

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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STATE OF IOWA ex rel.  
THOMAS J. MILLER,  
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

ERIC JAMES MITCHELL (d/b/a  
RESIDENTIAL SERVICES and E'NA  
LANDSCAPING BY DESIGN),

Defendant.

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**EQUITY EQCE083283**

**CONSENT JUDGMENT**

This Court, recognizing that the State of Iowa, by Attorney General Thomas J. Miller and Assistant Attorney General Benjamin E. Bellus, and Eric James Mitchell d/b/a “Residential Services” and “E’NA Landscaping by Design”, Defendant appearing pro se, have consented to the entry of this judgment, finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County, Iowa.
3. Plaintiff is the State of Iowa, ex rel. Attorney General Thomas J. Miller, the duly elected Attorney General of Iowa. The Attorney General of Iowa is expressly authorized pursuant to Iowa Code §§ 714.16(7) and 555A.6(2) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 714.16 and/or Iowa Code Chapter 555A.
4. Defendant Eric James Mitchell is the sole owner, operator and managing agent of two unincorporated home repair and contractor businesses named “Residential Services” and “E’NA Landscaping By Design” (a/k/a “ENA Landscaping By Design”); neither of which were registered as a trade name in any county in which Defendant Mitchell did business nor were they registered with the Iowa Secretary of State as business entities. Defendant Mitchell was never registered under any name with the contractor registry managed by the Division of Labor at Iowa Workforce

Development. During the relevant time period, the residence and business addresses for Defendant Mitchell and his businesses was 1170 SE Village View Lane, Ankeny, Iowa, 50021. Defendant Mitchell is named in his individual capacity as well as his past or present corporate capacities.

5. Defendant Eric James Mitchell formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of Residential Services and E'NA Landscaping By Design constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an officer, director, sole owner, and/or managing agent of both Residential Services and E'NA Landscaping By Design.

6. Unless otherwise specified, the term "Defendant" as referred to herein includes Eric James Mitchell as well as any corporate name or trade name under which he operated, or is operating, a business; and his representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by Eric James Mitchell.

7. The phrase "home repairs or contractor services," as used herein, includes any labor or materials provided for work on any residential dwelling, commercial building or other structure; and any labor or materials provided for work on other things commonly found on residential or commercial real property including, but not limited to, garages, pole buildings, out buildings, basements, interiors, roofs, porches, driveways, sidewalks, patios, fences, landscaping and snow removal.

8. The State alleges that Defendant violated Iowa Code chapter 555A by selling home repairs or contractor services that were valued at more than \$25.00 to consumers for personal, family or household purposes, at a place other than the Defendant's place of business and then:

- a. violating Iowa Code § 555A.2 by failing to furnish at the time of the transaction a fully completed receipt or copy of any contract containing the

notification of the consumers' cancellation rights required by this subsection, and in the format and language required by this subsection;

- b. violating Iowa Code § 555A.3 by failing to furnish two copies of a completed "Notice of Cancellation", containing the statutorily-mandated form and language, to consumers at the time that the parties entered into a contract;
  - c. violating Iowa Code § 555A.4(1) by failing to furnish two copies of the "Notice of Cancellation" to consumers, and complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date by which consumers may give notice of cancellation;
  - d. violating Iowa Code § 555A.4(2) by including a waiver in the contract of the consumers' right to cancel the sale in accordance with the provisions of Iowa Chapter 555A;
  - e. violating Iowa Code § 555A.4(3) by failing to orally inform consumers of their right to cancel the contract on or before the third business day after the sale;
  - f. violating Iowa Code § 555A.4(4) by misrepresenting the consumers' right to cancel; and
  - g. violating Iowa Code § 555A.4(5) by failing to honor valid cancellations by consumers and refund all payments made under the contracts within ten (10) business days of the cancellation.
9. The State further alleges that Defendant violated Iowa Code § 714.16(2)(a) by:
- a. pursuant to Iowa Code § 555A.6(2), committing the violations of Iowa Code Chapter 555A referenced in paragraph 8, above;
  - b. representing to consumers that Defendant would begin home repairs or contractor services within a promised time period, without a reasonable basis for such representations;
  - c. representing to consumers that Defendant would complete home repairs or contractor services within a promised time period, without a reasonable basis for such representations;
  - d. representing to consumers that Defendant would complete home repair or contractor services in a specific manner and then failing to provide said services to the agreed specifications;
  - e. representing to consumers that Defendant could provide home repair or contractor services in Iowa when Defendant was legally prohibited from

providing such services because Defendant was not properly registered as a contractor with the Department of Labor at Iowa Workforce Development;

