, man.
4:38	MAHMOUD	Then give me my shit and you can leave!
4:41	JOHN DOE	Otherwise, you're gonna have to go through me, and I'm not having a good day.
4:46	SHANE	Or, when PD gets here, 'cause again, I have everything, I got a video, I got it on video, I got you concealing, I have you walking out without paying, so.

4:53 MAHMOUD I'm gonna tell you this man, it's a bad day to test us. You picked a bad day to test us. So give me my stuff.

4:59 SHANE You can go to, you can get a ticket, go to possibly go to jail, possibly have police officers do that, or you can just put the stuff on the trashcan, you can walk away.

5:11 MAHMOUD You're not moving, dude. You're where you're gonna be until the cops get here. I don't know how else to explain it to you.

5:25 SHANE I know it sounded like a good idea to steal today, but it's not. So again, if you give me my product, I promise, you can go to Walmart, you can go different, somewhere else, but...

5:36 JOHN DOE You can steal the rest of the day, just not here. Hey, hey Dustin what's the ETA would you say, man?

5:54 MAHMOUD Alright, I guess we're waiting?

5:55 JOHN DOE Yep, we'll wait it out.

5:59 WILLIAM Well I don't wanna wait.

6:00 MAHMOUD Well then give me my stuff, dude. You're not moving, man. Give me my stuff.

6:06 JOHN DOE This is the easiest decision of your entire life, right now, you can walk, within that 30 seconds before they show up here, or when they get here, they're not going to play, especially if we gave you a choice, and you didn't take it. They're going to call you a dumbfuck also, and then they're going to throw you on the ground, and they may tase you. I've watched it happen at this location, countless times.

6:28 MAHMOUD That's alright, he doesn't want to [inaudible] any of us, he can find out.

6:30 JOHN DOE They don't play around.

6:31 MAHMOUD This is nice little break for us, anyway.

6:34 SHANE I like the weather.

6:36 WILLIAM It is pretty nice today.

6:39 JOHN DOE [Laughter]

7:25 MAHMOUD You're not going anywhere, dude.

7:58 MAHMOUD Let me see the shit you grabbed, dude. What do you even got in there?

8:04 MAHMOUD Okay.

8:06 JOHN DOE Oh we'll find out soon enough.

8:08 MAHMOUD Yeah. We've had some dumb ones, we haven't had people stand here and wait for us to come out and get 'em though, so thanks for doing that, you make my job easier.

8:47 MAHMOUD You're pretty slow, too, dude.

8:50 WILLIAM Well I ain't gonna charge you.

8:51 MAHMOUD Okay, then you're gonna stand there until the cops show up. Or you can just give me my stuff, and leave. What do you think is gonna happen, like can you walk me through your thought process? Like what's your best case scenario, you think you're just gonna walk away and we're just gonna get tired and leave, or what?

9:08 MAHMOUD I'm asking you a question.

9:10 JOHN DOE I don't know if he has a thought process. That's probably part of the problem.

9:17 MAHMOUD I want my stuff.

9:23 JOHN DOE Actually, just let him leave, I'll wait. Or he can run off camera. Walk away.

9:30 WILLIAM You're gonna make me, let me leave?

9:31 JOHN DOE Yeah, oh yeah, walk away.

9:32 WILLIAM You're gonna let me leave now?

9:33 JOHN DOE Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera.

9:38 WILLIAM Aww.

9:40 JOHN DOE Yeah, walk away dude.

9:41 WILLIAM So you're threatening me?

9:42 JOHN DOE No, no no no. Walk away. Have a great day. We'll stay right out of your way.

9:48 WILLIAM I don't feel safe leaving now.

9:50 MAHMOUD You shouldn't. [Laughter]

9:52 JOHN DOE I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also.

9:59 MAHMOUD That's what happens.

10:07 JOHN DOE Walk away.

10:08 MAHMOUD I'm giving you space, bro, here you go.

10:10 WILLIAM Did you just hear him?

10:11 MAHMOUD I didn't hear shit. All I know is that you have my stuff, and you're not giving it back.

10:17 WILLIAM Yeah I don't feel like getting jumped off camera.

10:19 MAHMOUD Then give me my stuff, dude.

10:20 JOHN DOE Give him his stuff.

10:22 MAHMOUD You have something in your pocket, you have something in your coat, just give it to me, and you can leave.

10:27 JOHN DOE You can leave, anyway. I don't care. Or you can give it to me. You give me a reason. Have a good day!

10:37 MAHMOUD What's up, dude?

10:39 JOHN DOE [Inaudible] fucked.

10:44 WILLIAM Like I said I don't feel safe leaving now.

10:47 MAHMOUD Then give me my shit.

10:47 JOHN DOE Give me my shit.

10:48 MAHMOUD You'll have zero problems if you hand me what's in your pocket, and what's in your coat.

10:54 JOHN DOE You can just walk away. Go on to go steal the rest of your life away, you miserable human. Do you know how hard people have to work, to be able to afford things like that? I mean, you know how much we have to do, to deal with people like you, who just come in and steal from us? What a miserable human being. Have a great day! See you later!

11:27 MAHMOUD There's are your chance.

11:28 WILLIAM Like I'm just gonna trust him that he's not gonna jump me.

11:31 MAHMOUD You shouldn't trust him that he's not. You should give me my stuff. That's what you should do.

11:37 JOHN DOE That's what I would do.

11:38 WILLIAM Get away from me dude.

11:38 JOHN DOE No, I'm staying right here. How about now? Give me my stuff.

11:43 MAHMOUD Just give us our stuff.

11:44 WILLIAM Don't...

11:45 JOHN DOE Would you like to give me my stuff? Would you like to give me my stuff? How about now? Would you like to give me my stuff? It's alright, we'll wait all day. We'll see where you go. I don't have anywhere to be. I have a job.

12:08 MAHMOUD You might be the dumbest motherfucker I ever met in my life. Just give us our shit.

12:15 MAHMOUD Have a good one dude. See ya later.

12:16 – 26:16 *William spends the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he feels that he may still get jumped, off camera, by the three employees who said to him they would.*

CONCLUSION

Respectfully submitted on this, the 19th day of September, 2024.

William Montgomery

William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **TRANSCRIPT OF PLAINTIFF'S BODYCAM FOOTAGE OF THE EVENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

Lori K. Bell
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Attorneys for Defendant

William Montgomery
William Montgomery

Public Records Menu

- Home
- FAQs
- Submit a Request
- My Records Center
- Public Records Archive
- Search by Reference Number

For more information on submitting a Public Records Request call the City Clerk's Office at 303-658-2161.

For general service questions **other than public records**, please visit Access Westminster.

FAQs

See All FAQs

- Purchase a Traffic Accident Report
- Is there a fee?
- What is a public record?
- Need more

View File(s) | View Message(s)

Request Type:	Police Records Request
Contact E-Mail:	zoinbergs@gmail.com
Reference No:	Z000422-090424
Status:	Full Release
Balance Due:	$0.00
Payments:	$0.00

DOWNLOAD ALL

Files:	UPLOAD DATE	
	09/10/2024	WPD2022-103788.pdf
	09/10/2024	WPD2022-103786.pdf

Police Records Request

24-72-301 Colorado Criminal Justice Records Act
All records requests are processed in accordance with the Colorado Criminal Justice Records Act (CCJRA). Some reports may not be released or may have redactions as required by law.

24-72-305.5 Access to Records - denial by custodian - use of records to obtain information for solicitation.
Records of Official Actions and Criminal Justice Records and the names, addresses, telephone numbers and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The Official custodian shall deny any person access to records of Official Actions and Criminal Justice Records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

24-72-309 Violation - penalty.
Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a

submitting a Public Records Request?

Can I get the fees waived?

imprisonment.

Are You Representing An Agency?:
No

Type of Report Requested:
Address Search / Calls for Service
Incident/Offense Report

PLEASE NOTE
The following information is necessary to process your request. Please fill out all sections. Colorado law and department procedures require you identify the record requested by supplying information that is specific enough to identify the exact record/person/report sought.

Case Report Number or Event Number:

Date of Incident:
11/25/2022

Location of Incident:
Best Buy @ 9369 Sheridan Blvd, Westminster, CO, 80031

Subject Involved:
Last Name, First Name, Middle Initial

Date of Birth:

Describe the Record(s) Requested:
Greetings! I am looking to obtain a record of all calls for service originating from this location on November 25, 2022. Specifically, I am looking for any calls for service that any Best Buy employees may have made, that might show up as a "shoplifting" incident, that might have been called in by said employees (if they even made such a call in the first place) and to which would have likely been made by them around 2:19pm that day. Ultimately, if no such calls for service were made on the date, around that time, an "empty" record report showing that no such calls were made on that date, around that time, is what I am alternatively seeking. Thanks!

Please be specific with your request to narrow our search and respond to you quickly and efficiently.

Preferred Method to Receive Records:
Electronic via Records Center

Acknowledgment
I have read the statute above and do hereby affirm and attest that the records requested by me shall not be used for the direct solicitation of business for pecuniary gain and that the information obtained in the reports requested and/or copies of said reports shall not be further disseminated by me except for as allowed by law.

Type Your Name To Sign:
William Montgomery

New Message | ✖ Return to List

Messages 3 | Print Messages (PDF)

On 9/10/2024 8:42:09 AM, Westminster CORA Request wrote:

Subject: [Records Center] Police Records Request :: Z000422-090424
Body:
Attached is the completed calls for service that you requested last week.
Please note, we usually charge $30.00 per hour for redaction on requests, but since there was only 2 calls for service and no redactions necessary I am not adding the charge to this request.

Thank you
Dawn Neelands

On 9/4/2024 5:22:26 PM, Westminster CORA Request wrote:

On 9/4/2024 5:22:26 PM, William Montgomery wrote:

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PCMSJ Exhibit #2.04

CAD Incident Number	Case Number
WPD2022103786	

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Location	Commonplace Name	Beat
9369 N SHERIDAN BLVD Westminster, CO 80031	**BEST BUY**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:14**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **471** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched:	Unit Arrived:	Unit Cleared:
11/25/2022 08:14	**11/25/2022 08:14**	**11/25/2022 08:15**

Call Comments

Location: BEST BUY

11/25/2022 8:15:11 AM, Performed By: TS

Comment: [1] 131 - C4

Westminster Police Department
Call For Service Detail Report

Case No. **2023CV226**
PCMSJ Exhibit #2.05

CAD Incident Number	Case Number
WPD2022103788	

Call Information

Priority Code	Call Type	Date/Time Call Was Taken	Date/Time Call Was Closed
OI Low	**OI - Extra Patrol PD**	**11/25/2022 08:15**	**11/25/2022 08:33**

Call Location	Commonplace Name	Beat
9369 N Sheridan Blvd Westminster, CO 80031	**Best Buy**	**30**

Date/Time First Unit Dispatched	Date/Time First Unit Enroute	Date/Time First Unit Arrived
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:15**

Call Taking Employee Name	Caller's Phone Number	Call Disposition(s)
TS		**P01 - No Report**

Responding Units

Unit Call Sign: **131** (Primary Unit) Unit Employee Name(s): **244170::Spehar, Tanner**

Unit Dispatched	Unit Arrived	Unit Cleared
11/25/2022 08:15	**11/25/2022 08:15**	**11/25/2022 08:33**

Person(s) Involved

Last Name	First Name	Phone Number
Herring	**Justin**	

Vehicle(s) Involved

License Plate	Plate State	Year	Make	Model	Color
AXDZ04	**CO**	**2005**	**Chevrolet**	**Silverado**	**White**
BGC010	**CO**				

Call Comments

Location: Best Buy

11/25/2022 8:19:00 AM, Performed By: TS

Comment: [1] [Query] 131, QP Combo Query: USRID/2061.LIC/AXDZ04.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:22:57 AM, Performed By: TS

Comment: [2] [Query] 131, QP Combo Query: USRID/2061.LIC/BGC010.LIS/CO.LIT/.LIY/.DST1/CO.

