

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PAUL HORTON SMITH, SR.;
NORTHSTAR COMMUNICATIONS,
LLC; PLANNING SERVICES, INC.;
AND EGATE, LLC,

Defendants.

Case No. 5:20-cv-01056-PA-SHK
PRELIMINARY INJUNCTION

1 This matter came before the Court on its Temporary Restraining Order and
2 Order to Show Cause Why a Preliminary Injunction Should Not Be Granted (“OSC”)
3 (Dkt. No. 14), issued on May 20, 2020, upon the Application of Plaintiff Securities
4 and Exchange Commission (“SEC”) for a Temporary Restraining Order and Orders
5 (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of
6 Documents; (4) Granting Expedited Discovery; (5) Appointing a Temporary
7 Receiver; and (6) to Show Cause Re Preliminary Injunction and Appointment of a
8 Permanent Receiver (the “TRO Application”).

9 The Court, having considered the SEC’s Complaint, the TRO Application, the
10 supporting Memorandum of Points and Authorities, the supporting declarations and
11 exhibits, and the other evidence and argument presented to the Court, finds that:

- 12 A. This Court has jurisdiction over the parties to, and the subject matter of,
13 this action.
- 14 B. The SEC has made a sufficient and proper showing in support of the
15 relief granted herein, as required by Section 20(b) of the Securities Act
16 of 1933 (“Securities Act”) (15 U.S.C. s 77t(b)), Section 21(d) of the
17 Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §
18 78u(b)), and Section 209(d) of the Investment Advisers Act of 1940
19 (“Advisers Act”) (15 U.S.C. §§ 80b-9(d)), by evidence establishing a
20 *prima facie* case and reasonable likelihood that Paul H. Smith, Sr.
21 (“Smith”); Northstar Communications, LLC (“Northstar”); Planning
22 Services, Inc. (“Planning Services”); and eGate, LLC (“eGate”) engaged
23 in, are engaging in, are about to engage in, and will continue to engage
24 in unless restrained transactions, acts, practices and courses of business
25 that constitute violations of Section 17(a) of the Securities Act, 15
26 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act, 15
27 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and
28 Section 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) &

1 80b-6(2).

2 C. Good cause exists to believe that, unless restrained and enjoined by
3 order of this Court, Defendants Smith, Northstar, Planning Services, and
4 eGate will dissipate, conceal, or transfer assets which could be the
5 subject to an order directing disgorgement or the payment of civil money
6 penalties in this action. It is appropriate for the Court to issue this
7 Preliminary Injunction to preserve and protect existing assets, and
8 prevent the dissipation of assets.

9 D. Good cause exists to extend the temporary receivership of Krista Freitag
10 by one week. The SEC's request for a permanent receiver is denied
11 without prejudice.

12 E. Good cause exists to believe that an accounting of assets is necessary.

13 F. Good cause exists to enjoin the destruction or alteration of documents
14 relevant to this action.

15 **I.**

16 IT IS HEREBY ORDERED that a Preliminary Injunction should issue and the
17 asset freeze should continue.

18 **II.**

19 IT IS FURTHER ORDERED that Defendants Smith, Northstar, Planning
20 Services, and eGate and their officers, agents, servants, employees, attorneys,
21 subsidiaries and affiliates, and those persons in active concert or participation with
22 any of them, who receive actual notice of this Order, by personal service or
23 otherwise, and each of them, be and hereby are preliminarily enjoined from, directly
24 or indirectly, in the offer or sale of any securities, by the use of any means or
25 instruments of transportation or communication in interstate commerce or by the use
26 of the mails:

27 A. employing any device, scheme or artifice to defraud;

28 B. obtaining money or property by means of any untrue statement of a

1 material fact or any omission to state a material fact necessary in order to
2 make the statements made, in light of the circumstances under which
3 they were made, not misleading; or

4 C. engaging in any transaction, practice, or course of business which
5 operates or would operate as a fraud or deceit upon the purchaser;
6 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

7 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil
8 Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
9 actual notice of this Preliminary Injunction by personal service or otherwise: (a)
10 Defendants' officers, agents, servants, employees, and attorneys; and (b) other
11 persons in active concert or participation with any of the Defendants or with anyone
12 described in (a).

