

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: August 31, 2016 3:47 PM FILING ID: 82A166F9CEDED CASE NUMBER: 2016CV33202
STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL, Plaintiffs, v. ALEJANDRO "ALEX" JAVALERA, JR. and CAROL JAVALERA. Defendants.	▲ COURT USE ONLY ▲
Attorneys for Plaintiff: CYNTHIA H. COFFMAN Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General JOHN FEENEY-COYLE, 44970* Assistant Attorneys General 1300 Broadway, 7 th Floor Denver, CO 80203 (720)508-6209 (720)508-6040 Fax *Counsel of Record	Case No.: Div.:
<i>EX PARTE</i> MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND ASSET FREEZE	

Plaintiff, the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel ("Plaintiff"), moves this Court for a Temporary Restraining Order, Preliminary Injunction, and Asset Freeze pursuant to § 6-1-110(1), C.R.S. (2016), and C.R.C.P. 65, to enjoin Defendants from engaging in deceptive trade practices and unlawful activities, and freezing bank accounts, including those identified herein. In support of this Motion, Plaintiff states as follows:

INTRODUCTION

1. Defendants provide residential and commercial carpet installation services in Colorado. Defendants require a fifty percent deposit before beginning any work, fail to show for the scheduled installation, and disappear with the deposit. In the event Defendants show at all, they deliver the wrong carpet or carpet that is used. In response to consumer complaints, Defendants promise to refund consumers' deposits only to disappear with the money. Consumers' deposits range from several hundred dollars to tens of thousands of dollars.

2. Alejandro ("Alex") Javalera, Jr. and Carol Javalera ("Defendants") have owned various carpet and flooring companies throughout the years, including Alex Carpets, LLC, Alex Carpet, LLC, and American Carpet, LLC, and have operated under various trade names, including Alex Carpets, Budget Flooring and Wood, and Alex Carpets & More. Defendants have also represented themselves to consumers as Budget Flooring, although upon information and belief, that entity has never been registered by Defendants with the Colorado Secretary of State. *See Ex. A, Affidavit of Investigator LeAnn Lopez*, at ¶5.

3. Defendants misrepresent the nature and characteristics of the products and services they sell in violation of §§ 6-1-105(1)(e), (f), (g), and (i), C.R.S., of the Colorado Consumer Protection Act ("CCPA").

4. Alex Javalera has a history of evading law enforcement. Several consumers in this case sought assistance from local law enforcement to have their money returned. When confronted by law enforcement, Alex Javalera promises to issue refunds but fails to honor that promise. This behavior is not an aberration. At least four bench warrants have been issued for Alex Javalera's arrest for failing to appear. *See Ex. A* at ¶¶11, 13-14, Att. 2; *Ex. D, Affidavit of Debbie Lloyd*; *Ex. F, Affidavit of Mark Anthony Torres*; *Ex. G, Affidavit of Antoniette Estrada*.

5. Upon information and belief, American Carpet, LLC d/b/a Alex Carpets is the only active entity registered with the Colorado Secretary of State. However, consumers report doing business as recently as June 22, 2016 with Alex Carpets & More, Budget Flooring and Wood, or Budget Flooring, all of which are either inactive with the Secretary of State or not registered by Defendants. *See Ex. A* at ¶¶5-6.

6. Given the risk that Defendants pose to Colorado consumers, Plaintiff requests a Temporary Restraining Order, Preliminary Injunction, and Asset Freeze prohibiting Defendants from collecting monies from consumers for any carpet or

flooring sales or installation services in Colorado, and freezing the bank accounts identified herein, until final relief can be determined in this case.

FACTUAL ALLEGATIONS

I. Defendants' Business Operations and Bank Accounts

7. Defendants have registered and operated several carpet companies, including Alex Carpet, LLC and American Carpet, LLC. Defendants registered Alex Carpets, Budget Flooring and Wood, and Alex Carpets & More as trade names for their corporate and individual business operations. See **Ex. A** at ¶¶5-6.