11/25/2022 8:33:27 AM, Performed By: TS

Comment: [3] 131 - C4

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.: 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
DEFENDANT BEST BUY, L.P.'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT	

Defendant, Best Buy Stores L.P. ("Best Buy"), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its Response to Plaintiff's Cross Motion for Summary Judgment, as follows:

INTRODUCTION

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff's factual assertions by way of affidavit. *See, Scott v. Harris,* 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party's version of events when

contradicted by video evidence). The first video, **Ex. L,** demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings with other companies,[1] demonstrates Plaintiff's modus operandi[2] – to engage in behavior that raises suspicion of shoplifting,[3] to get detained, and to not show his receipts[4] or take any other action to end the detention in order to test his perceived "rights."[5] Based upon this video, combined with the 29 pages of receipts showing Plaintiff's fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable questionable of material fact that the subject incident followed Plaintiff's modus operandi, which he has previously executed a plethora of times. **Ex. N.** Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the "shopkeepers' privilege" to detain him to investigate the same created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned any stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing

[1] **Ex. A-K.**
[2] "That's the crux of my whole sting operation!" **Ex. M,** 5:55.
[3] **Ex. M,** 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).
[4] Now I don't show my receipt everywhere I shop." **Ex. M,** approximately 1:25.
[5] "Refusing to show a receipt is just a refusal to a consent to being searched. Cops don't get to use to bootstrap with that. Merchants don't either." **Ex. M,** 5:40; "By them asking [to see a receipt], which they have a right to do, you have the right say no." **Ex. M;** 8:09.

unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See, Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).*Montgomery v. Walmart, Inc.,* No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

Response to Plaintiff's Statement of Undisputed Material Facts

1. Defendant Best Buy denies Plaintiff's description of the events. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19). Defendant Best Buy notes that during the 29-minute video produced by Plaintiff, his brother does not appear. **Exh. 1**, to PCMSJ (video identified by Plaintiff).

2. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N,** p. 18-19 (DEF_0000018-19).

3. For purposes of this Motion, only, Defendant will not dispute that "Shane," Mahmoud," and a third employee (James Robinson) encountered Plaintiff outside of the Best Buy Store.

4. Plaintiff's statements contained in paragraph 4 and nonsensical and confusing. However, the receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV **Ex. N,** p. 18-19 (DEF_0000018-19). While in the Best Buy Store, Plaintiff was observed placing JLab earbuds in his pocket, declining to produce a receipt at the door and exiting the store. **Exh. P** Affidavit of Mahmoud Abu-Shaweesh.

5. Admitted, in part. The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud. See **Exh. 1 to PCMSJ**. However, Plaintiff was asked to show a receipt inside of the store. **Exh. P** (Affidavit of Mahmoud Abu-Shawessh).

6. Defendant does not dispute the contents of the video recoding at **Exh. 1**.

7. Defendant denies that Plaintiff was surprised at being contacted by Best Buy employees. Plaintiff has had numerous encounters with Best Buy stores and its employees. In particular, on the day of the subject encounter, he made nine purchases at three Best Buy stores before arriving at the subject store and then proceeded to four additional Best Buy stores to make five more purchases of the same or similar products. Plaintiff travelled a total of 125 miles visiting various Best Buy stores, in furtherance of his modus operandi. **Exh. N, O** (Map of Plaintiff's travels on November 25, 2022, and purchases at each location).

8. Denied. Plaintiff's alleged facts are speculative and confusing. Plaintiff was observed by Mahmoud Abu-Shaweesh removing JLab earbuds from the display and placing them in his pocket. **Exh. P.** Further, receipts demonstrate that Plaintiff was in fact, in the store, prior to the encounter, at 2:20pm and made a purchase of a Chromecast with Google TV. **Ex. N,** p. 18-19 (DEF_0000018-19).

9. Defendant does not dispute the contents of the video.

10. Denied. See **Exh. 1**.

11. Defendant does not dispute the contents of the video.

12. Defendant does not dispute the contents of the video.

13. Defendant does not dispute the contents of the video.

14. Defendant Best Buy admits that after being told that officers had been contacted, Plaintiff ended the encounter and returned to the store. Regarding the remaining alleged facts, Best Buy does not dispute the contents of the video.

15. Defendant does not dispute the contents of the video.

16. Defendant does not dispute the contents of the video.

17. Defendant does not dispute the contents of the video.

18. Defendant does not dispute the contents of the video.

19. Defendant does not dispute the contents of the video.

20. Defendant can neither admit nor deny the allegation regarding the number of people Plaintiff counted.

21. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

22. Denied. Plaintiff was observed by Mahmoud Abu-Shaweesh placing JLab earbuds in his pocket. **Exh. P.**

23. Plaintiff's allegations are statements of opinion rather than fact. As such, the Court should find in favor of Defendant on Fact No. 23 and hold that there is no genuine issue of fact. *See,* C.R.C.P. 56(e).

24. Denied. Defendant Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols. See **Exh. 2 to Plaintiffs' PCMSJ**.

25. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 83.6 miles

to do so. **Ex. N,** p. 18-29; **Ex. O.** He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N,** p. 19, 23, 27. Further, prior to the encounter at issue herein, Plaintiff made six similar purchases and two identical purchases at three other Best Buy Stores. See **Exh. N** and **Exh. O** (Map of Plaintiff's travels on November 25, 2022 and purchases at each location).

Defendant's Additional Undisputed Material Facts

26. Plaintiff was present inside the Best Buy store located at 9369 Sheridan Blvd., Westminster, CO 80031 ("store") on November 25, 2022, the date of the incident, where he purchased Chromecast with Google TV. **Ex. N, p. 18-19** (Plaintiff's store receipts dated November 25, 2022).

27. Plaintiff has a long history of attempting to "sting" stores "so he can sue them for false arrest." **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

28. Plaintiff's modus operandi is to buy or appear to steal an item[s] from a store; not place the item[s] in a bag; all of which he knows is likely to provoke a suspicion that he has stolen and lead to his detention or arrest; and to not take any reasonable action such as show a receipt, produce the item[s] and/or otherwise prove that he owns the item to end the detention or arrest. **Ex. R** (youtube video) and **Ex. K ¶2 to Best Buy's MSJ**.

29. On the date of the incident, Best Buy employee, Mahmoud, observed Plaintiff inside the store and observed him to appear to steal store merchandise by placing it in his pocket and walking out of the store without paying for it. **Exh. P.**

30. After Mahmoud Abu-Shaweesh and other employees, Shane Rusch and James Robinson, stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store

merchandise. Plaintiff never showed a receipt for merchandise upon exiting the store and did not return the merchandise when asked to do so.

31. Plaintiff also did not take any other reasonable action, such as proving his pockets were empty and/or proving whatever was in his pockets belonged to him, that would have ended the detention because it was his intent to provoke to the detention.

32. Plaintiff was not damaged by any derogatory allegations related to the belief that he stole from the store because Plaintiff intentionally created the impression that he had stolen from the store. See, **Exh. P and R.**

33. During the subject incident, no employees of Best Buy ever touched Plaintiff.

Exh. 1.

RESPONSE TO ARGUMENT

A. Plaintiff Cannot Prove False Imprisonment as a Matter of Law Because He Intentionally Provoked the Detention and Knew of a Way to Escape That Would Not Cause an Unreasonable Risk of Harm to Him.

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the "facts are undisputed and reasonable minds can draw but one inference from them," the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad undisputed material facts, including but not limited to Plaintiff's YouTube video footage of the subject incident and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed Courts that indisputably prove that Plaintiff intended, *inter alia,* to provoke the detention in the subject incident. Best Buy's Additional Undisputed Material Facts ("AUMF"), nos. 2-3. Further, because Plaintiff intended to provoke the detention, once the detention occurred, he took no reasonable

action such as showing his receipts from the store that he undeniably possessed, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. Best Buy's AUMF, nos. 26, 27, 28 and 31.

As such, Plaintiff cannot prove two elements of his cause of action for False Imprisonment and he is not entitled to summary judgment regarding the same: 1) Best Buy did not restrict Plaintiff's freedom of movement, as this can only happen when Plaintiff "does not know anyway to escape without causing an unreasonable risk of harm to himself;" (CJI-21:2) and 2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention i.e., intended to be in one place for a period of time. *Id.*

B. Defendant is Entitled to The Shopkeeper's Privilege Because Plaintiff Intended to Create the Appearance That He Had Stolen From the Store, He Did Create Such Appearance and Plaintiff Admits the Detention was for Less Than 10 Minutes.

Where the evidence is not in dispute, the Court shall determine as a matter of law that Best Buy's employees "acted in good faith and upon probable cause based upon reasonable grounds" in their detention of Plaintiff pursuant to the Shopkeeper's Privilege. *J.S. Dillon & Sons Stores Co. v. Carrington*, 455 P.2d 201, 204 (CO 1969). In the instant case, as set forth above, the facts are undisputed that Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store. Best Buy's AUMF, nos. 27-28. Furthermore, Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen; Mahmoud observed Plaintiff take store merchandise (directly and on camera), place it in his pocket and leave the store without showing a receipt when requesting or attempting to pay for it.[6] Best

[6] Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets. Plaintiff's Undisputed Material Fact, no. 8, pg. 5.

Buy's AUMF, no. 29. As such, under the undisputed material facts of this case, it can and should be decided as a matter of law that Best Buy's employees acted in good faith and had probable cause based upon reasonable grounds to believe that Plaintiff concealed upon his person unpurchased goods and/or otherwise carried away unpurchased goods – an element of the Shopkeeper's Privilege. C.R.S 18-4-407.

In regard to the other elements of the Shopkeeper's Privilege, Plaintiff has admitted that the individuals who detained him were Best Buy employees. Plaintiff's Cross-MSJ, pg. 11, ¶6. Further, although Plaintiff takes false umbrage at some of the statements made by the Best Buy employees during his detention, Plaintiff admits that he was detained less than ten (10) minutes and that the interaction ended with Mahmoud telling him to "Have a good one dude. See ya later." Plaintiff's Undisputed Material Facts, no. 18, pg. 8. Plaintiff also does not allege any physical violence or that he was even touched during the detention. As such, the undisputed facts demonstrate that Best Buy detained and questioned the Plaintiff in a reasonable manner for the purpose of determining whether the Plaintiff committed theft – the last element of the Shopkeeper's Privilege. C.R.S 18-4-407. As such, Plaintiff is not entitled to summary judgment on his cause of action for False Imprisonment and it should be dismissed.

C. Plaintiff Cannot Prove Defamation For Being Called a Thief or Words to That Effect When His Sting Was Executed With The Intention That He Appear To Be a Thief and He Published a Video Wherein He Brags About the Sting.

