

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL  
DISTRICT

STATE OF NORTH DAKOTA EX REL.  
WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Plaintiff,

-vs-

MATTHEW HOLDEN, AFFORDABLE  
FLOORING, LLC,

Defendants.

Civil No. 08-2021-CV-02169

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER FOR JUDGMENT**

[¶1] This matter came before the Court on the State's Motion for Summary Judgment filed on February 2, 2022. Index ## 9 – 25. Defendants were served with the State's Motion for Summary Judgment by mail on February 2, 2022. Index # 25. More than 33 days have passed since Defendants were served with the State's Motion for Summary Judgment, and Defendants are now in default and have failed to dispute the facts and allegations set forth therein.

[¶2] WHEREFORE, the Court, having reviewed the State's Motion for Summary Judgment together with all supporting documents filed therewith and all other documents filed in this matter, and the Court being duly advised on the premises of this action, makes the following findings of fact and conclusions of law:

## I. FINDINGS OF FACT NOT IN GENUINE ISSUE

[¶3] The State initiated this action by service of the Summons and Complaint on Defendants. Index ## 6 – 8.

[¶4] Under N.D.R.Civ.P. 12(a)(1)(A), “a defendant must serve an answer within 21 days after being served with the summons and complaint.” N.D.R.Civ.P. 12(a)(1)(A). Under N.D.R.Civ.P. 8(b)(6), an allegation is admitted if it is not denied where a responsive pleading is required. N.D.R.Civ.P. 8(b)(6).

[¶5] Defendants failed to answer the Complaint and have not appeared in the action.

[¶6] Therefore, Defendants admit the entirety of the State’s Complaint, including the following specific facts that are undisputed and therefore not in genuine issue:

### **A. Affordable Flooring’s contract with Mary Junker.**

On or about April 23, 2021, Mary Junker, 1406 4th Ave. NW, Mandan, ND 58554, contracted with Affordable Flooring to install flooring in her home.

On or about April 23, 2021, Affordable Flooring solicited and accepted an advance payment of \$4,000.00 from Ms. Junker that she paid by check.

Affordable Flooring issued an invoice reflecting receipt of a \$4,000.00 payment from Ms. Junker.

Defendant Holden cashed Ms. Junker’s check the same day he received it.

Defendant Holden represented that he would install the flooring in Ms. Junker’s home on July 23, 24, and 25 of 2021.

Between April and August of 2021, Defendant Holden communicated with Ms. Junker via Facebook messenger and text messaging and

made excuses claiming that he could not obtain the flooring and install it in her home.

Defendant Holden told Ms. Junker that he filed for bankruptcy but would not identify the name of the attorney or law firm representing him.

Defendant Holden's claim to Ms. Junker that he filed bankruptcy was apparently a lie as PACER does not reflect that Defendant Holden has filed a petition for bankruptcy.

Defendants Affordable Flooring and Holden have never installed the promised flooring in Ms. Junker's home and have not issued a refund.

Defendants Affordable Flooring and Holden were not licensed when they contracted to install flooring in Ms. Junker's home.

#### **B. Affordable Flooring's contract with Tammi Randolph.**

On or about April 26, 2021, Tammi Randolph, 2825 Finley St., Lincoln, ND 58504, contracted with Affordable Flooring to install flooring in her home.

Ms. Randolph dealt with Defendants Holden and Kayla.

On or about April 26, 2021, Affordable Flooring solicited and accepted an advance payment of \$3,615.00 from Ms. Randolph.

Affordable Flooring issued an invoice reflecting that it accepted an advance payment of \$3,615.00 for "flooring product 7755F."

Despite receiving \$3,615.00 in advance from Ms. Randolph, Defendants have not provided any services to her.

Ms. Randolph has attempted to reach Defendants by telephone call and text messaging, but Defendants have not responded.

#### **C. Affordable Flooring's contract with Danielle Levey.**

On or about April 27, 2021, Danielle Levey, Box 597, Underwood, ND 58576, visited Affordable Flooring's store in Mandan, ND.

After Ms. Levey visited Affordable Flooring, Defendants came to her duplex and measured the area.

After Ms. Levey decided on flooring, Defendants solicited and accepted an advance payment of \$1,678.00 from Ms. Levey to install flooring in her duplex that Ms. Levey paid by check.

Affordable Flooring issued an invoice reflecting that Ms. Levey paid an advance payment of \$1,678.00 to the business, the total of \$1,578.00 for flooring product and a \$100.00 shipping charge.

