

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20134

In the Matter of

PAUL HORTON SMITH

Respondent.

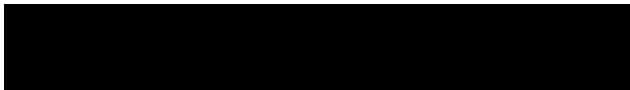
DIVISION OF ENFORCEMENT'S MOTION
FOR LEAVE TO FILE ITS MOTION FOR ENTRY OF DEFAULT
AND IMPOSITION OF REMEDIAL SANCTIONS *INSTANTER*

In conjunction with its concurrently filed motion for entry of default and imposition of remedial sanctions, and in light of the Commission's April 17, 2023 Order Denying Respondent's Motion to Stay Proceeding and Directing Respondent to Show Cause, Advisers Act Release No. 6287, directing the Division of Enforcement to file its motion by May 30, 2023 in the event that Respondent Paul Horton Smith failed to respond to the Commission's April 17 OSC, the Division respectfully moves for leave to file its default judgment motion *instanter*.

On April 17, 2023, the Commission issued an Order to Show Cause ordering Smith, by April 25, 2023, to show cause why the Commission should not find him in default and why this proceeding should not be determined against him due to his failure to file an answer to the allegations in the OIP, respond to the Commission's order directing him to cure a deficient filing, or otherwise defend this proceeding. *Id.* The Order further directed that if Smith failed to file a response, the Division should file a motion for default and other relief on or by May 30, 2023. *Id.* Smith did not appear or respond to the OSC. *Id.* ¶ 5. Once this contingent event occurred, Division counsel failed to monitor his calendar docket showing a deadline of May 30 for filing the Division's motion. Counsel regrets this oversight. If he elects to respond to the Division's motion, Respondent Smith should be afforded sufficient time to do so, and no prejudice would arise from the Division's delay in filing its default motion. Accordingly, the undersigned counsel respectfully requests leave to submit the Division's motion for default judgment *instanter*.

Dated: June 16, 2023

Respectfully submitted,



Gary Y. Leung
Division of Enforcement
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

In the Matter of Paul Horton Smith, Sr.
Administrative Proceeding File No. 3-20134
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR LEAVE TO FILE ITS MOTION FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS *INSTANTER*

was served on June 16, 2023, upon the following parties as follows:

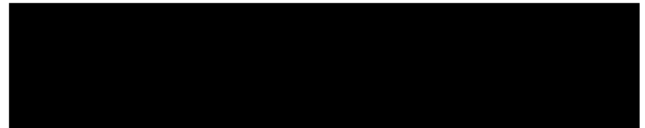
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP only)

Mr. Paul Horton Smith, Sr.



(By U.S. mail only)



Dated: June 16, 2023

Gary Y. Leung

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20134

In the Matter of

PAUL HORTON SMITH

Respondent.

DIVISION OF ENFORCEMENT'S MOTION
FOR ENTRY OF AN ORDER OF DEFAULT
AND IMPOSITION OF REMEDIAL SANCTIONS

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In conjunction with its concurrently filed motion for leave to file the instant motion *instanter*, the Division of Enforcement (“Division”) respectfully submits this motion for entry of default and imposition of remedial sanctions against Respondent Paul Horton Smith.

I. INTRODUCTION

From January 2018 to March 2020, Respondent Smith engaged in a \$5.2 million fraudulent securities offering through Northstar Communications, LLC, an entity that he controlled along with his state-registered advisory business, eGate, LLC, and his purported financial planning services firm, Planning Services, Inc. Smith and Northstar offered and sold supposed fixed-rate securities called “private annuity contracts” that claimed to provide both guaranteed interest and investment safety and security. These claims were false, as Northstar was a long-running Ponzi scheme.

The instant proceedings were commenced on October 22, 2020, based upon the entry of a final judgment against Smith that permanently enjoined him from future violations of the federal securities laws. The OIP was served on Respondent on December 6, 2022. *See In the Matter of Smith*, Admin. Proc. File No. 3-20134, Advisers Act Rel. 6287 (Apr. 17, 2023). Smith is now in default. The Division accordingly moves for entry of default and the imposition of remedial sanctions because, as explained below, Smith should be barred from the investment industry in the public interest.