8. Some of Defendants' contracts with consumers list the company's name as Alex Carpets & More with a physical address of 7711 W 6th Ave, Unit L, Lakewood, Colorado 80214. See e.g., **Ex. A**, Att. 2 at pp. 9-11. Other documents list the company's name as Budget Flooring or Budget Flooring and Wood, with an address at 8000 West Crestline Avenue, Littleton, Colorado 80123. See **Ex. A**, Att. 3; **Ex. H**, *Janet Fletcher's Contract with Budget Flooring*.

9. Consumers make their deposit checks payable to the various corporate entities or to the Defendants personally. See **Ex. C**, *Affidavit of Jillian Dawes*, at ¶7, Att. 1; **Ex. D** at ¶¶6-7, Att. 1. In at least one instance, a consumer was instructed to make his check payable to "Alex Java." See **Ex. A** at ¶11, Att. 2 at pp. 12-13.

10. Defendants change the payee's name on consumers' checks presumably so that either of them can cash the check personally. See **Exs. C** and **D**.

11. Almost immediately after collecting consumers' deposit checks, Defendants cash them at the consumer's bank. See **Ex. B**, *Affidavit of Sharon Setser*, at ¶¶3-4; **Ex. D** at ¶¶6-7; **Ex. F** at ¶¶6-8.

12. In one instance, Alex Javalera drafted two checks to a consumer from two different Wells Fargo accounts. The first account belongs to Budget Flooring and Wood, listing the Crestline address, and the second account belongs to Alex Javalera and Alex Carpet, LLC, listing the same address. The account number for the first account is XXXXXX9668 and the account number for the second account is XXXXXX5882. See **Ex. A** at ¶12, Att. 3.

13. The factual allegations listed below are only a sample of complaints about Defendants' business practices. Over sixty complaints were lodged by consumers with the Colorado Attorney General or with the Denver/Boulder BBB about Defendants' business practices. All of those complaints detail a similar, if not the same, pattern of deceit described below. Based on the complaints obtained by

Plaintiff, consumers have paid over \$65,000 to Defendants based on false representations about their carpet sales and installation services. *See Ex. A* at ¶¶7-11.

II. Sample of Defendants' Consumer Victims

14. Consumers' dealings with Defendants, as detailed below and in **Exhibit A**, demonstrate the need for the immediate injunctive relief and asset freeze sought here. *See also Ex. A* at ¶¶7-11, Att. 2. Consumers detail a consistent pattern and practice by Defendants of collecting deposit payments for carpet sales and installment services under false pretenses, then disappearing with the money without providing the promised goods or services. When consumers attempt to obtain refunds, Defendants initially promise to return the deposits, but eventually disappear with consumers' money.

Sharon Setser, Parker, Colorado

15. On June 6, 2014, Alex Javalera came to Ms. Sharon Setser's rental property, measured the installation area, and quoted her \$980 to install carpet. Alex Javalera scheduled the installation for June 9 and Ms. Setser paid a \$490 deposit. *See Ex. B* at ¶¶3-4.

16. According to Ms. Setser's bank records, Alex Javalera cashed the deposit check at her bank two days later. *Id.* at ¶4.

17. Defendants failed to show on June 9. After providing several excuses for not showing, Alex Javalera rescheduled the installation for June 12. *Id.* at ¶5.

18. Defendants failed to show on June 12. Ms. Setser attempted to contact Alex Javalera but received no response. *Id.* at ¶¶6-7.

19. Ms. Setser's realtor, who originally referred her to Defendants, was eventually able to contact Alex Javalera and Defendants' installers came to the rental property on June 13. *Id.* at ¶¶2 and 8.

20. Defendants installed only half of the required padding, which appeared to be used, and no carpet, before demanding payment for their work. *Id.* at ¶9.

21. When Ms. Setser contacted Alex Javalera about the installers' payment demand, he told her to pay the installers \$100 for "gas money" and that he would "take care of it." Ms. Setser paid the installers \$100 in cash. The carpet was never installed. *Id.* at ¶¶10-11.

