

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: August 31, 2016 3:47 PM FILING ID: 82A166F9CEDD CASE NUMBER: 2016CV33202  <b>▲ COURT USE ONLY ▲</b>
STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL,  Plaintiffs,  v.  ALEJANDRO “ALEX” JAVALERA, JR. and CAROL JAVALERA  Defendants.	
Attorneys for Plaintiff: CYNTHIA H. COFFMAN Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General JOHN FEENEY-COYLE, 44970* Assistant Attorney General 1300 Broadway, 7 <sup>th</sup> Floor Denver, CO 80203 (720)508-6209 (720)508-6040 Fax *Counsel of Record	Case No.:  Div.:
<b>COMPLAINT</b>	

Plaintiff, the State of Colorado, upon relation of Cynthia H. Coffman, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges against Defendants Alejandro “Alex” Javalera, Jr. and Carol Javalera as follows:

INTRODUCTION

This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (2016) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for statutorily mandated civil penalties, and for disgorgement, restitution, and other relief as provided in the CCPA.

## PARTIES

1. Cynthia H. Coffman is the duly elected Attorney General of the State of Colorado and is authorized under § 6-1-103, C.R.S., to enforce the provisions of the CCPA.
2. Defendant Alejandro Javalera, Jr. (hereinafter “Alex Javalera”) has also represented himself to consumers as Alex Java. His last known address is 8000 West Crestline Avenue, #621, Littleton, Colorado 80123.
3. Defendant Carol Javalera’s last known address is 8000 West Crestline Avenue, #621, Littleton, Colorado 80123.
4. Defendants Alex and Carol Javalera (“Defendants”) are husband and wife, and together registered a number of carpet installation businesses with the Colorado Secretary of State, including Alex Carpets, LLC, Alex Carpet, LLC, and American Carpet, LLC. Defendants also registered three trade names with the Secretary of State, Alex Carpets, Alex Carpets & More, and Budget Flooring and Wood. Defendants have also represented themselves to consumers as Budget Flooring, although upon information and belief, that entity was registered with the Secretary of State by an individual with no known relation to Defendants. Defendants have most recently been doing business as Alex Carpets & More, Budget Flooring and Wood, or Budget Flooring.

## JURISDICTION AND VENUE

5. Pursuant to §§ 6-1-103 and 6-1-110, C.R.S., this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.
6. The violations alleged herein occurred, in part, in Denver County, Colorado. Therefore, venue is proper in Denver County pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98.

## RELEVANT TIMES

7. This action is timely brought pursuant to § 6-1-115, C.R.S., in that it is brought within three years of the date on which the last in a series of false, misleading, and deceptive acts or practices occurred and/or were discovered.

## PUBLIC INTEREST

8. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured consumers in Colorado. Defendants routinely sell products and services to consumers and collect partial payment

without any intention of providing those products or services. In addition, Defendants have taken market share from competitors who do not engage in such deceptive trade practices. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

### PERSONAL LIABILITY

9. At all relevant times, Alex Javalera and Carol Javalera conceived of, directed, participated in, and controlled the deceptive business practices alleged herein, and are personally liable for all such deceptive trade practices.

### ACTS OF AGENTS

10. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the employees, agents, and representatives of Defendants performed, directed, or authorized such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

### GENERAL ALLEGATIONS

11. Defendants provide residential and commercial carpet installation services in Colorado.

12. Defendants' business was formerly owned and operated by Alex Javalera's father, Alejandro Javalera, Sr. The company operated without any known issues while under the direction of Alejandro Javalera Sr.

13. Because of Alejandro Javalera Sr.'s positive reputation in the community, many consumers were repeat customers or were referred to Alex Javalera by real estate agents and others who did business with the family in the past.

14. In 2014, it appears Alejandro Javalero Sr. ceded control of the company to his son and the business practices changed. Defendants began operating the business with the purpose of deceiving consumers into making deposit payments for substandard products and non-existent services.

15. Defendants require a fifty percent deposit payment from consumers before beginning any work.

16. Defendants immediately cash the deposit check at the consumer's bank. In some instances, Defendants change the payee's name on consumers' checks so that one of them can personally cash it.