II. FACTS

A. Smith and Northstar Communications, Planning Services, and eGate

Smith operated several businesses out of a single office in Riverside, California. First, Planning Services, Inc. (“Planning Services”) purported to provide financial planning services to pre-retirees and retirees, including investment, tax, and income planning. *See* Declaration of David S. Brown (“Brown Decl.”) at ¶¶ 12, 16, 33, Ex. 8 at pp. 75-78, Ex. 12 at pp. 85-99, Ex. 29 at p. 212. Second, eGate, LLC was a California state-registered investment adviser. *Id.* at ¶¶ 8, 32, Ex. 4 at p. 44, Ex. 28 at p. 211. And third, Northstar Communications, LLC (“Northstar”)

was a California limited liability company that purported to be a private annuity contracts business. *Id.* at ¶¶ 13, 32-33, Ex. 9 at pp. 79-80, Ex. 28 at pp. 206, 230, Ex. 29 at pp. 247-48.

Smith was the sole officer and director of Planning Services. *Id.* ¶ 14, Ex. 10, p. 81-82. Planning Services was a California-licensed insurance agent authorized to sell life, accident, and health insurance policies, and was until February 2020 authorized to sell variable annuities. *Id.* ¶ 12, Ex. 8, p. 75-78. Planning Services was not registered with the SEC in any capacity. *Id.* ¶ 6, Ex. 2, p. 16. Nor was it registered with or licensed by the State of California in any capacity. *Id.* ¶¶ 8, 11, Exs. 4, p. 44-45; 7, p. 72-74. Smith was the sole signatory on Planning Services' bank accounts. *Id.* ¶¶ 20, 22, Exs. 16, p. 125-29; 18, p. 134-40.

Smith was the president and control person of eGate. *Id.* ¶ 7, Ex. 3, p. 28, 33. According to eGate's Form ADV dated March 18, 2020, the advisory firm had over \$8.2 million in assets under management. *Id.* ¶ 7, Ex. 3, p. 22. eGate was not registered with the SEC in any capacity. *Id.* ¶ 6, Ex. 2, p. 17.

Smith was the managing and sole member of Northstar and was the sole signatory on Northstar's bank account. *Id.* at ¶¶ 13, 18, 33, Ex. 9, at pp. 79-80, Ex. 14 at pp. 110-118, Ex. 29 at p. 243. Smith also controlled Northstar's brokerage accounts, and at the time of the filing of the underlying action, all of those accounts held minimal funds. *Id.* at ¶¶ 26, 28, Ex. 22, p. 151-54, 157-58; Ex. 24, p. 161-64. Northstar was not licensed by the State of California as a bank or trust company, or other financial service provider. *Id.* at ¶ 11, Ex. 7, p. 72-74. Northstar and its securities were never registered with the SEC in any capacity, nor were they registered with the state of California. *Id.* ¶ 6, Ex. 2, p. 15; ¶ 8, Ex. 4, p. 44-45.

B. Smith's Disciplinary History

Prior to being sued in the Commission's underlying civil injunctive action, Smith had a disciplinary history.

In July 2000, the Idaho Department of Finance issued a Cease and Desist Order against Smith that barred him from offering and selling unregistered securities, soliciting clients when he

was not registered, and committing fraud, and ordered him to pay penalties of \$1,000. *Id.* ¶ 10, Ex. 6a, p. 57-65. In November 2008, the Idaho Department of Finance issued an Agreement and Order in which Smith agreed (a) not to apply for at least ten years to register in Idaho to sell securities or provide investment advisory services, and (b) not to sell securities or provide advisory services in Idaho, unless he was registered, for ten years and (c) to pay penalties and costs of \$3,000. *Id.* ¶ Ex. 6b, p. 66-71.

Then, on February 19, 2020, the California Department of Business Oversight issued Smith and eGate with a Notice of Intention to Issue Orders that would revoke eGate’s California investment adviser certificate and bar Smith from the securities industry in California (“CDBO Notice of Intent”). *Id.* ¶ 9, Ex. 5, p. 46-56b. The CDBO Notice of Intent includes four causes of action: (1) that Smith forged client signatures; (2) Smith and eGate breached their fiduciary duties guaranteeing a client a specific result and failing to follow client instructions, (3) eGate failed to maintain books and records, and (4) Smith made a false statement to the Commissioner. *Id.* On December 15, 2020, CDBO barred Smith in the state of California from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to CA Corporations Code § 25232.1. Declaration of Gary Y. Leung (“Leung Decl.”) at ¶ 3, Ex. 1. On March 8, 2021, CDBO revoked eGate’s investment advisor registration under CA Corporations Code §§ 25232(a), (e), and (h). *Id.* at ¶ 4, Ex. 2.