22. Ms. Setser attempted to contact Alex Javalera several times to complete the installation but received no response and never heard from Defendants again. *Id.* at ¶13.

23. Ms. Setser eventually paid another carpet company to remove the used padding and install new carpet. *Id.* at ¶12.

Jillian and Clint Dawes, Centennial, Colorado

24. In November 2014, Mrs. Jillian Dawes called Defendants for a quote to install carpet in her home. *See Ex. C* at ¶3.

25. Alex Javalera came to the Dawes' home, measured the installation area, and quoted them \$1,300 to complete the job. Alex Javalera asked for a fifty percent deposit and Mr. Clint Dawes wrote him a check for \$650, made payable to "Alex Javalera." They scheduled the installation for December 12. *Id.* at ¶¶4-5.

26. Defendants failed to show on December 12. Mrs. Dawes and Alex Javalera rescheduled the installation for the following day, December 13. *Id.* at ¶6

27. Defendants failed to show on December 13. Mrs. Dawes rescheduled the installation with Alex Javalera at least a dozen times, but no one ever showed to install the carpet. *Id.* at ¶6.

28. The Dawes' bank records showed that their check was cashed at a Key Bank. The check that was cashed was made payable to "Alex Javalera *or Carol Javalera*." The check had the initials "CD" written above "*or Carol Javalera*" and a signature for "Carol Javalera" appeared on the back of the check. *Id.* at ¶¶7-10, Att. 1.

29. Mr. and Mrs. Dawes never saw or heard Carol Javalera's name prior to obtaining a copy of the cashed check; and Mr. Dawes never initialed the check he gave to Alex Javalera. *Id.* at ¶9.

30. After Defendants failed to respond, the Mr. and Mrs. Dawes hired a different company to install the carpet for \$2,300. *Id.* at ¶11.

Debbie Lloyd, Arvada, Colorado

31. In November 2014, Ms. Debbie Lloyd contacted Defendants for a quote to install carpet in her home. One of Defendants' installers came to her home, measured the installation area, and quoted her \$1,800 to complete the job. *See Ex. D* at ¶3.

32. In February 2015, Ms. Lloyd spoke with Alex Javalera directly and he promised to honor the November 2014 quote. *Id.* at ¶5.

33. On March 16, 2015, Ms. Lloyd gave Alex Javalera a check for \$900 as a deposit, made payable to “Alex Carpets.” According to Ms. Lloyd’s bank records, Alex Javalera added his own name to the check and cashed it at Ms. Lloyd’s bank the same day. *Id.* at ¶¶6-7.

34. Defendants were scheduled to install the carpet on March 23, but no one showed. *Id.* at ¶8.

35. Over the course of the following two days, Ms. Lloyd and Alex Javalera exchanged several text messages trying to reschedule the install. Alex Javalera then ceased all communication and never showed to install the carpet. *Id.* at ¶9.

36. Ms. Lloyd filed a police report with the Arvada Police Department, alleging that Defendants took her deposit and changed the payee’s name on her check. When Ms. Lloyd told Alex Javalera about the police report, he promised to return her money. *Id.* at ¶¶10-11.

37. Ms. Lloyd never heard from Defendants again and never received a refund from them. She eventually hired another company to install the carpet in her home. *Id.* at ¶¶12-13.

JC Parrish, Denver, Colorado

38. In March 2015, Mr. J.C. Parrish contacted Defendants for a quote to install carpet in his Denver rental property. Alex Javalera came to Mr. Parrish’s property, measured the installation area, and quoted him \$1,440 to complete the job. Mr. Parrish paid Alex Javalera a \$600 deposit and they scheduled the installation for the following week. *See Ex. E, Affidavit of JC Parrish*, at ¶3.

39. Defendants did not show on the installation date. Alex Javalera gave Mr. Parrish multiple excuses for not showing. *Id.* at ¶4.

40. On or around March 30, Alex Javalera contacted Mr. Parrish and told him his carpet would be installed on April 4. *Id.* at ¶5.

41. On April 4, Defendants’ installers came to Mr. Parrish’s property, inspected the installation area and promised to return the following day. They never returned. *Id.* at ¶6.