According to Affordable Flooring, the flooring product Ms. Levey paid was never delivered.

When Ms. Levey contacted Affordable Flooring about completion of the outstanding product, Defendant Holden represented that he would be issuing a refund plus an additional \$100 for the inconvenience.

Ms. Levey never received the supposed refund check from Defendants.

Ms. Levey attempted to reach Defendants Holden and Kassy on or about August 31, 2021 but was unable to reach them.

#### **D. Affordable Flooring's contract with Jennifer Repnow.**

On or about June 9, 2021, Jennifer Repnow, 4001 Roosevelt Dr., Bismarck, ND 58503, visited Affordable Flooring's store in Mandan, ND and viewed flooring samples. During this visit, Kassy assisted Ms. Repnow and her husband.

On or about June 9, 2021, Kassy visited Ms. Repnow's home and provided an estimate for the installation of laminate flooring in Ms. Repnow's home.

On or about June 15, 2021, Defendant Affordable Flooring contracted with Ms. Repnow to install laminate flooring in her home.

Affordable Flooring solicited and accepted an advance payment of \$4,800.00 from Ms. Repnow.

On or about July 14, 2021, Defendant Holden texted Ms. Repnow and represented that he would install flooring in Ms. Repnow's home on July 24, 25, and 26 of 2021.

On or about July 21, 2021, Defendant Holden represented that Ms. Repnow's flooring order had been "mixed up" with another customer's flooring. He represented that he would provide a full refund if one was requested and that he would reduce the labor cost by \$400.00.

On or about August 5, 2021, Defendant Holden left a voice mail with Ms. Repnow claiming there had been a shipping mishap with Ms. Repnow's flooring. He also claimed that his phone had stopped working.

After August 5, 2021, Ms. Repnow attempted to communicate with Defendant Holden but was ignored.

When Ms. Repnow and her husband visited Affordable Flooring's store on August 24, 2021, they found the store empty. Further efforts to reach Defendants Holden and Affordable Flooring were unsuccessful.

Defendants Affordable Flooring and Holden were not licensed when they contracted to install flooring in Ms. Repnow's home.

#### **E. Affordable Flooring's contract with Roxane Fredericks.**

After seeing an Affordable Flooring advertisement, on or about June 30, 2021, Roxane Fredericks, 217 Lake St., Mandan, ND 58554, visited Affordable Flooring's store in Mandan, ND intending to remove current flooring, and purchase and install new flooring in her home.

On or about June 30, 2021, Affordable Flooring solicited and accepted an advance payment of \$7,391.13 that was paid by check.

Affordable Flooring issued an invoice reflecting receipt of Ms. Fredericks' advance payment for flooring products, removal of current flooring, and installation of the new flooring.

After Affordable Flooring had accepted the \$7,391.13 advance payment, Defendant Holden contacted Ms. Fredericks and claimed that he was unable to obtain one of the flooring products and asked her to come to the store and select another product.

Defendant Holden subsequently contacted Ms. Fredericks and represented that he would begin performance on the contract on October 5, 2021.

On or about September 16, 2021, by text message, Defendant Holden represented to Ms. Fredericks that he would have the flooring and would begin the installation as scheduled.

On or about October 5, 2021, Ms. Fredericks attempted to reach Defendant Holden, but he did not answer her calls or respond to her text messages.

Thereafter, Ms. Fredericks attempted to reach Defendant Holden on a weekly basis, including by text messaging and leaving voice mails. Defendant Holden ignored all of Ms. Fredericks' efforts to communicate.

Defendants Affordable Flooring and Holden failed to provide the promised product or services and never provided a refund.

Defendants Affordable Flooring and Holden were not licensed when they contracted to install flooring in Ms. Fredericks' home.

**F. Affordable Flooring's contract with Terri Kiefer.**

On or about July 6, 2021, Terri Kiefer, 227 E. Deer St., Mandan, ND 58554, visited Affordable Flooring's store in Mandan, ND.

On or about July 6, 2021, Affordable Flooring solicited and accepted an advance payment of \$2,754.26 from Ms. Kiefer that she paid by check.

Defendant Holden endorsed Ms. Kiefer's check and cashed or deposited it at U.S. Bank.

Affordable Flooring issued an invoice to Ms. Kiefer reflecting that she paid an advance payment of \$2,754.26 for flooring product and toward the installation.