In regard to Plaintiff's cause of action for Defamation Per Se, Plaintiff cannot prove that calling him a thief is defamatory under the circumstances; he can not prove any negligence on the part of Best Buy's employees in making such a statement; and he cannot prove actionability of the

statement irrespective of special damages. *Han Ye Lee v. Colorado Times, Inc.*, 222 P.3d 957, 961(Colo. App. 2009)(listing the elements for defamation). As set forth above, Plaintiff created an intentional sting whereby he would cause employees of shop owners such as Best Buy to think he stole and cause them to detain him. Best Buy's AUMF, nos. 27-28. Indeed, Plaintiff posted a YouTube video wherein he bragged of his sting. Best Buy's AUMF, nos. 27-28. On the day of the subject incident, he then executed his sting once again, successfully causing a Best Buy employee to believe he stole. Best Buy's AUMF, no. 29. Under these circumstances, it is not defamatory to call Plaintiff a thief or make statements of a similar ilk.

Additionally, Plaintiff cannot prove any fault on the part of the Best Buy employees, including negligence, as Plaintiff *intended* that the Best Buy employees think he stole from the store. Best Buy's AUMF, nos. 27-28. Finally, even assuming *arguendo* that calling someone a thief when untrue is actionable *per se* as Plaintiff argues (Plaintiff's Cross MSJ, pg. 17-18), it is not actionable *per se* in regard to Plaintiff because, as part of his sting, he wants others to believe he is a thief and he brags about convincing others that he is a thief in his YouTube video. Best Buy's AUMF, nos. 27-28. As such, Plaintiff is not entitled to summary judgment on his cause of action for Defamation *Per Se* and it should be dismissed.

D. Plaintiff Cannot Meet Any of The Elements of Assault Where Plaintiff Admits Defendants Never Threatened to Harm Him and Plaintiff Intentionally Did Not End the Detention.

Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to "jump" him they merely did not correct him when he used the word "jump." Plaintiff's Cross MSJ, pg. 20, ¶3. Further, clearly Plaintiff was not placed in "apprehension of immediate physical contact"

wherein the subject incident was a sting he was carrying out and one that he had carried out almost innumerous times before. Best Buy's AUMF, nos. 27-28. In addition, as argued *supra,* if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not. Best Buy's AUMF, no. 31. As such, Plaintiff is not entitled to summary judgment on his cause of action for Assault and it should be dismissed.

CONCLUSION

WHEREFORE for all of the reasons set forth above, Defendant Best Buy, L.P. respectfully requests that the Court deny Plaintiff' Cross Motion for Summary Judgment in its entirety, along with any other relief deemed appropriate by the Court.

Respectfully submitted October 10, 2024.

MONTGOMERY | AMATUZIO

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

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on October 10, 2024 a true and correct copy of **DEFENDANT BEST BUY, L.P.'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT** 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/Jaime L. Gress
Jaime L. Gress, Paralegal

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

Plaintiff, proceeding *pro se*, hereby submits to the Court his AMENDED REPLY to Defendant's RESPONSE to his CROSS-MSJ, and in support thereof, states as follows:

INTRODUCTION

Defendant has frantically supplied this Court with nothing but **purely conclusory statements, categorically inadmissible hearsay,** and **blatant contradictions** to support its utterly unsubstantiated position that it is somehow not liable for its actions in the matter. However, *as will quickly be seen,* **literally nothing** that Defendant has said or submitted has any merit *whatsoever,* while Plaintiff has provided *more than sufficient* evidence and argument to fairly and reasonably **GRANT** his C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S UNDISPUTED MATERIAL FACTS

To the extent that Plaintiff fails to respond to every allegation in Defendant's

RESPONSE brief, Plaintiff denies any allegations not explicitly admitted herein.

1. In a desperate attempt to refute *Fact #1* of Plaintiff's Undisputed Material Facts, Defendant has now submitted to the Court a series of receipts, purportedly pulled from its records, one of which *(Def's Exhibit N, pages 18-19)* purportedly establishes that Plaintiff "was in the store," "at 2:20pm," and "made a purchase of Chromecast with Google TV." ***However,*** said receipt **DOES NOT ACTUALLY ESTABLISH** that any of said "facts" to which Defendant negligently argues are true. First, a receipt showing that a particular purchase is associated with a particular account *only establishes that **some** person made that purchase, not actually **who** made it.* Therefore, **anybody who Plaintiff provides authorization to use his credit and debit cards on his behalf,** *see Plaintiff's Second Affidavit (herein "PSA") at ¶ 2,* could have *just as easily* made the associated purchase that day, as Plaintiff.[1] Next, Defendant ***never once*** identified what Plaintiff held in his hands [or had in his pockets] that day, either. *See PCMSJ Exhibit #1 at timestamp 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave.").* Therefore, it is still ***wholly unknown*** if whatever Plaintiff possessed was indeed a "Chromecast with Google TV." Next, Defendant's only purported "evidence" now supplied in this matter – Mahmoud Abu-Shaweesh's affidavit – is **completely bereft** of any mention whatsoever that the employee had observed Plaintiff pay for any particular item [i.e. a "Chromecast with Google TV"] at any particular register. Finally, ***and of the utmost critical importance,*** the entirety of Defendant's Exhibit N is **CATEGORICALLY INADMISSIBLE HEARSAY,** as it fails to be "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." *Henderson v. Master Klean Janitorial,* 70 P.3d 612, 617 (Colo. App. 2003). *See also C.R.C.P. 56(e),*

1 Best Buy has an electronic transaction system in place whereby if a particular credit or debit card is used to pay for a purchase, and that credit or debit card is already linked to a registered Best Buy account, that purchase is then automatically associated with that particular account [and any receipt, either emailed or printed, is then drafted to reflect that particular association]. As such, the receipt **only** shows the associated Best Buy account holder's name on it, **not** the actual person who swipes the credit or debit card (which therefore could be ***anybody*** who the account holder authorizes to swipe it on their behalf). *See PSA at ¶ 3.*

CRE 803(6), and CRE 902(11). Therefore, Defendant has ***STILL*** failed to establish that Plaintiff "was [even] in the store" that day of November 25, 2022, ***let alone*** that he "made a purchase of Chromecast with Google TV." As such, the Court should find in favor of Plaintiff on *Fact #1*.

2. For the same reasons as above, the Court should find in favor of Plaintiff on *Fact #2.*

3. Defendant admitted to Plaintiff's *Fact #3*. Thus, there is no genuine issue of fact.

4. Defendant attempts to refute Plaintiff's *Fact #4* by submitting to the Court an affidavit prepared by Mahmoud Abu-Shaweesh. This affidavit, however, **blatantly contradicts** Plaintiff's video evidence in the record – namely his pen camera footage of the event. *See PCMSJ Exhibit #1.* "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, 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." *Scott v. Harris,* 550 U.S. 372, 380 (2007).

First, Mahmoud claims that he "observed a gentleman, now known to me as William Montgomery, remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store." *Def's Exhibit P at ¶ 4.* However, this claim **blatantly contradicts** *numerous* facts already established by Plaintiff's video. One, Mahmoud states that Plaintiff was "wait[ing] for us to come out and get 'em." *PCMSJ Exhibit #1 at timestamp 8:08.* Here, Mahmoud's use of the term "wait[ing]" indicates that he did not **follow** Plaintiff out of the store after purportedly personally observing him steal some JLab headphones/earbuds "immediately" prior to.[2] This **strains credulity** for an Assistant Manager of a $20 billion dollar multinational company to do. Such a high-ranking employee would presumably be aware of his own loss prevention policy which customarily requires a merchant [pursuant to shopkeeper's privilege] to maintain **uninterrupted** visual contact of a suspected shoplifter in order to [lawfully] detain them. Moreover, the act of an assistant manager purportedly ***personally*** observing a suspect steal, ***not*** *immediately follow him out of the*

2 It is actually ***wholly irrelevant*** whether Plaintiff was "waiting on the side of the Best Buy building" for *less than a minute* [as Defendant argues] or *five full minutes* [as Plaintiff argues], as the term "waiting" unambiguously refers to an act that is **mutually exclusive** from the act of "being followed out by somebody."

store, but then all of a sudden, mere moments later, ***change his mind entirely*** *to then meet up with the suspect right outside the store*, **strains even more credulity.** Two, throughout his entire 12 minute confrontation with Plaintiff, Mahmoud only mentions wanting to recover the contents of Plaintiffs pocket ***three whole times*.** See *PCMSJ Exhibit #1 at timestamps 0:28, 10:22, and 10:48.* Meanwhile, he mentions wanting to recover what Plaintiff held in his hands **a whopping 31 times.** *See PCMSJ Exhibit #1 at timestamps 0:00, 0:02, 0:04, 0:05, 0:10, 0:11, 0:52, 1:01, 1:13, 1:44, 1:48, 2:01, 2:10, 2:16, 2:30, 2:40, 2:45, 2:51, 3:34, 3:51, 4:38, 4:53, 6:00, 8:51, 9:17, 10:11, 10:19, 10:47, 11:31, 11:43, and 12:08.* Thus, it **strains credulity** that an assistant manager would be ***so much more interested*** in recovering merchandise that he admittedly [by way of his own affidavit] ***did not*** observe Plaintiff walk out of the store with, than merchandise that he purportedly ***did*** observe him walk out with.[3] Indeed, Mahmoud even began his conversation with Plaintiff by using the word "it" [a singular term] to describe what he wanted to recover [i.e. what he presumably noticed Plaintiff holding in his hands upon first confronting him], **which meant that he wasn't even interested in the contents of Plaintiff's pocket** until later on in the conversation. *See PCMSJ Exhibit #1 at timestamp 0:05.* Then, when Mahmoud finally ***does*** mention Plaintiff's pocket, he only uses the word "too" to describe its contents, **which meant that such contents weren't even the primary reason for the confrontation** in the first place. *See PCMSJ Exhibit #1 at timestamp 0:28.* **This is just not the typical, believable, *or even plausible* behavior of an assistant manager** who purportedly *personally* observes a shoplifting suspect steal something from its store. Three, throughout Plaintiff's entire 12 minute detention, Mahmoud ***never once*** mentions to him that he observed him place something [or things] into his pocket. It **strains credulity** that an assistant manager would not let a shoplifting suspect know right away how surely he got caught, especially when another employee freely offers a similar [utterly unsubstantiated of course] explanation. *See PCMSJ Exhibit #1 at timestamp 4:46.*

3 Most shockingly here, as the video incontrovertibly shows, is that Mahmoud **didn't even bother to use the word "pocket" for nearly ten consecutive minutes of the encounter.** *See PCMSJ Exhibit #1 from timestamp 0:28 to 10:22.*

