

To: Charles Bell

Subject: Service of documents in Bell, Charles v. Varvel, Alyson.

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- Court Location: Boulder County
- Case Number: 2025CV000118
- Case Name: Bell, Charles v. Varvel, Alyson
- Filing ID: A6BD2F05C2B8A
- Filed Document Title(s):
 - Response to Motion to Vacate Dismissal Under C.R.C.P. 60(b) (Final Paragraph)
- Submitted on Date/Time: Wed Dec 24 17:30:10 MST 2025
- Submitted by Authorizing Organization: Mills Schmitz Halstead and Zaloudek LLC
- Submitted by Authorizing Attorney: Michael Mills

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DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6 th Street Boulder, CO 80302	DATE FILED December 24, 2025
Plaintiff: CHARLES R. BELL, a Colorado Resident vs. Defendants: ALYSON G. VARVEL, a Colorado resident	▲ COURT USE ONLY ▲ <hr/> Case No. 2025CV118 Courtroom/Div: 2
Attorneys for Defendant: Michael F. Mills, No. 34859 Mills Halstead and Zaloudek, LLC 600 Seventeenth Street, Suite 2800 Denver, Colorado 80202 Tele. (303) 226-5861 Email: mfm@mhzlegal.com	
<p style="text-align: center;">RESPONSE TO MOTION TO VACATE DISMISSAL UNDER C.R.C.P. 60(b) (FINAL PARAGRAPH)</p>	

Defendant Alyson G. Varvel ("Ms. Varvel"), through her counsel, Mills Halstead and Zaloudek, LLC, respectfully submits her Response to Motion to Vacate Dismissal Under C.R.C.P. 60(b) as follows:

ARGUMENT

A. This Case Was Properly Dismissed.

This Court granted Ms. Varvel's Motion to Dismiss as barred by the doctrine of claim preclusion. The Court's analysis thoroughly analyzed the four elements of claim preclusion and determined that each was applicable to this case. In dismissing the case, the Court noted that claim preclusion, "prevents the perpetual re-litigation of the same claim or cause of action....

The purpose of claim preclusion is "to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." (internal citations omitted).

B. Plaintiff's Motion to Vacate Fails to Identify Error or Justify the Relief Sought.

Plaintiff's Motion to Vacate was not served on counsel or the defendant in this case. It was filed with the Court, but counsel only became aware of it well after it was filed, and through a phone conversation about other issues. Additionally, the Motion contains no certification of conferral as required by C.R.C.P. 121 § 1-15(8). However, dismissing the motion on those grounds would certainly invite yet more litigation.

Plaintiff fails to identify any error in this Court's Order dismissing the case. Plaintiff does not argue that any element of the doctrine of claim preclusion was not met. In fact, as with the original complaint, Plaintiff repeatedly references other cases stating, "For more than eight months, Plaintiff has consistently identified the same concealed billing records, expert-payment flows, and income-modeling work that are now central to this Motion." Plaintiff claims, without citation or evidence, that "No tribunal has substantively reviewed that evidence on the merits." Even if Plaintiff were correct, then by his admission, he has submitted this evidence to other courts for more than eight months and it is still pending before those courts. Colorado law grants trial courts broad discretionary authority over evidentiary matters. *Bly v. Story*, 241 P.3d 529 (Colo. 2010). This discretion encompasses determinations regarding the admissibility of evidence presented during trial proceedings. *Venalonzo v. People*, 2017 CO 9, 388 P.3d 868. Plaintiff's recourse, if his assertions are true, is to press for a ruling in the original court proceeding and, if he

is unsatisfied with the results, to file a motion to vacate or reconsider the ruling or appeal the ruling within that court.

Plaintiff fails to offer legal grounds upon which this Court could grant his Motion to Vacate. To the contrary, Plaintiff reenforces this Court's dismissal by arguing that this same evidence has been presented to other courts for over eight months. It would be improper for this Court to supplant another trial court's determination of admissibility and relevance of Plaintiff's proffered evidence. As this Court noted in its Order dismissing this case, "This Court has no authority to review the rulings made by another district court. See *State ex rel. Dep't of Corrs. v. Pena*, 911 P.2d 48, 57 (Colo. 1996) ("A district court may not assume the authority or power to superintend or review the propriety of or supervise the judgment of another district court.").

