

DISTRICT COURT, DENVER COUNTY, COLORADO		
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202		
<b>Plaintiff(s)</b> ST OF COLO EX REL ATTORNEY GENERAL et al. v. <b>Defendant(s)</b> ALEJANDRO ALEX JAVALERA, JR et al.		DATE FILED: March 6, 2017 10:44 AM CASE NUMBER: 2016CV33202
		<b>△ COURT USE ONLY △</b>
		Case Number: 2016CV33202 Division: 368      Courtroom:
<b>Order on Motion for Default Judgment</b>		

The motion/proposed order attached hereto: GRANTED.

This matter is before the Court on Plaintiff's Motion for Default Judgment, filed December 27, 2016. Plaintiff's motion is granted.

The Court finds that service was in accordance with C.R.C.P. 4. To date, neither defendant has answered, filed a responsive pleading, or otherwise appeared in this matter. The Court granted "Plaintiff's Motion for Entry of Default Against Defendants Carol Javalera and Alejandro 'Alex' Javalera, Jr." on November 21, 2016.

The requirements of C.R.C.P. 55(b) and C.R.C.P. 121(c), Section 1-14 have been met: the affidavit of Attorney John Feeney-Coyle shows that venue is proper; and that neither of the defendants is a minor, incapacitated person, in the military, or an officer or agency of the State of Colorado. Section 6-1-113(4), C.R.S. 2016 permits the entry of attorney fees. The affidavit of Investigator Leann Lopez establishes the amount of damages. The Court finds the attorney fees reasonable both in time (180 hours) and amount (\$41,580.00).

Paragraph 17, line one of the order is amended to read "thirty-four" instead of four.

Judgment enters in accordance with the attached order.

Issue Date: 3/6/2017



EDWARD DAVID BRONFIN  
District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL,  Plaintiffs,  v.  ALEJANDRO "ALEX" JAVALERA, JR. and CAROL JAVALERA  Defendants.	▲ COURT USE ONLY ▲
	Case No.: 2016CV033202 Div.: 368
<b>(PROPOSED) ORDER ON PLAINTIFF'S MOTION FOR          DEFAULT JUDGMENT</b>	

The Court, having reviewed the record in this matter, including Plaintiff's Motion for Default Judgment and the supporting affidavits, and being fully advised in the premises:

FINDS and CONCLUDES that default judgment should be entered for Plaintiff in the above-captioned matter against Defendants Alejandro "Alex" Javalera, Jr. and Carol Javalera ("Defendants")

1. This Court has subject matter jurisdiction in this action by virtue of C.R.S. § 6-1-110(1) (2016). The Court has jurisdiction over Defendants who were personally served.
2. Some of Defendants' consumer victims resided in the City and County of Denver during the relevant timeframe. Therefore, venue has been considered and is proper in the County of Denver, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2016).

3. Pursuant to Rule 121 § 1-14, neither Defendant are minors, incapacitated persons, officers or agencies of the state, or in the military.
4. Neither Defendant has answered Plaintiff's Complaint within the timeframe set by the Rules of Civil Procedure, and default was entered on November 21, 2016.
5. Plaintiff is in compliance with C.R.C.P. Rule 55, having provided notice of its motion for default judgment to Defendants on the date of filing.

### PERMANENT INJUNCTION

6. The State has requested a permanent injunction pursuant to C.R.S. § 6-1-110(1) against Alex Javalera and Carol Javalera and any other person or entity under their control or in active concert or participation with them who receive notice of this Court's order, that permanently enjoins them from directly or indirectly collecting or controlling any money paid by consumers for residential or commercial carpet or flooring products or installation services.
7. The Court finds that such relief is warranted based on the allegations in the Complaint, the affidavits submitted in support of the Motion for Temporary Restraining Order, Preliminary Injunction, and Asset Freeze, and the record established at the September 2, 2016 temporary restraining order hearing and the preliminary injunction hearings on September 16, 2016 and October 5, 2016.
8. Accordingly, the Court hereby converts the preliminary injunction to a permanent injunction.

