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JAMES N. HATTEN, Clerk  
By: [Signature]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

NEW DAY ATLANTA, LLC d/b/a  
NDA FINANCIAL, LLC,  
ANDREW L. AVERY and LEE E.  
MARKS,

Defendants.

Civil Action No.

1 10-CV-1333

TCB

**ORDER GRANTING PERMANENT INJUNCTIONS  
AND ORDERING OTHER ANCILLARY RELIEF**

The Plaintiff, Securities and Exchange Commission ("Commission") having filed a Complaint and Defendants New Day Atlanta, LLC d/b/a NDA Financial, LLC ("NDA"), Andrew L. Avery ("Avery"), and Lee E. Marks ("Marks") (collectively, the "Defendants") having entered general appearances, consented to the Court's jurisdiction over Defendants and the subject matter of this action, consented to entry of this Order Granting Preliminary and Permanent Injunctions and Ordering Other Ancillary Relief (the "Order"), without admitting or denying the allegations of the Complaint (except as to jurisdiction), waived findings of fact

and conclusions of law with respect to this Order, and waived any right to appeal from this Order:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are preliminarily and permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**II.**

**IT IS FURTHER ORDERED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are preliminarily and permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**III.**

**IT IS FURTHER ORDERED** that Defendants and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or

otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

**IV.**

**IT IS FURTHER ORDERED** that the parties may take expedited discovery as follows:

A. The parties may take depositions upon oral examination subject to at least three (3) business days notice prior to expiration of thirty (30) days after service of the Summons and Complaint upon all Defendants, pursuant to Rule 30(a) of the Federal Rules of Civil Procedure;

B. Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, the parties shall answer all interrogatories within three (3) business days of service of such interrogatories;

C. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the parties shall produce all documents within three (3) business days of service of such request;

D. Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, the parties shall answer requests for admissions within three (3) business days of service of such request;

E. The parties may serve discovery by facsimile, electronic mail or by any other means provided for within the Federal Rules of Civil Procedure, with the date of service of such discovery being the date of sending in the event that discovery is served by either facsimile, electronic mail, or by hand delivery;

F. All written responses to the requests for discovery under the Federal Rules of Civil Procedure shall be delivered to counsel for the party that served the discovery by the most expeditious means available, including facsimile, hand delivery, or electronic mail, in which event the date of service of responses shall be deemed to be the date of sending the responses by the above-mentioned means.

V.

**IT IS FURTHER ORDERED** that, pending further order of the Court, Defendants and their officers, agents, employees, servants, attorneys, and all persons in active concert or participation with them, and each of them, are restrained and enjoined from destroying, transferring or otherwise rendering illegible all books, records, papers, ledgers, accounts, statements and other

documents employed in any of such Defendants' business, which reflect the business activities of any of the Defendants, or which reflect the transactions described in the Commission's Complaint.

**VI.**

**IT IS FURTHER ORDERED** that:

A. Neil C. Gordon is appointed to serve as an independent monitor ("Monitor"), with the powers set forth herein. The Monitor's mandate will be to protect the interests of all persons who have invested in, purchased securities from, and/or loaned moneys to NDA (collectively, the "Investors"), to the extent permitted by law;

B. The Monitor is hereby empowered to:

1. have full and complete immediate access to the books and records of NDA;

2. have the full and complete ability to interview all NDA principals, officers, directors, employees and agents, or anyone who is otherwise associated with NDA and to immediately require all such persons to cooperate fully with the Monitor and to respond, within the time requested by the Monitor to

any inquiries or questions by the Monitor, and to provide, within the time requested by the Monitor, any documents requested by the Monitor;

3. monitor any contemplated liquidation, sale or disposition of any real property, security interest in any real property or vehicles, inventory, merchandise, products, cash, assets or things of value in the possession, custody, or control of NDA (collectively, the "Property") to ensure that any such liquidation, sale or disposition is commercially reasonable and for the benefit of the Investors;

4. monitor and review any bills or invoices sent to NDA;

5. determine the names, addresses and contact information for and interview all Investors;

6. determine the principal amount invested with and/or loaned to NDA by all Investors;

7. determine any amounts paid by NDA to any Investors;

8. determine the names, addresses and contact information for and interview all entities from which NDA purchased or otherwise obtained the Property;

9. determine the amount of funds used by NDA to purchase or otherwise obtain the Property;



10. determine the current location of the Property;

11. on reasonable advance notice, defined as no less than any time during the preceding business day, be provided with full access to any real property owned by NDA or in which NDA has any legal or equitable interest;

12. determine the names, addresses, and contact information for and interview all persons and/or entities utilized by NDA to generate funds and/or receive revenue for the disposition of previously held Property;

13. determine the amount of funds generated or revenue received by NDA through or as a result of disposing of any previously held Property;