Written on top of the invoice was the phrase, "Aug 9th – 10th," in reference to the promised date of installation.

After receiving Ms. Kiefer's advance payment, Defendant Holden contacted Ms. Kiefer and represented that he did not know when the flooring product would arrive and claimed that he would provide a refund.

Ms. Kiefer requested a refund from Mr. Holden.

After Ms. Kiefer did not receive a refund, she attempted to reach Defendants Affordable Flooring and Holden but was unable to reach them. Her calls were not returned.

On or about August 9, 2021, Ms. Kiefer then contacted Kayla and was told that a refund would be issued August 16, 2021.

After Ms. Kiefer did not receive the promised refund, on or about August 22, 2021, she again contacted Kayla and was told that Kayla no longer worked at Affordable Flooring.

Ms. Kiefer attempted to reach Defendants Affordable Flooring and Holden on August 17, 18, 20, and 22, but never received a telephone call in return.

Defendants took Ms. Kiefer's payment and then never provided the products or service and never provided a refund.

**G. Affordable Flooring's contract with Herb Kringen.**

On or about August 6, 2021, Herb Kringen, 2724 10th Ave. SE, Mandan, ND 58554, visited Affordable Flooring's store in Mandan, ND.

On or about August 6, 2021, Defendants Affordable Flooring and Holden solicited and accepted an advance payment of \$3,130.00 from Mr. Kringen that he paid by check.

Defendants Affordable Flooring and Holden represented that the flooring product would be received in two weeks.

On or about August 30, 2021, Mr. Kringen attempted to reach Affordable Flooring by telephone to find out if the product he paid for had been received. He left a message and never received a response.

On or about September 4, 2021, Mr. Kringen visited Affordable Flooring's store in Mandan to find the store empty.

Defendants took Mr. Kringen's payment and then never provided the products or service and never provided a refund.

**H. Affordable Flooring's contract with Karalee Butman.**

On or about September 8, 2021, Karalee Butman, 5600 Copper Pt., Bismarck, ND 58504, visited Affordable Flooring's store in Mandan, ND.

On or about September 8, 2021, Defendants Affordable Flooring, Holden, and Michelle solicited and accepted an advance payment of \$2,593.00 from Ms. Butman.

Defendants later claimed to Ms. Butman that the flooring product she had paid for was discontinued.

Defendants provided Ms. Butman with sample flooring products that they claimed could be obtained in place of the original product.

When Ms. Butman attempted to return the samples, she found that Affordable Flooring's store was closed.

When Ms. Butman contacted Defendants, she was told that she would receive a letter from an attorney.

Defendants took Ms. Butman's payment and then never provided the products or service and never provided a refund.

Compl., Index # 2, ¶¶ 16 – 84; also, Index ## 13 – 20.

[¶7] The State also sought summary judgment on two additional complainants who alleged they were defrauded by Defendants. Because Defendants failed to present competent admissible evidence that raises an issue of material fact as to those complainants, the following additional facts are not in genuine dispute:

[¶8] On or about June 23, 2021, North Dakota consume Susan Wagner paid \$5,200.00 to Defendants for the purchase and installation of vinyl flooring at two separate locations. Index # 21 at p. 2; Index # 22 at p. 28. The first job was to be performed on July 9, 2021. Index # 21 at p. 2. Subsequently, the Defendants kept stringing Mrs. Wagner along, claiming that they would provide the product and installation on several different dates, only to make an excuse when they failed to follow through. Id. at pp. 2 – 3. In the end, Defendants delivered only a portion of what they contracted to provide for the first job (319 sq/ft of flooring instead of 475 sq/ft). Id. at p. 3. Additionally, the consumer had to pay to obtain flooring for the second job from a vendor in California and pay an additional amount. Id. Mrs. Wagner alleges that she did not receive approximately \$3,597.00 (\$700.00 worth of missing product for the first job, and \$2,897.00 worth of missing product for the second job) worth of flooring from Defendants. Id.

[¶9] On or about August 30, 2021, North Dakota consumer Jon Parker paid \$2,879.00 to Defendants for the purchase and installation of flooring at his home.



