

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

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

ARGUMENT

In Defendant's RESPONSE, it claims that “Plaintiff did not meet his burden in proving a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.” *Def's Response at* ¶ 2. However, merely reciting the Colorado Rules Of Civil Procedure is not a meaningful legal argument. **It is not substantive, and offers no guidance to the Court on exactly how it should apply the Rule to Plaintiff's instant case.** Nevertheless, to the extent that Defendant's argument could be inferred, it still fails to pass legal muster. Specifically, Plaintiff's argument that his Cross-MSJ's *reply* brief has been **impermissibly** used as some sort of

surreply brief to Defendant's MSJ *reply* brief is about as much of a “manifest error of fact or law” that can possibly exist. Indeed, entire cases have already explicitly described, *in extraordinary detail*, precisely *how* such an error “results in manifest injustice.” See *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952). *Morlan* isn't just some old case Plaintiff picked out of the ethers. It's explicitly mentioned **TWELVE TIMES** in the Annotations of C.R.C.P. Rule 56. As such, it is *critically important* Colorado case law that applies with as much force today as it did 73 years ago.

Next, Defendant claims that “Plaintiff uses this Second Motion for Reconsideration to re-hash arguments that previously failed; he is impermissibly trying to get a second bite at the apple.” *Def's Response at* ¶ 3. **Again, Defendant is sorely mistaken.** Specifically, Plaintiff made the argument in his *First Motion For Reconsideration* that the Court made verifiable errors of **FACT** in its *Order Granting Defendant's MSJ* that **a)** Defendant supposedly submitted ***[WITH ITS INITIAL MSJ]*** a store employee's affidavit and some affidavit-less business records, thereby purportedly “satisfying its ***initial*** burden as the movant” in the matter [when no such evidence was *actually* filed with Defendant's ***initial*** MSJ], and **b)** that Plaintiff supposedly, ***[IN RESPONSE TO DEFENDANT'S INITIAL MSJ]***, “provided no evidence of his actions in the store to ***counter*** this” [when Plaintiff was never put on *actual* notice of the ***NEED*** to ***counter*** such *non-existent* evidence].¹ However, in the Court's *Order Denying Plaintiff's Motion For Reconsideration*, ***IT 100% FAILED TO ADDRESS*** these well-pleaded errors of **FACT**, and instead, simply introduced a *brand new* legal holding encompassing a *brand new* theory of law [that because Plaintiff's Cross-MSJ *reply* brief was filed “after” Defendant's MSJ *reply-only* exhibits were filed, he purportedly had an “opportunity” to “respond” to them]. **Thus, Plaintiff never even got a first “bite of the apple” regarding the addressing of these verified factual deficiencies – the Court never gave him one.** Then, while Plaintiff *did* reference *Wallman v. Kelley*, 976 P.2d 330, 332

¹ Side note: Plaintiff actually ***DID*** submit an affidavit of his actions inside the Best Buy store immediately preceding his detention, which the Court should have alternatively ***INFERRED*** was fairly applicable to him being on the inside of it [if said affidavit wasn't already explicit enough *on its own* to establish as much].

(Colo. App. 1999) in his *First MFR*, and even referenced *Morlan v. Durland Co.*, 127 Colo. 5, 12-13 (Colo. 1952) in his *Reply In Support Of His MFR*, both cases and their attendant legal holdings were again, **100% NOT EVEN REMOTELY ADDRESSED** by the Court. **So what is a reasonable person in Plaintiff's position supposed to do?** Without “findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which the trial court reached its decision,” *In re Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988), **it was more than reasonable, and indeed, absolutely necessary for Plaintiff to seek reversal from the Court [in a Second MFR].** See also *Mowry v. Jackson*, 140 Colo. 197, 343 P.2d 833 (1959) (“[F]indings must be so explicit as to give an appellate court a clear understanding of the basis of the trial court's decision and to enable it to determine the ground on which it reached its decision.”). See also *Credit Inv. & Loan Co. v. Guaranty Bank & Trust Co.*, 166 Colo. 471, 444 P.2d 633 (1968) (“Findings of fact by a court should respond to and be within the issues, and a finding outside the issues cannot be supported and cannot be used to formulate a judgment.”). Indeed, Plaintiff is *****STILL***** waiting for this Court [let alone Defendant] to **even begin to** address his absolutely valid and *critically important* legal argument that Defendant **impermissibly** submitted to the Court affidavit-less business records (i.e. receipts) **IN DIRECT VIOLATION** of *Henderson v. Master Klean Janitorial*, 70 P.3d 612, 617 (Colo. App. 2003) (holding that a “business record” is only admissible “when accompanied by an affidavit of its custodian or other qualified witness certifying that the record was made by a person with knowledge in the course of the regularly conducted activity and that it was the regular practice of the party to make such a record. CRE 902(11).”). **No such “custodial affidavit” WAS EVER ONCE SUBMITTED with Defendant's pile of receipts, and as such, THIS COURT WAS NEVER ALLOWED TO ADMIT THEM.** *Yet it continues to pretend [?] that Plaintiff never brought up this argument.* Come on Jefferson County District Court! **These are absolutely primary, elemental, decades old, clearly established laws**

that are being broken, in broad daylight, and Plaintiff isn't receiving *even a peep* from the Court **as to how it is allowed to deviate from them.** As such, Plaintiff absolutely cannot be blamed for filing a first, and a second, *and however many is necessary* Motions For Reconsideration until he either **a)** has the absolutely valid case law he references honored so as to **REVERSE** the Court's Order **impermissibly** granting Defendant's MSJ, or **b)** receives clear, cognizant, and legally supportable reasons **actually explaining** why the aforementioned Order should *not* be reversed. **Seriously.** The factual and legal arguments Plaintiff has made in **both** his Motions For Reconsideration aren't "merely disagreements with the Court's decision." *Def's Response at ¶ 5.* **They are concrete, substantive, well-articulated arguments** backed by case law directly pulled from the Colorado Rules Of Civil Procedure. This Court is in **direct violation** of these *numerous* precedential Colorado cases that Plaintiff has plainly and repeatedly pointed out, and as such, must **BY LAW HONOR THEM** and REVERSE its Order **impermissibly** granting Defendant's MSJ.

Finally, Defendant Claims that Plaintiff's "Second Motion for Reconsideration is untimely and should be denied" due to it not being "submitted within 14 days from the date of the Court's order." *Def's Response at ¶¶ 6 and 7.* **Once again, Defendant is mistaken.** Colorado Rules Of Civil Procedure Rule 6(a)(1) states that [with regard to the computing of filing deadlines] "The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, *or a legal holiday,* in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday." C.R.C.P. Rule 6(a)(2) then states that "the third Monday in January, observed as Martin Luther King Day" is a "legal holiday" for purposes of tolling the deadline. **As such, Plaintiff had until January 21, 2025, the day after Martin Luther King Day, to file his Second Motion For Reconsideration.**

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** his **SECOND MOTION FOR RECONSIDERATION**, so that it may then **REVERSE** its **ORDER** impermissibly **GRANTING** Defendant's **MSJ**, so that this case may proceed to **TRIAL**, by Jury, on its merits.

Respectfully submitted on this, the 14th day of February, 2025.


William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of February, 2025, a true and correct copy of the foregoing **PTF'S REPLY TO DEF'S RESPONSE TO PTF'S SECOND MOTION FOR RECONSIDERATION** was sent to the following people, via email:

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