Four, Mahmoud, **by way of his very own captured statements,** ***already admitted*** that he didn't *even remotely* know the identity of *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets]. *See PCMSJ Exhibit #1 at timestamps 0:28 ("I want what's in your pocket, too."), 7:58 ("Let me see the shit you grabbed, dude. What do you even got in there?"), 10:22 ("You have something in your pocket, you have something in your coat, just give it to me, and you can leave."), and 10:48 ("You'll have zero problems if you hand me what's in your pocket, and what's in your coat.").* Considering that Plaintiff's video incontrovertibly shows that he ***never once*** handed anything held in his hands over to Mahmoud, his fellow employees, or the police [let alone emptied his pockets in front of them], Mahmoud never learned identity of Plaintiff's possessions, and therefore, **would have never identified them as "JLab headphones/earbuds."** Moreover, it **strains credulity** that Mahmoud would have identified Plaintiff's possessions as "JLab headphones/earbuds" *from afar,* either, by way of having purportedly observed him "on the store security video" as he claims next in his affidavit. As such, the entirety of ¶ 4 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that he "observed the same activity on the store security video." *Def's Exhibit P at ¶ 5.* First, Plaintiff was told during his detention that Best Buy had ***already*** [purportedly] observed him "on video" shoplifting from the store. *See PCMSJ Exhibit #1 at timestamp 4:46.* Yet, Mahmoud claims [in his affidavit] that a) he "observed [Plaintiff] remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," b) he observed Plaintiff, "as [he] was exiting the store, [be] asked by a loss prevention employee to show his receipt, which he declined to do," and c) he "exited the store to request that [Plaintiff] return the product from his pocket." *Def's Exhibit P at ¶¶ 4 through 6.* In other words, if Mahmoud ***really did*** "observe Plaintiff steal something, exit the store, and then [under Defendant's version of the event, directly thereafter] confront him outside about it," **he would have never had time to go review any security video footage of the same** [that again, was *already*

claimed to have been purportedly reviewed by the store ***prior to*** the confrontation].[4] This leaves Mahmoud with but one remaining logical possibility: that he had [purportedly] "observed the same activity on the store security video" ***AFTER*** he and his fellow employees ended their confrontation with Plaintiff. But then this scenario begs an even bigger question: *why on earth were the police never contacted?* **EVER.** As Plaintiff showed both in his REPLY to Defendant's MSJ and in his own C-MSJ, "Defendant made no 'calls for service' to Westminster Police, *whatsoever,* in reference to Plaintiff purportedly shoplifting from its store." *Ptf's Response To Def's MSJ at ¶ 44; Ptf's C-MSJ at ¶ 24.* **Defendant doesn't even dispute this fact.**[5] *See Def's Reply To Ptf's Response To Def's MSJ at ¶ 24.* Indeed, Defendant even claims [and Plaintiff doesn't dispute] that "Best Buy arranged for extra patrols on November 25, 2022, including a call at 8:14 am for extra patrols." *Def's Response To Ptf's C-MSJ at ¶ 24.* Therefore, **Defendant certainly had an *active and ongoing* relationship with the police at the time, and would have surely called them** *within the SEVERAL HOURS it had remaining that day*, to **EVENTUALLY** turn over said purported "video footage" of a shoplifter that it had purportedly ***positively caught red handed*.** Yet *not one single* "call for service" was made that day regarding Plaintiff. **EVER.** One could only presume that such would be a clear violation of Best Buy's loss prevention policy [that an assistant manager, such as Mahmoud, would presumably have knowledge of and be following]. As such, because the statement contradicts the record, *and is utterly illogical in its own right,* the entirety of ¶ 5 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Mahmoud claims that "As Mr. Montgomery was exiting the store he was asked by a loss prevention employee to show his receipt, which he declined to do." *Def's Exhibit P at ¶ 6.*

4 Indeed, it would have been ***just as preposterous***, under Plaintiff's version of the event, for Mahmoud to have [purportedly] observed Plaintiff steal something, *run to the security office within the five minutes that Plaintiff had been waiting on the side of the building* [to go view him on video], but then *run back outside after viewing the video* [to then personally confront him about it]. It **strains serious credulity** that a merchant would need to go view something on video, *from afar*, **right after** they *already* purportedly *personally* saw it happen *right in front of them* [nor would they likely have sufficient enough time to perform the research necessary *to even locate* the suspect within the video system].

5 Interestingly, Defendant contradicts itself by vaguely denying this fact in its *Response To Ptf's C-MSJ at ¶ 24.* However, it then fails in said *Response* to lay any foundation to support said denial, **so such a denial holds no weight.**

Here, because this statement refers to *what some other employee supposedly said*, the entirety of this paragraph is **categorically inadmissible hearsay.** "Affidavits based on inadmissible hearsay are insufficient for purposes of summary judgment determination." *Henderson v. Master Klean Janitorial, Inc.,* 70 P.3d 612 (Colo. App. 2003). *See also C.R.C.P. 56(e).* Moreover, such a statement is **blatantly contradictory** in its own right, in that a loss prevention employee, *claimed by Mahmoud himself to have been "posted up" at the store's exit,* **would not have had the capacity to witness Plaintiff purportedly "remove two boxes of JLab headphones/earbuds from the shelf [and] place them in his pocket" for that employee to even know, *in the first place*, whether or not to "ask Plaintiff to show his receipt for them."** *Employees just don't ask random people exiting a store to see receipts for whatever random, unidentified contents may exist inside their random pockets / purses / etc.* Indeed, it **strains credulity** that a "loss prevention" employee ***would even bother asking for a receipt at all at that point,*** if they alternatively ***did*** personally observe a shoplifter steal something *right in front of them.* They would likely just jump right to demanding that the person give the product back. As such, because it is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record, the entirety of ¶ 6 of Mahmoud's affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Finally, Mahmoud claims that "Once I received confirmation that the police had been contacted, I walked back inside of the Best Buy Store and had no further contact with Mr. Montgomery." *Def's Exhibit P at ¶ 9.* Here, *even this* statement **blatantly contradicts** the record, in which **AN ABSOLUTE PLETHORA** of claims were ***already*** made during the confrontation – both by Mahmoud *and* by his fellow employees – that a) police were ***already*** contacted ***prior*** to Plaintiff's detention, and b) Plaintiff ***would be actively detained in the mean time*** until they arrived [as is typical and customary to have happen when police are called out to an active shoplifting detention]. *See PCMSJ Exhibit #1 at timestamps 0:13, 0:15, 1:05, 1:33, 1:44, 1:48, 2:51, 3:17, 4:46, 5:11, and 8:51.* Of course, the police **were never actually contacted,** *in the first place,* prior to Plaintiff's detention,

let alone even later on THAT ENTIRE DAY after Plaintiff was released [and Defendant doesn't even dispute this]. So *even that* portion of Mahmoud's statement, "that police had been contacted," has no truth to it. *See PCMSJ Exhibit #2.* As such, the entirety of ¶ 9 of Mahmoud's **blatantly contradictory** affidavit cannot be considered by the Court when ruling on Plaintiff's C-MSJ.

Ultimately, it appears that Defendant, having **gotten caught** failing to perform a lawful detention of Plaintiff, thought that it could "coach" some employee into producing some "affidavit" for it that might otherwise "save" it from liability. But such affidavit, *having been loaded up with what looks to be quite literally everything the employee could possibly think of to conjure up justification for its actions,* actually produced ***nothing more than lies*** premised on **categorically inadmissible hearsay** and **blatant contradictions** instead. Thus, the Court should find in favor of Plaintiff on *Fact #4*.

5. Defendant admitted that "The video produced by Plaintiff of the encounter at Best Buy, includes the request by Mahmoud." Thus, there is no genuine issue of fact on that particular claim. However, Defendant attempts to refute Plaintiff's remaining claim – that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" – by pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #5* that he "was never asked to 'show a receipt' by Mahmoud, Shane, or John Doe" [or by any other Best Buy employee, for that matter, that day].

6. Defendant admitted to Plaintiff's *Fact #6*. Thus, there is no genuine issue of fact.

7. Defendant attempts to refute Plaintiff's *Fact #7* by once again pointing to a series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #7.*

8. Defendant attempts to refute Plaintiff's *Fact #8* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh, and its series of receipts that it purportedly pulled from its records. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record, and the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, neither cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #8*.

9. Defendant admitted to Plaintiff's *Fact #9*. Thus, there is no genuine issue of fact.

10. Defendant attempts to refute Plaintiff's *Fact #10* by pointing to *Exhibit #1* of Plaintiff's C-MSJ.[6] However, Defendant's denial is but one word long, purely generic in nature, and points to no specific timestamps in the video that otherwise clarify its position. **As such, Defendant's general denial holds no weight.** Thus, the Court should find in favor of Plaintiff on *Fact #10*.

11-19. Defendant admitted to Plaintiff's *Facts #11 through #19*. Thus, there is no genuine issue of fact regarding any of these particular facts.

20. While Defendant claims that it "can neither admit nor deny the allegation regarding the number of people Plaintiff counted," Plaintiff's video footage of the event speaks for itself. Thus, the Court should find in favor of Plaintiff on *Fact #20.*

21. Defendant attempts to refute Plaintiff's *Fact #21* by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #21*.

22. Defendant attempts to refute Plaintiff's *Fact #22* by once again[7] pointing to its supplied

6 Interestingly, Defendant contradicts itself here by **NOT** later refuting Plaintiff's *Undisputed Material Fact #13,* which makes essentially the same claim – that "Mahmoud repeatedly affirmed his intent to detain him (accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go)."

7 Elsewhere in Defendant's RESPONSE, it further addresses Plaintiff's *Fact #22. See Def's Response To Ptf's C-MSJ at page 8, footnote 6* ("Plaintiff's assertions that no one could have seen him place anything in his pant pockets is speculative and notable for its lack of denial that Plaintiff did place something in his pant pockets."). However, Plaintiff **DID** deny "that he placed something in his pant pockets." **He literally said so right there in his Undisputed Material Facts.** *See Ptf's C-MSJ at ¶ 21* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever**

affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record. As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #22*.

23. Defendant attempts to refute Plaintiff's *Fact #23* by claiming that "Plaintiff's allegations are statements of opinion rather than fact." However, Plaintiff has every right to establish facts – by way of producing an affidavit on the subject. Indeed, what Plaintiff claims to be aware or not aware of, is a "fact" like any other, that the Court can [and should] consider. Thus, the Court should find in favor of Plaintiff on *Fact #23*.[8]

24. Defendant attempts to deny Plaintiff's *Fact #24,* **but already admitted to it** in its *Reply To Ptf's Response To Def's MSJ at ¶ 44.* Thus, the Court should find in favor of Plaintiff on *Fact #24*.

