

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

NORTH DAKOTA DEVELOPMENTS, LLC,)
ROBERT L. GAVIN, and)
DANIEL J. HOGAN,)

Defendants,)

and)

NORTH DAKOTA DEVELOPMENTS)
PROPERTY MANAGEMENT LLC,)
GREAT AMERICAN LODGE LLC,)
NDD HOLDINGS 1 LLC,)
NDD HOLDINGS 2 LLC,)
NDD MODULAR LLC,)
AUGUSTA EXPLORATION, LLC, and)
AMES ENGINEERING & DEVELOPMENT)
SERVICES LLC,)

Relief Defendants.)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Case No. 4:15-cv-053

Before the Court is the “Plaintiff Securities and Exchange Commission’s Emergency Motion for Temporary Restraining Order, Preliminary Injunction, Asset Freeze and Other Equitable Relief” filed on May 5, 2015. See Docket No. 3. The Plaintiff specifically requests the Court issue an order: (1) enjoining Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan from violations of the antifraud provisions of the federal securities laws; (2) freezing funds and other assets of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property

Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, wherever located, which are derived directly or indirectly from any investor funds obtained by or on behalf of Defendants or Relief Defendants in connection with the scheme alleged in the SEC's Complaint; (3) prohibiting Defendants and Relief Defendants from the acceptance, deposit, or disbursement of additional funds from investors or potential investors; (4) requiring Defendants and Relief Defendants to provide an accounting of investor funds and other assets; (5) prohibiting the destruction or alteration of documents; (6) providing for expedited discovery by the SEC; (7) providing alternative service by the SEC; and (8) requiring Defendants and Relief Defendants to appear and show cause why a preliminary injunction continuing the emergency relief should not enter.

The Court has considered the entire record, including the Complaint in this action and "Plaintiff's Memorandum of Law In Support of its Emergency Motion for an Order Granting a Temporary Restraining Order, Asset Freeze, and Other Equitable Relief" (Docket No. 4) with the attached Declarations of Michael J. Cates, Anne C. Romero, Donna Zhoa, and Sammy Lo, with attached exhibits. The Court **GRANTS** the Plaintiff's motion for a temporary restraining order (Docket No. 3). Further, the Court **FINDS**:

1. This Court has jurisdiction over the subject matter of this action and over the Defendants and Relief Defendants.

2. The SEC has met its burden under Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)(1)] by establishing a *prima facie* case for each of the violations in the Complaint and a strong likelihood that the SEC will prevail at trial on the merits

and that Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan, directly or indirectly, have engaged in and, unless restrained and enjoined by order of this Court, will continue to engage in acts, practices, and courses of business constituting violations of Section 17(a) of the Securities Act [15 U.S.C. §§ 77e and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o], and/or Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

3. There is good cause to believe that, unless restrained and enjoined by order of this Court, the Defendants and Relief Defendants will dissipate, conceal, or transfer from the jurisdiction of this Court assets that could be subject to an order directing disgorgement or the payment of civil money penalties in this action, and that unless restrained Defendant North Dakota Development, LLC and the Relief Defendants will continue to accept funds from investors.

4. There is good cause to believe that, unless restrained and enjoined by order of this Court, Defendants and Relief Defendants may alter or destroy documents relevant to this action.

5. There is good cause to believe that an accounting is necessary to identify the source, location, and use of funds obtained from investors.

6. There is good cause to believe alternative means of service are warranted.

Accordingly, the Court **ORDERS** the following:

I.

That until the expiration of this Order or as otherwise ordered by the Court: Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and their officers, directors, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are enjoined and restrained from, directly or indirectly, 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 the use of the mails: (1) employing any device, scheme, or artifice to defraud; or (2) obtaining money or property by means of any untrue statement of a material fact or any omission 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 (3) engaging in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon the purchaser in violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)].

II.

That until the expiration of this Order or as otherwise ordered by the Court: Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and their officers, directors, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are enjoined and restrained from directly or indirectly, by the use of 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: (1) employing any device, scheme, or artifice to defraud; (2) making 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 (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

III.

That until the expiration of this Order or as otherwise ordered by the Court: Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, and their officers, directors, successor corporation, subsidiaries and affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, shall refrain from, directly or indirectly, accepting, taking control of, or depositing in any financial institution, funds from investors.

IV.

That until the expiration of this Order or as otherwise ordered by the Court:

A. The assets, funds, or other property of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, wherever located, which derive, directly or indirectly, from any investor funds obtained by or on behalf of the Defendants or Relief Defendants in connection with the scheme alleged in the SEC's Complaint, are frozen.¹

B. Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta

¹ This includes, but is not limited to, assets in the United Kingdom, including Santander Bank accounts ****2706, ****2719, ****2722, ****2735, ****5930, ****0609, and assets in Malaysia.

Exploration, LLC, and Ames Engineering & Development Services LLC, and their officers, directors, successor corporations, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, shall hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever of any of their funds or other assets or things of value presently held by them, under their control or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located, which derive, directly or indirectly, from any investor funds obtained by or on behalf of the Defendants and Relief Defendants in connection with the scheme alleged in the SEC's Complaint; and

C. Any bank, financial or brokerage institution or other person or entity holding any funds, securities or other assets which derive, directly or indirectly, from any investor funds obtained by or on behalf of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan or Relief Defendants in connection with the scheme alleged in the SEC's Complaint, held in the name of, for the benefit of, or under the control of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan or Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, or their officers, directors, successor corporations, subsidiaries, affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets.

