IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re: AVI SCHWALB, Debtor.	Case No. 25-12666-JGR Chapter 7
JOHN DOE AND JANE ROE, Plaintiffs, v. AVI SCHWALB, Defendant.	Adversary Case No. 25-1255-JGR

PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

Plaintiffs John Doe and Jane Roe ("Plaintiffs"), by and through their undersigned counsel, hereby submit this motion for default judgment against Defendant Avi Schwalb ("Defendant" or "Debtor"), pursuant to Fed. R. Civ. P. 55(b)(2), made applicable by Fed. R. Bankr. P. 7055, and L.B.R. 7055-1(b) (this "Motion"). In support of this Motion, Plaintiffs rely upon and incorporate by reference the declaration of Plaintiff Jane Roe (the "Roe Declaration"),[1] the Declaration of Alexandra K. Lewis in Support of Plaintiffs' Motion for Default Judgment, and the Declaration of Emily Goodman in Support of Plaintiffs' Motion for Default Judgment filed contemporaneously herewith. In further support hereof, Plaintiffs state as follows:

[1] This Court granted Plaintiffs' motion to proceed pseudonymously on September 5, 2025, and further ordered that all parties maintain the confidentiality of Plaintiffs' identities [Doc. No. 7]. Contemporaneous with the instant Motion, Plaintiffs have filed a motion to file under seal certain documents and evidence containing Plaintiffs' identifying information, including Plaintiffs' names in the Roe Declaration.

INTRODUCTION

1. Plaintiffs are Venezuelan immigrants who leased an apartment from Defendant Schwalb in Aurora, Colorado. Defendant subjected Plaintiffs to threats, intimidation, harassment, retaliation, and unsafe and unsanitary housing conditions while they were his tenants. After months of victimization at the hands of Defendant based on their national origin and perceived immigration status, Plaintiffs sued Defendant in Colorado state court for causes of action under Colorado law for violations of the Immigrant Tenant Protection Act, Retaliation, Removal Without Process, Unfair Housing Practice, Breach of the Covenant of Quiet Enjoyment, and Declaratory and Injunctive Relief. When Defendant Schwalb filed for bankruptcy, Plaintiffs brought the instant adversary proceeding (the "Adversary Proceeding") to vindicate their claims and seek damages—statutory, compensatory, and punitive—against Defendant Schwalb, among other relief. After failing to defend the claims and clerk's entry of default, Plaintiffs now bring their motion for entry of default judgment against Defendant Schwalb on the claims set forth in the complaint commencing the Adversary Proceeding [Doc. No. 1] (the "Adversary Complaint").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding and the claims asserted therein pursuant to 28 U.S.C. § 1334.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

4. This adversary proceeding constitutes a "core" proceeding under 28 U.S.C. § 157(b)(2)(A), (B) (C), (I) and (O).

FACTUAL BACKGROUND

5. Plaintiffs John Doe and Jane Roe are a Venezuelan couple with pending asylum applications in the United States. Roe Decl., ¶ 2. At all times relevant to this action, Plaintiffs lived with their two minor sons in a residential apartment in Aurora, Colorado (the "Apartment") that they leased from PHS Rent LLC ("PHS Rent"). *Id.* ¶ 3. Defendant Schwalb was the sole member of PHS Rent and the owner of the Apartment. *Id.* ¶ 3; Compl. ¶ 5. Nancy Dominguez was the assistant manager at PHS Rent who managed the Apartment. Compl. Ex. A (Amended State Court Compl.), ¶ 9. Plaintiffs entered into a written lease (the "Lease") on September 20, 2024, with a term of September 23, 2024, through September 30, 2025. *See* Roe Decl. Ex. 1 (Lease). The monthly rent for the Apartment was $1,800.00 per month. *Id.*; Roe Decl. ¶ 4. Defendant Schwalb, his company PHS Rent, and its manager, Ms. Dominguez, were Plaintiffs' landlord within the meaning of Colo. Rev. Stat. § 38-12-1202(3) and the terms of the Lease. Compl. Ex. A (Amended State Court Compl.), ¶¶ 8–10.

A. Uninhabitable Conditions

6. When Plaintiffs moved into the Apartment in October 2024, its conditions were uninhabitable and posed a serious risk to their family's health and safety. A window was cracked so badly that rain and wind got into the Apartment. Roe Decl. ¶ 5. There was urine in the area around the Apartment, and a cockroach infestation inside that Ms. Roe documented with photographs of her kitchen. *Id.* ¶ 5 & Ex. 2. And there was inadequate fencing and lighting, which presented a serious safety issue, especially for Plaintiffs' fifteen and three-year-old sons—the younger of whom fell ill and developed an infection on his foot. *Id.* ¶¶ 5, 7 & Ex. 3. Plaintiffs reported the uninhabitable conditions to Nancy Dominguez. *Id.* ¶ 6; *see also* Goodman Decl. ¶ 5. Not only was nothing done to address

the problems, but even worse, Defendant Schwalb wrongfully told Mr. Doe that *he* was responsible for repairing the broken window under the Lease. Roe Decl. ¶ 6; *see also* Goodman Decl. ¶ 5.

B. Defendant Schwalb's Unlawful and Discriminatory Attempts to Remove Plaintiffs from the Apartment

7. On at least five occasions, Defendant Schwalb harassed and intimidated Plaintiffs in an effort to get them to abandon the Apartment. Defendant Schwalb's unlawful actions were motivated, in whole or in part, by discrimination based on his perception of Plaintiffs' immigration status and Venezuelan origin.

8. *First*, on or about December 4, 2024, Plaintiffs fifteen-year-old son came home from school to find that the Apartment locks had been changed. Roe Decl. ¶ 8; Goodman Decl. ¶ 8. Prior to the lockout, Plaintiffs were not notified that the locks would be changed. Roe Decl., ¶ 8; Goodman Decl. ¶ 9. It was too late in the day for the family to secure a spot at a local shelter. Goodman Decl., ¶ 10. That night, he and Mr. Doe were forced to sleep in their car in the cold. Roe Decl. ¶ 8. Plaintiffs called the landlord's office several times. Goodman Decl., ¶ 11. Ms. Dominguez, acting on Defendant Schwalb's authority, told Ms. Doe that Plaintiffs could do nothing about the lockout because they are Venezuelan and have no rights. Roe Decl. ¶ 9. Mr. Doe was forced to make two additional rent payments of $1,000.00 and $300.00 before Plaintiffs finally received a new key a week later. *Id.*

9. *Second*, on or about January 15, 2025, Ms. Dominguez, acting on Defendant Schwalb's authority, banged on the Apartment door and shoved a "Demand for Compliance-Residential Eviction Notice" at Plaintiffs. Roe Decl. ¶ 10. Ms. Dominguez misleadingly told Plaintiffs they had ten days to move out. *Id.* The Demand for Compliance

alleged that Plaintiffs owed past-due rent for payments up to and including rent that was not yet due. *Id.* ¶ 10; Lewis Decl. Ex. 2.