E. Defendant Is Entitled to an Award of Attorney's Fees and Costs

Defendant is entitled to an award of her attorney's fees and costs pursuant to C.R.S. 13-17-102. Plaintiff's Complaint was barred by the doctrine of claim preclusion. A complaint that is barred by claim preclusion is necessarily frivolous because Plaintiff cannot present a rational argument based on the evidence or law in support of the claim. When claim preclusion applies, the law is clear that the subsequent action is barred as a matter of law. The doctrine of res judicata holds that an existing judgment is conclusive of the rights of the parties in any subsequent suit on the same claim. *Michaelson v. Michaelson*, 884 P.2d 695 (Colo. 1994).

The doctrine prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. *Michaelson v. Michaelson*, 884 P.2d 695 (Colo. 1994). This is because claim preclusion works to preclude not only the relitigation of matters that have already been decided but

also matters that could have been raised in a prior proceeding but were not. *Argus Real Estate, Inc. v. E-470 Pub. Highway Auth.*, 109 P.3d 604 (Colo. 2005).

Defendant is entitled to an award of attorney's fees and costs for three primary reasons. First, Plaintiff's complaint was both groundless and frivolous under Colorado law because it was clearly barred by claim preclusion. When all elements of claim preclusion are present—as they were here—a plaintiff cannot present any rational argument based on law or evidence to support the claim, making it frivolous. The complaint is also groundless because claim preclusion is a complete defense that prevents any possibility of success on the merits.

Second, Colorado law provides clear statutory authority for awarding attorney's fees in this case. Under C.R.S. 13-17-102, courts must award attorney's fees when an action lacks substantial justification.

Third, Plaintiff's motion to vacate the dismissal order provides additional grounds for awarding attorney's fees. Colorado courts have consistently awarded attorney's fees in cases involving dismissals based on procedural bars similar to claim preclusion. For example, courts have held that "an award of attorney fees is mandatory when a trial court dismisses an action under C.R.C.P. 12(b)." *Wark v. Bd. of Cty. Comm'rs*, 47 P.3d 711 (Colo. App. 2002). This includes dismissals based on lack of subject matter jurisdiction under the Colorado Governmental Immunity Act, where courts have held that "[a] party who successfully defends such a dismissal order is also entitled to recover reasonable attorney fees on appeal." *Ferrel v. Colo. Dep't of Corr.*, 179 P.3d 178 (Colo. App. 2007).

Furthermore, Colorado courts have recognized that attorney's fees may be awarded for defending against subsequent motions after dismissal. When a party is awarded attorney fees for

a prior stage of the proceedings, "it may recover reasonable attorney fees and costs for successfully defending the appeal." *1046 Munras Props., Ltd. P'ship v. Kabod Coffee*, 2025 COA 71, 577 P.3d 1033. This principle should extend to fees incurred in defending against a motion to vacate a dismissal order, as such a motion essentially seeks to overturn the dismissal similar to an appeal.

Colorado courts have recognized that when "the record reveals that counsel or any party has brought, maintained, or defended an action in bad faith, the rationale for awarding attorney fees is even stronger." *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984). Bad faith may include conduct that is "arbitrary, vexatious, abusive, or stubbornly litigious" and may also include "conduct aimed at unwarranted delay or disrespectful of truth and accuracy." *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984), *In re in re Talco, Ltd.*, 769 P.2d 468 (Colo. 1989).

The plaintiff's motion to vacate exemplifies "stubbornly litigious" conduct. After the court properly dismissed the complaint based on claim preclusion, the plaintiff persisted in pursuing litigation without any legitimate basis. This type of conduct demonstrates bad faith that strengthens the rationale for awarding attorney's fees. This represents a continuation of frivolous litigation and demonstrates the type of "stubbornly litigious" conduct that Colorado courts have found warrants attorney's fees.

The only proper course of action is to DENY Plaintiff's Motion to Vacate and to award Defendant her attorney's fees and costs for the original groundless and frivolous Complaint, and this equally groundless and frivolous Motion to Vacate.

WHEREFORE, Plaintiff respectfully prays that this Court DENY Plaintiff's Motion to Vacate, and award Defendant her attorney fees pursuant to C.R.S. 13-17-102, award Defendant her costs, and for such further or different relief to which she is entitled.

Respectfully submitted this 24th day of December, 2025.

Mills Halstead & Zaloudek, LLC

s/Michael F. Mills

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of December, 2025 a true and correct copy of the foregoing was served via Colorado Courts E-filing, addressed to all parties of record.

By: s/ Michael F. Mills
Michael F. Mills

Pursuant to C.R.C.P. 121, Section 1-26(7) a copy of this document with original or scanned signatures is maintained at the offices of Mills Halstead & Zaloudek, LLC and will be made available for inspection by other parties or the court upon request.