13 **III.**

14 IT IS FURTHER ORDERED that Defendants Smith, Northstar, Planning
15 Services, and eGate, and their officers, agents, servants, employees, attorneys,
16 subsidiaries and affiliates, and those persons in active concert or participation with
17 any of them, who receive actual notice of this Preliminary Injunction, by personal
18 service or otherwise, and each of them, be and hereby are preliminarily enjoined
19 from, directly or indirectly, in connection with the purchase or sale of any security,
20 by the use of any means or instrumentality of interstate commerce, or of the mails, or
21 of any facility of any national securities exchange:

- 22 A. employing any device, scheme or artifice to defraud;
23 B. making any untrue statement of a material fact or omitting to state a
24 material fact necessary in order to make the statements made, in the light
25 of the circumstances under which they were made, not misleading; or
26 C. engaging in any act, practice, or course of business which operates or
27 would operate as a fraud or deceit upon any person;
28

1 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
2 thereunder, 17 C.F.R. § 240.10b-5.

3 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil
4 Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
5 actual notice of this Preliminary Injunction by personal service or otherwise: (a)
6 Defendants' officers, agents, servants, employees, and attorneys; and (b) other
7 persons in active concert or participation with any of the Defendants or with anyone
8 described in (a).

9 **IV.**

10 IT IS FURTHER ORDERED that Defendants Smith, Northstar, Planning
11 Services, and eGate, and their officers, agents, servants, employees, attorneys,
12 subsidiaries and affiliates, and those persons in active concert or participation with
13 any of them, who receive actual notice of this Preliminary Injunction, by personal
14 service or otherwise, and each of them, be and hereby are preliminarily enjoined from

15 A. employing any device, scheme or artifice to defraud any client or
16 prospective client; and

17 B. engaging in any transaction, practice, or course of business which
18 operates or would operate as a fraud or deceit upon any client or
19 prospective client;

20 in violation of Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) &
21 80b-6(2).

22 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil
23 Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
24 actual notice of this Preliminary Injunction by personal service or otherwise: (a)
25 Defendants' officers, agents, servants, employees, and attorneys; and (b) other
26 persons in active concert or participation with any of the Defendants or with anyone
27 described in (a).

1 **V.**

2 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court,
3 Defendants Smith, Northstar, Planning Services, and eGate, and their officers, agents,
4 servants, employees, attorneys, subsidiaries and affiliate, and those persons in active
5 concert with them, who receive actual notice of this Preliminary Injunction, by
6 personal service or otherwise, and each of them, be and hereby are preliminarily
7 enjoined from, directly or indirectly, transferring, assigning, selling, hypothecating,
8 changing, wasting, dissipating, converting, concealing, encumbering, or otherwise
9 disposing of, in any manner, any funds, assets, securities, claims or other real or
10 personal property, including any notes or deeds of trust or other interest in real
11 property, wherever located, of any one of the Defendants, or their subsidiaries or
12 affiliates, owned by, controlled by, managed by or in the possession or custody of any
13 of them and from transferring, encumbering dissipating, incurring charges or cash
14 advances on any debit or credit card of the credit arrangement of any one of the
15 Defendants, or their subsidiaries and affiliates.

16 **VI.**

17 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court,
18 the asset freeze previously ordered by this Court in the OSC shall continue on all
19 monies and assets (with an allowance for necessary and reasonable living expenses to
20 be granted only upon good cause shown by application to the Court with notice to
21 and an opportunity for the SEC to be heard) in all accounts at any bank, financial
22 institution or brokerage firm, or third-payment payment processor, all certificates of
23 deposit, and other funds or assets, held in the name of, for the benefit of, or over
24 which account authority is held by Defendants, including but not limited to the
25 accounts listed below:
26
27
28

BANK NAME	ACCOUNT NAME	ACCOUNT NO.
BBVA USA	Northstar Communications LLC	2525787020
BBVA USA	Planning Services, Inc.	2525787012
Bank of America	Joylynn and Paul Smith	xxxxxxxx6656
Charles Schwab	Northstar Communications LLC	6144-7268
TD Ameritrade	Paul H. Smith	xxx-xx0415
TD Ameritrade	Northstar Communications LLC	425-851749
TD Ameritrade	Paul H Smith Sr Trustee Fbo Northstar Communications Llc Pft Sharing	xxx-xx6179
Interactive Brokers	eGate, LLC	F1428528
Provident Bank	eGate, LLC	3924362
Provident Bank	Paul H. Smith Sr. OR Joylynn Smith	xxx7873
Provident Bank	Northstar Communications LLC	3457380
Provident Bank	Planning Services, Inc.	3457330
Provident Bank	Paul H. Smith Sr. OR Joylynn Smith	xxx7406
Provident Bank	Paul H. Smith Sr. OR Joylynn Smith	xxx7430
C3bank	Planning Services, Inc.	2533847
Wells Fargo Bank	Paul Smith	xx5594

Any bank, financial institution or brokerage firm, or third-party payment processor holding such monies and assets described above shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets except as otherwise ordered by this Court.