D. No person or entity, including the Defendants, Relief Defendants, or any creditor or claimant against any of the Defendants or Relief Defendants, or any person acting on behalf of such creditor or claimant, shall take any action to interfere with the asset freeze, including, but not limited to, the filing of any lawsuits, liens, or encumbrances, or bankruptcy cases to impact the property and assets subject to this order; provided, however, that any party or non-party may seek leave from this order upon a proper showing.

V.

That Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property Management, LLC, Great American Lodge LLC, Great American Energy Services LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Holdings 3 LLC, NDD Holdings 4 LLC, NDD Holdings 5 LLC, NDD Holdings 6 LLC, NDD Holdings 7 LLC, and NDD Modular shall each, by **May 15, 2015**, file with this Court, and serve on the SEC, at the address of its counsel of record, a sworn accounting of:

A. All funds raised in any securities offerings by Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan, or any subsidiary, division, or affiliate thereof, in the form of investment contracts (including any “units” or “studios” in short-term housing projects), profits interests, notes or any other security, listing the name, address and phone number of each person who invested funds in such program, the amount the investor paid directly or indirectly to any of the entities and date(s) such funds were received; the current locations of all such funds; the disposition of any such funds including the date, amount, recipient and purpose of each disbursement; the location, title and account numbers at any financial institution to which any such funds have been transferred; and the amount of earnings paid to each investor, if any, and date of payment, the amount of other funds returned to each investor and date of payment;

B. All persons who received a commission, finder's fee, or any other payment relating to any securities offered or sold by Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan or Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, or otherwise identified in paragraph V.A. above; listing the name and address and phone number of each such person, and the amount and the date of any such payment;

C. All investments, securities, funds, real estate, and other assets held in the names of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and/or Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, or in the names of any subsidiary, affiliate, or agent or under their direct or indirect control, or in which they have or have had since May 1, 2012, a direct or indirect beneficial interest, stating a description and location of such assets;

D. Each account, including safe deposit boxes, with any bank, financial institution or brokerage firm, maintained in the names of Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and/or Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, or the names of any subsidiary, affiliate, or agent, or in which they have direct or indirect control or beneficial interest, or have had any direct or indirect beneficial interest since May 1, 2012; and

E. Every transaction in which the ownership, direction and control of any funds or other assets of any kind have been transferred, directly or indirectly, since May 1, 2012, to or from Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan or Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, or their affiliates, subsidiaries, or agents.

VI.

That Defendants North Dakota Developments, LLC, Robert Gavin, and Daniel Hogan and Relief Defendants North Dakota Developments Property Management LLC, Great American Lodge LLC, NDD Holdings 1 LLC, NDD Holdings 2 LLC, NDD Modular LLC, Augusta Exploration, LLC, and Ames Engineering & Development Services LLC, and their officers, directors, successor corporations, subsidiaries and affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, and each of them, are hereby restrained from destroying, mutilating, concealing, altering, or disposing of any document referring or relating in any manner to any transactions described in the SEC's Complaint in this action, or to any communications between or among any of the Defendants and/or Relief Defendants. As used in this order, "document" means the original and all non-identical copies (whether non-identical because of handwritten notation or otherwise) of all written or graphic matter, however produced, and any other tangible record, or electronic data compilation capable of reproduction in tangible form, including, without limitation, computer data, e-mail messages, correspondence, memoranda,

minutes, telephone records, reports, studies, telexes, diaries, calendar entries, contracts, letters of agreement, and including any and all existing drafts of all documents.

VII.

That service of this Order, the Summons and Complaint may be made by facsimile, mail, e-mail, delivery by commercial courier, or personally by any employee of the Securities and Exchange Commission who is not counsel of record in this matter, or special process server, or any other person, or in any other manner authorized by Rule 5 of the Federal Rules of Civil Procedure and may be made on any registered agent, officer, or director of Defendants or Relief Defendant, or by publication.

VIII.

That Defendants and Relief Defendants, and each of them, shall appear before this Court on **Monday, May 18, 2015, at 3:00 PM** in Courtroom One of the United States District Court for the District of North Dakota, in Bismarck, North Dakota, to show cause, if any there be, why this Court should not enter a Preliminary Injunction and order preliminary relief against the Defendants and Relief Defendant pursuant to Rule 65 of the Federal Rules of Civil Procedure, extend the temporary relief granted in this Order until a final adjudication on the merits may be had, and appoint a receiver to marshal and conserve assets for the protection of investors.

IX.

At any time, the Defendants may file a motion to dissolve or modify this temporary restraining order in accordance with Rule 65(b)(4) of the Federal Rules of Civil Procedure. The Defendants may also contact the U.S. District Court to modify the time or date of the scheduled

hearing. The temporary restraining order will not become effective until the Plaintiff serves the order on the Defendants. The Plaintiff shall arrange for the immediate service of this order together with the Plaintiff's motion for a temporary restraining order (Docket No. 3), memorandum in support (Docket No. 4) and the supporting pleadings and affidavits, and shall promptly file proof of service with the Court. No bond shall be required to be posted by the Plaintiff before the temporary restraining order is effective. In accordance with Rules 65(b)(2), this order expires in 14 days or on or before May 19, 2015, at the same hour of this Order, unless the Court, for good cause, extends the order "for a like period or the adverse party consents to a longer extension."

IT IS SO ORDERED.

Dated at 3:50 p.m., this 5th day of May, 2015.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court