C. Smith’s Solicitation of Investors for the Fraudulent Northstar Offering

From January 2018 to March 2020, Smith used eGate and Planning Services to find and solicit investment in securities issued by Northstar, which the company called “private annuity contracts.” Smith held himself out as an experienced financial professional who marketed investment advisory, insurance, and tax services. He claimed to be a “veteran of the financial services industry,” a “chartered senior financial planner,” and a “certified estate adviser.” Brown

Decl., ¶ 16, 59, Exs. 12, p. 85-99; 55, p. 550. Smith targeted his marketing to older adults and retirees living in Riverside and San Bernardino counties. *Id.* ¶ 59, Ex. 55, p. 550. His website asserted that “We have proudly served the Inland Empire’s retirement communities for over 20 years!” *Id.*, ¶ 16, Ex. 12, p. 84-99.

As detailed below, Smith solicited investors through financial workshops, free-meal seminars, investor events, and one-on-one meetings. He portrayed himself as someone who wanted to demonstrate his “value” to investors and earn their trust, and he told investors that he was a fiduciary who had “to do what’s in your best interest.” *Id.* ¶¶ 36, 48, Exs. 32, p. 317-318; 44, p. 521. Once he established himself as a person who could be trusted through these marketing events and financial services, Smith offered and sold securities in Northstar to investors and advisory clients.

1. Smith’s financial workshops

Smith advertised free financial workshops on Planning Services’ website, on Facebook, and using flyers sent through the U.S. Postal Service. *Id.* ¶¶ 38, 40, 48, Exs. 34, p. 378; 36, p. 449, 457; 44, p. 520-26. In correspondence to workshop attendees, Smith represented that hosting workshops “is the first step we use to demonstrate our value to you. Know this, this workshop is not a sales pitch in disguise. . . . We find that after attending the workshop, many people choose to meet with us to explore potential solutions.” *Id.* ¶ 48, Ex. 44, p. 521. At the workshops, Smith made a PowerPoint presentation, usually on the topics of individual retirement accounts and estate planning. *Id.* ¶ 40, Ex. 36, p. 452-55. Attendees were provided with Smith’s biography, *id.* ¶¶ 40, 59, Exs. 36, p. 476; 55, p. 550; for example, at a workshop held in February 2020, Smith claimed: “I have financial licenses . . . Your pockets aren’t going to get picked, okay? . . . We are all fiduciaries. . . . We have to do what is in your best interest.” *Id.* ¶ 36, Ex. 32, p. 317. Smith encouraged attendees to make an appointment with him for a “complimentary”

meeting to discuss “our comprehensive approach” to wealth management including devising an “income plan.” *Id.*, p. 323-33.

2. Smith’s free meal seminars

Smith also advertised free-meal seminars using direct-mail companies to publicize the seminars. Smith held these seminars in a hotel or restaurant, where attendees were treated to free meals and sometimes live entertainment. *Id.* ¶¶ 34, 38, 39, Exs. 30, p. 295; 34, p. 378; 35, p. 405-06. Promotional materials for the free-meal seminars included statements such as: “Educational Estate Planning Event . . . Complimentary Meal! . . . Be our Guest! No cost. No obligation. Very Informative!” and “You Are Invited to an Exclusive Special Event . . . By Attending, You Will Learn . . . Are Dividend-Paying Stocks Right For Your RETIREMENT Plan? . . . How To PROTECT YOUR LIFE SAVINGS From an Impending Market Crash.” *Id.* ¶ 48, Ex. 44, p. 523-26. Similar to the workshops, Smith made a PowerPoint presentation and touted his experience and the financial services he could provide. *Id.* ¶ 40, Ex. 36, p. 452-54.

3. Smith’s investor events

Finally, Smith held “special events” for investors and prospective investors, such as an “Annual Client Appreciation Luncheon” and an annual “Holiday Luncheon.” Smith’s 2019 Holiday Luncheon attracted between 200 and 230 attendees. *Id.* ¶¶ 34, 40, 48, Exs. 30, p. 291-94; 36, p. 461-63; 44, p. 519, 522. Attendees at the events were encouraged to complete contact forms, arrange follow up meetings with Smith, and provide the names of other possible clients, or referrals. *Id.* ¶¶ 40, 59, Ex. 36, p. 460, 478; 55, p. 551-53.