- f. contracting with consumers to provide home repair and contractor services, and then failing to provide labor, materials, or reimbursement of the consumers' down payment;
- g. accepting payment from consumers as a down payment for the provision of home repair and contractor services and then failing to provide labor or materials, or repay the down payment to consumers;
- h. doing business and advertising under false names and/or pseudonyms without registering the names or businesses as a "construction contractor" with the Division of Labor at Iowa Workforce Development, without registering the businesses as a Trade Name with the county recorder, or without incorporating the businesses with Iowa Secretary of State; or taking any other steps so that a dissatisfied consumer could readily identify and contact the Defendant, or so that any consumer performing due diligence could identify Defendant before signing a home repair or construction contract and/or making a down payment;
- i. contracting with consumers to provide home repair and contractor services and then failing to perform the home repair and contractor services in a workmanlike manner, and/or in a manner within industry standards, and/or in a manner that complied with manufacturer standards, and/or building codes; thus placing the consumers at risk of physical and/or financial harm, and/or causing consumers physical and/or financial harm;
- j. failing to disclose to consumers at any time before entering into a contract for home repair or contractor services that the Defendant previously failed to complete multiple contracts for home repair or contractor services and had multiple civil judgments against Defendant for breach of contract and other claims relating to the failure to perform home repair or contractor services; and
- k. refusing to respond to consumer complaint inquiries, or responding to consumer inquiries in a manner that delayed, hindered, or otherwise prevented, consumers from limiting their losses.

10. Defendant admits the State's allegations and agrees to entry of this Consent Judgment.

11. Defendant waives the right to a judicial or administrative hearing on any issue of fact or law set forth in the Petition filed by the State herein.

12. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of Iowa from any further losses from any similar conduct by the Defendant in Iowa in the future.

13. The Court finds that an Order should be entered in this matter.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that, pursuant to Iowa Code § 714.16(7):

14. Defendant Eric James Mitchell is hereby permanently RESTRAINED and ENJOINED from:

- a. owning, operating, controlling, directing, or otherwise profiting from any business in the State of Iowa that in any manner offers or provides home repairs or contractor services;
- b. advertising or offering any home repair or contractor services to Iowa consumers nor entering into any contracts to provide home repairs or contractor services to Iowa consumers; and
- c. advising, controlling, directing, or otherwise exercising any authority to any extent regarding a business which, in part or in whole, provides home repair or contractor services, including, but not limited to business practices, hiring decisions, or the like.

15. The Order under paragraph 14 shall be in addition to other remedies the Court may order in the event of Defendant's non-compliance with this Consent Judgment.

16. Pursuant to Iowa Code Chapter 665, Defendant may be found guilty of contempt of this Court for violation of this Consent Judgment.

17. Pursuant to Iowa Code § 714.16(7), the Court may impose a civil penalty of not more than \$5,000 for each day of intentional violation of this Consent Judgment in addition to any other remedy allowed by law.

18. Pursuant to Iowa Code § 714.16(7), judgment in the amount of \$25,253.08 is hereby entered against Defendant personally for reimbursement of Iowa consumers listed in the attached

Exhibit “A.”<sup>1</sup> Defendant has informed the State that Defendant does not have the financial ability to pay the judgment in full and the State has agreed to a repayment plan commensurate with Defendant’s represented financial condition in reliance on the Defendant’s representations. The State reserves the right to demand greater payment(s) should credible evidence surface that Defendant either misrepresented Defendant’s financial status or has subsequently improved his financial situation. At this time, Defendant shall pay the judgment in the following manner:

- a. All payments shall be delivered to:  
Susan Kerr, Investigator, (or her successor)  
Iowa Department of Justice  
Consumer Protection Division  
1305 East Walnut Street, Second Floor  
Des Moines, IA 50319
- b. Defendant shall make payments of \$350.00 per month, beginning on July 15, 2018, and continue to pay said installment on or before the fifteenth (15<sup>th</sup>) day of each consecutive month until the full judgment amount has been paid. The State may claim interest at the rate of 10% per annum on any payments not received by the Consumer Protection Division by the twenty-fifth (25<sup>th</sup>) day of the month in which that payment is due. The provisions of this Consent Judgment do not preclude Defendant from paying this judgment in advance of this payment schedule if Defendant so chooses.
- c. Should Defendant fail to make to make full payment on any two months within any 12-month period, whether nonconsecutive or otherwise, the State may cancel the payment plan and collect the full judgment.
- d. Notwithstanding subparagraph “c” of this paragraph, should Defendant encounter financial difficulties that might temporarily impair his ability to comply with the payments scheduled under this section, Defendant may request a temporary reduction or deferral in the payments from the Attorney General. Such a reduction or deferral may be granted at the Attorney General’s sole discretion, shall be granted only in writing, and shall not constitute a waiver by the Attorney General of any terms or provisions contained within this Consent Judgment. The Attorney General may demand evidence of Defendant’s financial condition and/or statements to be made under oath as a condition for any reduction or deferral of payment.

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<sup>1</sup> The Court recognizes that some consumers may independently obtain judgments or refunds against the Defendant. It is not the Court’s intention to obtain duplicate recoveries for consumers for the same transactions and the final payment due under this Judgment shall be reduced in the amount of any payment(s) actually made to consumers arising from the same transactions.

19. This Consent Judgment shall not bar the State or any other governmental entity from enforcing other laws or rules against Defendant relating to any of Defendant's practices, including those alleged in the petition.

20. This Consent Judgment shall not be construed so as to affect the legal or equitable rights of any individual citizen to initiate court proceedings against Defendant and to obtain any relief authorized by law or regulation.

21. Pursuant to Iowa Code § 714.16(11), Defendant shall pay any and all court costs incurred in this action.

22. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorney fees, it incurs in the event of noncompliance by Defendant. Such costs may include court costs in excess of those authorized by paragraph 21, above.

23. The mailing of a copy of this signed and filed Consent Judgment to Defendant Eric James Mitchell shall constitute notice and acceptance by Defendant of all the terms of this Consent Judgment; Defendant has waived the necessity of having the Consent Judgment served upon him.

**SO ORDERED.**

Agreed and approved as to form and content:

Date June 22nd 2018

Eric Mitchell

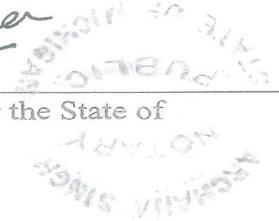
Eric James Mitchell, individually and in any corporate capacity, d/b/a Residential Services and E'NA Landscaping by Design, Defendant

Subscribed and sworn to before me this 22 day of June, 2018.



Archana Singh

Notary Public in and for the State of Michigan



Date July 10, 2018

Ben E Bellus

Benjamin E. Bellus  
Attorney for the State of Iowa  
Iowa Department of Justice  
Consumer Protection Division

Copies to:

Eric James Mitchell  
594 Heights Road  
Lake Orion, MI 48362

Benjamin E. Bellus  
IOWA DEPARTMENT OF JUSTICE  
Consumer Protection Division  
1305 East Walnut, Second Floor  
Des Moines, IA 50319

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THOMAS J. MILLER,  
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**EQUITY EQCE083283**

**EXHIBIT A  
(CONSUMER REIMBURSEMENT)**

1. Christensen, Jared	\$1,800.00
2. Conley, Steven	1,400.00
3. Howe, Adina	2,100.00
4. Iglehart, Desirae	3,300.00
5. Koenig, James	325.00
6. Nicholson, Kerry and Cheryl	3,000.00
7. Pfeifer, Denise and Janet Jones (SCSC586665)	3,900.00
8. Qi, Qiang (SCSC030712)	478.08
9. Sabre, Jennifer	450.00
10. Thull, Gary	800.00
11. Tieck, Cathy	600.00
12. Yegge, San and Pam (SCSC027659)	5,000.00
13. Zhengrui, Jiang (SCSC056604)	<u>2,100.00</u>
Total:	\$25,253.08



State of Iowa Courts

**Type:** ORDER FOR CONSENT DECREE

**Case Number**      **Case Title**  
EQCE083283      STATE OF IOWA VS ERIC JAMES MITCHELL ET AL

So Ordered

A handwritten signature in cursive script, appearing to read "Sarah Crane".

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Sarah Crane, District Court Judge  
Fifth Judicial District of Iowa