

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**FEDERAL TRADE COMMISSION,**  
Plaintiff,

v.

**NATIONAL PAYMENT PROCESSING  
LLC**, a Georgia  
limited liability company,

**NATIONAL CLIENT SERVICES LLC**,  
also d/b/a **AFS LEGAL SERVICES, AFS  
SERVICES, ACCOUNT FINANCIAL  
SERVICES**, and **ACCOUNT  
FINANCIAL SOLUTIONS**, a Georgia  
limited liability company,

**OMAR SMITH**, individually and as  
managing member and officer of  
**NATIONAL PAYMENT PROCESSING  
LLC**, and

**ERNEST SMITH**, individually and as  
manager and owner of **NATIONAL  
CLIENT SERVICES LLC**,  
Defendants.

Case No. 1:15-CV-3811-AT

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND  
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), on

October 30, 2015, filed its Complaint for Permanent Injunction and Other Equitable Relief ( “Complaint”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692*l* and Motion for Temporary Restraining Order (“TRO”) pursuant to Rule 65(b) of the Federal Rules of Civil Procedure with asset freeze, appointment of receiver, and other equitable relief. All Defendants have been served with the Summons and the Complaint.

On November 3, 2015, this Court entered a TRO, [Doc. 8], which was extended by the parties’ consent until January 15, 2016. [Doc. 36]. Defendants National Payment Processing LLC, National Client Services LLC, and Omar Smith filed an Answer to the Complaint on November 25, 2015. [Doc. 25]. Defendant Ernest Smith filed his Answer on November 27, 2015 and asserted a crossclaim against the other Defendants. [Doc. 26]. On January 5, 2016, the Court entered the parties’ Stipulated Preliminary Injunction With an Asset Freeze and Other Equitable Relief. [Doc. 43].

The Commission and all Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between and among them.

**THEREFORE, IT IS ORDERED** as follows:

## FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FDCPA, 15 U.S.C. §§ 1692-1692p, in connection with abusive and deceptive debt collection practices.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees. Defendants waive and release any claims that they may have against the Commission, the Receiver, and Receiver's agents that relate to this action.
5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

## DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Credit repair services”** means using any instrumentality of interstate

commerce or the mails to sell, provide, or perform any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of (i) improving any consumer's credit record, credit history, or credit rating, or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

B. **"Debt"** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

C. **"Debt collection activities"** mean any activities of a debt collector to collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due another.

D. **"Debt collector"** means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also includes any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

E. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

F. **“Corporate Defendants”** means National Payment Processing LLC, National Client Services LLC, also d/b/a AFS Legal Services, AFS Services, Account Financial Services, and Account Financial Solutions and their successors and assigns.

G. **“Individual Defendants”** means Omar Smith and Ernest Smith, individually or collectively.

H. **“Financial-related product or service”** includes any product, service, plan or program represented, expressly or by implication, to:

- a. Provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, an extension of consumer credit;
- b. Provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any secured or unsecured debt relief product or service; and
- c. Provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any secured or unsecured debt relief product or service.

I. **“Receiver”** means the court-appointed receiver in this case, Barry

Mukamal, who was appointed by the Court as receiver over the Corporate Defendants in Stipulated Preliminary Injunction Order with an Asset Freeze and Other Equitable Relief entered on January 5, 2016. [Doc. 43].

J. **“Secured or unsecured debt relief product or service”** means, with respect to any mortgage, loan, debt, or obligation between a person and one or more secured or unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication to (1) negotiate, settle, or in any way alter the terms of payment or other terms of the mortgage, loan, debt, or obligation, including but not limited to, a reduction in the amount of interest, principal balance, monthly payments, or fees owed by a person to a secured or unsecured creditor or debt collector; (2) stop, prevent, or postpone any mortgage or deed of foreclosure sale for a person’s dwelling, any other sale of collateral, or otherwise save a person’s dwelling or other collateral from foreclosure or repossession; (3) obtain any forbearance or modification in the timing of payments from any secured or unsecured holder of any mortgage, loan, debt, or obligation; (4) negotiate, obtain, or arrange any extension of the period of time within which the person may (a) cure his or her default on the mortgage, loan, debt, or obligation, (b) reinstate his or her mortgage, loan, debt, or obligation, (c) redeem a dwelling or other collateral, (d) exercise any right to reinstate the mortgage, loan,

debt, or obligation or redeem a dwelling or other collateral, or (e) obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other collateral; or (5) negotiate, obtain, or arrange (a) a short sale of a dwelling or other collateral, (b) a deed-in-lieu of foreclosure, or (c) any other disposition of a mortgage, loan, debt, or obligation other than a sale to a third party that is not the secured or unsecured loan holder. The foregoing shall include any manner of claimed assistance, including, but not limited to auditing or examining a person's application for the mortgage, loan, debt, or obligation.