#### **I. Monetary Relief**

##### **A. *Restitution and Unjust Enrichment***

9. Through its Motion for Default Judgment the State seeks monetary relief against Defendants under C.R.S. § 6-1-110(1), which authorizes the Court to make "such orders or judgments . . . which may be necessary to completely compensate or restore to the original position of any person injured by means of any [deceptive trade practice] or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice." As such, Defendants are not entitled to keep the proceeds earned from their deceptive trade practices.
10. Financial losses detailed in consumer complaints and testimony heard at the

preliminary injunction hearings can be used to form a baseline in calculating the amount of disgorgement necessary in this case. See *FTC v. Kuykendall*, 371 F.3d 745, 766 (10th Cir. 2004) (en banc) (“[U]sing the defendant's gross receipts is a proper baseline in calculating the amount of sanctions necessary to compensate injured consumers.”); *FTC v. Freecom Commc’n., Inc.*, 401 F.3d 1192, 1206 (10th Cir. 2005) (same).

11. The State seeks restitution and disgorgement from Defendants for the money consumers paid for carpet and flooring products and installation services. Collectively, the thirty-four consumers who complained to the State, the Denver/Boulder Better Business Bureau, and/or local police departments paid Defendants \$70,397 for carpet and flooring products and installation services that were never delivered or performed as promised
12. The Court finds that Defendants violated the following provisions of the CCPA:
  - a. Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith. C.R.S. § 6-1-105(1)(e).
  - b. Representing that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand. C.R.S. § 6-1-105(1)(f).
  - c. Representing that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another. C.R.S. § 6-1-105(1)(g)
  - d. Advertising goods, services, or property with intent not to sell them as advertised. C.R.S. § 6-1-105(1)(i).
13. The Court hereby ORDERS Defendants Alex and Carol Javalera jointly and severally liable for **\$70,397** in restitution and unjust enrichment.

### ***B. Civil Penalties***

14. The CCPA also authorizes civil penalties of up to \$2,000 per CCPA violation, capped at \$500,000 for any related series of violations. C.R.S. § 6-1-112(1).

15. The Court finds that Defendants have engaged in a pattern of egregious and repeated CCPA violations, and assesses a civil penalty of \$2,000 per violation, as is appropriate in this matter. Defendants were aware that they were not providing the products or services consumers paid for. If consumers attempted to get their money back, Defendants would promise to issue a refund and then disappear for good.
16. Because Defendants did not answer the Complaint, the State was unable to conduct discovery. However, penalties may be imposed without proof of an actual injury or loss. *May Dep't Stores Co. v. State ex rel. Woodard*, 863 P.2d 967, 973 (Colo. 1993). *See also Rhino Linings United States v. Rocky Mt. Rhino Lining*, 62 P.3d 142, 148 (Colo. 2003) (“Thus, a plaintiff may satisfy the deceptive trade practices requirement of section 6-1-105(1)(e) by establishing either a misrepresentation or that the false representation had the capacity or tendency to deceive, even if it did not.”).
17. As set forth in the State’s Complaint, Defendants committed four violations of the CCPA. Defendants’ false quote scheme deceived all thirty-four consumers who filed complaints in violation of C.R.S. §§ 6-1-105(1)(e) and (i). Defendants’ used carpet scheme deceived five of those consumers in violation C.R.S. §§ 6-1-105(1)(f) and (g). At \$2,000 per violation, the statutory penalty for Defendants’ series of violations of C.R.S. § 6-1-105(1)(e) against thirty-four consumers equals \$68,000. The statutory penalty for Defendants’ series of violations of C.R.S. § 6-1-105(1)(i) against thirty-four consumers also equals \$68,000. At \$2,000 per violation, the statutory penalty for Defendants’ series of violations of C.R.S. § 6-1-105(1)(f) against five consumers equals \$10,000, as does the statutory penalty for Defendants’ series of violations of C.R.S. § 6-1-105(1)(g) against those same five consumers.
18. Accordingly, The Court hereby Orders an award of civil penalties of **\$156,000** against Defendants, jointly and severally, for their series of violations of C.R.S. §§ 6-1-105(1)(e), (f), (g), and (i).

### ***C. Attorney Fees and Costs***

19. The CCPA provides that “[c]osts and attorney fees shall be awarded to the attorney general . . . in all actions where the attorney general . . . successfully enforces this article.” C.R.S. § 6-1-113(4). The State is requesting fees for lead attorney John Feeney-Coyle and paralegal Nettie Morano in the amount of \$41,580.00 for 180 hours of work prosecuting this matter.
20. The Court hereby ORDERS Defendants Alex and Carol Javalera jointly and severally liable for fees in the amount of **\$41,580.00**.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

---

CATHERINE A. LEMON  
District Court Judge

Attachment to Order - 2016CV33202