Index # 23 at pp. 2, 5. The total price of the contract was \$4,053.60. Id. at p. 7. When Mr. Parker contacted Defendant Holden via Facebook, Defendant Holden apologized and claimed that he was filing for bankruptcy. Id. at p. 2. Defendant Holden claimed to have Mr. Parker's flooring, but that it would take time for his bankruptcy attorney to "get it all worked out." Id. As with their other victims, Defendants kept stringing Mr. Parker along with claims that they had the product and that they would provide the contracted goods and services, but then failed to do so due to a claimed excuse. Id. at p. 5. In the end, Mr. Parker was unable to reach Defendant Holden because his telephone number was either disconnected or not accepting telephone calls. Id. Defendant Holden also failed to respond to text messages. Id.

## II. CONCLUSIONS OF LAW

[¶10] The State of North Dakota brought this action on the relation of Wayne Stenehjem, Attorney General of the State of North Dakota, in the public interest pursuant to N.D.C.C. ch. 51-15. The State of North Dakota ex rel. Wayne Stenehjem, Attorney General, has authority to act in this matter pursuant to N.D.C.C. ch. 51-15.

[¶11] The Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07.

[¶12] The Court has personal jurisdiction over Defendants.

[¶13] Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 this Court has jurisdiction to enter appropriate orders.

[¶14] The venue of this action in Burleigh County is proper under N.D.C.C. § 28-04-05 and § 28-04-03 because all or part of the cause of action arose in Burleigh County.

[¶15] The standard for summary judgment is well-established:

“Summary judgment is appropriate when ‘there is no dispute as to either the material facts or the inferences to be drawn from the undisputed facts, or whenever only a question of law is involved.’ ” Rooks v. Robb, 2015 ND 274, ¶ 10, 871 N.W.2d 468 (quoting First Nat’l Bank v. Clark, 332 N.W.2d 264, 267 (N.D. 1983)). Under Rule 56, N.D.R.Civ.P., the movant bears the burden of showing no genuine issue of material fact exists. Rooks, at ¶ 10. The party resisting the motion for summary judgment is given all favorable inferences which may reasonably be drawn from the evidence. Id. A party resisting summary judgment cannot only rely on the pleadings, but must present competent admissible evidence raising an issue of material fact. Swenson v. Raumin, 1998 ND 150, ¶ 9, 583 N.W.2d 102. A non-moving party cannot rely on speculation. Beckler v. Bismarck Pub. Sch. Dist., 2006 ND 58, ¶ 7, 711 N.W.2d 172.

City of Glen Ullin v. Schirado, 2021 ND 72, ¶ 10.

[¶16] When a reasonable person can draw but one conclusion from the evidence, a question of fact becomes a matter of law for the court to decide. Stockman Bank of Montana v. AGSCO, Inc., 2007 ND 26, ¶ 9, 728 N.W.2d 142, 147; also, Grinnell Mut. Reinsurance Co. v. Ctr. Mut. Ins. Co., 2003 ND 50, ¶ 9, 658 N.W.2d 363, 369. “Although actions involving state of mind, such as fraud, are not usually suited for disposition by summary judgment, if a ... [party] fails to support his opposition to a summary judgment motion with sufficient facts to show that there is a genuine issue for trial, then, even in these cases, summary judgment is appropriate.” Dahl v. Messmer, 2006 ND 166, ¶ 8, 719 N.W.2d 341, 344 (quoting Kary v. Prudential Ins. Co. of Am., 541 N.W.2d 703, 706 (N.D. 1996)).

[¶17] Consumer fraud must be proved by a preponderance of the evidence. State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 902-03 (N.D. 1986). In civil actions, “preponderance of the evidence” is the “greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability.” Black’s Law Dictionary 1182 (6<sup>th</sup> ed. 1990); also, Rooks v. N. Dakota Workers' Comp. Bureau, 506 N.W.2d 78, 80 (N.D. 1993).

[¶18] Under N.D.R.Ct. 3.2(c), because Defendants failed to submit a response to the State’s Motion for Summary Judgment, the Court may deem their failure an admission that the State’s motion is meritorious. N.D.R.Ct. 3.2(c).

[¶19] There is no material issue of fact preventing an entry of summary judgment as a matter of law because the material facts of the Complaint are undisputed, and Defendants failed to present competent admissible evidence to raise a genuine issue of material fact. Schirado, 2021 ND at ¶ 10.

[¶20] Defendants are of were engaged in the advertisement, solicitation, and sale of “merchandise,” as that term is defined in N.D.C.C. § 51-15-01, in the State of North Dakota, including services as a “contractor” within the meaning of N.D.C.C. § 43-07-01(1).