10. *Third*, Defendant Schwalb tried to have the locks on the Apartment changed again on January 25, 2025, but Mr. Doe got home just in time to prevent the lockout. Goodman Decl. ¶¶ 14, 16. Over the phone, Defendant screamed at Plaintiffs to leave their home. *Id.* ¶ 18. Defendant Schwalb then came to the Apartment and accosted Plaintiffs supposedly because of unpaid rent. Roe Decl. ¶ 11. When Ms. Doe opened the door, Defendant Schwalb slammed it back hitting her in the face. *Id.* He began yelling at Plaintiffs that they had one or two hours to leave, they would be out on the street, to go home to Venezuela, and they came to the United States to cause problems. *Id.* ¶¶ 11–12. After Plaintiffs correctly asserted that a court order was required to evict them, Defendant Schwalb repeatedly threatened to call immigration enforcement and the police to the Apartment. *Id.* ¶ 12. Plaintiffs recorded the confrontation with Defendant Schwalb at their Apartment. *See id.* Ex. 4. Defendant Schwalb has similarly shouted at Plaintiffs and disparaged their Venezuelan heritage to their neighbors in the past. *Id.* ¶ 13; Goodman Decl. ¶ 6. Later that same day, Defendant Schwalb and Ms. Dominguez, acting on Defendant's authority, each called 911 making unsubstantiated, inflammatory accusations and discriminatory statements against Plaintiffs. Lewis Decl. Ex. 3, at 22–31. Records obtained from the Aurora Police Department document this unlawful conduct. Lewis Decl. ¶ 7 & Ex. 3. These 911 calls were so centered on Defendant's perception of Plaintiffs' immigration status that the dispatcher had make clear to Defendant that the police "don't get involved in immigration . . . . So their [immigration] status, that doesn't involve the police. We're here to handle criminal issues, not look at that." *Id.* Ex. 3, at 28–

29. Aurora Police Officer Gary M. Oliver subsequently called Defendant Schwalb, who made multiple false allegations against and bigoted statements about Plaintiffs in an effort to get Aurora Police to remove Plaintiffs from the Apartment. *Id.* Ex. 3, at 33–36. Officer Oliver informed Defendant that his complaints were a civil matter that Aurora Police could not help him with, that Defendant should contact an attorney, and that no police would be sent to the Apartment. *Id.* Ex. 3, at 35–36. Officer Oliver also explicitly instructed Defendant, "once you go through the eviction process, make sure you notify the sheriffs and have the sheriff respond to serve [Mr. Doe.]" *Id.* Ex. 3, at 35. Plaintiffs were afraid to leave the Apartment because they feared being locked out of their home. Goodman Decl. ¶ 21. Plaintiffs also feared that immigration officers would forcibly remove them from the Apartment even though they have pending asylum applications. *Id.* ¶ 22. Ms. Doe was afraid for her children's safety at the Apartment. *Id.* ¶ 23. The family began looking for a new place to live because they no longer felt safe in their home. *Id.* ¶ 24.

11. *Fourth*, on or about February 8, 2025, PHS Rent and Ms. Dominguez, acting on Defendant Schwalb's authority, served Plaintiffs with a fraudulent eviction notice. Roe Decl. ¶ 15. The eviction summons arose from another eviction action filed January 27, 2025, that did not name Plaintiffs as the parties and listed an entirely different address. *Id.*; Lewis Decl. Ex. 5, at DOE000102–105, DOE000106. The summons purported to set a hearing for February 10, 2025. Lewis Decl. Ex. 5, at DOE000106-109. The summons was served after a Temporary Restraining Order was in effect enjoining Defendant Schwalb (and PHS Rent and Ms. Dominguez) from trying to influence Plaintiffs to surrender the Apartment based, in any way, on their immigration status and three days before a hearing on Plaintiffs' request for a preliminary injunction seeking the same

protections. Lewis Decl. ¶¶ 8–9 & Ex. 4; Roe Decl. ¶ 15. Plaintiffs were afraid of being evicted before they had a chance to obtain a preliminary injunction and believed Defendant Schwalb served the notice because they sued him for tenant harassment based on their perceived immigration status and Venezuelan origin. Roe Decl. ¶ 16.

12. *Fifth*, PHS Rent and Ms. Dominguez, acting on Defendant Schwalb's authority, filed an eviction action against Plaintiffs on February 11, 2025. Lewis Decl. Ex. 7, at DOE00091-97, DOE000110-113. The hearing on Plaintiffs' request for a preliminary injunction was held that same day and a stipulated order granting Plaintiffs' request was entered at the conclusion of the hearing. *Id.* ¶ 11 & Ex. 6, at 2. The eviction action attached the same Demand for Compliance Ms. Dominguez shoved at Plaintiffs at Defendant Schwalb's behest on January 15, 2025. *Id.* ¶ 6 & Ex. 2, at DOE000042–52; Roe Decl. ¶ 10. PHS Rent subsequently moved to dismiss the action on February 24, 2025. Lewis Decl. Ex. 7, at DOE000138–139. After hearing Defendant Schwalb's disparaging remarks about their Venezuelan heritage and immigrant status at the preliminary injunction hearing, Plaintiffs believed Defendant Schwalb was trying to evict them again in retaliation for asserting their rights as immigrants and tenants in court. Roe Decl. ¶ 18.

13. Defendant Schwalb, alone and through his company PHS Rent and agent Ms. Dominguez, took extreme and unlawful actions in an attempt to force Plaintiffs and their family out of the Apartment. The common denominator across these incidents is Defendant Schwalb's overt animus against Plaintiffs based on their citizenship status and Venezuelan heritage.

C. Plaintiffs' Organizing Activities

14. As is their right, Plaintiffs have participated in activities to promote tenants' rights with a local community advocacy organization, the East Colfax Community Collective (a/k/a EC3). Roe Decl. ¶ 19; Goodman Decl. ¶¶ 2-4. After months of enduring unlawful harassment, threats, and intimidation at the hands of Defendant Schwalb, Plaintiffs chose to *lawfully* stand up for their rights as immigrants and tenants in court. Roe Decl. ¶ 19. Defendant Schwalb's conduct was motivated in part as retaliation for Plaintiffs organizing activities. *Id.*

15. The facts of this case demonstrate a pattern of discrimination behind Defendant Schwalb's unlawful conduct against Plaintiffs.

PROCEDURAL HISTORY

A. State Court Action

16. On January 28, 2025, Plaintiffs filed an action against Defendant Schwalb, PHS Rent, and Ms. Dominguez in Arapahoe County District Court, Colorado (the "State Court Action"). *See John Doe and Jane Roe v. Avi Schwalb et al.*, No. 2025CV30241 (Colo. Dist. Ct. Jan. 28, 2025). Plaintiffs also filed a motion for temporary restraining order and preliminary injunction under Colorado's Immigrant Tenant Protection Act (the "ITPA"). Lewis Decl. Ex. 1. A hearing on Plaintiffs' motion for preliminary injunction was set for February 11, 2025. *Id.* ¶ 9. Plaintiffs' operative Amended Complaint was filed on March 7, 2025. *Id.* ¶ 5.

17. On January 29, 2025, the district court granted Plaintiffs' Motion for Temporary Restraining Order. Lewis Decl. Ex. 4. The Temporary Restraining Order (the "TRO") enjoined Defendant Schwalb, PHS Rent, Ms. Dominguez "and any persons acting in concert with them" from:

> Disclosing or threatening to disclose information regarding or relating to the immigration or citizenship status of Plaintiffs or their minor children to any person, entity, or immigration or law enforcement agency; and shall not harass or intimidate Plaintiffs or their minor children, or retaliate against them for exercising their rights as tenants under the ITPA, or for opposing any conduct prohibited by the ITPA; and shall not interfere with Plaintiffs' rights under the ITPA, including influencing or attempting to influence Plaintiffs to surrender possession of the dwelling unit based solely or in part on Plaintiffs' immigration or citizenship status.

Id., Ex. 4, at 5. The TRO remained in effect until the court granted Plaintiffs preliminary injunction on February 11, 2025. *Id*. ¶ 11.

18. At the February 11, 2025, preliminary injunction hearing, Defendant Schwalb made disparaging and discriminatory statements about Plaintiffs' immigration and citizenship status. Roe Decl. ¶¶ 17–18. At the conclusion of the hearing, Defendant agreed to a preliminary injunction, and the district court entered its written order the next day. Lewis Decl. ¶ 11 & Ex. 6. The preliminary injunction enjoins the same conduct prohibited under the TRO and remains in effect. *Id.* Ex. 6, at 4.

B. Defendant Schwalb's Failure to Defend This Adversary Proceeding

19. Plaintiffs filed the Adversary Complaint on September 3, 2025, against Defendant Schwalb [Doc. No. 1].

20. Defendant Schwalb failed to defend against Plaintiffs' Adversary Complaint. After failing to answer or otherwise respond to several court-imposed deadlines to answer, Plaintiffs filed and properly served their Motion for Entry of Clerk's Default on December 12, 2025, by which date Defendant Schwalb had still not filed an answer or other response to Plaintiffs' Adversary Complaint. [Doc. No. 28, ¶ 17]. The clerk entered default on December 16, 2025 [Doc. No. 31].