25. Defendant attempts to refute Plaintiff's *Fact #25* by once again pointing to its series of receipts that it purportedly pulled from its records. However, as previously discussed,

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once 'concealed' anything in front of [let alone not in front of] anybody, ever, period.") *and ¶ 22* ("At no point in time, on that day of November 25, 2022, **had Plaintiff ever once placed into, or removed, anything** from any pant pocket in front of ***[LET ALONE NOT IN FRONT OF, as extrapolated from the previous fact]*** anybody, ever, period. Whatever was located in his pant pockets remained there **BEFORE,** throughout, and after his interaction with the Best Buy employees."). That is, such statements were not meant to be interpreted [read: twisted] to read that "Plaintiff didn't put anything in his pockets *when he thought somebody was looking* [but then he ***DID*** put something in his pockets *when he thought nobody was looking!*]." Rather, they were meant to be interpreted to read that "Plaintiff didn't put anything in his pockets, ***EVER, AT ALL,*** *throughout that day, after getting up, while out in public, both in front of* ***AND NOT IN FRONT OF*** *other people, whether he believed they were looking,* ***OR NOT.****"*) **Geez, does Plaintiff really have to spell this stuff out?** Nowhere in his lawsuit did he ever say something like: *"no one could have seen me place anything in my pant pockets."* That's nothing but a factual fabrication on the part of Defendant. ***SOOORRRRY*** *Plaintiff forgot to mention the phrase* ***"let alone not in front of"*** *he mentioned in Fact #21, when he drafted Fact #22 on the subject!*

8 Plaintiff actually knows of ***one*** "receipt" policy [if one could even call it that] to which Best Buy has made him aware of. *See PRTDRTPCMSJ Exhibit #1 at page 2, paragraph 5.* **Such a long-standing, environmentally-friendly, "email only" policy allows patrons of Best Buy stores to "request a digital receipt" upon completion of a transaction, *in lieu of having one be printed in the matter.*** However, this would obviously be of no help to Defendant, as under such circumstances [if we were to assume, *arguendo,* that Plaintiff was even a customer that day] it has ***STILL*** failed to provide any evidence, *whatsoever,* that Plaintiff was ever "provided a ***physical*** receipt" [for which he might have otherwise been "required to retain" as an Appellate Panel once impermissibly argued]. In other words, **not even the Appellate Panel could fault Plaintiff for requesting that such a "digital-only receipt" be issued to him,** that the very store at issue LITERALLY ENCOURAGES the issuing of, *that any employees posted up at the store's exit would also undoubtedly know gets regularly issued [and would likewise know inherently lacks the ability to be presented upon leaving].* ONCE AGAIN, though, ***it must be repeated that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.* Specifically, Defendant had no earthly idea, ***whatsoever***, the nature or identity of *whatever* Plaintiff possessed that day [and whereby he could have *just as easily* possessed "**non-store** merchandise he had erroneously attempted to return to the wrong store"]. *See Ptf's C-MSJ Undisputed Material Fact #8.*

the entirety of Defendant's Exhibit N [and its attendant Exhibit O] is **categorically inadmissible hearsay.** As such, it cannot be considered by the Court when ruling on Plaintiff's C-MSJ. Thus, the Court should find in favor of Plaintiff on *Fact #25*.

PTF'S RESPONSE TO DEF'S STATEMENT OF ADDITIONAL MATERIAL FACTS

26. Plaintiff DENIES that this asserted material fact is true. As previously discussed, the entirety of Defendant's Exhibit N is **categorically inadmissible hearsay.** As such, the Court should **REJECT** Defendant's proffered *Fact #26* when ruling on Plaintiff's C-MSJ.

27. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Here, Defendant seems to think that Plaintiff's YouTube video is some sort of *bona fide* taped confession. Yet, such video **utterly fails** to *even begin to* support ***any*** of the alleged "facts" to which Defendant negligently argues. Moreover, Defendant's *ad nauseam* attempt to defame Plaintiff as some "lawsuit scammer" holds no merit, either.[9] Plaintiff, *being literally no different than any other customer who shops in public while simultaneously knowing their rights,* is no more or less of a "secret shopper" than they could potentially be. **Clearly, Plaintiff is not alone with regards to the legitimate concerns he has developed over the years regarding unlawful bootstrapped detentions occurring of unreasonably suspected shoplifters for merely refusing to answer questions upon leaving stores directly after shopping.** *See PRTDMSJ Exhibit #14*. Are each and every one of the "receipt refusers" referenced in those news articles all "lawsuit scammers" executing "sting operations" just so that they can "sue for false arrest?" What an emphatic, laughable, **NO.**[10] Rather, like any other merchant, ***Defendant needs to stop scapegoating and victim-shaming those whom it unreasonably falsely imprisons,*** and own up to its transgressions. As such, the Court should

9 Funny how elsewhere in this case Defendant will cry out that Plaintiff has lodged *ad hominem* attacks against *it, **right after*** it has hypocritically lodged **one giant *ad hominem* attack against Plaintiff** [that he's a lawsuit scammer].

10 ONCE AGAIN, though, as mentioned in *Ptf's Response To Def's MSJ, **it must be repeated evidently forever that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

REJECT Defendant's proffered *Fact #27* when ruling on Plaintiff's C-MSJ.

28. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. As just discussed, Plaintiff's purported "modus operandi" **is not a legally cognizable argument.** It is a statement of opinion, rather than fact, and does not address that Defendant has ***STILL*** failed to provide this Court with **ANY** *actually admissible* evidence to legally justify its detention of Plaintiff for purportedly shoplifting from its store. Moreover, it can hardly be considered some *disingenuous* "modus operandi" for a police officer to set out a "bait car" for an unsuspecting car thief – because in the end, that officer is *technically* just parking his car, **just like any other car owner would,** thus rendering ***all*** car owners effective "bait car" owners.[11]

Next, there are PLENTY of things that "provoke suspicion," as Defendant claims, **but do not actually rise to the level of providing LAWFUL JUSTIFICATION yet to begin *actually detaining* a patron over.** For example, the patron in *Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) walked out of the store with an untagged ascot around his neck. The existence of such an ascot, *being available for sale at that very store,* was certainly enough to "provoke suspicion" of the store employee who stopped him to investigate into its potentially stolen nature. However, the Court still held that "The absence of any indication that the merchandise was 'unpurchased' justified the conclusion of the court that there were no reasonable grounds for believing that the defendant-customer was shoplifting." *Henry v. Shopper's World,* 200 N.J. Super. 14, 18 (App. Div. 1985).[12] The same holds true with regard to Plaintiff's purported "sting" operations, **in which he merely leaves**

11 In other words, the whole point of a "sting" operation **is to *NOT* act or be different than any other person.** Therefore, Plaintiff's long running "sting" operation [if one could even call it that] **of being identical to every other shopper who uses whatever registers are available to them and who don't use plastic bags for environmental reasons** *is not a legally cognizable argument.* The only thing Plaintiff might do different is "refuse to cooperate" on his way out of stores, ***which is not a concrete enough justification yet to begin lawfully detaining a patron over.*** "We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick,* 501 U.S. 429, 437 (1991). "[A]nd it should go without saying that consideration of such a refusal would violate the Fourth Amendment." *United States v. Wood,* 106 F.3d 942, 946 (10th Cir. 1997).

12 *See also Wal-Mart Stores, Inc. v. Odem,* 929 S.W.2d 513, 520 (Tex. App. 1996) where the Court held that "little more than unfounded naked suspicion" existed to "formulate the [reasonable] belief that [the patron] had stolen anything" where the store employee "never saw [the patron] anywhere in the store until they were walking out of the store.").

stores after shopping while likewise carrying out items in which there exists the same "absence of any indication that the merchandise is unpurchased." OF COURSE using whatever registers are available to him and not using plastic bags "provokes suspicion." **However,** such "suspicion" [read: hunches] **does not** provide *enough* suspicion **YET** to begin lawfully detaining a patron over.[13] Moreover, such "provoked suspicion" is something that the patron in *Coblyn v. Kennedy's Inc.* would have undoubtedly learned about. Does that then mean that said patron, having won his case and therefore gaining said knowledge of what unreasonably triggers detentions-purportedly-premised-on-shopkeeper's-privilege-but-not-actually-so, *can never shop at Kennedy's in the same way ever again?* **Hardly so.** Seriously, if Coblyn chose to go back and do the exact same thing again [that triggered his first lawsuit] *would he not be allowed to sue again should he happen to get unlawfully detained again?* Again, hardly so. **A false imprisonment is a false imprisonment, no matter how many times that it occurs [and no matter how much intuition a victim has that it may potentially happen, perhaps again, to them].** Thus, it is truly insulting that Defendant [and prior Courts] would attempt to distinguish Plaintiff from the patron in *Coblyn* **just because he has the intuition that he *might* be torted,** *just like the patron in Coblyn would have after having it happen to him.*[14]

Finally, on the topic of supposedly "failing to mitigate circumstances," the patron in *Coblyn* obviously didn't void his right to not be falsely imprisoned by failing, as Defendant states, to "take any reasonable action such as show a receipt and/or otherwise prove that he owns the item." **This is because such actions are not dispositive of whether or not a false imprisonment, *premised outright on a lack of shopkeeper's privilege*, has already occurred in the matter.** As such, the Court should **REJECT** Defendant's proffered *Fact #28* when ruling on Plaintiff's C-MSJ.

13 This is because *using alternate registers* and/or *not using a plastic bag* "in no way distinguishes the person to be stopped from other law abiding citizens." *Whitfield v. Bd. of Cty. Com'rs of Eagle,* 837 F. Supp. 338, 344 (D. Colo. 1993). Moreover, employees working at stores in which such "alternate registers" are installed *would undoubtedly be aware of their existence,* thus rendering said "provoked suspicion" **a self-fulfilling prophecy.** Same goes with lack of plastic bag use, which employees *would also undoubtedly be aware of happens* for customers who purchase single and/or large items.

14 **Technically, anybody who reads *Coblyn v. Kennedy's Inc.* would develop the same intuition as Plaintiff!** Does that then mean every person who becomes educated on the law now voids their right to not be falsely imprisoned should they choose to shop in the same way as *Coblyn* did in his particular case? Again, an emphatic, laughable, **NO.**

29. Plaintiff DENIES that this asserted material fact is true. Defendant attempts to support this claim by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 4 of Mahmoud's affidavit **blatantly contradicts** the record.[15] As such, the Court should **REJECT** Defendant's proffered *Fact #29* when ruling on Plaintiff's C-MSJ.

30. Plaintiff ADMITS the fact that three Best Buy employees "stopped Plaintiff outside of the store to investigate Plaintiff's apparent theft of store merchandise" is true. Obviously, Plaintiff's unlawful detention is the very subject of his lawsuit. However, Plaintiff DENIES the remaining two portions of Defendant's *Fact #30* as true. First, Defendant attempts to support the claim – that "Plaintiff [refused to show] a receipt for merchandise upon exiting the store" – by once again pointing to its supplied affidavit of Mahmoud Abu-Shaweesh. However, as previously discussed, the entirety of ¶ 6 of Mahmoud's affidavit is **categorically inadmissible hearsay** *and* **blatantly contradicts** the record. Second, Defendant attempts to make the claim – that Plaintiff "did not return the merchandise when asked to do so" – except that here it has, once again, failed to ***ever*** establish that *whatever* Plaintiff held in his hands that day [let alone *whatever* may have existed inside one of his pockets] was, **in fact,** *stolen merchandise* [let alone *store merchandise*] for which Plaintiff might have otherwise been required to "return." As such, the Court should **REJECT** the remaining two portions of Defendant's proffered *Fact #30* when ruling on Plaintiff's C-MSJ.

31. Plaintiff DENIES that this asserted fact is true, let alone that it is material to the outcome of his case. Plaintiff [nor any other patron] has **any legal obligation whatsoever** to "prove his innocence" [in order to succeed in his false imprisonment claim] by way of "proving his pockets were empty and/or proving whatever was in his pockets belonged to him."[16] As such,

15 Moreover, such a **bold new claim** that Plaintiff purportedly, *for the first time ever,* actually STOLE from a store **blatantly contradicts** his purported "modus operandi" [according to Defendant] TO SERIALLY PURCHASE from stores! **So which is it?** *Is it Plaintiff's "modus operandi" to purchase from stores, or to steal from them?*

16 Either Plaintiff ***is not required to*** "prove his innocence" ***in the first place*** in order to succeed in his false imprisonment claim, *see Coblyn v. Kennedy's Inc.,* 359 Mass. 319, 268 N.E.2d 860 (Sup.Ct. 1971) *and Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996), ***would succeed anyways as if he were to have*** "proven his innocence" in his false imprisonment claim, *see Ball v. Wal-Mart, Inc.,* 102 F. Supp. 2d 44 (D. Mass. 2000) *and J. C. Penney Co. v. Cox,* 246 Miss. 1, 11 (Miss. 1963), or ***is not reasonably expected to forfeit his right to succeed***

the Court should **REJECT** Defendant's proffered *Fact #31* when ruling on Plaintiff's C-MSJ.