D. The Fraudulent Northstar Offering

1. Smith’s offer and sale of Northstar securities

Smith and Northstar offered and sold securities, in the form of an investment contract that they called “private annuity contracts.” *Id.* ¶¶ 29, 30, 32, 33, Exs. 25, p. 168-69, 173-78; 26, p.

182-89; 28, p. 206-09; 29, p. 252-56. Northstar and Smith marketed these private annuity contracts as fixed-rate securities with guaranteed annual rates between 3 percent and 10.5 percent, with assurances that investors' principal was safe and secure. *Id.* ¶¶ 37-39, 58, Exs. 33, p. 353-54; 34, p. 388; 35, p. 411; 54, p. 549; Declaration of Catalina Mann ("Mann Decl."), ¶ 23. Smith emphasized to investors that they would receive higher returns from Northstar securities than a bank or brokerage account could provide. Brown Decl. ¶¶ 38, 39, Exs. 34, p. 381-82; 35. Smith offered and sold the private annuity contracts in two ways.

First, some investors were asked to complete an account application, which asked for the name of the owner of the contract and the beneficiary, and specified the dollar amount invested and the rate of interest. *Id.* ¶¶ 29, 30, Exs. 25, p. 173-78; 26, p. 184-89. Once completed and signed, Smith provided these investors with a copy of the "private annuity contract" as proof of their investment, which confirmed the date and amount of the investment, the amount of the "guaranteed interest rate," how long the interest rate guarantee would last, and the frequency of periodic interest payments. *Id.* The "private annuity contract" also identified its term, from one to ten years, but also provided for automatic renewal. *Id.*

Second, Smith solicited other investors to purchase securities issued by Northstar without completing the application or providing a copy of the "private annuity contract." *Id.* ¶ 39, Ex. 35, p. 411-14. These investors transferred their investment funds to Northstar, and then subsequently received monthly statements from Northstar showing the balance of the investment and the interest. *Id.* ¶¶ 38, 39, 43, 50, 51, 55, 57, Exs. 34, p. 383-84; 35, p. 415-16; 46, p. 531; 47, p. 532; 51, p. 539; 53, p. 541-48.

Smith and Northstar offered investors two choices on how investment interest was paid: (i) a monthly interest payment for life, or (ii) re-invest the monthly interest payments for a

compounded return. *Id.* ¶¶ 29, 30, Exs. 25, p. 173-78; 26, p. 184-89. Smith represented to investors that any money remaining after their death would be paid to the investor's designated beneficiary. *Id.*

From January 2018 through April 2020, Smith and Northstar sold more than \$5.6 million in securities to approximately 35 investors. *See* Declaration of Dora Zaldivar ("Zaldivar Decl.") ¶ 10a. Investors purchased the Northstar securities by personal check, wire transfer, or through self-directed IRAs. Brown Decl. ¶¶ 37, 50, 55, 60-62, Exs. 33, p. 342-43; 46, p. 531; 51, p. 539; 56-58, p. 554-65. Investors' funds were pooled in Northstar's bank account, which was controlled by Smith. Zaldivar Decl. ¶ 9.

2. The Northstar securities offering was a Ponzi scheme

Northstar's bank records for the period from January 2018 to March 2020 demonstrate that its securities offering was a Ponzi scheme.

First, those financial records show investor deposits of about \$5.6 million from January 2018 to April 2020, a sum that constituted 95% of all incoming deposited funds. In the same period, Smith and Northstar paid more than \$5.2 million in interest payments or returns of principal to Northstar investors – an outgoing amount equal to approximately 89% of all of the funds that came into Northstar's account. Zaldivar Decl. ¶ 10b. And so earlier Northstar investors were paid almost exclusively with money paid in by later investors, in an example of classic Ponzi payments.

Second, bank accounts related to Smith's other businesses confirm that new investor funds were the source for payments to earlier investors. There are no transfers of investor funds from Northstar's bank account to brokerage accounts held in investors' names. *Id.*, ¶ 10b. Moreover, investor funds were not transferred to any investments or assets owned or controlled by Northstar, Smith, or Planning Services, much less investments capable of generating revenue

or producing income needed to pay investor returns. *Id.* ¶¶ 10b, 11. That is because although Northstar held accounts at brokerage firms, those accounts contained minimal or no funds. Brown Decl. ¶¶ 26, 28, Exs. 22, p. 151-58; 24, p. 161-64. Accordingly, for this second reason, it is clear that deposits of new investor funds were almost the exclusive source of payments made to investors in Northstar, in a classic Ponzi scheme fashion.