## **ORDER**

### **A. BAN ON DEBT COLLECTION ACTIVITIES**

IT IS ORDERED that Defendants, whether acting directly or through an intermediary, are permanently restrained and enjoined from:

- A. Participating in debt collection activities;
- B. Assisting others engaged in debt collection activities; and
- C. Advertising, marketing, promoting, offering for sale, selling, or buying any consumer or commercial debt or any consumer information relating to a debt.

**II. PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL-RELATED PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial-related product or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

1. The terms or rates that are available for any loan or other extension of credit;
2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;
3. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;
4. Any aspect of any secured or unsecured debt relief product or service, including but not limited to, the amount of savings a consumer will receive



from purchasing, using, or enrolling in such secured or unsecured debt relief product or service; the amount of time before which a consumer will receive settlement of that consumer's debts; or the reduction or cessation of collection calls;

5. That a consumer will receive legal representation;

6. That any particular outcome or result from a financial-related product or service is guaranteed, assured, highly likely or probable, or very likely or probable;

7. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer;

8. Any other fact material to consumers concerning any financial-related product or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics; or

9. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

### III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Four Million Four Hundred Seventy Nine Thousand One Hundred Fifty Two Dollars (\$4,479,152.00) is entered in favor of the Commission against the Individual Defendants and the Corporate Defendants, jointly and severally, as equitable monetary relief.
- B. In partial satisfaction of the judgment against Defendants:
1. To the extent not already done, Defendants and SunTrust Bank N.A. shall transfer all funds in account number ending in 1191 to the Receiver or his designated agent.
  2. To the extent not already done, Defendants and Bank of America, N.A. shall transfer all funds in accounts ending in 0334 and 4094 to the Receiver or his designated agent.
  3. To the extent not already done, Defendants and Wells Fargo Bank N.A. shall transfer all funds in the accounts ending in 9690 and 9764, to the Receiver or his designated agent.
- C. To the extent not already done, Individual Defendant Omar Smith shall immediately take specific steps, as set forth below, to cooperate in the sale of the 2011 Mercedes-Benz (“Mercedes”) S550 4MATIC (VIN:

WDDNG8GB0BA393427) identified in the November 20, 2015, financial statement provided by Defendant Smith to the FTC:

1. To the extent not already done, Individual Defendant Omar Smith shall immediately relinquish possession of the Mercedes to Repo, Inc11 LLC, or another person or entity upon written notification by Commission counsel;
2. Concurrent with relinquishing possession of the Mercedes, Defendant Omar Smith shall direct the entity to whom he relinquishes possession of the Mercedes to be his sales agent to sell the Mercedes. Such sales agent is authorized to sell the Mercedes “as is” to the highest-bidding third party. Defendant Omar Smith shall direct his sales agent to provide to Commission counsel information concerning, or documentation showing, the proposed buyer and sale price and all bids or offers received. Such sale shall only be consummated with prior written approval by Commission counsel of both the buyer and the sales price;
3. All reasonable and customary costs associated with the sale of the Mercedes shall be deducted from the proceeds of such sale. Defendant Omar Smith shall not receive or take possession of the sales proceeds

or in way profit, directly or indirectly, from the sale of the Mercedes, including by sharing in any sales commission or fee, or by receiving anything of value of any kind. Defendant Omar Smith shall direct his sales agent to wire the net proceeds of the sale immediately to the Commission in accordance with instructions provided by a Commission representative;

4. Defendant Omar Smith shall cooperate to facilitate the sale and transfer of the Mercedes to a third-party buyer. Defendant Omar Smith shall make the Mercedes and its keys available for turn over to the designated sales agent; sign the title and any contract for sale of the Mercedes; sign and complete all documents necessary or appropriate for the sale of the Mercedes to the new buyer.

D. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

E. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary

judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- F. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- G. Defendants acknowledge that their Taxpayer Identification Numbers and Social Security Numbers, which they previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.
- H. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for

such equitable relief is to be deposited to the U.S. Treasury as disgorgement.

Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

- I. The asset freeze is modified to permit the transfers identified in the Monetary Judgment Section. Upon completion of those transfers, the asset freeze is dissolved.