32. Plaintiff DENIES that this asserted material fact is true. To date, Defendant has ***STILL*** failed to provide this Court with *any* admissible, **non-hearsay, non-contradictory** evidence that Plaintiff "intentionally created the impression that he had stolen from the store." Moreover, such a statement suffers from the classic **"conclusory statement"** logical fallacy. That is, what Defendant is *actually* just saying, is that "we detained him, because he got us to detain him." Yet within such a statement there obviously exists no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "created the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. "A conclusory statement made without supporting documentation or testimony is insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). As such, the Court should **REJECT** Defendant's proffered *Fact #32* when ruling on Plaintiff's C-MSJ.

33. Plaintiff ADMITS that the asserted fact is true, but DENIES that it is material to the outcome of his case. This is because "Physical force is not required to complete a false imprisonment." *Crews-Beggs Co. v. Bayle,* 97 Colo. 568, 571 (Colo. 1935). As such, the Court should **REJECT** Defendant's proffered *Fact #33* when ruling on Plaintiff's C-MSJ.

PTF'S REPLY TO DEF'S RESPONSE TO PTF'S C-MSJ ARGUMENT

I. PLAINTIFF HAS PROVEN FALSE IMPRISONMENT AS A MATTER OF LAW

In Defendant's RESPONSE to Plaintiff's C-MSJ, it begins its argument by claiming that "there are myriad undisputed material facts [that] indisputably prove that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident." *Def's Response To Ptf's C-MSJ at page 7.*

First, as just discussed, such a statement – that Plaintiff "intended to provoke the detention in

in his false imprisonment claim by otherwise being required to "prove his innocence" ***which could potentially be interpreted as*** "voluntarily giving consent to a detention," *see Broadnax v. Kroger Texas,* No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) *and Grayson Variety Store Inc. v. Shaffer,* 402 S.W.2d 424, 425 (Ky. 1966).

the subject incident" – is a **purely conclusory statement,** thus rendering it categorically "insufficient to create an issue of material fact." *Suncor v. Aspen,* 178 P.3d 1263, 1269 (Colo. App. 2008). Moreover, police "intend to provoke the stealing of bait cars" *all the time,* except that **"merely affording a person an opportunity to commit an offense is not entrapment."** *C.R.S. § 18-1-709.*

Next, Plaintiff's "YouTube video footage of the subject incident" *isn't even video footage of the subject incident,* and as such, doesn't ***even remotely*** establish *any* of the "facts" to which Defendant negligently argues. Likewise, the "vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations" don't establish *any* actual **facts** related to his instant case, either.[17] Moreover, the legal conclusions made in those cases **BLATANTLY VIOLATED THE LAW.**[18]

Next, Defendant claims that Plaintiff "took no reasonable action such as showing his receipts from the store that he undeniably possessed." However, Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever,* that a) Plaintiff ***was even a customer of it*** that day, b) he ***was even asked for a receipt*** upon leaving, c) an actual, tangible receipt ***was printed*** **AND NOT EMAILED,** for which he might have otherwise been "required to retain" in order to

17 Indeed, Plaintiff's previous lawsuits are **readily distinguishable** from his instant case in that they dealt with situations involving stores **owned by a wholly different merchant**, where Plaintiff was found to be located inside those stores, was a customer of those stores, had receipts both printed and provided to him upon shopping those stores, and finally, refused to show [or keep on him] said printed receipts upon leaving those stores. However, **NONE** of those facts have ***even remotely*** been fairly and legally established by Defendant in Plaintiff's instant case.

18 Specifically, those Courts erroneously concluded that *Plaintiff "**concealed** merchandise"* [when he clearly didn't]. That "***showing** a receipt" is some "**open window**"* [that's clearly not] *which **merely** entails a **change in direction** that Plaintiff purportedly "**failed** to avail himself of"* [which he clearly didn't]. That *"**showing** a receipt" **after** being detained is an "**escape**"* [when it's only a "**release**"]. That *"**not showing** a receipt" is a **voluntary consent** to a detention* [when **showing** the receipt actually is]. That *simply **refusing** to show a receipt provides enough "shopkeeper's privilege" to begin **detaining** over* [when such is nothing more than **mere bootstrapping**]. That ***keeping** a receipt **"on hand,"** at all times, **before even being detained,** is now **legally mandatory*** [when it's clearly not]. That ***showing** a receipt is, "**at most**, a **slight** inconvenience"* [when the law is already **clearly established** that "any imprisonment, '**no matter how short**'" qualifies as compensable]. That *"**showing** a valid receipt" would not subject a patron to "**physical or mental harm**"* [**of course** it wouldn't]. That ***anticipating detentions** and **starting recordings** ahead of time **voids** false imprisonment claims* [when they clearly don't]. That *it's Walmart's "**official** receipt checking policy" **to detain patrons** who **refuse** to show their receipts* [when it's clearly not]. That *being "**asked**" to show a receipt is not a **legally cognizable** false imprisonment claim* [when Plaintiff has never argued such, but rather, has ***always and only*** argued that **the act of physically blocking all available pathways of his through all available exits** is what has always constituted his false imprisonment claims]. The prior Courts even concluded that *"being **taken** to a secluded room, **forcibly moved** within the store, or **arrested**," are all **required elements** of a valid false imprisonment claim* [when they're clearly not]. As such, *it should be painfully obvious at this point,* that **LITERALLY ZERO** of Plaintiff's prior cases were **fairly and reasonably** decided by **fair and impartial** Courts that were **fairly and genuinely** apprised of **both the facts and the law** in each particular matter.

show upon leaving, and d) he, **and not just someone else with authorization to use his credit or debit card,** actually ***made the purchase*** and ***received the printed receipt*** for which the purchase would have been associated. However, *as can quickly be seen,* **NONE** of these **absolutely critical facts** have ***even remotely*** been fairly and legally established by Defendant in this case.

Next, Defendant claims that Plaintiff was required "to prov[e] his pockets were empty and/or prov[e] anything that may have been in his pockets belonged to him in order to shorten or end the detention." However, this claim has already been addressed by Plaintiff earlier.[19] *See ¶ 31, above.*

Finally, Defendant concludes its argument by "threadbare reciting" **unsubstantiated, unsupported-by-law,** and **utterly irrational** interpretations of two "elements" that a Plaintiff is purportedly required to address in order to succeed in a valid false imprisonment claim. However, *each and every one* of Defendant's arguments has been *more than sufficiently* addressed **[and refuted]** by Plaintiff throughout the course of his briefing. Moreover, Defendant has **failed completely** to *even begin to* sufficiently address **[let alone refute]** *a single one* of Plaintiff's Undisputed Material Facts in the matter. Rather, it has supplied nothing more than **categorically inadmissible hearsay** and **blatant contradictions** instead. As such, the Court should **REJECT** Defendant's wholly baseless arguments, and **GRANT** Plaintiff's C-MSJ.

II. DEFENDANT LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

In its next argument section, Defendant claims that "Plaintiff intended, as part of his modus operandi, to create the impression that he had stolen item[s] from the store." *Def's Response To Ptf's C-MSJ at page 8.* However, as previously discussed, such a statement is a **purely conclusory statement** legally incapable of supporting its position. Again, such a statement provides no ***actual*** independent evidence that *even begins to* describe precisely [let alone roughly] **HOW** Plaintiff "intended to create

19 Moreover, *listing off literally all possible actions that are purportedly required for a patron to perform in order to end [read: **undo**, as Defendant and prior Courts argue] 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*]. In other words, if there is *ALWAYS* something that *ALL* detainees can do, "in order to shorten or end their detentions," can Defendant ***please*** describe **a single situation** in which a merchant ***WOULD*** be liable for unlawfully detaining a patron? Merchants don't simply get *carte blanche* authority to **indiscriminately** detain whomever they wish!

the impression that he had stolen from the store" [in order to **lawfully** trigger such a detention]. Seriously, what exactly did Plaintiff ***DO*** to supply Defendant with "shopkeeper privilege" in this matter? Defendant can't just show up to Court one day and say, "Well, we detained him, so clearly he did ***something*** to get detained by us!" In other words, **simply pointing to some purported "modus operandi" does not relieve a merchant from the burden they have to satisfactorily develop "shopkeeper's privilege" for their detentions.** Moreover, as previously discussed, it can hardly be considered some "modus operandi" for the *countless other* patrons referenced in *PRTDMSJ Exhibit #14* to have had upon *their* shopping experiences.[20] **Why is Plaintiff being treated any different?**

Next, Defendant claims that "Plaintiff did in fact create that impression on Best Buy's employee Mahmoud that Plaintiff had stolen." However, as previously discussed, the entirety of ¶¶ 4 through 6, and 9 of Mahmoud's affidavit contains **categorically inadmissible hearsay** and/or **blatantly contradicts** the record. *See ¶ 4, above.* As such, absolutely none of it can be considered by the Court when ruling on Plaintiff's C-MSJ.

Next, Defendant claims that "Plaintiff admits that he was detained less than ten (10) minutes." However, in order to succeed in a false imprisonment claim, a Plaintiff must only show that he was detained "for a period of time, **no matter how short.**" *See Colorado Civil Jury Instruction 21:1(2).*

Finally, Defendant claims that "Plaintiff also does not allege any physical violence or that he was even touched during the detention." Obviously, as previously discussed, "Physical force is not required to complete a false imprisonment." *Crews-Beggs Dry Goods Co. v. Bayle,* 97 Colo. 568, 51 P.2d 1026 (1935). So that issue is put to rest there. However, what Defendant is likely getting at, is that because "shopkeeper's privilege inherently provides a defense even when there are threats of physical

20 Indeed, many of the shoppers referenced in those news articles started recordings of their anticipated detentions ahead of time. Does that show "disingenuous, false-imprisonment-claim-voiding, **premeditated intent** to be detained," *or does it simply show **intuition** that **anybody** can **easily gain** for an **increasingly problematic** issue? See also Cop Records Himself Detained At Walmart Receipt Check,* The Consumerist, *https://tinyurl.com/4npw8cba* (Dec 23, 2010). Indeed, *numerous **bar-licensed** attorneys* even spoke up in those news articles against the growing legal crisis. *Are they all horribly mistaken, too?* **Hardly, inconceivably, so.** ONCE AGAIN, though, ***it must be repeated yet again that*** any talk about "receipt showing" **IS STILL AN ENTIRELY MOOT POINT,** as Defendant has ***STILL*** failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts.*

force," [and] "Best Buy . . . only used [purportedly] reasonable threats of force in the event that Plaintiff attempted to escape," *Def's Reply To Ptf's Response To Def's MSJ at pages 10-11,* Defendant's detention of Plaintiff was carried out "in a [purportedly] reasonable manner." The problem with such a position is this: threats [implicit *or* explicit] made to "jump" somebody **CLEARLY AND INDISPUTABLY EXCEED** the "force necessary to prevent escape or to prevent loss of property." *Cruz v. Johnson,* 823 A.2d 1157, 1160 (R.I. 2003). **"Jumping" a person entails physically, *often brutally* attacking them, without regard for life or limb.** No merchant would *ever* resort to using such crude and violent tactics just to "prevent escape or . . . loss of property." Rather, *[and only if the situation called for it],* a merchant might say something like, "if necessary, we'll use physical force to prevent you from escaping!" It would *never* make ***actual, unrestricted, disproportionate, egregious*** threats to "jump" the person.[21] As such, the Court should **REJECT** Defendant's wholly baseless arguments that it had "shopkeeper's privilege" to lawfully detain Plaintiff that day, including that it purportedly detained him "in a reasonable manner," and **GRANT** Plaintiff's C-MSJ.

III. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, *PER SE*, AS A THIEF

In its next argument section, Defendant spews *even more* **purely conclusory statements** that don't legally support its position. **SERIOUSLY,** when is Defendant going to actually DESCRIBE, ***with real, tangible, meaningful, non-contradictory, non-hearsay, non-conclusory words,*** precisely **HOW** Plaintiff "caused employees of shop owners such as Best Buy to think he stole," "caused a Best Buy employee to believe he stole," "intended that the Best Buy employees think he stole," and "wants others to believe he is a thief." *Plaintiff is still waiting for this.* Meanwhile, Defendant **DOESN'T EVEN DISPUTE** that it made *numerous* implicit **and** explicit accusations of theft *all throughout Plaintiff's detention,* but whereby because it lacked shopkeeper's privilege for its actions,

21 Notably here, is that **Plaintiff didn't even exhibit signs calling for the use [let alone threatened use] of physical force during the encounter.** He even *told* the employees that he was not interested in being violent with them. *See PCMSJ Exhibit #1 at timestamps 0:57 ("I'm not gonna touch you, man..."), and 2:06 ("Well I'm not touching you.").* Thus, ***even the making of such physical threats*** [let alone implicit or explicit threats to "jump"] was completely unnecessary for the employees to make during their confrontation with Plaintiff.

it made such accusations **"with knowledge that they were false, or with reckless disregard for whether they were true or false."** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not defame Plaintiff, *per se,* as a thief, and **GRANT** Plaintiff's C-MSJ.

IV. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

In its final argument section, Defendant claims that "Plaintiff cannot meet the element of intending to place Plaintiff in apprehension of harmful physical contact where Plaintiff admits that the Best Buy employees never threatened to 'jump' him they merely did not correct him when he used the word 'jump.'" *Def's Response To Ptf's C-MSJ at page 10.* However, **nowhere in the law does it state that "implicit" threats do not qualify as having the same capacity to be as damaging to the listener as "explicit" threats might.** *At the very least, this sort of issue would be left for the jury to decide, as it could be interpreted to be a dispute over what constitutes a "fact" in the matter.* Next, Defendant claims that because "the subject incident was a sting [Plaintiff] was carrying out," it is somehow not liable for its actions. However, as previously discussed, such a statement is *yet another* **purely conclusory statement** that holds no value in law. Finally, Defendant claims that "if Plaintiff had been in apprehension of immediate physical contact, which he was not, he would have taken reasonable measure to end the detention and he did not." However, as previously discussed, not only has Defendant **utterly failed to establish** that Plaintiff ***was even a customer of it*** that day, for which he might have otherwise had "measures [available to him] to end the detention," such measures ***aren't even legal obligations of patrons in the first place.*** As such, the Court should **REJECT** Defendant's wholly baseless arguments that it did not assault Plaintiff, and **GRANT** Plaintiff's C-MSJ.

CONCLUSION

Plaintiff has satisfied *each and every* element of his false imprisonment, defamation *per se*, and assault claims, with indisputable facts to support each. Defendant, on the other hand, has ***STILL*** failed to provide this Court with *literally any* tangible, admissible, **non-contradictory, non-hearsay, non-conclusory** facts to *even begin to* support its **naked and unfounded** affirmative

defense of "shopkeeper's privilege" to have otherwise lawfully detained him with that day.

Moreover, regarding the whole idea that "receipt showing" is some sort of "escape path" patrons must supposedly not "fail to avail themselves of," this Court should be mindful that "Courts may not impute their own meaning to otherwise clear statutory language, nor assume a legislative intent that would vary the words used by the General Assembly." *People v. Gholston,* 26 P.3d 1, 7 (Colo. App. 2001). Then again, it ***STILL*** has yet to be shown that Plaintiff's case *has anything to do with receipts*.

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **GRANT** his CROSS-MOTION FOR SUMMARY JUDGMENT in this matter.

Specifically, this Court should **A)** enter judgment in Plaintiff's favor on all issues of law and liability in all of his claims, and **B)** leave for the jury to decide the only remaining triable issue of fact regarding the amount of damages he should be awarded in his claims [as he has elected to not specify an exact dollar amount for what damages he has sustained].

Respectfully submitted on this, the 31st day of October, 2024.

William Montgomery
William Montgomery
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Denver, CO 80210
(970) 412-5463
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CERTIFICATE OF SERVICE

I hereby certify that on this, the 31st day of October, 2024, the foregoing **PLAINTIFF'S *AMENDED* REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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

COMES NOW that William Montgomery, proceeding *pro se*, respectfully submits to the Court the following Affidavit:

1. My name is WILLIAM MONTGOMERY. I am a United States citizen, and a permanent resident of Denver, CO. I am over the age of 21 years, and am of sound mind. I am the Plaintiff in this action, and I have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify competently to these particular facts and matters. I submit this Affidavit in support of my Reply to Defendant's Response to my Cross-Motion for Summary Judgment.

2. My credit and debit card agreements allow me to give others full authorization to use my credit and debit cards – including my Citibank credit card ending in 0527 – on my behalf, in order to make purchases for me, both at "brick and mortar" stores, and online.

3. For at least five years now, I have observed that Best Buy automatically associates my Best Buy account with whatever credit or debit cards I choose to link to it, in that whenever a linked credit or debit card of mine is swiped at one of their registers – either by me or by anybody else whom I authorize to conduct business on my behalf – Best Buy reflects the associated sale in their system [and any receipts, either emailed or printed, also reflect that particular association].

4. For at least twenty years now, I have observed that Best Buy provides multiple checkout registers throughout its stores, including the store located at 9369 Sheridan Blvd, Westminster, CO, 80031, whereby customers can purchase at those registers items gathered from anywhere in the store. From my recollection, I have observed there to be registers located in the computer, television, home entertainment, cell phone, and home appliance sections of the stores.

5. About five years ago I opted to have all Best Buy receipts emailed to me upon completion of making a purchase at any and all of their stores. When somebody else whom I have authorized to use a credit or debit card of mine that is linked to my Best Buy account makes a purchase on my behalf, I receive the same email in my inbox as if I had made the purchase myself.

FURTHER AFFIANT SAYETH NAUGHT.

I, WILLIAM MONTGOMERY, do hereby declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed on this, the 28th day of October, 2024.

William Montgomery
William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of October, 2024, the foregoing **PLAINTIFF'S SECOND AFFIDAVIT** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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Attorneys for Defendant

William Montgomery
William Montgomery

5 Ways to Shop Sustainably at Best Buy

By Best Buy November 22, 2017

As you're browsing for the latest tech this holiday season, you can feel good about your purchases while helping to protect the environment. Here are five tips for shopping sustainably at Best Buy.

1. Look for ENERGY STAR®

At Best Buy, we're committed to providing our customers with a wide assortment of sustainable products, including ENERGY STAR electronics and appliances. These products are certified to use less energy than standard models. That helps you save money on your utility bill and protect the environment. Look for the ENERGY STAR logo on the sign next to products in stores or filter by ENERGY STAR on BestBuy.com. Also be sure to check out rebates from your local utilities on ENERGY STAR-certified products.

2. Buy paper gift cards

As you're browsing the gift card selection at Best Buy, check out the "Go Green" card. It's made of paper and can be recycled. By using paper, we help reduce the amount of plastic that's thrown out. That's a win for you and a win for Earth.

3. Recycle unused electronics

Bring in your devices that have been sitting in the closet for months and dispose of them responsibly through Best Buy's recycling program. Some of your electronics might qualify for our trade-in program, where you can exchange them for a Best Buy gift card (don't forget to Go Green!). Use our Trade-In estimator to learn what your old devices might be worth or see current promotions to learn how you can save on new tech by recycling.

4. Shop online

Shopping on BestBuy.com will help you save time and gas money, and cut vehicle emissions. So snuggle in at home and buy that laptop you've had your eye on without weaving through rush-hour traffic to a store. And don't forget, Best Buy offers free shipping on everything from now until Christmas Day. There's no minimum purchase amount and no membership fee. Learn more about our holiday shipping here.

5. Request a digital receipt

When you shop at Best Buy, you now have the option to have your receipt emailed to you instead of being printed on paper. You'll feel good about it, and so will the trees you saved.

For more Best Buy for Good news, follow @BestBuyCSR on Twitter.

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED November 19, 2024 2:12 PM CASE NUMBER: 2023CV226
Plaintiff: **WILLIAM MONTGOMERY** v. Defendant: **BEST BUY, L.P.**	▲ COURT USE ONLY ▲ Case Number: **23CV00226** Division: 06 Courtroom: 520

ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiff's (William Montgomery) and Defendant's (Best Buy) respective Motions for Summary Judgment. The Court, having considered the motions as well as response and reply briefs from all parties 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 under, among other things, Shopkeeper's Privilege. Defendant also submitted to the Court a video made by Plaintiff wherein Plaintiff explains how he gets "free lawsuits" by going into stores and conducting a "sting operation" where he conducts himself in a manner that could be reasonably construed as suspicious and sues store employees for confronting him upon believing he is stealing.[1] Indeed, Defendant cites several nearly identical cases Plaintiff

[1] See Defendant's Exhibit Q at 04:20, explaining how Plaintiff uses registers in the back of the store, does not use bags, and refuses to show employees his receipt; Exhibit Q at 05:05, "That's the crux of my whole sting operation!"; Exhibit Q at 17:13, "I've already got cases where I've got it all set up perfectly—a true sting—where I'm not going to say I have a receipt or not, I'm not even going to say I was a customer or not . . . all I've got to show is that I was surrounded . . . I'm done doing the merchants' homework for them in lawsuits."; Exhibit Q at 20:00, "That's why I don't show my receipt, for a free lawsuit. Because if somebody's going to hand out free lawsuits at the door, I'm game!"

has filed against other stores around Colorado.[2]

Plaintiff filed a Cross Motion for Summary Judgment on September 19, 2024, also seeking summary judgment on all of Plaintiff's claims. In support of his motion, Plaintiff submitted body-worn camera footage of the detainment. Both parties subsequently filed response and reply briefs.

II. LEGAL STANDARD

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits [submitted] . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." C.R.C.P. 56(c); Miller v. Van Newkirk, 628 P.2d 143, 145 (Colo. App. 1980). A material fact is simply a fact that will affect the outcome of the case. Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 239 (Colo. 1984).

The party moving for summary judgment bears the initial burden of presenting the basis for a motion for summary judgment and identifying those portions of the record which demonstrate the absence of any genuine issues of material fact or any triable issues of fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). Once this initial burden has been met, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. Id. at 713. The nonmoving party must set forth specific facts through affidavits or other means to show that there is a genuine issue for trial and may not rest upon the mere allegations or denials in the pleadings or simple argument. Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991). If the nonmoving party cannot muster sufficient evidence to establish that there is a triable issue of material fact, the moving party is entitled to summary judgment as a matter of law. Keenan, 731 P.2d at 713.

Summary judgment should be granted only when there is a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. KN Energy, Inc. v. Great W. Sugar Co., 698 P.2d 769, 776 (Colo. 1985). 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).