Moreover, Smith and Northstar used new investor money to settle investor lawsuits and investor demands for principal. During 2019 and 2020, Smith and Northstar used at least \$175,000 of new investor funds to settle investor lawsuits. Zaldivar Dec. ¶ 16. For example, in February 2020, an elderly investor filed a lawsuit seeking return of his investment in Northstar. Brown Decl. ¶ 30, Ex. 26, p. 179-92. Smith settled the lawsuit and agreed to make periodic payments beginning with an initial payment of \$80,000 by February 25, 2020, with two additional periodic payments thereafter. *Id.*, ¶ 35, Ex. 31, p. 305-14. Bank records again show that at the time of the agreement, Northstar did not have sufficient funds to make the payment. Zaldivar Dec. ¶¶ 10b, 14, Ex. 2. Shortly after the agreement was signed, Northstar deposited \$191,000 from a new investor, and 18 days later made the initial payment of \$80,000 pursuant to the settlement agreement. *Id.* ¶¶ 11b, 16c, Ex. 5. During that 18-day period, there were no other significant deposits into Northstar's bank account, *id.* ¶ 10b, Ex. 2; this course of conduct amplifies the fact that Northstar was a Ponzi scheme.

Finally, Smith commingled investor funds deposited into the Northstar bank account with those of his other companies. At least \$256,000 of investor funds deposited into Northstar's bank account were commingled with money held in other accounts Smith controls, including at least \$231,000 to Planning Services and at least \$15,000 to eGate. *Id.*, ¶¶ 10b-c, 13, 14, Exs. 2, 3. And in many cases, when Planning Services had insufficient funds to pay expenses, investor

funds were routinely transferred from Northstar's account to pay Planning Service's expenses. *Id.*, Dec. ¶ 14, 15.

E. Smith's False and Misleading Lulling Statements to Northstar Investors

From January 2018 through April 2020, Smith and Northstar sent monthly statements to investors which included a statement of the beginning monthly balance, a statement of monthly interest earned, and a statement of the amount of the ending balance for the month, which was represented as the "total account value." Brown Decl. ¶¶ 43, 51, 57, Exs. 39, p. 497-502; 47, p. 532; 53, p. 541-48; Mann Dec. ¶ 5, Ex. 1. In truth, however, investors' funds were not generating any investment gains. They were instead used by Smith to make Ponzi payments. Consequently, Smith's monthly statements to investors were false, they misrepresented the value of the accounts, they omitted material information, and they were singularly designed to conceal Smith's fraud.

Next, in late 2019 and February 2020, Smith represented to concerned investors that their money remained safe and secure but claimed that their funds were invested in an income-producing "pension" that was illiquid and impossible to refund. Smith asserted that: (1) "You will get your income just as contracted. That's not going to change." (*Id.*, ¶ 49, Ex. 45, p. 527-29); (2) "The account . . . is designed more like a pension than [sic] a liquid account. The pension payments are guaranteed to continue but when pension payments begin liquidity ends." (*Id.*, ¶ 44, Ex. 40, p. 503); (3) "Once we set up pension payments like you guys are receiving – it's extremely difficult to undo that." (*Id.*, ¶ 46, Ex. 42, p. 507-10); (4) "[T]he funds are invested long term to guarantee the payments that you're receiving" and to undo that is extremely expensive and time consuming." (*Id.*); (5) "[T]here's a whole lot . . . that goes into setting up these pension payments that you've been receiving. And part of that is a very long-term strategy. . . . It's all managed by Northstar. . . [I]t's a long-term account." (*Id.*); and (6) "[W]hen you set a pension account like we set up, they're set up to pay off for life. . . there is no provision for you to unwind that situation. You're simply in a pension for life. So, unwinding that is extremely

problematic.” *Id.*, ¶ 47, Ex. 43, p. 512-16. Later, in February or March 2020, Smith over the phone told an investor who threatened to withdraw her money from Northstar that her money was secure and, as proof, he referred her to the balances shown on the monthly statement. *Id.*, ¶ 39, Ex. 35, p. 423. Smith had no basis for any of these statements – at all relevant points in time, Northstar had no assets and was only using new investor money to pay earlier investors.