21. Before Plaintiffs could file a motion for default judgment, Defendant Schwalb filed a Motion to Set Aside Clerk's Entry of Default on December 30, 2025, and Plaintiffs timely objected. [Doc. Nos. 33 & 35].

22. On March 6, 2026, this Court denied Defendant Schwalb's requested relief and ordered Plaintiffs to bring this motion for entry of default judgment against Defendant Schwalb [Doc. No. 37].[2]

LEGAL ARGUMENT

I. LEGAL STANDARD ON ORDER AND JUDGMENT BY DEFAULT

23. Fed. R. Bank. P. 7055 and Fed. R. Civ. P. 55(b)(2) empower this Court to enter a default judgment against a defendant who fails to defend its case under a two-step process: (1) clerk's entry of default, and (2) entry of default judgment. *Williams v. Smithson*, 57 F.3d 1081 (Table), 1995 WL 365988, at *1 (10th Cir. June 20, 1995). The clerk's default entry establishes the defaulting defendant's liability for the allegations in the complaint. See *Purzel Video GmbH v. Martinez*, 13 F. Supp. 3d 1140, 1148 (D. Colo. 2014) ("After an entry of default, a defendant cannot defend a claim on the merits.") (citing *Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1125 (10th Cir. 2003) ("[D]efendant, by his default, admits the plaintiff's well-pleaded allegations of fact[.]"); *see also* Doc. No. 37 at 6 ("If there is no meritorious defense, there is no reason to proceed.").

24. The Court may then enter default judgment upon a motion providing a basis for the requested relief. *See Williams*, 1995 WL 365988, at *1 (following clerk's default, party entitled to judgment shall apply to the court). In connection with the motion, plaintiffs

[2] Defendant Schwalb filed a Supplemental Filing and Notice of Exhibits asking the Court to reconsider his Motion to Set Aside Clerk's Entry of Default on April 2, 2026—one day before Plaintiffs' filing deadline for the instant Motion [Doc. No. 42]. Plaintiffs will timely respond to Defendant's untimely Supplemental Filing and Notice within 14 days as required under L.B.R. 7007-1.

must submit a supporting affidavit "executed by an individual with personal knowledge, setting forth sufficient factual support for each element of each claim on which judgment is requested." L.B.R. 7055-1(b)(2). Documentary evidence to support allegations in the affidavit may be attached as exhibits. L.B.R. 7055-1(b)(4). The Court must then consider whether the unchallenged facts constitute a legitimate basis for the entry of a judgment. *Purzel*, 13 F. Supp. 3d at 1148. Well-pleaded facts of the complaint relating to liability and undisputed facts set forth in plaintiffs' affidavits and exhibits are deemed true. *Id*. However, allegations as to damages are not deemed true and the court may require evidence as to plaintiffs' claim for damages in a supplemental proceeding. *See id.*; *In re Moden*, 2021 WL 5300020, at *7 (B.A.P. 10th Cir. Nov. 12, 2021).

II. PLAINTIFFS' ENTITLEMENT TO ORDER AND JUDGMENT BY DEFAULT

25. Here, Plaintiffs' "Complaint outlines the facts in precise detail in 70 paragraphs." [Doc. No. 37 at 6]. Plaintiffs offer sworn affidavits and documentary evidence in support of their particularized allegations against Defendant Schwalb. *See* Roe Decl., Lewis Decl., & Goodman Decl. Plaintiffs allege substantiated claims against Defendant for: (1) violation of Colorado's Immigrant Tenant Protection Act ("ITPA"), (2) retaliation under C.R.S. § 38-12-509, (3) removal without process under C.R.S. § 38-12-510, (4) unfair housing practice under Colorado's Anti-Discrimination Act, (5) breach of the covenant of quiet enjoyment, (6) declaratory and injunctive relief under C.R.C.P. 57, 65, and (7) nondischargeability under 11 U.S.C. 523(a)(6). As this Court has aptly observed, "[t]he conduct detailed in the complaint is uncivilized and reprehensible." [Doc. No. 37 at 6 ("The claims are for outrageous conduct.")]. It is also unlawful. As set forth herein, Plaintiffs have established a legitimate basis for entry of judgment against Defendant on

all claims and respectfully request the Court grant their requested relief and ascertain damages in an amount it deems proper under the applicable rules.[3]

26. Plaintiffs' instant Motion for Default Judgment sets forth requests for an award of damages on each specific claim brought against Defendant Schwalb. However, Plaintiffs recognize that damages may overlap across certain claims. In the event the Court grants this Motion as to all claims, as requested herein, Plaintiffs submit a non-duplicative request for a cumulative damages award in the amount of $182,900.00.

A. Count I: Defendant's Violation of The Immigrant Tenant Protection Act ("ITPA"), C.R.S. § 38-12-1201, et seq.

i. Relief Requested Under the ITPA.

27. Plaintiffs seek judgment on Count I of the Adversary Complaint, that Defendant Schwalb, acting in his capacity as Plaintiffs' landlord, threatened, harassed, and retaliated against Plaintiffs on the basis of their actual or perceived immigration or citizenship status. Plaintiffs seek compensatory and statutory damages and equitable relief under the ITPA for the harm caused by Defendant's unlawful actions and an order restraining Defendant from further violating Plaintiffs' rights under the ITPA.

ii. Relevant Provisions of the ITPA.

28. The ITPA prohibits a landlord from threatening, harassing, intimidating, or interfering with a tenant's rights on the basis of their "actual or perceived immigration or citizenship status." C.R.S. § 38-12-1202(2). Relevant here, the ITPA specifically provides that a landlord "shall not:"

[3] Plaintiffs respectfully request the Court allow Plaintiffs to submit an application for reasonable attorneys' fees and bill of costs within 14 days of judgment, if so ordered.

- "Disclose or threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant to any person, entity, or immigration or law enforcement agency;"
- "Harass or intimidate a tenant or retaliate against a tenant" for exercising their rights under the ITPA or opposing any conduct the ITPA prohibits;
- "Interfere with a tenant's rights under" the ITPA, "including influencing or attempting to influence a tenant to surrender possession of a dwelling unit…based solely or in part on the immigration or citizenship status of the tenant;"
- "[P]reclude a tenant from occupying a dwelling unit, based solely or in part on the immigration or citizenship status of the tenant;"
- "Bring an action to recover possession of a dwelling unit based solely or in part on the immigration or citizenship status of a tenant."

C.R.S. § 38-12-1203(b)-(f).

29. The ITPA allows tenants to seek compensatory damages, civil penalties "in an amount not to exceed two thousand dollars for each violation, payable to the tenant," costs (including reasonable attorney's fees), and equitable relief. C.R.S. § 38-12-1205(1)(a)-(d). Compensatory damages are noneconomic damages and include "pain and suffering, inconvenience, emotional stress, and impairment of the quality of life." C.R.S. § 13-21-102.5(2)(b). Nothing in the ITPA "renders the immigration or citizenship status of a tenant relevant to any issue of liability or remedy in a civil action involving a tenant's housing rights." C.R.S. § 38-12-1205(2).

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count I Against Defendant Under The ITPA.

30. Defendant Schwalb committed at least five separate acts in violation of the ITPA: (1) on December 4, 2024, Defendant Schwalb locked out Plaintiffs on the basis of their immigration or citizenship status, (2) on January 15, 2025, Defendant Schwalb caused to be served on Plaintiffs a fraudulent eviction notice and did so because of

Plaintiffs' immigration status, (3) on January 24, 2025, Defendant Schwalb threatened to disclose information about Plaintiffs' immigration or citizenship status to immigration and law enforcement and did, in fact, contact local law enforcement authorities making false allegations and discriminatory statements in an attempt to further intimidate Plaintiffs, (4) on February 8, 2025, Defendant Schwalb caused to be served an improper eviction notice on Plaintiffs in violation of a temporary restraining order preventing Defendant Schwalb from discriminating against Plaintiffs on the basis of their perceived or actual immigration status, and (5) on February 11, 2025, Defendant Schwalb initiated an improper eviction action against Plaintiffs on the basis of the improper notice. *See supra* ¶¶ 7–13; Roe Decl. Ex. 4; Lewis Decl. Ex. 2-3, 5, & 8.