14. monitor and/or review all previously completed, pending or contemplated acquisitions, purchases, transfers or conveyances of any assets of NDA, including but not limited to the Property and the holdings or assets of any bank, depository and brokerage accounts in which NDA has or had any beneficial interest;

C. NDA shall immediately arrange, through the relevant financial institutions, for the Monitor to be designated as a party entitled to receive past and present periodic, and interim upon request, statements for all bank, depository and brokerage accounts in which NDA has or had any beneficial interest. To the extent

such access currently exists or can be enabled, NDA will immediately take any and all steps necessary to provide the Monitor with electronic real-time access to all such bank, depository and brokerage accounts;

D. NDA shall immediately arrange, through the relevant persons and/or entities, for the Monitor to be designated as a party entitled to receive past and present periodic statements of account from all vendors and other third-parties utilized in connection with or in furtherance of NDA's business activities. To the extent such access currently exists or can be enabled, NDA will immediately take any and all steps necessary to provide the Monitor with electronic real-time access to the records of all such persons or entities utilized in connection with or in furtherance of NDA's business activities;

E. NDA shall immediately arrange, through the relevant persons and/or entities, for the Monitor to have access to all real estate marketing and sales information and materials available to NDA;

F. Should the monitor consent to his appointment under this Order, the Monitor shall, within five (5) days of the date of this Order file with the Court a consent to his appointment as Monitor. Thereafter, within ten (10) days of the filing of such consent, the Monitor shall file a report with the Commission counsel and

NDA's counsel as to the state of affairs of NDA (the "Monitor's Report"). The Monitor shall thereafter file with the Commission counsel and NDA's counsel updates to the Monitor's Report every ninety (90) days, or, within five (5) days of a request for an update by the Commission. The Monitor's Report shall address those issues of NDA's operations with which the Monitor has been vested authority to inquire into and monitor under this Order, and shall specifically include the name and address of all Investors, the amount invested and/or loaned to NDA by all Investors (the "Investments"), the total amount of the Investments, the date each individual Investment was made, the total amount of monies paid by NDA to the Investors, the amount paid by NDA to each individual Investor, and a listing of all expenditures of \$5,000 or more, showing the amount and to whom paid and the date of payment;

G. NDA shall provide the Monitor with the greatest possible advance notice of, and complete and immediate access to inquire into, all pending or contemplated acquisitions, purchases, transfers or conveyances by NDA. Should NDA contemplate any acquisitions, purchases, transfers or conveyances that are either: (a) not in the ordinary course of business; or (b) are in the ordinary course of business and are of an amount greater than \$5,000, including, but in no way limited

to, the sale, transfer, or conveyance of any real property (collectively, “Irregular Transfers”), NDA shall provide the Monitor and the Commission counsel with advance written notice at least two (2) business days prior to the contemplated date of such Irregular Transfer. Such written notice shall include the name of the intended transferee, the amount of the transfer(s) and the purpose for such transfer(s). Should the Monitor become aware of any pending or contemplated Irregular Transfers for which NDA did not provide advance written notice, the Monitor shall immediately provide written notice of such pending or contemplated Irregular Transfers to Commission counsel and counsel for NDA. The Commission or the Monitor may notify counsel for NDA of any objections to pending or contemplated Irregular Transfers. Should the Commission or the Monitor so notify counsel for NDA of any pending or contemplated Irregular Transfer, the Irregular Transfer will be prohibited unless NDA seeks leave from and obtains leave of the Court to effect the Irregular Transfer;

H. Failure to provide access and assistance to the Monitor or advance notice to the Monitor of any Irregular Transfers as ordered herein may constitute contempt of court, and the Commission may pursue all appropriate relief based on any such contempt;

I. Subject to Paragraphs J-U immediately below, the Monitor is authorized to solicit persons and entities (“Retained Personnel”) to assist him in carrying out the duties and responsibilities described in this Order. The Monitor shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement. The Monitor will review the services provided to NDA by Defendants Avery and Marks prior to the appointment of the Monitor and the compensation paid by NDA to Defendants Avery and Marks for the provision of such services, and determine whether, if in the Monitor’s determination it is in the best interests of the Investors, to recommend to the Court that Defendants Avery and Marks be engaged by the Monitor as Retained Personnel;

J. The Monitor and any Retained Personnel are entitled to reasonable compensation and expense reimbursement from NDA in a manner wholly analogous to and consistent with the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) and as agreed to by the Monitor. Such compensation shall require prior approval of the Court. Within three (3) business days after the entry of this Order, NDA shall establish an escrow account using funds currently held in the NDA bank account(s), and fund that account with \$50,000 (the “Initial

