

The below described is SIGNED.

Dated: December 05, 2011

JOEL T. MARKER  
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH – CENTRAL DIVISION

<p>In re: Brian Jared Smart,  Debtor.</p>	<p><b>Bankruptcy No: 09-31462</b> <b>Chapter 7</b></p>
<p>D. Ramey Logan et al.,  Plaintiffs,  -v-  Brian Jared Smart,  Defendant.</p>	<p><b>Adversary Proceeding No: 10-02085</b></p>

**AMENDED [PROPOSED] ORDER AND FINAL JUDGMENT**

Upon the motion (“Motion”) of Plaintiffs Katherine Anne Brown, Dagmar Chaplin Lee and Don Ramey Logan as Trustee of the P&K Brown Family Trust (collectively, “Plaintiffs”) in the above-captioned Adversary Proceeding, for entry of an order (i) granting summary judgment to Plaintiffs declaring that the debts owed by Brian J. Smart to Plaintiffs are non-dischargeable under 11 U.S.C. § 523(2) and (19); (ii) ordering judgment to be entered in this case in favor of: (a) Katherine Brown for \$236,935.00 plus pre- and post-judgment interest thereon; (b) Dagmar Chaplin Lee for \$198,539.00 plus pre-and post-judgment interest thereon; (iii) ordering that any future judgment against debtor on behalf of Plaintiffs concerning the fraud described herein,

including any potential award for putative damages, be declared non-dischargeable under 11 U.S.C. §§ 523; (iv) ordering that any future award for attorney's fees, costs and expenses incurred in connection with this Adversary Proceeding and/or any future action against debtor for the recovery of monies relating to the fraud described herein be declared non-dischargeable under 11 U.S.C. §§ 523; and (v) awarding such other and further relief as this Court deems proper; and the Court having reviewed and considered the Adversary Amended Complaint, the Answer, the Motion, and the declarations filed in support of the foregoing; and the Court having jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. § 1334(b); and in consideration of the Adversary Complaint and the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court under 28 U.S.C. § 1409(a); and due and proper notice having been provided; and the Defendants having failed to file any opposition to the Motion and a hearing having been held to consider the relief requested in the Adversary Complaint and the Motion (the "Hearing"); and upon record of the Hearing and all of the proceedings had before the Court; and after having heard from counsel for Plaintiffs and Defendants at the hearing due deliberation and sufficient cause appearing therefor, the Court hereby orders as follows:

ORDERED that the Motion is granted to the extent set forth below; and it is further

ORDERED, ADJUDGED and DECREED that Plaintiffs shall have judgment against the Defendant as follows: (a) Katherine Brown shall have judgment in the amount of \$236,935.00 plus pre judgment interest to the same extent as granted by Judge Kimball in *SEC v. Brian J. Smart, et al.*, (U.S.D.C., D. Ut., C.D.) (Civ. No. 2:09-cv-00224) (DAK) ("*SEC v. Smart*") in the amount of \$68,624.77 plus post judgment interest pursuant to 18 U.S.C. 1961 compounded annually and (b) Dagmar Chaplin Lee shall have judgment in the amount of \$198,539.00 plus pre judgment interest to the same extent granted by Judge Kimball in *SEC v. Brian J. Smart, et*

*al.*, (U.S.D.C., D. Ut., C.D.) (Civ. No. 2:09-cv-00224) (DAK) (“*SEC v. Smart*”) in the amount of \$57,507.39 and post judgment interest pursuant to 18 U.S.C. 1961 compounded annually, together with taxable costs as may be entered by the Clerk of the Court pursuant to Local Rule 7204(1)(a) and (b); and it is further

ORDERED, ADJUDGED and DECREED and hereby declared that the judgments of Plaintiffs described herein are (i) debts for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation and/or actual fraud in statements other than statement’s respecting the debtors or an insider’s financial condition; (ii) debts for fraud and/or defalcation while acting in a fiduciary capacity, embezzlement, or larceny; and (iii) debts for the violating of the Federal Securities laws as defined in Section 3(a)(47) of the Securities Exchange Act of 1934 and/or common law fraud deceit or manipulation in connection with the purchase or sale of securities; and it is further

ORDERED, ADJUDGED and DECREED the judgments entered herein are non-dischargeable under 11 U.S.C. § 523(2) and (19); and it is further

ORDERED, ADJUDGED and DECREED that all remaining relief requested in the Motion is hereby denied; and it is further

ORDERED, ADJUDGED and DECREED that this Court shall return jurisdiction with respect to all matters relating to this Order.

END OF ORDER

**CERTIFICATE OF SERVICE**

I, Lee Squitieri, hereby certify that on November 23, 2011, I caused a true and correct copy of the following document to be served upon all parties, by electronic means, and/or first class mail:

- [Proposed] Order And Final Judgment

Dated: November 23, 2011

/s/ Lee Squitieri  
Lee Squitieri

**EXHIBIT A TO CERTIFICATE OF SERVICE**

By ECF and/or Email

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