31. Defendant Schwalb has intimidated and discriminated against Plaintiffs based on their immigration status from at least as early as December 4, 2024, when he unlawfully caused the locks to be changed on the Apartment, *see supra* ¶ 8, up to and during the Preliminary Injunction hearing in the State Court Action on February 11, 2025, *see supra* ¶¶ 9–12. The transcripts of the recordings from January 24, 2025, showcase Defendant Schwalb's egregious discrimination against Plaintiffs aimed at intimidating them from exercising their rights as tenants and coercing them to surrender possession of their Apartment. *See* Roe Decl. Ex. 4.

32. Defendant Schwalb showed up at the Apartment on January 24, 2025, to harass Plaintiffs in an attempt to scare them into leaving the Apartment. His reprehensible statements included:

- "[T]oday you need to pay. . . . you don't have money you're going to have to leave. On the street. You're going to sleep outside. Where it's cold." Roe Decl. Ex. 4, at 2.

- "Okay, I think you're going to get out today. . . . I'll give you an hour, in two hours you're going to get out." *Id.* at 4–5.
- "Listen to me, you owe me money, I don't owe you. You owe me. Do you understand? . . . You're going to get out, with immigration. . . . you call your lawyer and I'll call the immigration office to come here." *Id.* at 5–6.
- "You don't have papers, you don't have anything. You only bring me problems here. Go to Venezuela, go home." *Id.* at 9.
- "Like the car that has no license plates? . . . Only in Venezuela is [sic] like this. . . . The police are going to come today. I'll wait for you. I want to go and see where the license plates [sic]." *Id.* at 10–11.

33. Later the same day, Ms. Dominguez called 911 on Defendant Schwalb's behalf and falsely accused Plaintiffs of consuming and trafficking drugs, having firearms, and threatening to kill Defendant if he kicked them out of the Apartment for being late on rent. Lewis Decl. Ex. 3 at 22–23. On the same call, Ms. Dominguez later admitted that there were no weapons or drugs involved in the situation—only that she "wouldn't doubt they have some in there." *Id.* at 4:5-14. She also disclosed Mr. Doe's identity and date of birth to the dispatcher. *See id.* at 25. When Defendant Schwalb called 911 shortly thereafter, he told the dispatcher Plaintiffs are "Venezuelans," are not "even legal here," are "dangerous" and "are crazy people, those people, you know?" *Id.* at 27-28. Plaintiffs told him, "[i]f you want to speak to me you take me to court." *Id.* at 29. Defendant responded, "[i]f you do not behave yourself I'm gonna call the police…listen, you are a foreigner. You've come over here. Don't give us a hard time." *Id.*

34. When Officer Oliver called Defendant Schwalb to follow up on his complaints, he spent the entire call disparaging Plaintiffs' Venezuelan heritage and immigration status in an attempt to get the Aurora Police to help him remove Plaintiffs from the Apartment. *See* Lewis Decl. Ex. 3 at 33-36. The horrifying events documented

on January 24, 2025 reflect the same egregious misconduct Defendant Schwalb directed at Plaintiffs on at least four other occasions between December 2024 and February 2025.

35. Defendant repeatedly threatened to disclose—and did disclose on at least one occasion—information about Plaintiffs' immigration or citizenship status to immigration and law enforcement in violation of C.R.S. § 38-12-1203(b). Defendant repeatedly harassed and intimidated Plaintiffs based on their immigration or citizenship status in violation of C.R.S. § 38-12-1203(c). Defendant repeatedly attempted to influence Plaintiffs to surrender possession of their Apartment based solely or in part on their immigration or citizenship status in violation of C.R.S. § 38-12-1203(d). Defendant locked Plaintiffs out of their apartment based solely or in part on their immigration or citizenship status in violation of C.R.S. § 38-12-1203(e). And Defendant brought multiple improper actions to recover possession of the Apartment based solely or in part on Plaintiffs' immigration or citizenship status in violation of C.R.S. § 38-12-1203(f).

36. Pursuant to C.R.S. § 38-12-1205(a), Plaintiffs are entitled to compensatory damages in the amount of $50,000.00 for their pain and suffering, emotional stress, and impairment of quality of life caused by Defendant Schwalb's violations of the ITPA. *See e.g., Boulder Meadows v. Saville*, 2 P.3d 131, 138 (Colo. App. 2000) (compensatory damages can be established by testimony or inferred from the circumstances); *see also* Goodman Decl. Plaintiffs are also entitled to statutory damages in the amount of $2,000.00 for each of Defendant's five separate violations of the ITPA, for a total of $10,000.00. *See* C.R.S. § 38-12-1205(b). Plaintiffs are further entitled to an order permanently restraining Defendant Schwalb from further violating Plaintiffs' rights under

the ITPA on the terms set forth in the proposed judgment, attached as Exhibit 2 hereto. *See* C.R.S. § 38-12-1205(d).

B. Count II: Defendant's Violation of Colorado's Prohibition on Retaliation (C.R.S. § 38-12-509).

i. Relief Requested Under C.R.S. § 38-12-509 (Retaliation).

37. Count II of the Adversary Complaint alleges that Defendant improperly abused the eviction process to retaliate against Plaintiffs in response to their protected organizing activity. Plaintiffs seek statutory damages and an award of their costs and reasonable attorney's fees.

ii. Colorado Retaliation Standard.

38. Colorado law prohibits a landlord from retaliating against a tenant "in response to the tenant" engaging in protected activity, including "[o]rganizing or becoming a member of a tenants' association or similar organization[.]" C.R.S. § 38-12-509(1)(a)(II). Colorado law defines "organizing" as "any lawful, concerted activity by a tenant or tenant's guest or an invitee for the purpose of mutual aid or establishing, supporting, or operating a tenants' association or similar organization or exercising any other right or remedy provided by law." C.R.S. § 38-12-502(6.3).

39. "Prohibited retaliation includes: [t]erminating or not renewing a rental agreement or contract without written consent of the tenant; [b]ringing or threatening to bring an action for possession; [and] [t]aking action that in any manner intimidates, threatens, discriminates against, harasses, or retaliates against a tenant[.]" C.R.S. § 38-12-509(1)(b)(II)-(IV). To prove a claim for unlawful retaliation, "a tenant need only demonstrate that the tenant's protected activity . . . was a motivating factor that influenced

the landlord's decision to engage in" prohibited conduct. C.R.S. § 38-12-509(1.7) (tenant need not prove retaliation "was the sole reason" landlord engaged in prohibited activities).

40. If a landlord violates Colorado's prohibition on retaliation, the tenant "[s]hall recover damages in an amount not more than three months' periodic rent or three times the tenant's actual damages, whichever is greater, plus reasonable attorney fees and costs." C.R.S. § 38-12-509(2)(a). A claim brought under Section 38-12-509 does not preclude a tenant's ability to assert other claims against a landlord "for the same injury or arising from the same subject matter or transaction." C.R.S. § 38-12-511(4).

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count II Against Defendant for Unlawful Retaliation.

41. Plaintiffs have participated in tenants' rights organizing activities with a local community advocacy organization. Roe Decl. ¶ 19. Plaintiffs filed suit against Defendant Schwalb on January 28, 2025, asserting their rights under the ITPA, Anti-Discrimination Act, and prohibition on unlawful eviction. *Id.* ¶¶ 14, 19. These are "protected activities" under the broad definition provided by C.R.S. ¶ 38-12-502(6.3).