42. On or around April 6, Mr. Parrish asked Alex Javalera for a refund and Alex Javalera told Mr. Parrish that an installer was on his way to the property. No one

showed. *Id.* at ¶7.

43. Mr. Parrish never heard from Defendants again and his money was never returned. *Id.* at ¶¶7-8.

Mark Anthony Torres, Aurora, Colorado

44. In March 2015, Mr. Anthony Torres contacted Defendants for a quote to install carpet in his home. On March 4, Alex Javalera came to Mr. Torres' home, measured the installation area, and quoted him \$2,450 to complete the job. Mr. Torres told Alex Javalera he would contact him when he was ready to install the carpet. See **Ex. F** at ¶¶3-4.

45. On May 27, Alex Javalera contacted Mr. Torres to tell him the carpet he wanted was on sale until May 29. *Id.* at ¶5.

46. On May 29, Mr. Torres gave Alex Javalera a check for \$1,000 as a deposit. Mr. Torres postdated the check until June 5 because Defendants did not have the colors he wanted. Alex Javalera promised Mr. Torres he would not cash the check until he received the color samples he wanted. *Id.* at ¶6.

47. According to Mr. Torres' bank records, Alex Javalera cashed his check on June 1. Alex Javalera told Mr. Torres his secretary was at fault for cashing the check early. *Id.* at ¶8.

48. From May 31 to June 5, Alex Javalera repeatedly promised to deliver carpet samples to Mr. Torres but never showed. *Id.* at ¶7.

49. Mr. Torres even offered to visit Defendants' offices to see the samples, but never received a response. *Id.* at ¶9.

50. Mr. Torres visited 2135 South Sheridan Boulevard, hoping to find Defendants. The storefront was empty and an employee from a neighboring business told Mr. Torres that Defendants had vacated the premises three months earlier. *Id.* at ¶10.

51. Mr. Torres contacted the Aurora Police Department and a Detective was able to speak with Alex Javalera by phone. Alex Javalera promised the Detective he would return Mr. Torres' money. He never did. *Id.* at ¶¶11-12.

52. Mr. Torres' bank was able to recover the \$1,000 he had paid to Defendants. *Id.* at ¶12.

Antoniette Estrada, Lakewood, Colorado

53. On January 13, 2016, Alex Javalera came to Ms. Antoniette Estrada’s home, measured the installation area, quoted her \$2,070 to complete the job, and asked for a fifty percent deposit. *See Ex. G* at ¶3.

54. Ms. Estrada did not pay the deposit immediately and Alex Javalera threatened to rescind the quote if she did not agree to pay it by January 15. Ms. Estrada trusted that Alex Javalera would install the carpet and paid the \$1,035 deposit on January 14. *Id.* at ¶4.

55. On January 30, a man named Paul Martinez from American Pride Flooring came to Ms. Estrada’s home. Mr. Martinez claimed to be one of Defendants’ contractors and demanded the remaining \$1,035 before beginning any work. Ms. Estrada noticed that Mr. Martinez had delivered the wrong carpet and she refused to pay the balance. She called Alex Javalera and demanded that he deliver the correct carpet or refund her money. Alex Javalera responded only by text, blaming Mr. Martinez for delivering the wrong carpet. *Id.* at ¶¶6-10

56. When Ms. Estrada questioned Mr. Martinez about the numerous cancellations followed by the delivery of the wrong carpet, Paul Martinez stated that Alex Javalera “does this all the time.” *Id.* at ¶9.

57. For the next two weeks, Ms. Estrada tried to reschedule the install with Alex Javalera. Defendants never showed. *Id.* at ¶11.

58. After Defendants ceased communicating with Ms. Estrada, she filed a police report with the Lakewood Police Department. *Id.* at ¶14.

59. When Javalera learned of the police report, he initially promised to return Ms. Estrada’s deposit but then ceased all communication and disappeared with her money. *Id.* at ¶¶15-18.