F. Smith Did Not Disclose His Disciplinary History to Investors

During the course of his workshops and free-meal seminars, Smith omitted material information about his disciplinary history in his communications with investors touting his experience and role as a fiduciary. For example, at a workshop on February 25, 2020, at a local college, Smith represented: “Now, we’re a fiduciary. What’s a fiduciary? That’s somebody who is supposed to put your best interest first. Because of the licenses we have . . . I have financial licenses, which I’ll explain why I have them in a moment – you don’t have to worry about that. Your pockets are not going to be picked, okay?” Brown Decl. ¶ 36, Ex. 32, p. 317. During that workshop, Smith did not disclose his disciplinary history, which would have undermined his sales effort. This workshop is a salient example of Smith’s brazenness and disregard for the truth, because less than a week before February 25 when he made these statements to potential clients and investors, Smith had been served on February 19, 2020, with the CDBO Notice of Intention to revoke eGate’s registration as a California investment adviser and to bar Smith from the securities industry in California.

Smith also did not disclose material information concerning his regulatory history with Idaho securities regulators to Northstar investors. *Id.* at ¶¶ 36-39, Exs. 32, p. 315-27; 33, p. 366; 34, p. 391; 35, p. 420. Smith was aware of his disciplinary history and its relevance to investors because it was disclosed on eGate’s March 18, 2020 Form ADV, which answers “yes” to a series of questions concerning his prior disciplinary history. *Id.*, ¶ 7, Ex. 3, p. 18-43.

G. The Commission’s Civil Injunctive Action against Smith

On September 27, 2021, the Commission filed a complaint against the Smith in the civil action entitled *Securities and Exchange Commission v. Paul Horton Smith, Sr., et al.*, Civil Action Number 2:20-cv-01056 PA-SHKx, in the United States District Court for the Central District of California. Leung Decl. at ¶ 6, Ex. 4. The Commission’s complaint alleged that Smith conducted a Ponzi scheme targeting senior citizens and engaged in other fraudulent conduct by offering and selling securities in Northstar in conjunction with his state-registered investment advisory firm, eGate, and his insurance and estate planning company, Planning Services. The complaint alleged Smith and Northstar assured investors their principal would be safe, secure, and invested in purported “private annuity contracts,” and they promised investors guaranteed annual interest payments between 3 percent and 10.5 percent, but Smith and Northstar did not invest any investor funds in any securities. The complaint further alleged that from January 2018 through April 2020, Smith sold more than \$5.6 million of fictitious Northstar securities to at least 35 investors and paid out over \$5.3 million to Northstar investors as interest payments or principal return, in a Ponzi scheme. The complaint alleged that Smith misused at least \$256,000 of Northstar investor funds by comingling those funds among bank accounts of Northstar, eGate, and Planning Services that Smith controlled; and that Smith misused at least \$175,000 of Northstar investor funds by settling investor lawsuits brought against him by defrauded investors. According to the Commission’s complaint, Smith perpetrated this fraud by holding himself out as a trusted fiduciary through his position as an investment adviser representative with eGate and by failing to disclose his disciplinary history in the securities industry.

H. Entry of the District Court Injunction

On October 19, 2020, the district court granted the SEC’s motion for default judgment and entered a final judgment enjoining him from future violations of Section 17(a) of the

Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. *Id.* at ¶ 7, Ex. 5.

I. Institution of This Follow-On Administrative Proceeding

The instant proceedings were commenced on October 22, 2020, based upon the entry of a final judgment against Smith, permanently enjoining him from future violations of the federal securities laws. The OIP was served on Respondent on December 6, 2022. *See In the Matter of Smith*, Admin. Proc. File No. 3-20134, Advisers Act Rel. 6287 (Apr. 17, 2023). Smith is now in default.

On April 17, 2023, the Commission issued an Order to Show Cause ordering Smith, by April 25, 2023, to show cause why the Commission should not find him in default and why this proceeding should not be determined against him due to his failure to file an answer to the allegations in the OIP, respond to the Commission's order directing him to cure a deficient filing, or otherwise defend this proceeding. *Id.* The Order further directed that if Smith failed to file a response, the Division should file a motion for default and other relief on or by May 30, 2023. *Id.* Smith did not appear or respond to the OSC. *Id.* ¶ 5. Because Division counsel failed to monitor his calendar docket showing a deadline of May 30 for this motion, counsel respectfully requests leave to submit this motion for default judgment at this time.

III. ARGUMENT

A. Because Smith Defaulted, the OIP's Allegations May Be Deemed True

Because Smith has not responded to the OIP, she is in default. Rule 155(a) of the SEC's Rules of Practice states:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: . . .