[¶21] **Defendants violated N.D.C.C. § 43-07-02(1).** N.D.C.C. § 43-07-02(1) prohibits “engaging in the business or acting in the capacity of a contractor ... when the cost, value, or price per job exceeds the sum of four thousand dollars.” The Supreme Court recognizes that the purpose of the contractor licensing statute “is to protect consumers from fraudulent practices and to protect the public from

unqualified or uninsured contractors,” and to “protect the public by ensuring a contractor has liability insurance and has secured workforce safety and insurance coverage.” Snider v. Dickinson Elks Bldg., LLC, 2018 ND 55, ¶ 13, 907 N.W.2d 397, 401.

[¶22] By failing to answer the Complaint and oppose the State’s Motion for Summary Judgment, Defendants admit they violated N.D.C.C. § 43-07-02(1) by contracting with North Dakota consumers above the statutory amount of four thousand dollars while unlicensed, including consumers Mary Junker, Tammi Randolph, Danielle Levey, Jennifer Repnow, Roxane Fredericks, Terri Kiefer, Herb Kringen, and Karalee Butman. Supra, ¶ 6; also, Index ## 13 – 20. They engaged in the same conduct when they contracted with Susan Wagner and Jon Parker. Supra, ¶¶ 8 – 9; also, Index ## 21 – 23.

[¶23] **Defendants violated N.D.C.C. § 51-15-02.** N.D.C.C. § 51-15-02 provides:

**51-15-02. Unlawful practices – Fraud – Misrepresentation.** The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

N.D.C.C. § 51-15-02.

[¶24] “It is well established that the Unlawful Sales Practices Act is remedial in nature and must be liberally construed to effectuate its purpose.” Staal v. Scherping Enterprises, Inc., 466 F. Supp. 3d 1030, 1034 (D.N.D. 2020) (citing State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 903 (N.D. 1986)).

[¶25] By failing to answer the Complaint and oppose the State’s motion for summary judgment, Defendants admit that they violated N.D.C.C. § 51-15-02 by: (1) engaging in the business or acting in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeds the sum of four thousand dollars without first having a contractor license issued by the Secretary of State; (2) making false and misleading representations to customers, including implied or express false representations regarding Defendants’ ability to engage in the business or act in the capacity of a contractor; (3) and making untrue, deceptive, and misleading representations, or engaging in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, including by contracting with consumers and then failing to provide the product or service. Supra, ¶¶ 6, 8 – 9.

[¶26] Specifically, Defendants admit that they (1) contracted with Mary Junker, Tammi Randolph, Danielle Levey, Jennifer Repnow, Roxane Fredericks, Terri Kiefer, Herb Kringen, and Karalee Butman, Susan Wagner, and Jon Parker; (2) solicited advance deposits from each of them; and (3) performed no work, provided no materials, and/or provided no refunds. Id. Instead of performing as promised, Defendants made excuses and ignored efforts to communicate with them. Id.

[¶27] Under N.D.C.C. § 51-15-07, the Attorney General may seek and obtain “an injunction prohibiting [a] person from continuing [an] unlawful practice or engaging in the [an] unlawful practice or doing any act in furtherance of the unlawful practice,” and the Court “may make an order or judgment as may be

necessary to prevent the use or employment by a person of any unlawful practices ...” N.D.C.C. § 51-15-07. Pursuant to N.D.C.C. § 51-15-07, injunctive relief is necessary and appropriate in this case to prohibit Defendants from engaging in continued or future violations of N.D.C.C. § 51-15-02, and injunctive relief is justifiable under the circumstances of this case.

[¶28] Under N.D.C.C. § 51-15-07, the Court “may make an order or judgment ... to restore to any person in interest any money, or property that may have been acquired by means of any practice” unlawful under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-07. Defendants are liable to pay such restitution necessary to restore any loss suffered by persons because of their deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

[¶29] Under N.D.C.C. § 51-15-10, the Court “shall award to the attorney general reasonable attorney’s fees, investigation fees, costs, and expenses of any investigation and action brought” under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-10. Defendants are liable to pay the Attorney General for the fees and costs incurred in investigating and prosecuting this matter, pursuant to N.D.C.C. § 51-15-10.

[¶30] Under N.D.C.C. § 51-15-11, the Court “may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation” of N.D.C.C. ch. 51-15. Civil penalties are appropriate in this case based on Defendants’ conduct. N.D.C.C. § 51-15-11.