42. Defendant Schwalb twice retaliated against Plaintiffs based on their protected organizing activities. *First*, Defendant served Mr. Doe with a fraudulent summons alleging Mr. Doe was the defendant in an eviction case in which he was not named and that pertained to an unrelated property, despite being enjoined from doing so under the district court's TRO. *See supra* ¶ 11; Lewis Decl. Ex. 4, 5. *Second*, Defendant filed an eviction case against Plaintiffs mere hours after the Preliminary Injunction hearing in the State Court Action where Defendant made discriminatory statements about Plaintiffs, and which resulted in a preliminary injunction enjoining Defendant from the same conduct prohibited under the TRO. *See supra* ¶¶ 12, 17-18; Lewis Decl. Ex. 6-7.

43. Defendant Schwalb's actions to intimidate, threaten, discriminate against and harass Plaintiffs based on their Venezuelan heritage and immigration status, the timing of his eviction actions described above, and his statements to the district court at the Preliminary Injunction hearing demonstrate that Defendant's wrongful eviction actions were retaliation motivated by Plaintiffs' protected organizing activities in violation of C.R.S. § 38-12-509.

44. Pursuant to C.R.S. § 38-12-509(2)(a), Plaintiffs are each entitled to the greater of three months periodic rent or three times their actual damages for each instance of Defendants prohibited conduct. Plaintiffs' rent under the lease was $1,800.00 per month. Roe Decl. Ex. 1, at 1. Accordingly, Plaintiffs are each entitled to damages in the amount of $5,400.00 (three times monthly rent) for each of the two instances of prohibited conduct, totaling $21,600.00.

C. Count III: Defendant's Violation of Colorado's Prohibition on Removal Without Process (C.R.S. § 38-12-510).

i. Relief Requested Under C.R.S. § 38-12-510 (Removal Without Process).

45. Count III of the Complaint alleges Defendant willfully and unlawfully excluded Plaintiffs from the Apartment without process. Plaintiffs seek actual and statutory damages and an order declaring the exclusions unlawful and restraining Defendant from further violating Colorado law.

ii. Colorado Removal Without Process Standard.

46. Colorado law prohibits extrajudicial evictions. *See* C.R.S. § 38-12-510(1) ("It is unlawful for a landlord to remove or exclude a tenant from a dwelling unit without resorting to court process[.]"). "Unlawful removal or exclusion includes . . . the willful removal of doors, windows, *or locks to the premises* other than as required for repair or

maintenance." *Id.* (emphasis added). If a landlord "willfully and unlawfully removes the tenant from the premises . . . the tenant may seek any remedy available under the law" including "a civil action to restrain further violations and to recover damages, costs, and reasonable attorney fees." *Id.* §§ (1)-(2). If a landlord violates Colorado's prohibition on removal without process, the tenant "must be awarded statutory damages equal to the tenant's actual damages and the higher amount of either three times the monthly rent or five thousand dollars" plus "any other damages, attorney fees, and costs that may be owed." *Id.* § (2). "Although the statute does not define 'damages,' the ordinary dictionary meaning of 'damages' includes noneconomic damages." *Oberstar v. PRCP – CO Gov's Park LLC*, 2024 WL 4848462, at *3 (Colo. App. Nov. 7, 2024) (citing Black's Law Dictionary 488 (11th ed. 2019)). Noneconomic damages include pain and suffering, emotional stress, and impaired quality of life. *See* C.R.S. § 13-21-102.5(2)(b).

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count III Against Defendant for Unlawful Removal Without Process.

47. On or before December 4, 2024, Defendant Schwalb caused the locks on Plaintiffs apartment to be changed. *Supra* ¶ 8. On or about December 4, 2024, Plaintiffs fifteen-year-old son came home from school to find that the Apartment locks had been changed and he could not open the door to his home. *Id.* That night, he and Mr. Doe were forced to sleep in their car in the cold. *Id*. Ms. Dominguez, acting on Defendant Schwalb's authority, told Ms. Doe that Plaintiffs could do nothing about the lockout because they are Venezuelan and have no rights. *Id.* Mr. Doe was forced to make two additional rent payments of $1,000.00 and $300.00 before Plaintiffs finally received a new key a week later. *Id.* Defendant tried to have the locks changed again in January 2025 and was only prevented from doing so because Mr. Doe arrived home in time to prevent the lockout.

See supra ¶ 10. Plaintiffs were emotionally harmed by Defendant's unlawful actions and the family no longer felt safe in their own home. *See id.*

48. Accordingly, pursuant to C.R.S. § 38-12-510(2), Plaintiffs are entitled to a judgment of actual damages in the amount of $1,750.00 (two additional rent payments and prorated rent for one-week lockout period) and statutory damages in the amount of $5,400.00 (three times the monthly rent of the apartment) for a total of $6,700.00. *See* Roe Decl. ¶ 8 & Ex. 1, at 1. Plaintiffs are also entitled to an order permanently restraining Defendant Schwalb from further violating Colorado's prohibition on removal without process on the terms set forth in the proposed judgment filed contemporaneously herewith. *See* C.R.S. § 38-12-510(2).

D. Count IV: Defendant's Violation of The Colorado Anti-Discrimination Act's Prohibition on Unfair Housing Practice (C.R.S.A. § 24-34-501, et seq.).

i. Relief Requested Under C.R.S. § 24-34-501, et seq. (Unfair Housing Practice).

49. Count IV of the Complaint alleges that Defendant violated the Colorado Anti-Discrimination Act's ("CADA") prohibition on unfair housing practice by discriminating against Plaintiffs on the basis of their national origin in the provision and furnishing of rental housing. Plaintiffs seek damages for Defendant's discriminatory treatment and an order restraining Defendant from further violating CADA.

ii. Relevant Provisions of The Colorado Anti-Discrimination Act.

50. "It is an unfair housing practice, unlawful, and prohibited: . . . to discriminate against an individual because of . . . national origin . . . in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, *rental*, or lease of any housing *or in furnishing facilities or services in connection with housing*[.]" C.R.S. § 24-34-

502(1)(a)(I) (emphasis added). Where a private plaintiff proves a violation of CADA Section 502, "the court may award to the plaintiff actual and punitive damages or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate." C.R.S. § 24-34-505.6(6)(a). The court also has discretion to "allow the prevailing party reasonable attorney fees and costs." *Id.* § (6)(b).

51. "Compensatory damages in a housing discrimination case may be awarded for humiliation and emotional distress if established by testimony or inferable from the circumstances." *Boulder Meadows*, 2 P.3d at 138. That such damages are not capable of precise measurement, such as through medical evidence, does not bar recovery. *Id.* Punitive damages may also be awarded "when the injury complained of is attended by circumstances of fraud, malice, insult, or a wanton and reckless disregard of the injured party's rights and feelings." *Id.* at 139 (citing C.R.S. § 13-21-102). Whether the evidence is sufficient to support punitive damages "is a question of law for the court." *Id.*

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count IV Against Defendant for Unfair Housing Practice.

52. As described above, Defendant Schwalb discriminated against Plaintiffs on the basis of their Venezuelan origin in his capacity as their landlord. When Defendant locked Plaintiffs out of the Apartment without process, Ms. Dominguez—acting on Defendant Schwalb's authority—told Ms. Doe that Plaintiffs could do nothing about it because they are Venezuelan and have no rights. *See supra* ¶ 8. When Defendant tried to evict Plaintiffs without a court order on January 24, 2025, he made numerous threats to call immigration and repeatedly denigrated Plaintiffs' Venezuelan origin and perceived

immigration status. *See supra* ¶ 10; Roe Decl. Ex. 4; Goodman Decl., ¶ 20 (Defendant screamed, "la migra today" at Plaintiffs). He made similar discriminatory statements to law enforcement later that same day in an unsuccessful attempt to get Aurora Police to help him illegally remove Plaintiffs from the Apartment. *See supra* ¶ 10; Lewis Decl. Ex. 3. Defendant also served two retaliatory eviction notices on Plaintiffs that were motivated by bias against Plaintiffs' national origin and immigration status and their protected organizing activities as immigrants and tenants under Colorado law. *See supra* ¶¶ 11-12; Lewis Decl. Ex. 5, 8.