LEGAL ARGUMENT

I. The CCPA Expressly Provides for Temporary Restraining Orders and Preliminary Injunctions

60. This Court is expressly authorized by C.R.S. § 6-1-110(1) to issue a temporary restraining order preliminary injunction to enjoin ongoing violations of the CCPA:

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this

article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

61. Additionally, Plaintiff may seek a temporary restraining order and preliminary injunction pursuant to C.R.C.P. 65.

62. The CCPA's express provision for temporary restraining orders and preliminary injunctions reflects its purpose, which is to provide "prompt, economical, and readily available remedies against consumer fraud." *W. Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979); *see also May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 972 (Colo. 1993); *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47, 51 (Colo. 2001).

63. Both a temporary restraining order and preliminary injunction are designed to preserve the status quo or protect a party's rights pending the final determination of a matter. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). A temporary restraining order is meant to prevent "immediate and irreparable harm." *Id.* (quoting *Mile High Kennel Club v. Colo. Greyhound Breeders Ass'n*, 559 P.2d 1120, 1121 (Colo. App. 1977)). Like a temporary restraining order, a preliminary injunction prevents irreparable harm before a decision on the merits of a case. *Id.* Granting preliminary injunctive relief is within the sound discretion of the trial court, and its ruling will not be disturbed on appeal unless it is manifestly unreasonable, arbitrary, or unfair. *Bd. of County Comm'rs v. Fixed Base Operators*, 939 P.2d 464, 467 (Colo. App. 1997).

II. The *Rathke* Factors Governing Preliminary Injunctions Are Met in this Case

64. The Court may grant a preliminary injunction when:

- a) there is a reasonable probability of success on the merits;
- b) there is a danger of real, immediate and irreparable injury which may be prevented by injunctive relief;

- c) there is no plain, speedy and adequate remedy at law;
- d) the granting of the preliminary injunction will not disserve the public interest;
- e) the balance of the equities favors entering an injunction; and
- f) the injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982); *see also Gitlitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007).

65. The *Rathke* factors for preliminary injunctive relief are met here.

66. First, there is a reasonable probability that Plaintiff will prove its claims against Defendants. *Rathke*, 648 P.2d at 653. Affidavits signed by consumers and additional complaints filed with Plaintiff and the BBB, along with consumer contracts and payments reflect Defendants' pattern of deceit. Defendants routinely collect deposit payments from consumers without ever completing, or even beginning, the carpet installation. When consumers complain about Defendants' services, or attempt to obtain a refund, Defendants disappear with the deposit payments. This evidence supports a reasonable probability that Plaintiff will prove its claims against Defendants at trial.

67. There is a danger of real, immediate, and irreparable injury to consumers if no preliminary injunction is entered. *Rathke*, 648 P.2d at 653. As a preliminary matter, the temporary restraining order and preliminary injunction are sought by the Colorado Attorney General on behalf of the State of Colorado to enforce state laws affecting the public interest. Under Colorado law, the Attorney General is not required to plead or prove immediate or irreparable injury when a statute concerning the public interest is implicated. *Kourlis v. Dist. Court*, 930 P.2d 1329, 1335 (Colo. 1997) ("Special statutory procedures may supersede or control the more general application of a rule of civil procedure."); *see also Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001); *Lloyd A. Fry Roofing Co. v. State Dep't of Health Air Pollution Variance Bd.*, 553 P.2d 800, 808 (Colo. 1976).

68. In any event, the irreparable injury requirement is met in this case. The CCPA is designed to safeguard the public from financial loss. *State ex rel. Dunbar v. Gym of Am., Inc.*, 493 P.2d 660, 667 (Colo. 1972). Defendants make almost no attempt to provide the goods and services they promise, and when consumers demand refunds, they disappear with their money. Even when confronted by local law enforcement, Defendants disappear with consumers' money. Those consumers

who did get their money back were only able to do so with the help of their credit card company or bank.