## ORDER FOR JUDGMENT

[¶31] THEREFORE, IT IS HEREBY ORDERED pursuant to N.D.C.C. § 51-15-02 *et seq.*:

A. Defendants are adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.

B. Defendants are adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

C. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

D. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from engaging in deceptive acts

or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

E. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services, including flooring, in accordance with Paragraph 31(G), *infra*.

F. Pursuant to N.D.C.C. § 51-15-07, Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, are permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services. Notwithstanding the permanent injunction, Defendants may engage in future contracting services if Defendants apply to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendants have fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Five or more years have expired since the entry of judgment herein;
2. Defendants have paid in full restitution to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered in the State of North Dakota, including Mary Junker, Tammi Randolph,



Danielle Levey, Jennifer Repnow, Roxane Fredericks, Terri Kiefer, Herb Kringen, and Karalee Butman, Susan Wagner, and Jon Parker;

3. Defendants have paid all amounts owed to the State pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendants, or after a hearing, that Defendants are sufficiently rehabilitated pursuant to the terms and conditions herein, Defendants, upon order of the Court, may engage in contracting provided they have complied with all requirements appropriate and necessary for the work to be undertaken by them.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

G. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$4,000.00 as restitution for Mary Junker.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$3,615.00 as restitution for Tammi Randolph.

I. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$1,678.00 as restitution for Danielle Levey.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL  
DISTRICT

STATE OF NORTH DAKOTA EX REL.  
WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Civil No. 08-2021-CV-02169

Plaintiff,

-vs-

**JUDGMENT**

MATTHEW HOLDEN, AFFORDABLE  
FLOORING, LLC,

Defendants.

[¶1] This action came on before the Honorable David E. Reich, Judge of the Burleigh County District Court, South Central Judicial District, on a Motion for Summary Judgment, filed by Plaintiff, the State of North Dakota, on the relation of Wayne Stenehjem, Attorney General, and served upon Defendants by mail on February 2, 2022. Defendants failed to respond in opposition to the State’s Motion for Summary Judgment.

[¶2] The Court, having reviewed its file and records herein, including the Motion for Summary Judgment with supporting documents, and being fully advised in the premises, having made and entered its Findings of Fact, Conclusions of Law and Order for Summary Judgment; IT IS NOW ORDERED, ADJUDGED AND DECREED:

A. Defendants are adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the

Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.

B. Defendants are adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

C. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

D. Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

E. Defendants, their agents, employees, representatives, assigns and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, are enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services, including flooring, in accordance with Paragraph 31(G), *infra*.

F. Pursuant to N.D.C.C. § 51-15-07, Defendants, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, are permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services. Notwithstanding the permanent injunction, Defendants may engage in future contracting services if Defendants apply to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendants have fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Five or more years have expired since the entry of judgment herein;
2. Defendants have paid in full restitution to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered in the State of North Dakota, including Mary Junker, Tammi Randolph, Danielle Levey, Jennifer Repnow, Roxane Fredericks, Terri Kiefer, Herb Kringen, and Karalee Butman, Susan Wagner, and Jon Parker;
3. Defendants have paid all amounts owed to the State pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendants, or after a hearing, that Defendants are sufficiently rehabilitated pursuant to the terms and conditions herein, Defendants, upon order of the Court, may engage in contracting provided they have complied with all requirements appropriate and necessary for the work to be undertaken by them.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

G. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$4,000.00 as restitution for Mary Junker.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$3,615.00 as restitution for Tammi Randolph.

I. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$1,678.00 as restitution for Danielle Levey.

J. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$4,800.00 as restitution for Jennifer Repnow.

K. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$7,391.13 as restitution for Roxane Fredericks.

L. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$2,754.26 as restitution for Terri Kiefer.

M. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$3,130.00 as restitution for Herb Kringen.

N. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$2,593.00 as restitution for Karalee Butman.

O. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$3,597.00 as restitution for Susan Wagner.

P. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendants, jointly and severally, in the amount of \$2,879.00 as restitution for Jon Parker.

Q. Plaintiff shall have Judgment against Defendants in the amount of \$5,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

R. Plaintiff shall have Judgment against Defendants in the amount of \$2,477.20 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

S. Defendants, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendants by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

T. Pursuant to N.D.C.C. §§ 51-15-07, Defendant Affordable Flooring, LLC is ordered involuntarily dissolved.

U. The Judgment entered shall be a Judgment for which execution may issue.

V. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

CLERK OF DISTRICT COURT  
Signed: 3/8/2022 9:24:13 AM



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08-2021-CV-02169