#### **IV. CONSUMER INFORMATION**

IT IS FURTHER ORDERED that Defendants and their respective officers, agents, employees, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

- A. disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's or prospective consumer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with any debt collection activities;
- B. failing to provide sufficient consumer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission

requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days; and

C. failing to destroy such consumer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission;

Provided, however, that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or further court order.

#### **V. RECEIVERSHIP TERMINATION**

IT IS FURTHER ORDERED that the Receiver must complete all duties within 120 days after entry of this Order, but any party or the Receiver may request that the Court extend that Receiver's term for good cause. Upon termination of the receivership and final payment to the Receiver of all approved fees, cost, and expenses, the Receiver shall turn over to the FTC or its designated agent all remaining assets in the receivership estate.

#### **VI. ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the

Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 15 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and including payment processors and list brokers; and (3) any business entity resulting from any change in structure as set forth in the Section below titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **VII. COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:



A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify their primary physical, postal, and email addresses and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with that Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if he or it knows or should know from his or its own involvement); and (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in

detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which that Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission a notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against

such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. National Payment Processing LLC, *et al*, X160002.

### **VIII. RECORDKEEPING**

IT IS FURTHER ORDERED that Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, each Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other

Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's name, addresses, telephone numbers, job title or position, dates of service, and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material.

#### **IX. COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for

financial depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.


C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any reporting agency must furnish reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

**X. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 29th day of August, 2016.

  
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



Robin L. Rock

Ga. Bar No. 629532

Hans C. Clausen

Ga. Bar No. 153250

Federal Trade Commission

Southeast Region

225 Peachtree Street, N.E., Suite 1500

Atlanta, GA 30303

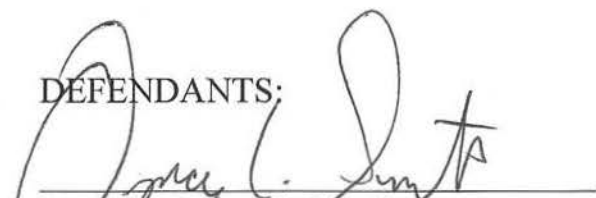
Telephone: 404-656-1368 (Rock); 404-656-1361 (Clausen)

Facsimile: 404-656-1379


Email: rrock@ftc.gov; hclausen@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

DEFENDANTS:



Omar Smith, Individually  
and as CEO of National Payment Processing, LLC, and National Client Services,  
LLC



Ernest Smith, Individually

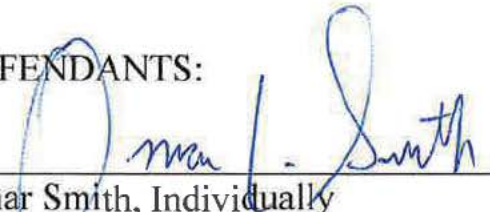
FOR DEFENDANTS:

\_\_\_\_\_  
Louis Cohan  
Ga. Bar No. 173357  
Cohan Law Group, LLC  
3340 Peachtree Road, Suite 2570  
Atlanta, GA 30326  
Telephone: 404-891-1770  
Facsimile: 404-891-5094  
Email: lcohan@cohanlawgroup.com  
Attorney for Defendants National Client Services LLC, National Payment  
Processing LLC, and Omar Smith

\_\_\_\_\_  
Michael Cohen  
Ga. Bar No. 174600  
Northside Law Center, LLC  
3340 Peachtree Road, Suite 2570  
Atlanta, GA 30326  
Telephone: 404-303-2733  
Email: mcohen@nsidelaw.com  
Attorney for Defendant Ernest Smith




DEFENDANTS:

  
Omar Smith, Individually  
and as CEO of National Payment Processing, LLC, and National Client Services,  
LLC

Ernest Smith, Individually

FOR DEFENDANTS:

  
Louis Cohan  
Ga. Bar No. 173357  
Cohan Law Group, LLC  
3340 Peachtree Road, Suite 2570  
Atlanta, GA 30326  
Telephone: 404-891-1770  
Facsimile: 404-891-5094  
Email: lcohan@cohanlawgroup.com  
Attorney for Defendants National Client Services LLC, National Payment  
Processing LLC, and Omar Smith

  
Michael Cohen  
Ga. Bar No. 174600  
Northside Law Center, LLC  
3340 Peachtree Road, Suite 2570  
Atlanta, GA 30326  
Telephone: 404-303-2733  
Email: mcohen@nsidelaw.com  
Attorney for Defendant Ernest Smith