

**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 ENTERING FINAL JUDGMENT AND IMPOSING
DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL
PENALTIES AGAINST DEFENDANTS AVERY AND MARKS**

Consistent with the findings of fact and conclusions of law set forth in the Court's Order dated August 1, 2013 which granted the SEC's motion for summary judgment against Defendants Avery and Marks, which findings and conclusions are incorporated herein by reference; and pursuant to the entry of the permanent injunctions entered in this matter on May 3, 2010 against Defendants Avery and Marks, the final judgment against Avery and Marks should be entered accordingly.

I.

DISGORGEMENT AND PREJUDGMENT INTEREST
AGAINST DEFENDANT AVERY

IT IS HEREBY ORDERED that Defendant Avery shall pay disgorgement in the amount of \$292,491.33, representing the investor funds by which he personally benefitted at the expense of the NDA investors as a result of his illegal and fraudulent sale of NDA securities, as set forth in the Commission's complaint. Pre-judgment interest owed by Avery from May 3, 2010 through June 30, 2013, totals \$30,911.31. Defendant Avery shall satisfy this obligation by paying \$323,402.64 within thirty days from the date of the entry of this Final Judgment by cashier's check, certified check, or postal money order made payable to the court appointed Receiver, Neil C. Gordon; hand-delivered or delivered by overnight delivery service to the Receiver at Arnall Golden & Gregory, LLP 171 17th Street, NW, Suite 2100, Atlanta, Georgia 30363; and submitted under a cover letter that identifies Andrew L. Avery as a Defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within thirty-five days from the entry of this Final Judgment. By making his payment, Defendant Avery relinquishes all legal and equitable right, title and interest in such

funds, and no part of the funds shall be returned to Defendant Avery. The Receiver shall deposit the funds into an interest-bearing account. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the Receiver until further order of the Court.

II.

**DISGORGEMENT AND PREJUDGMENT INTEREST
AGAINST DEFENDANT MARKS**

IT IS FURTHER ORDERED that Defendant Marks shall pay disgorgement in the amount of \$160,431.47, representing the investor funds by which he personally benefitted at the expense of the NDA investors as a result of his illegal and fraudulent sales of NDA securities, as set forth in the Commission's complaint. Pre-judgment interest owed by Marks from May 3, 2010 through June 30, 2013, totals \$16,954.85. Defendant Marks shall satisfy this obligation by paying \$177,386.32 within thirty days from the date of the entry of this Final Judgment by cashier's check, certified check, or postal money order made payable to the court appointed Receiver, Neil C. Gordon; hand-delivered or delivered by overnight delivery service to the Receiver at Arnall Golden & Gregory, 171 17th Street, NW, Suite 2100, Atlanta, Georgia 30363; and submitted under a cover letter that identifies Lee E. Marks as a Defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior

Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within thirty-five days from the entry of this Final Judgment. By making his payment, Defendant Marks relinquishes all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to Defendant Marks. The Receiver shall deposit the funds into an interest-bearing account. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the Receiver until further order of the Court.

III.

CIVIL PENALTY AGAINST DEFENDANT AVERY

IT IS FURTHER ORDERED, ADJUDGED AND DECREED

that Defendant Avery pay a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Avery is ordered to pay the civil penalty in the amount of \$292,491.33 to the Receiver, Neil C. Gordon, II within thirty days from the date of the entry of this Final Judgment by cashier's check, certified check, or postal money order made payable to the Receiver, Neil C. Gordon; hand-delivered or delivered by overnight delivery service to Arnall Golden & Gregory, 171 17th Street, NW, Suite 2100, Atlanta, Georgia 30363; and submitted under a cover letter that identifies Andrew L. Avery as a Defendant in these proceedings, a copy of

which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within thirty-five days from the entry of this Final Judgment. The Receiver shall deposit the funds into an interest-bearing account. The civil penalty funds paid by Defendant Avery (“the Penalty Fund”), together with any interest and income earned thereon, shall be held by the Receiver in a separate account designated as such, until further order of the Court. The Court anticipates that it may, post final judgment, oversee and direct a distribution of the civil penalties collected in this matter to investor victims of NDA’s fraud in accordance with the Fair Funds for Investors provision of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a).

IV.

CIVIL PENALTY AGAINST DEFENDANT MARKS

IT IS FURTHER ORDERED, ADJUDGED AND

DECREED that Defendant Marks pay a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Marks is ordered to pay the civil penalty in the amount of \$80,000 to the Receiver, Neil C. Gordon, within thirty days from the date of the entry of this Final Judgment by cashier’s check, certified check, or postal money order made

payable to the Receiver, Neil C. Gordon; hand-delivered or delivered by overnight delivery service to Arnall Golden & Gregory, 171 17th Street, NW, Suite 2100, Atlanta, Georgia 30363; and submitted under a cover letter that identifies Lee E. Marks as a Defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within thirty-five days from the entry of this Final Judgment. The Receiver shall deposit the funds into an interest-bearing account. The civil penalty funds paid by Defendant Marks (“the Penalty Fund”), together with any interest and income earned thereon, shall be held by the Receiver in a separate account designated as such, until further order of the Court. The Court anticipates that it may, post final judgment, oversee and direct a distribution of the civil penalties collected in this matter to investor victims of NDA’s fraud in accordance with the Fair Funds for Investors provision of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a).

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Final Judgment, and may order

other and further relief that this Court deems appropriate under the circumstances.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay, and the Clerk is directed to enter a Final Judgment against Defendants Avery and Marks pursuant to the terms of this Order, pursuant to the Court's Order granting summary judgment against Defendants on August 1, 2013 and pursuant to the terms of the Order of Permanent Injunction previously entered in this Court against Defendants on May 3, 2010.

SO ORDERED, this 1st day of August, 2013.

A handwritten signature in black ink, appearing to read "Timothy C. Batten", is written over a horizontal line.

**TIMOTHY C. BATTEN, JUDGE
U.S. DISTRICT COURT**