53. Defendant Schwalb, in his capacity as landlord, discriminated against Plaintiffs because of their Venezuelan origin pertaining to rental of the Apartment in violation of C.R.S. § 24-34-502(1)(a)(I). Plaintiffs feared they would be forcibly removed from their home by immigration officers and feared for their children's safety living in the Apartment. *See supra* ¶ 10.

54. Accordingly, Plaintiffs are entitled to compensatory damages in the amount of $50,000.00 for suffering harassment, intimidation, and humiliation associated with their immigration and citizenship status and fear of eviction from their home due to Defendant Schwalb's discriminatory conduct associated with their tenancy. *See Boulder Meadows*, 2 P.3d at 138–39. Plaintiffs are also entitled to punitive damages in the amount of $100,000.00 because Defendant Schwalb's blatant threats and retaliatory actions showed malice, insult, and a wanton and reckless disregard of Plaintiffs' rights and human dignity. *See id.* at 139 (upholding trial court's award of $150,000.00 in compensatory and punitive damages for claims under C.R.S. § 24-34-502.2 (unfair housing practice to discriminate based on disability)). Plaintiffs are further entitled to an order, pursuant to

C.R.S. § 24-34-505.6(6)(a), permanently enjoining Defendant Schwalb from further violations of CADA on the terms set forth in the proposed judgment filed contemporaneously herewith.

E. Count V: Defendant's Breach of The Covenant of Quiet Enjoyment.

i. Relief Requested for Breach of The Covenant of Quiet Enjoyment.

55. Count V of the Complaint alleges Defendant breached Plaintiffs' right to quiet enjoyment of the Apartment they inhabited as tenants by failing and refusing to provide a safe and sanitary environment in the Apartment. Plaintiffs seek damages plus an award of their costs and reasonable attorney's fees, and any other relief the Court deems appropriate.

ii. Colorado Covenant of Quiet Enjoyment Standard.

56. Colorado courts have long recognized a tenant's implied right to quiet enjoyment. *See Radinsky v. Weaver*, 460 P.2d 218, 220 (Colo. 1969) ("[I]n the absence of an agreement to the contrary, there is an implied covenant for the quiet enjoyment of the leased premises and the tenant is entitled to the possession of the premises to the exclusion of the landlord."); *see also W. Stock Ctr., Inc. v. Sevit, Inc.*, 578 P.2d 1045, 1051 (Colo. 1978). Further, Colorado has since statutorily narrowed the implied covenant of quiet enjoyment by prohibiting a written rental agreement from including "[a] waiver of: The implied covenant of quiet enjoyment" as it relates to actions within "the reasonable control of the landlord[.]" C.R.S. § 38-12-801(3)(a)(III)(D).

57. "The covenant of quiet enjoyment is breached by 'any disturbance of a lessee's possession by his lessor which renders the premises unfit for occupancy . . . or which deprives the lessee of the beneficial enjoyment of the premises[.]'" *Al-Hamim v. Star Hearthstone, LLC*, 564 P.3d 1117, 1122 (Colo. App. 2024) (*quoting W. Stock Ctr.*,

578 P.2d at 1051). "The crucial issue . . . is whether the disturbance of the tenant's possessory interest is attributable to the landlord." *W. Stock Ctr.*, 578 P.2d at 1051. A tenant can recover for an abatement of the rent, measured by comparing the fair rental value of the property before and after the time the property became uninhabitable. *Bedell v. Los Zapatistas, Inc.*, 805 P.2d 1198, 1200 (Colo. App. 1991). "Abatement is allowed until the default is eliminated or the lease terminates, whichever first occurs." *Id.* (*quoting* Restatement (Second) of Property § 11.1 (1977)).

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count V Against Defendant for Breach of the Covenant of Quiet Enjoyment.

58. Defendant Schwalb breached Plaintiffs' right to quiet enjoyment of the Apartment by failing and refusing to provide safe and sanitary living conditions, locking them out of the Apartment without process, and harassing and intimidating Plaintiffs in an attempt to remove them from the Apartment. Upon moving into the Apartment, Plaintiffs found hazardous and uninhabitable conditions including a severely cracked window, urine stains, a cockroach infestation and inadequate fencing and lighting. *See supra* ¶ 6; Roe Decl. Ex. 2. The unsanitary conditions caused Plaintiffs' three-year-old son to fall ill and a cut on his foot developed an infection. *See supra* ¶ 6; Roe Decl. Ex. 3. When Plaintiffs reported the conditions, nothing was done to improve them. *Supra* ¶ 6. Further, Defendant Schwalb told Mr. Doe that *he* was responsible for repairing the pre-existing broken window under the terms of the Lease. *Id.* Defendant is prohibited under Colorado law from including a waiver of the implied covenant of quiet enjoyment in the Lease relating to actions under his reasonable control. *See* C.R.S. § 38-12-801(3)(a)(III)(D). Defendant could have reasonably fixed the uninhabitable conditions of the Apartment, including the

broken window. Plaintiffs believed Defendant did not respect them because they are from Venezuela. Goodman Decl., ¶ 6.

59. Defendant Schwalb further impeded Plaintiffs' quiet enjoyment of the Apartment by locking them out of the Apartment, *see supra* ¶ 8, and by repeatedly harassing and threatening Plaintiffs with the purpose and intent of removing them from the Apartment, *see supra* ¶¶ 9-12. Plaintiffs were afraid for their family's safety living in their own home, so much so that they felt they had to find a new place to live. Goodman Decl., ¶¶ 21-24.

60. Defendant Schwalb's failure to remedy the hazardous and unsanitary conditions at the Apartment rendered the Apartment unfit for occupancy, and his disturbance of Plaintiffs through intimidation tactics and impediment of Plaintiffs' access to their dwelling deprived Plaintiffs of the beneficial enjoyment of the Apartment. *Al-Hamim*, 564 P.3d at 1122; *W. Stock Ctr.*, 578 P.2d at 1051. Defendant committed ongoing breach of the covenant of quiet enjoyment from December 2024 through February 2025.

61. Accordingly, Plaintiffs are entitled to abatement damages for the entire fair rental value of the property ($1,800.00 per month) for the three-month period of Defendant Schwalb's continuing breach of Plaintiffs' right to quiet enjoyment of the Apartment, for a total of $5,400.00. *See Bedell*, 805 P.2d at 1200.

F. Count VI: Declaratory and Injunctive Relief (C.R.C.P. 57, 65).

i. Relief Requested Under C.R.C.P. 57 & 65.

62. Count VI of the Complaint alleges that Plaintiffs face an immediate threat of irreparable injury as a result of Defendant's discriminatory and retaliatory conduct. Plaintiffs seek a declaration that any ongoing threats and discriminatory treatment by

Defendant against Plaintiffs are unlawful and an order enjoining Defendant from further violating Colorado law.

ii. Colorado Legal Standard for Declaratory and Injunctive Relief.

63. Under Colorado law, "[a]ny person interested under a . . . written contract . . . or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may . . . obtain a declaration of rights, status, or other legal relations thereunder." C.R.C.P. 57(b); C.R.S. § 13-51-106. Where a claim for declaratory relief "involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of facts…in other civil actions in the court in which the proceeding is pending." C.R.C.P. 57(i); C.R.S. § 13-51-113. A declaration may be "affirmative or negative" and "shall have the force and effect of a final judgment or decree." C.R.C.P. 57(a); C.R.S. § 13-51-105. Rule 57 "is to be liberally construed and administered," C.R.C.P. 57(k), and "interpreted and construed . . . with federal laws and regulations on the subject of declaratory judgments and decrees," C.R.S. § 13-51-104.