17. Defendants consistently fail to install consumers' carpet on the agreed upon installation date. In the rare instance when they do show up, Defendants deliver the wrong or used carpet products. Defendants' own employees state that Defendants "[do] this all the time."
18. Having already paid Defendants half of the original quote, consumers try to reschedule the installation, sometimes waiting weeks or months to have their carpet installed. Defendants promise to show on the rescheduled date but rarely do.
19. When consumers complain, Defendants evade their calls. On occasion, Defendants may promise a refund, but then fail to deliver the refund as promised.
20. Eventually, Defendants cease all communication with consumers and disappear with their money.
21. Some consumers sought assistance from local law enforcement to get their money back. Defendants promptly respond to law enforcement's demands for refunds, but ultimately fail to return consumers' money as promised.
22. Those consumers who manage to get their money back are only able to do so with assistance from their bank or credit card company.
23. From August 2014 to March 2016, over sixty consumers complained to the Colorado Attorney General or the Denver/Boulder Better Business Bureau ("BBB") about Alex and Carol Javalera's carpet companies. *See Motion for Temporary Restraining Order, Preliminary Injunction, and Asset Freeze*, filed contemporaneous with this Complaint and incorporated herein, **Ex. A** at ¶7.
24. Most, if not all, of those consumers reported the same pattern of deceptive conduct described here. *See Motion for Temporary Restraining Order, Preliminary Injunction, and Asset Freeze*, **Ex. A** at ¶¶7-11, Att. 2, and **Exs. B-G**.
25. Defendants took approximately \$67,000 from consumers who complained to the Attorney General or the BBB. However, Defendants are believed to have deceived many more consumers who have not complained to the Attorney General or BBB. *See id.*

### **FIRST CLAIM FOR RELIEF**

(Knowingly makes 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 in violation of § 6-1-105(1)(e), C.R.S.

26. Plaintiff incorporates herein all of the allegations set forth above in the Complaint.

27. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants knowingly made false representations as to the characteristics of the carpets and installation services they provide to consumers.

28. Defendants provide consumers a quote to deliver and install carpet, collect a fifty percent deposit, and then fail to perform the work. In many instances, Defendants fail to deliver or install any carpet at all. In other instances, they deliver a used carpet or a carpet of lesser value than what the consumer ordered. When consumers complain, Defendants promise to issue refunds then disappear with their money.

29. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **SECOND CLAIM FOR RELIEF**

(Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand in violation of § 6-1-105(1)(f), C.R.S.)

30. Plaintiff incorporates herein all of the allegations set forth above in the Complaint.

31. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants represent they are selling new carpet then attempt to install carpet that is used, deteriorated, or of lesser value than what the consumer ordered.

32. Defendants require a fifty percent deposit before any work is begun. If Defendants show at all to install the carpet, they often deliver the wrong carpet or a used product. When consumers complain, Defendants promise to issue refunds then disappear with their money.

33. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

### **THIRD CLAIM FOR RELIEF**

(Represents 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 in violation of § 6-1-105(1)(g), C.R.S.)

34. Plaintiff incorporates herein all of the allegations set forth above in the Complaint.

35. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants represent that they will install carpet of a certain quality only to then deliver the wrong carpet or a used product.

36. Defendants quote consumers a price to deliver and install the carpet specifically requested by the consumer and collect a fifty percent deposit before any work is performed. Defendants often deliver the wrong carpet or a used product. Defendants' own employees claim that Defendants "[do] this all the time." When consumers complain, Defendants promise to issue refunds then disappear with their money.

37. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers.

#### **FOURTH CLAIM FOR RELIEF**

(Advertises goods, services, or property with intent not to sell them as advertised in violation of § 6-1-105(1)(i), C.R.S.)

38. Plaintiff incorporates herein all of the allegations set forth above in the Complaint.

39. Through the conduct described in this Complaint and in the course of their business, vocation, or occupation, Defendants collect a deposit payment from consumers to install the carpet consumers request, knowing that they rarely show up to install any carpet, and when they do show, they deliver the wrong carpet or a used product.

40. Defendants quote consumers a price to deliver and install the carpet specifically requested by the consumer, and then collect a fifty percent deposit before any work is begun. Defendants rarely show at all to install the carpet, and if they do, they deliver the wrong carpet or a used product. When consumers complain, Defendants promise to issue refunds then disappear with their money.

41. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for judgment against Defendants and the following relief:

- A. An order declaring Defendants' above-described conduct to be in violation of the CCPA, §§ 6-1-105(1)(e), (f), (g), and (i), C.R.S.
- B. An order permanently enjoining Defendants, their officers, directors, successors, assignees, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.
- C. Additional appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.
- D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S.
- E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to § 6-1-112(1), C.R.S., or \$10,000 per violation pursuant to § 6-1-112(3), C.R.S.
- F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113(4), C.R.S.
- G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Respectfully submitted this 31st day of August, 2016.

CYNTHIA H. COFFMAN  
Attorney General

/s/ John Feeney-Coyle  
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