III. ANALYSIS

[2] 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.

a. Defendant's Motion for Summary Judgment

Defendant Best Buy filed a Motion for Summary Judgment on July 25, 2024. In its Motion, Defendant seeks this Court dismiss all of Plaintiff's claims and grant Defendant an award of attorney's fees and costs.

i. False Imprisonment

For a plaintiff to prevail on a false imprisonment claim, he must prove that: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." Goodboe v. Gabriella, 663 P.2d 1051, 1055-56 (Colo. App. 1983). However, "[I]t is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience." Restatement (Second) of Torts § 36 cmt a.

Here, Plaintiff alleges he was falsely imprisoned by three Best Buy employees when they "surrounded [him] on all sides with [his] back against a wall and wouldn't let [him] leave or go anywhere for 12 minutes." (Complaint at p. 1.) Defendant argues that Best Buy cannot be held liable for false imprisonment because (in addition to Shopkeeper's Privilege, discussed below) Plaintiff had the tools of escape and unreasonably refused to use them.

There is no genuine issue of material fact for this claim. Defendant admits its employees detained Plaintiff briefly outside of the Best Buy after suspecting him of stealing store merchandise. Defendant has provided proof that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase. (Defendant's Exhibit N.) Plaintiff does not deny having a receipt at the time of the incident. During Plaintiff's detainment outside of Best Buy, Defendant's employees can repeatedly be heard telling Plaintiff that he can leave as soon as he gives back the stolen goods.[3] (Plaintiff's Exhibit 1.) Not once during the detainment does Plaintiff deny stealing or show proof of purchase. (See Plaintiff's Exhibit 1, showing body-camera footage of the entirety of the detainment.)

The Court agrees with Defendant that showing proof of purchase would have freed Plaintiff from the false imprisonment, and that showing proof of purchase is a slight inconvenience that it was unreasonable of Plaintiff not to utilize. Thus, the Court concludes that Defendant did not

[3] See Plaintiff's Exhibit 1 at 00:05, "Can you just give it back to us now and you can leave?"; Exhibit 1 at 00:22, "You can just give us our product back and you can go on your own way"; Exhibit 1 at 01:26, "Give me the product back and I'll leave you alone, you can go on your own way"; Exhibit 1 at 01:35, "If you want to leave without any issues then just give me my product"; Exhibit 1 at 03:29, "You can make it easy dude, just give me my stuff and you can go."

"confine" Plaintiff and thus cannot be held liable for false imprisonment. As such, Plaintiff's claim for false imprisonment is dismissed on summary judgment.

ii. Defamation Per Se

For a plaintiff to prevail on a claim of defamation, he must prove that there was: "(1) A defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication." Williams v. Dist. Court, 866 P.2d 908, 911 n.4 (Colo. 1993). Statements that are actionable irrespective of special damages are defamatory per se. See Restatement (Second) of Torts § 570. "Historically, a statement constituted defamation per se if it imputed a criminal offense; a venereal or loathsome disease; improper conduct of a lawful trade, business, profession, or office; or unchastity of a woman." Keohane v. Wilkerson, 859 P.2d 291, 301 (Colo. App. 1993).

"One who publishes a false and defamatory communication concerning a private person . . . is subject to liability, if, but only if, he (a) knows that the statement is false and that it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them." Restatement (Second) of Torts § 580B. "Insofar as the truth or falsity of the defamatory statement is concerned, the question of negligence [is] . . . whether [the defendant] had reasonable grounds for believing that the communication was true." Id. cmt g.

Here, Plaintiff alleges he was defamed by Best Buy employees when they "falsely, loudly, rudely, and publicly accused [him] of stealing in front of many others." (Complaint at p. 1.) Because theft is a criminal offense, this qualifies as defamation per se. Defendant argues (again, in addition to Shopkeeper's Privilege, discussed below) that the employees were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy.

There is no genuine issue of material fact relevant to this claim. There is body camera footage from the detainment showing Defendant accusing Plaintiff, in public, of stealing merchandise from the store. (See Plaintiff's Exhibit 1.) Defendant does not deny this.

However, to be liable for defamation, Defendant must have acted with actual knowledge of the statement's falsity, reckless disregard for the truth or falsity of the statement, or negligence. Defendant has submitted proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store. (Defendant's Exhibit P.) Plaintiff provides no evidence of his actions in the store to counter this. Rather, Plaintiff's YouTube video provides corroborative proof of Defendant's version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his "sting operation." (See Defendant's Exhibit Q.)

"Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury." Montgomery v. Walmart Stores, 21CA0359 (Colo. App. 2022) (not published pursuant to C.A.R. 35(e)). "However, in the 'clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them,' the issue may be resolved as a matter of law." Id.

Here, the case is clear, the facts are undisputed, and reasonable minds can draw but one inference: Defendant did not act with fault amounting to at least negligence in accusing Plaintiff of stealing. Rather, Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit. As such, the Court concludes Defendant cannot be held liable for defamation and Plaintiff's claim for defamation is dismissed on summary judgment.

iii. Assault

For a plaintiff to prevail on an assault claim, he must prove: (1) The defendant acted "intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact," and (2) "the other is thereby put in such imminent apprehension." Restatement (Second) of Torts § 21. "Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault." Restatement (Second) of Torts § 31 cmt a.

Here, Plaintiff alleges Best Buy's employees assaulted him when they "threatened to 'jump' [him] around the corner and off camera." (Complaint at p. 1.) Defendant argues that its employees never threatened Plaintiff, and if anything said may be construed as a threat, no employee took any other step to show hostility toward Plaintiff.

Because the parties have submitted body-camera footage of the detainment, there is no genuine issue of material fact for this claim. The body-camera footage shows that Defendant's employees never touched Plaintiff. As for "threats," at one point one employee said, "We'll take this off camera—walk away"[4] and throughout the encounter the employees did not correct Plaintiff when Plaintiff said he was worried about being jumped.[5] (Plaintiff's Exhibit 1.) The footage also shows that the employees spent the detainment standing around Plaintiff at a respectable distance, making no threatening movements, and repeatedly saying that they would leave Plaintiff alone as soon as he gave back what he had stolen from their store. (See Plaintiff's Exhibit 1.)

The Court agrees with Defendant that, even if the employees' words could be construed as a threat, there was no additional act apparently intended to carry the threat into execution. As such,

[4] Plaintiff's Exhibit 1 at 09:27.

[5] Plaintiff's Exhibit 1 at 09:48, "I don't feel safe leaving now," "You shouldn't"; Exhibit 1 at 10:17, "I don't feel like getting jumped off camera," "Then give me my stuff, dude"; Exhibit 1 at 10:44, "I don't feel safe leaving now," "Then give me my shit"; Exhibit 1 at 11:28, "Like I'm just going to trust him that he's not going to jump me," "You shouldn't trust him that he's not. You should give me my stuff."

the mere words were not enough to put Plaintiff in apprehension of imminent bodily contact, and so do not make Defendant liable for an assault. Therefore, Plaintiff's claim for assault is dismissed on summary judgment.

iv. Shopkeeper's Privilege

Under C.R.S. § 18-4-407, colloquially known as "Shopkeeper's Privilege," a merchant or any of its employees, "acting in good faith and upon probable cause based upon reasonable grounds therefor," may detain and question any person that "conceals upon his person or otherwise carries away any unpurchased goods . . . held or owned by any store," in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. "Such questioning of a person by a merchant, merchant's employee, or a peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention." Id. Whether a defendant acted in good faith is a question of fact, meaning summary judgment should be granted "only if, assuming the truth of the plaintiff's evidence, and drawing every favorable inference of fact therefrom, reasonable persons could reach only one conclusion, that being these defendants acted in good faith." Goodboe v. Gabriella, 663 P.2d 1051, 1055 (Colo. App. 1983).

Defendant has submitted a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment. (Defendant's Exhibit N.)[6]

Plaintiff, in his response, denies having been in Best Buy, denies having the store's merchandise on him, and denies concealing anything. However, Plaintiff "may not rest upon the mere allegations or denials in the pleadings" and must set forth specific facts through affidavits or other means. Burman, 821 P.2d at 917. In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees. (Plaintiff's Affidavit of the Event.) This is not inconsistent with Defendant's affidavit, which argued that Defendant's employee saw Plaintiff in the store, watched store security video after Plaintiff exited, and then confronted Plaintiff outside. (Defendant's Exhibit P.) Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.

Even assuming the truth of Plaintiff's evidence and drawing every favorable inference of fact therefrom, reasonable persons could reach only the conclusion that Defendant acted in good faith. Under the circumstances presented by Plaintiff, a reasonable person would believe he may

[6] Plaintiff argues that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any "genuine" issue of fact, not whether there is any conceivable issue of fact.

have been shoplifting. Indeed, Plaintiff designed his conduct to inspire this belief. (See Defendant's Exhibit Q.)

As for probable cause based upon reasonable grounds, Defendant has supplied an affidavit stating that its employee saw Plaintiff "remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," which was then confirmed on store security video. Plaintiff also refused to show his receipt upon being asked. Again, Plaintiff has provided no evidence as to his actions inside the Best Buy store and "may not rest upon the mere allegations or denials in the pleadings." Id. As such, the Court agrees that Defendant had probable cause to believe Plaintiff was shoplifting.

Because Defendant is a merchant; Defendant's employees acted in good faith and upon probable cause in detaining Plaintiff; and Defendant's employees detained Plaintiff in a reasonable manner, Defendant is protected under C.R.S. § 18-4-407 from slander and false imprisonment. As such, even if Plaintiff were able to make a prima facie case of false imprisonment and defamation (which the Court has held above he does not), Defendant would fall within the statue's protections.

b. Plaintiff's Motion for Summary Judgment

Plaintiff William Montgomery filed his Cross Motion for Summary Judgment on September 19, 2024. Plaintiff requests that the Court enter summary judgment as to all of Plaintiff's claims. Plaintiff and Defendant make the same arguments in Plaintiff's pleadings as they had made in Defendant's pleadings.

For the reasons laid out above, the Court denies Plaintiff's request for summary judgment as to all of Plaintiff's claims.

IV. ORDERS

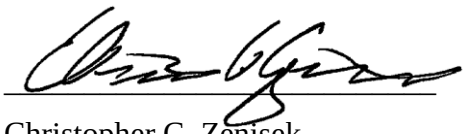
For the reasons stated above, the Motion for Summary Judgment for Defendant is **GRANTED, and Plaintiff's claims are dismissed with prejudice**. The Motion for Summary Judgment for Plaintiff is **DENIED.**

1. Defendant's request for summary judgment on Plaintiff's false imprisonment claim is GRANTED, and the claim is dismissed.
2. Defendant's request for summary judgment on Plaintiff's defamation per se claim is GRANTED, and the claim is dismissed.
3. Defendant's request for summary judgment on Plaintiff's assault claim is GRANTED, and the claim is dismissed.
4. Plaintiff's request for summary judgment on Plaintiff's false imprisonment claim is DENIED.
5. Plaintiff's request for summary judgment on Plaintiff's defamation per se claim is DENIED.

6. Plaintiff's request for summary judgment on Plaintiff's assault claim is DENIED.
7. Costs are awarded to Defendant.
8. Any motion for attorney's fees, if desired, shall be filed pursuant to C.R.C.P. 121 § 1-22.

Done in Golden, Colorado, this 19th day of November 2024.

BY THE COURT:



Christopher C. Zenisek
District Court Judge