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding

17 CFR § 201.155(a). Moreover, the OIP itself provides: “If Respondent fails to file the directed answer the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true”

The Commission has already made findings that Smith was properly served with the OIP and has failed to answer. *See* Order to Show Cause, Advisers Act. Rel. No. 6287 (Apr. 27, 2023). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the Commission may determine the proceedings against the party upon consideration of the record, including the OIP. 17 CFR § 201.155(a); *see also In the Matter of Roman Sledziejowski*, Admin. Proc. File No. 3-19502, SEC Rel. No. 97485, 2023 WL 3433408, *3 (Comm’n. Op.) (May 11, 2023) (“Because Sledziejowski has failed to answer or to respond to the show cause order or the Division's motion, we find it appropriate to deem him in default and to deem the allegations of the OIP to be true.”); *In the Matter of Conrad A. Coggeshall*, Admin. Proc. File No. 3-20142, SEC Rel. No. 6306, 2023 WL 3433398, *2 (Comm’n. Op.) (May 10, 2023) (same).

B. Imposition of a Permanent Bar Is Warranted

Based on the record here and in the underlying action, the Division respectfully requests that sanctions be imposed under Section 203(f) of the Advisers Act, stating in relevant part that:

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has . . . [been] enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e).

15 U.S.C. § 80b-3(f). Thus, that provision **Error! Bookmark not defined.** authorizes the Commission to impose an associational bar against a respondent if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he is enjoined from any action,

conduct or practice specified in Section 203(e)(4); and (3) a bar is in the public interest. Each of these factors is easily met here.

1. At the time of his misconduct, Smith was associated with an investment adviser

As to the first factor, Smith's misconduct occurred when he was the president and control person of eGate, a state-registered investment adviser. In the course of perpetrating his Northstar offering fraud, Smith touted his fiduciary status as a means to engender trust from investors and potential investors, as well as to entice their investment. *See* Facts, *supra*, at § II(A) and (C). This predicate element of Section 203(f) has accordingly been met.

2. Smith was permanently enjoined by a district court

The second element under Section 203(f) is also established by the record in the underlying district court action, because Smith was enjoined from conduct specified in Section 203(e)(4). The acts enumerated under that subsection include "any conduct or practice in connection with" any activity as an investment adviser. 15 U.S.C. § 80b-3(e)(4). Here, the district court permanently enjoined Smith from violating *inter alia* Sections 206(1) and 206(2) of the Advisers Act, thus satisfying this second factor. *See* Leung Decl. at ¶ 7, Ex. 5.

3. Barring Smith is in the public interest

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest).

As to whether a bar is appropriate in a follow-on proceeding, “[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry.” *Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

a. Smith’s violations were egregious, intentional and recurrent

The first three *Steadman* factors are met here.

Smith’s violations were egregious. Smith’s scheme was designed to falsely impress upon investors that Smith was a knowledgeable and trustworthy veteran of the financial services industry. He held workshops and free-meal seminars to entice investors to trust him for financial advice and for investments that are safe and secure. Once Smith gained an individual’s trust, he sold them Northstar securities, an offering that was in truth a Ponzi scheme. But in reality, as fast as money came in from new investors, Smith used it to make interest and principal payments to existing investors, to pay settlements on lawsuits with former clients, or to help fund his businesses. *See* Zaldivar Decl. at ¶¶ 10-16. Smith also took extensive steps to conceal his fraud by sending bogus monthly statements to Northstar investors, made additional excuses to certain of them with a fictitious story about having invested them in an interest-bearing, but illiquid investment instrument, and never disclosed to any of them his troubled disciplinary history with two different state securities regulators. The egregiousness of Smith’s securities fraud is not subject to serious question.

Smith’s violations occurred, again and again, over a sustained period of time. He operated a Ponzi scheme from at least January 2018 to April 2020, and in that time, he defrauded 35 investors who entrusted him with \$5.3 million of their money. He did so despite having previously been the subject of two regulatory orders from the Idaho securities regulator, in 200 and 2008. He did so despite being the subject of a California regulatory action at the very same time he was raising this \$5.3 million from investors.