69. Even if Defendants' corporate entities are inactive with the Secretary of State, they continue to do business and solicit consumers. Further, they have shown the ability and desire to organize, register, and operate a number of carpet businesses to continue their deceptive practices. And even if Defendants have ceased operations, a temporary restraining order and preliminary injunction should be entered here. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also Old Homestead Bread Co. v. Marx Baking Co.*, 117 P.2d 1007, 1010 (Colo. 1941) ("If the practice 'has been abandoned in good faith and for all time, an injunction can do the defendant no harm, and it is a protection to which we deem the plaintiff entitled."). Because the purpose of injunctive relief in this case is to prevent future violations of the CCPA, injunctive relief is appropriate when there is a "cognizable danger of recurrent violation, something more than mere possibility." *W.T. Grant Co.*, 345 U.S. at 633. Without the relief requested here, there is nothing to prevent Defendants from starting a new carpet company, or restarting the operations of their current companies, and continuing to take money from Colorado consumers.

70. For the same reasons, absent an injunction, there is no plain, speedy and adequate remedy at law. *Rathke*, 648 P.2d at 654. A law enforcement action under the CCPA is equitable in nature. *See State ex rel. Salazar v. Gen. Steel*, 129 P.3d 1047, 1050 (Colo. App. 2005). As noted above, the CCPA was designed to provide "prompt, economical, and readily available remedies against consumer fraud." *W. Food Plan*, 598 P.2d at 1041 (emphasis added). Defendants pose a unique threat to consumers. Defendants make almost no effort to provide the goods or services they are paid for. Defendants have exhibited a pattern of operating their business solely for the purpose of deceiving consumers into making false deposit payments. Involvement by local law enforcement has no effect on Defendants' behavior.

71. The granting of a preliminary injunction will not disserve the public interest, and the balance of equities favors a preliminary injunction. *Rathke*, 648 P.2d at 654. An injunction will serve the public interest by protecting consumers from significant ongoing financial harm. For their part, Defendants will suffer no undue hardship by the entry of a preliminary injunction because Defendants have no right to continue to engage in unlawful and deceptive trade practices, or to collect and keep money from consumers as a result of such unlawful and deceptive conduct. Without an injunction, Plaintiff will be unable to adequately protect the public from Defendants' unlawful activities.

72. Finally, an injunction would preserve the status quo pending a trial on the merits. *Rathke*, 648 P.2d at 654. "The purpose of an injunction is to stop the alleged actions of defendant, to prevent any *further* damage to plaintiff." *Am. Television & Commc'ns Corp. v. Manning*, 651 P.2d 440, 446 (Colo. App. 1982)

(emphasis added) (rejecting the trial court’s denial of a preliminary injunction on the basis that the status quo would not be preserved because defendants’ business would be completely closed); *see also Sanger v. Dennis*, 148 P.3d 404, 419 (Colo. App. 2006) (finding the appropriate status quo to be the plaintiff’s status quo *ante*, or before the alleged harm occurred); *Commonwealth v. Snyder*, 977 A.2d 28, 43 (Pa. Commw. Ct. 2009) (“The status quo to be maintained is the last actual and lawful uncontested status, which preceded the pending controversy.”). Since at least 2014, Defendants have operated their business for the sole purpose of collecting payments from consumers under false pretenses. Because of the substantial risk of future harm Defendants pose to consumers, there is a need to restore the status quo by preventing Defendants from collecting or controlling money paid by consumers for carpet or flooring sales or installation services in Colorado.

III. Asset Freeze Request under C.R.S. § 6-1-110(1)

73. Plaintiff requests an equitable order pursuant to C.R.S. § 6-1-110(1) that freezes Defendants’ bank account(s) to preserve Plaintiff’s ability to obtain final financial relief. Section 6-1-110(1) authorizes an equitable order which may be necessary to “completely compensate or restore to the original position of any person injured . . . or to prevent any unjust enrichment.” *Id.* The Colorado Supreme Court has held that § 6-1-110(1) “must be read in light of the broad legislative purpose to provide *prompt, economical, and readily available* remedies against consumer fraud.” *W. Food Plan*, 598 P.2d at 1041 (emphasis added); *see also United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483, 496 (2001) (stating that district courts sitting in equity have discretion to craft a fitting remedy “unless a statute clearly provide otherwise.”).