64. A permanent injunction "is meant to prevent future harm." *Trinidad Area Health Assoc. v. Trinidad Ambulance Dist.*, 562 P.3d 928, 934 (Colo. App. 2024). A plaintiff may obtain injunctive relief "in connection with final judgment." C.R.C.P. 65(g). Further, "an injunction may be mandatory" if "merely restraining the doing of an act or acts will not effectuate the relief to which the moving party is entitled[.]" C.R.C.P. 65(f). To obtain a permanent injunction, a plaintiff must show that it (1) achieved success on the merits, (2) irreparable harm will result absent the injunction, (3) the threatened injury outweighs the harm an injunction may cause to defendant, and (4) the injunction is not against the public interest. *Trinidad*, 562 P.3d at 935 (citation omitted); *see also Southwest Stainless,*

LP v. Sappington, 582 F.3d 1176, 1191 (10th Cir. 2009) (same factors required by Tenth Circuit). Any evidence submitted in application for a preliminary injunction that would be admissible at trial "becomes part of the record[.]" C.R.C.P. 65(a)(2).

iii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count VI Against Defendant for Declaratory and Injunctive Relief.

65. Plaintiffs have established that they are entitled to a declaration of their rights for Defendant Schwalb's violations of Colorado law and that a permanent injunction is necessary to prevent future harm. Defendant Schwalb violated Plaintiffs' rights as tenants on the basis of their perceived immigration status and national origin. *See supra* ¶¶ 6-15. Defendant's discriminatory conduct against Plaintiffs continued after a TRO and Preliminary Injunction were issued by the district court, *see supra* ¶¶ 11-12, 16-18, demonstrating that he has little regard for the law and its consequences or Plaintiffs' rights. For the reasons set forth herein, Plaintiffs have established that Defendant violated their rights under Colorado statutory and common law and are entitled to a declaration protecting their rights and clarifying the parties' obligations thereunder. *See* C.R.C.P. 57(b), (i); C.R.S. §§ 13-51-106, 13-51-113.

66. Plaintiffs have also established that a permanent injunction is necessary to prevent Defendant Schwalb from future harm. *See Trinidad*, 562 P.3d at 935. *First*, Plaintiffs have established success on the merits of their claims against Defendant in this action. *Second*, Plaintiffs and the public face a real threat of irreparable harm if Defendant is not permanently enjoined from harassing, intimidating, and threatening Plaintiffs and others based on their perceived immigration status or national origin. Further, Defendants' disregard for the law is not isolated—this Court has already taken "judicial notice that a jury returned a guilty verdict against the Defendant on 47 counts [of theft for fraud] on

February 19, 2026", [Doc. No. 38 at 4], and found that the "uncivilized and reprehensible" conduct detailed in Plaintiffs' Complaint "combined with the criminal conviction and flood of homeowner civil actions and secured lender foreclosure actions" weighed against vacating clerk's entry of default, [*Id.* at 8]. *Third*, Plaintiffs' requested injunction poses no credible harm to Defendant. A defendant "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). In any case, Defendant awaits sentencing on his highly publicized criminal convictions, is embroiled in a chapter 7 bankruptcy proceeding that is far from over, and he has not—and cannot—show that his livelihood or personal freedom would be compromised by the injunctive relief requested. *Fourth*, the injunction would affirmatively serve the public interest because eradicating discrimination in housing is strongly in the public interest. *See e.g., Mishkin v. Young*, 107 P.3d 393, 399 (Colo. 2005) (recognizing "the disparity in power which exists between landlord and tenant"); *Diamond House of SE Idaho, LLC v. City of Ammon*, 381 F. Supp. 3d 1262, 1279 (D. Idaho 2019) ("courts have emphatically declared the public interest is served by effective enforcement of [fair housing statutes]."). Indeed, by enacting the ITPA, Colorado has clearly determined that preventing the kind of misconduct at issue here is in the public interest. *See, e.g.,* C.R.S. § 38-12-1205(2) ("Nothing in [the ITPA] renders the immigration or citizenship status of a tenant relevant to any issue of liability or remedy in a civil action involving a tenant's housing rights."); *Gonzalez v. Recht Family P'ship*, 51 F. Supp. 3d 989, 992-93 (S.D. Cal. 2014) (concluding the "public interest has been authoritatively declared by Congress in its enactment of the [Fair Housing Act]" in disability discrimination suit requesting preliminary injunction). A permanent injunction is necessary to "stop . . . an intentional

and deliberate campaign of terror that [Defendant has] embarked upon" against Plaintiffs. *Nolan v. Smith*, No. 02CV44, 2003 WL 24286582, at *3, ¶ 12 (Colo. Dist. Ct. Aug. 12, 2003) (entering judgment for plaintiffs on request for injunctive relief pursuant to Colo. R. Civ. P. 65).

67. Accordingly, Plaintiffs are entitled to: (1) a declaration, pursuant to Colo. R. Civ. P. 57, that Defendant's threats and discriminatory treatment are unlawful under Colorado law, and (2) a permanent injunction, pursuant to Colo. R. Civ. P. 65, barring Defendant Schwalb from continuing to violate Colorado law and Plaintiffs' rights thereunder, on the terms set forth in the proposed judgment filed contemporaneously herewith.

G. Count VII: Nondischargeability Against Debtor (11 U.S.C. 523(a)(6)).

68. Count VII of the Complaint alleges that Defendant willfully and maliciously injured the Plaintiffs when he, acting as Plaintiffs' landlord (1) threatened, harassed and retaliated against Plaintiffs on the basis of their actual or perceived immigration or citizenship status; (2) retaliated against the Plaintiffs for their organizing activities related to a tenant's association by wrongfully evicting them; (3) removed Plaintiffs from their apartment without process; (4) discriminated against Plaintiffs for their perceived or actual immigration status and Venezuelan national origin; and (5) by failing and refusing to provide a safe and sanitary environment, breaching the covenant of quiet enjoyment.

69. Count VII further alleges that Defendant has, and at all relevant times had full knowledge that each and every of the actions described in the Complaint derogated Plaintiffs' rights, violated Colorado law, and would result in injury to Plaintiffs. Plaintiffs seek an order declaring that the debt owed by Defendant to Plaintiffs for these violations is non-dischargeable.

i. Willful and Malicious Injury Standard for Nondischargeability.

70. The Bankruptcy Code excepts from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To establish that a debt is for "a willful and malicious" injury, a creditor must prove that the injury was both "willful" and "malicious." *In re Smith,* 618 B.R. 901, 912 (B.A.P. 10th Cir. 2020).

71. A debtor "willfully" injures a creditor when the debtor deliberately or intentionally injures the creditor, not merely a "deliberate or intentional act that leads to injury." *Id.* "Willful injury may be established by direct evidence of specific intent to harm a creditor or the creditor's property." *In re Bloom*, No. 22-1005, 2022 WL 2679049, at *7 (10th Cir. July 12, 2022). A willful injury may also be established "by indirect evidence that the debtor desired to cause the injury or believed the injury was substantially certain to occur." *Smith*, 618 B.R. at 912.

72. An injury is "malicious" when the debtor **"**acted with a culpable state of mind *vis-à-vis* the actual injury caused the creditor", meaning "an act taken in conscious disregard of one's duties and without just cause or excuse, even in the absence of personal hatred, spite, or ill-will, or wrongful and without just cause or excuse." *Smith*, 618 B.R. at 919 (quoting *In re Pasek,* 983 F.2d 1524, 1527 (10th Cir. 1993)); *see also Bloom*, 2022 WL 2679049, at *7.

73. Where an unlawful eviction by a debtor-landlord constitutes willful and malicious injury, the resulting damages are a nondischargeable resulting debt. *See In re Kumar,* 661 B.R. 241, 247 (Bankr. N.D. Cal. 2024) (landlord failing to utilize legal process for eviction and violating state tenant laws by turning off utilities and preventing tenant from gaining access by changing locks constituted a willful and malicious injury, and

resulting damages were nondischargeable); *Clark v. Morris,* 710 P.2d 1130, 1134 (Colo. App. 1985) (wrongfully evicting and converting a tenant's property without legal process constitutes a "wanton and reckless disregard of the injured party's rights.").

ii. Plaintiffs Have Alleged Facts Establishing a Legitimate Basis for Entry of Default Judgment on Count VIII for Nondischargeability Against Defendant-Debtor.