Because he controlled all of the operative bank accounts, Smith undoubtedly knew the sources and uses of investor funds in those accounts, and he undoubtedly knew that Northstar had never generated investment returns as represented, but was instead nothing more than a Ponzi scheme. Smith also knew about his own disciplinary history in Idaho and California, yet never deigned to disclose it to his investors. Smith consequently acted with a high degree of scienter.

b. The remaining *Steadman* factors also favor a bar

The remaining *Steadman* factors also favor a bar. Smith has not substantially acknowledged the wrongfulness of his conduct. Worse yet, he has failed to respond in this proceeding, nor has he given any meaningful against future violations or recognition of her wrongful conduct. *Id.* ¶5. The “absence of recognition by [a respondent] of the wrongful nature of his conduct” favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, “[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct”); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser’s registration on summary disposition following an injunction, noting that “Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission’s witnesses of bias or lying”); *Terrence O’Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent’s “protest” that the securities laws were not sufficiently clear, finding

this “evidence that [respondent] still seeks to minimize his misconduct”); *Steadman*, 603 F.2d at 1140.


In addition, the final *Steadman* factor considers “the likelihood that the respondent’s occupation will present future opportunities for violations.” Smith’s current employment is unclear. However, the question is not what position Smith might be able to obtain in the future, but whether he would work in the investment industry if he could. *SEC v. Alexander*, 115 F. Supp. 3d 1071, 1086 (N.D. Cal. 2015) (“Although Defendants are in prison and no longer work for APS Funding, they may enter the business world in the future.”); *SEC v. Small Bus. Capital Corp.*, No. 5:12-CV-03237-EJD, 2013 U.S. Dist. LEXIS 159227 (N.D. Cal. Nov. 6, 2013). Finally, because the other *Steadman* factors strongly favor the imposition of the bar, this final factor is at most neutral.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: June 16, 2023

Respectfully submitted,


Gary Y. Leung
Division of Enforcement
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

In the Matter of Paul Horton Smith, Sr.
Administrative Proceeding File No. 3-20134
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

**DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF AN ORDER OF
DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS**

was served on June 16, 2023, upon the following parties as follows:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP only)

Mr. Paul Horton Smith, Sr.

[REDACTED]

(By U.S. mail only)

[REDACTED]

Dated: June 16, 2023

Gary Y. Leung

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20134

In the Matter of

PAUL HORTON SMITH

Respondent.

DECLARATION OF GARY Y. LEUNG
IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION
FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS

I, Gary Y. Leung, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. This declaration is in support of the Division of Enforcement's Motion for Entry of Default and Imposition of Remedial Sanctions in the above-captioned matter. Unless specifically stated, I have personal knowledge of the matters set forth below, and if called as a witness, I could and would testify competently thereto under oath.

2. I am the Regional Trial Counsel for the Los Angeles Regional Office of the SEC, and, after appearing for the Division of Enforcement in this matter in December 2022, I am responsible for litigating this case.

3. A true and accurate copy of the Declaration of David S. Brown filed on May 19, 2020 in the civil injunctive action captioned, *SEC v. Smith, et al.*, Case No. 5:20-cv-01056-PA-SHKx (C.D. Cal.), is attached hereto as Exhibit 1.

4. A true and accurate copy of the Declaration of Dora M. Zaldivar filed on May 19, 2020 in the civil injunctive action captioned, *SEC v. Smith, et al.*, Case No. 5:20-cv-01056-PA-SHKx (C.D. Cal.), is attached hereto as Exhibit 2.

5. A true and accurate copy of the Declaration of Catalina M. Mann filed on May 19, 2020 in the civil injunctive action captioned, *SEC v. Smith, et al.*, Case No. 5:20-cv-01056-PA-SHKx (C.D. Cal.), is attached hereto as Exhibit 3.

6. A true and accurate copy of the complaint filed by the Commission in the civil injunctive action captioned, *SEC v. Smith, et al.*, Case No. 5:20-cv-01056-PA-SHKx (C.D. Cal.), is attached hereto as Exhibit 4.

7. A true and accurate copy of the final judgment entered against Paul Horton Smith by the district court in the civil injunctive action captioned, *SEC v. Smith, et al.*, Case No. 5:20-cv-01056-PA-SHKx (C.D. Cal.), is attached hereto as Exhibit 5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of June, 2023 in Los Angeles, California.

A solid black rectangular box used to redact the signature of Gary Y. Leung.

Gary Y. Leung

In the Matter of Paul Horton Smith, Sr.
Administrative Proceeding File No. 3-20134
SERVICE LIST

Pursuant to Commission Rule of Practice 151 (17 C.F.R. §201.151), I certify that the attached:

**DECLARATION OF GARY Y. LEUNG
IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION
FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS**

was served on June 16, 2023, upon the following parties as follows:


Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP only)

Mr. Paul Horton Smith, Sr.


(By U.S. mail only)

Dated: June 16, 2023


Gary Y. Leung