74. Courts have ordered asset freezes in cases brought under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53, which, like the CCPA, provide equitable relief against deceptive trade practices. *See, e.g., FTC v. U.S. Mortg. Funding, Inc.*, 2011 WL 810790, at *1 (S.D. Fla. March 1, 2011) (ordering asset freeze against loan modification defendants “thereby preserving Court’s ability to provide effective final relief.”); *FTC v. USA Financial, LLC*, 2011 WL 679430, at *4 (11th Cir. Feb. 25, 2011) (“Maintaining the asset freeze until the monetary judgment was satisfied was necessary to ‘accomplish complete justice.’”) (quoting *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002)); *FTC v. Inc21.com Corp.* 2010 WL 1486356, slip op. at *1 (N.D. Cal. April 13, 2010) (ordering asset freeze in a preliminary injunction so refunds may be issued if FTC prevails); *FTC v. Darling Angel Pin Creations, Inc.* 2011 WL 65917 (M.D. Fla. Jan. 10, 2011) (granting asset freeze to preserve court’s ability to grant effective final relief to consumers); *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (“A request for equitable relief invokes the district court’s inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.”); *In re Nat’l Credit Mgmt. Grp., LLC*, 21

F. Supp. 2d 424, 462 (D.N.J. 1998) (observing that state and FTC were likely to prevail on merits in a consumer fraud action under state and federal law and thus an asset freeze is appropriate to preserve assets for possible restitution awards); *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982) (stating that an asset freeze by a preliminary injunction is an appropriate provisional remedy to give form to the final equitable relief) (“While it is true that the asset freeze has an effect comparable to that of an attachment, it is not an attachment.”).

75. An asset freeze is necessary for Plaintiff to achieve its statutory mandate to “completely compensate or restore to the original position of any person injured . . . or to prevent any unjust enrichment.” C.R.S. § 6-1-110(1).

76. If Defendants’ assets are not frozen immediately, there is a demonstrable risk that Defendants will fail to pay any judgment that is entered against them. By immediately cashing consumers’ checks, often at the consumer’s own bank, Defendants have exhibited the ability and intention to hide their assets when confronted with refund demands. Defendants’ refusal to issue refunds, even when demanded by local law enforcement, reflects Defendants’ intentions to ignore or obstruct Plaintiff’s attempts to collect on any judgment it may obtain in this case.

77. Plaintiff respectfully requests the Court to ensure that meaningful relief can be obtained by freezing all bank accounts belonging to or controlled by Defendants, including the accounts identified herein. See **Ex. A** at ¶12, Att. 3.

78. Pursuant to C.R.C.P. 65(c), Plaintiff is not required to provide a security bond.

79. Pursuant to C.R.C.P. 65(b), Plaintiff has not notified Defendants of this *ex parte* Motion because of Defendants’ propensity for evading consumers and law enforcement when confronted with allegations regarding their business practices. In order to effectively restrain Defendants’ deceptive conduct and freeze any assets, it is necessary to proceed with the temporary restraining order and asset freeze without notice to Defendants until a hearing on preliminary injunction is set.

80. Plaintiff respectfully requests that the Court set a date for an evidentiary hearing within 14 calendar days following the Court’s Order regarding Plaintiff’s Motion for Temporary Restraining Order, Preliminary Injunction, and Asset Freeze.

WHEREFORE, Plaintiff respectfully requests the Court to issue the attached proposed Temporary Restraining Order and Asset Freeze, which would prohibit Defendants from collecting or controlling any monies paid by consumers for any carpet or flooring sales or installation services in Colorado, and freezing all bank accounts belonging to or controlled by Defendants, including the bank accounts identified therein. Following a hearing on this matter, Plaintiff requests that the

Court convert the Temporary Restraining Order and Asset Freeze into a Preliminary Injunction and Asset Freeze.

Respectfully submitted this 31st day of August, 2016.

CYNTHIA H. COFFMAN
Attorney General

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