Amount”), to be used to pay the fees and expenses of the Monitor and of the Retained Personnel (the “Monitor Escrow Account”). NDA shall continue to provide additional funds to the escrow account as necessary to maintain at all times a balance equal to or greater than the Initial Amount;

K. Within forty-five (45) days after the end of each calendar quarter, the Monitor and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Monitor Escrow Account (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Monitor will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff;

L. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the monitorship. At the close of the monitorship, the Monitor will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Monitor during the course of the monitorship;

M. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with

the Court. The total amounts held back during the course of the monitorship will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the monitorship;

N. Each Quarterly Fee Application shall:

1. Comply with the terms of the Billing Instructions agreed to by the Monitor; and,
2. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Investors; and, (ii) with the exception of the Billing Instructions, the Monitor has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Monitor Escrow Account, NDA or the Property, or any sharing thereof.

O. At the close of the monitorship, the Monitor shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Monitor's final application for compensation and expense reimbursement;

P. The Monitor has a continuing duty to ensure that there are no conflicts of interest between the Monitor, his Retained Personnel, and the Investors and the Property;

Q. The Monitor and all persons who may be engaged or employed by the Monitor to assist him in carrying out his duties and obligations hereunder shall not be liable for any act or omission of the Monitor or such person, respectively, or any of their partners, employees, or agents, unless it shall be proven that the Monitor or such other person in bad faith acted or omitted to act. This provision shall apply to all claims based on conduct during the term of any agreement that may be entered into between the Monitor and any other person who may be engaged or employed by the Monitor hereunder, even if such claims are filed after the termination of any such agreement;

R. From the date of this Order and for a period of two years from completion of the duties required under the Monitor's appointment, the Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with NDA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. Any firm with which the Monitor is affiliated or of which he is a member, and any person engaged to assist the Monitor in performance of his duties under this Order shall not, without prior written consent of the staff of the Commission counsel, enter into any employment, consultant, attorney-client, auditing or other professional



relationship with NDA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period from the date of this Order for a period of two years from the completion of the duties required under the Monitor's appointment;

S The Commission or the Defendants may, in their discretion, petition the Court to modify the scope of the Monitor's authority, or relieve the Monitor of all authority;

T. The Commission shall have the right to petition the Court for immediate relief if the Commission deems that any of the Defendants' ongoing activities are contrary to the best interests of the Investors, such relief may include the appointment of a receiver. No party has waived any right to appeal any subsequent Order modifying or terminating the Monitor's authority;

U. Any notice, written or otherwise, to be provided by NDA or the Monitor to Commission counsel shall be effected and sent by electronic mail to [sullivan@sec.gov](mailto:sullivan@sec.gov) and [brunsonn@sec.gov](mailto:brunsonn@sec.gov). Any notice, written or otherwise to be provided by NDA or the Monitor to counsel for NDA shall be effected and sent by electronic mail to [gbartko@securitieslawcounsel.com](mailto:gbartko@securitieslawcounsel.com). Any notice, written or otherwise, to be provided by NDA to the Monitor shall be effected and sent by

electronic mail to [neil.gordon@agg.com](mailto:neil.gordon@agg.com), with copies of same sent to the Commission's counsel and to NDA's counsel. All persons receiving electronic mail under this paragraph shall agree to accept and acknowledge all requests by senders for electronic "read receipts" or other means of proof of receipt requested by any senders under this paragraph.

**VII.**

**IT IS FURTHER ORDERED** that within three (3) business days of the entry of this Order, Defendants shall provide a sworn statement to the Monitor and to the Commission counsel in this matter, identifying all accounts at any financial institution that are either: (a) in any of the Defendants' name; (b) that any of the Defendants controls; or (c) in which any Defendant has an interest.

**VIII.**

**IT IS FURTHER ORDERED** that, pending further order of the Court, the Defendants, their agents, representatives, employees and officers and all persons acting in concert or participation with them, whatever business names they may operate under shall not transfer or convey any assets of NDA except subject to provisions and limitations of Paragraph VI of this Order.

**IX.**

**IT IS FURTHER ORDERED** that Avery, as the sole principal of Georgia Specialty Retail Services, LLC, shall, within five (5) business days of entry of this Order, cause all equity, interests, and rights in 24/7 Coin Laundry, located at 5041 Snapfinger Woods Dr., Decatur, Georgia, 30035, to be assigned in full to NDA.

**X.**

Upon motion of Plaintiff, the Court shall determine whether it is appropriate to order additional relief, including, but not limited to, disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] against Defendants and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendants shall pay prejudgment interest thereon, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Consent or this

Order Granting Permanent Injunctions And Ordering Other Ancillary Relief; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.


**XI.**

**IT IS FURTHER ORDERED** that the Defendants' Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

**XII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for all purposes.

Dated: May 3rd, 2010

  
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UNITED STATES DISTRICT JUDGE