74. Defendant Schwalb's acts as set forth in Section II(b) *infra* sufficiently establish the requisite injuries to Plaintiffs were caused intentionally and maliciously, including (1) on December 4, 2024, Defendant Schwalb locked out Plaintiffs on the basis of their immigration or citizenship status, (2) on January 15, 2025, Defendant Schwalb a fraudulent eviction notice to be served on Plaintiffs, and did so because of Plaintiffs immigration status, (3) on January 24, 2025, Defendant Schwalb threatened to disclose information about Plaintiffs' immigration or citizenship status to immigration and law enforcement, and did, in fact, contact local law enforcement authorities making false allegations and discriminatory statements in an attempt to further intimidate Plaintiffs, (4) on February 8, 2025, Defendant Schwalb caused an improper eviction notice to be served on Plaintiffs in violation of a temporary restraining order preventing Defendant Schwalb from discriminating against Plaintiffs on the basis of their perceived or actual immigration status, and (5) on February 11, 2025, Defendant Schwalb initiated an improper eviction action against Plaintiffs on the basis of the improper notice. Each of the foregoing actions gives rise to one (or more) of the claims set forth above and were done with specific, malicious intent to cause harm. Defendant Schwalb's debts to Plaintiffs as a result of the foregoing conduct and this judgment are thus non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

WHEREFORE, for the foregoing reasons, the Plaintiffs respectfully request that the Court enter the proposed default judgment filed contemporaneously herewith in favor of Plaintiffs and against Defendant.

Dated: April 3, 2026

Respectfully Submitted,

/s/ Alexandra K. Lewis

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Counsel for Appellees John Doe and Jane Roe

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, a true and correct copy of the foregoing was served via CM/ECF upon those registered to receive electronic filings in this case and via prepaid first-class mail on the appellant at the following address:

Avi Schwalb
433 Locust St
Denver, CO 80220

Dated: April 3, 2026

/s/ Alexandra K. Lewis
Alexandra K. Lewis

EXHIBIT 1

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Joseph G. Rosania, Jr.

In re: AVI SCHWALB, Debtor.	Case No. 25-12666-JGR Chapter 7
JOHN DOE AND JANE ROE, Plaintiffs, v. AVI SCHWALB, Defendant.	Adversary Case No. 25-1255-JGR

ORDER GRANTING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

Upon consideration of the Motion[1] of Plaintiffs John Doe and Jane Roe for entry of default judgment against Defendant Avi Schwalb, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure (the "Civil Rules"), made applicable to the Adversary Proceeding under Rules 7001 and 7055 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and upon consideration of the record of the Adversary Proceeding, including the Adversary Complaint and all exhibits thereto and the Lewis Affidavit and Roe Affidavit filed in support of the Motion and all exhibits thereto; and due and proper notice of the Motion having been given and no other or further notice of the Motion being required; and this Court having jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 1334 and 157; and this Court's consideration of the Motion and the relief

[1] Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue of this proceeding and the Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the well-pleaded allegations set forth in the Adversary Complaint meeting the elements of the causes of action on which this Court enters judgment; and the Motion and its supporting materials establishing just cause for the relief granted herein and the Motion having satisfied all applicable legal and factual burden; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. In accordance with Civil Rules 55(b) and 58(a), made applicable to the Adversary Proceeding by Bankruptcy Rules 7055 and 7058, a separate default judgment will enter against Defendant.

Dated: _____, 2026

FOR THE COURT:

_____
Joseph G. Rosania, Jr.
United States Bankruptcy Judge

EXHIBIT 2

Proposed Judgment

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Joseph G. Rosania, Jr.

In re: AVI SCHWALB, Debtor.	Case No. 25-12666-JGR Chapter 7
JOHN DOE AND JANE ROE, Plaintiffs, v. AVI SCHWALB, Defendant.	Adversary Case No. 25-1255-JGR

[PROPOSED] JUDGMENT

On _____, 2026, the Court granted the Motion[1] of Plaintiffs John Doe and Jane Roe for entry of default judgment against Defendant Avi Schwalb [Docket No. __]. In accordance with Fed. R. Civ. P. 58(a), made applicable to the Adversary Proceeding pursuant to Fed. R. Bankr. P. 7058, a default judgment hereby enters as follows:

1. Judgment in the amount of $10,000.00 in statutory damages and $50,000 in compensatory damages is hereby GRANTED in favor of Plaintiffs and against Defendant on Count I of the Adversary Complaint.

[1] Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

Count I

2. With respect to Count I of the Adversary Complaint, the Court finds that Defendant's actions constitute violations of Plaintiffs' rights under the ITPA. Defendant is hereby permanently enjoined and prohibited from further violating Plaintiffs' rights under the ITPA.

Count II

3. Judgment in the amount of $21,600.00 in statutory damages is hereby GRANTED in favor of Plaintiffs and against Defendant on Count II of the Adversary Complaint.

Count III

4. Judgment in the amount of $6,700.00 in statutory damages is hereby GRANTED in favor of Plaintiffs and against Defendant on Count III of the Adversary Complaint.

5. With respect to Count III of the Adversary Complaint, the Court finds that Defendant's conduct in removing or attempting to remove Plaintiffs from the premises without resort to proper legal process is in violation of C.R.S. § 38-12-510. Defendant is permanently enjoined from removing, or attempting to remove, Plaintiffs from the subject premises without full compliance with all requirements of Colorado law.

Count IV

6. Judgment in the amount of $50,000.00 in compensatory damages is hereby GRANTED in favor of Plaintiffs and against Defendant on Count IV of the Adversary Complaint.

7. Further, with respect to Count IV of the Adversary Complaint, because the Court finds that Defendant's volitation of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-501 et seq., was particularly egregious based on Defendant's blatant threats and retaliatory actions showed malice, insult, and a wanton and reckless disregard of Plaintiffs' rights and human dignity, judgment in the amount of $100,000.00 in punitive damages is hereby GRANTED in favor of Plaintiffs.

8. Further, with respect to Count IV of the Adversary Complaint, Defendant is permanently enjoined and restrained from engaging in any unfair housing practice prohibited by CADA, retaliating against Plaintiffs for exercising rights protected by CADA, and otherwise interfering with Plaintiffs' rights under CADA.

Count V

9. Judgment in the amount of $5,400 is hereby GRANTED in favor of Plaintiffs and against Defendant on Count V of the Adversary Complaint.

Count VI

10. With respect to Count VI of the Adversary Complaint, the Court finds and declares that Defendant has violated Plaintiffs' rights as tenants on the basis of their perceived immigration status and national origin, in violation of Colorado statutory and common law, as set forth in Plaintiffs' Motion and supporting materials.

11. Further, with respect to Count VI of the Adversary Complaint, the Court finds and declares that Defendant's threats and discriminatory treatment toward Plaintiffs are unlawful under Colorado law. Defendant is permanently enjoined and restrained from engaging in any conduct that constitutes discrimination against Plaintiffs as defined by applicable Colorado law.

Count VII

12. The judgment herein against Defendant and Defendant's debts to Plaintiffs are hereby found to be and are ordered as non-dischargeable pursuant to 11 U.S.C. § 523(a)(6) and shall not be discharged in this or any subsequent bankruptcy proceeding of Defendant until such debts and this judgment are satisfied in full.

13. In light of the Judgment on the Counts as set forth above, the total, non-duplicative cumulative judgment in the amount of $182,900.00 is hereby GRANTED in favor of Plaintiffs.

14. The Court finds that Plaintiffs are entitled to recover reasonable attorneys' fees and expenses incurred in prosecuting this action pursuant to CADA and other applicable law.

15. Plaintiffs' counsel shall file a bill of costs, and a petition for attorneys' fees and expenses, within fourteen (14) days of entry of this Order.

16. The Court will review Plaintiffs' bill of costs and petition for attorneys' fees and enter a supplemental order awarding such fees and expenses as appropriate.

17. Plaintiffs are authorized to take all actions necessary or appropriate to effectuate this judgment. This judgment is effective immediately and the stay provided in Fed. R. Bankr. P. 7062 to execute on and enforce this judgment is not in effect.

18. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this judgment.

Dated: _____, 2026

FOR THE COURT:

_____
Joseph G. Rosania, Jr.
United States Bankruptcy Judge