VII.

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, each of the Defendants Smith, Northstar, Planning Services, and eGate, and their

1 officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those
2 persons in active concert or participation with any of them, who receive actual notice
3 of this Preliminary Injunction, by personal service or otherwise, and each of them, be
4 and hereby are preliminarily enjoined from, directly or indirectly: destroying,
5 mutilating, concealing, transferring, altering, or otherwise disposing of, in any
6 manner, any documents, which includes all books, records, computer programs,
7 computer files, computer printouts, contracts, emails, correspondence, memoranda,
8 brochures, or any other documents of any kind in their possession, custody or control,
9 however created, produced, or stored (manually, mechanically, electronically, or
10 otherwise), pertaining in any manner to Defendants Smith, Northstar, Planning
11 Services, and eGate.

12 **VIII.**

13 IT IS FURTHER ORDERED that the appointment of Krista L. Freitag of E3
14 Realty Advisors, Inc. as temporary receiver of Defendants Northstar, Planning
15 Services, and eGate, and their subsidiaries and affiliates is extended by one week
16 from the date of this order. Freitag shall submit to the Court, no later than 12:00 pm
17 on June 8, 2020, a proposal for winding down defendants Northstar, Planning
18 Services, and eGate, as well as assisting investors in transitioning their eGate
19 accounts. All other requested relief concerning the proposed permanent receiver's
20 powers and authority is hereby denied without prejudice.

21 **IX.**

22 IT IS FURTHER ORDERED that Defendants Smith, Northstar, Planning
23 Services, and eGate, and their subsidiaries and affiliates, including all of the other
24 entities in receivership, and their officers, agents, servants, employees and attorneys,
25 and any other persons who are in custody, possession or control of any assets,
26 collateral, books, records, papers or other property of or managed by any of the
27 entities in receivership, shall forthwith give access to and control of such property to
28 the temporary receiver.

1 X.

2 IT IS FURTHER ORDERED that no officer, agent, servant, employee or
3 attorney of Defendants Smith, Northstar, Planning Services, and eGate shall take any
4 action or purport to take any action, in the name of or on behalf of Defendants
5 Northstar, Planning Services, and eGate without the written consent of the temporary
6 receiver or order of this Court.

7 XI.

8 IT IS FURTHER ORDERED that Defendants Smith, Northstar, Planning
9 Services, and eGate, and their subsidiaries, affiliates, officers, agents, servants,
10 employees and attorneys, shall cooperate with and assist the temporary receiver and
11 shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere
12 with the temporary receiver or her attorneys, accountants, employees or agents, in the
13 conduct of the temporary receiver's duties or to interfere in any manner, directly or
14 indirectly, with the custody, possession, management, or control by the temporary
15 receiver of the funds, assets, collateral, premises, and choses in action described
16 above.

17 XII.

18 IT IS FURTHER ORDERED that Defendants Northstar, Planning Services,
19 and eGate and their subsidiaries and affiliates, shall pay the costs, fees and expenses
20 of the temporary receiver incurred in connection with the performance of her duties
21 described in Temporary Restraining Order, including the costs and expenses of those
22 persons who may be engaged or employed by the temporary receiver to assist her in
23 carrying out her duties and obligations. All applications for costs, fees, and expenses
24 for services rendered in connection with the receivership other than routine and
25 necessary business expenses in conducting the receivership, such as salaries, rent, and
26 any and all other reasonable operating expenses, shall be made by application setting
27 forth in reasonable detail the nature of the services and shall be heard by the Court.

28 **THE COURT WILL ONLY AUTHORIZE THE RECEIVER'S COSTS, FEES,**

1 **AND EXPENSES THAT THE COURT DEEMS REASONABLE AND**
2 **NECESSARY.**

3 **XIII.**

4 IT IS FURTHER ORDERED that no bond shall be required in connection with
5 the appointment of the temporary receiver. Except for an act of gross negligence, the
6 temporary receiver shall not be liable for any loss or damage incurred by any of the
7 defendants, their officers, agents, servants, employees and attorneys or any other
8 person, by reason of any act performed or omitted to be performed by the temporary
9 receiver in connection with the discharge of her duties and responsibilities.

10 **XIV.**

11 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this
12 action for the purpose of implementing and carrying out the terms of all orders and
13 decrees which may be entered herein and to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 IT IS SO ORDERED.

16
17 Dated: June 4, 2020

18 
19 _____
20 PERCY ANDERSON
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28