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U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
BY \_\_\_\_\_ DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA

UNITED STATES,  
  
Plaintiff,  
  
v.  
  
NATIONAL AUDIT DEFENSE NETWORK,  
FREE TRADE ENTERPRISES, INC., d/b/a  
ORYAN MANAGEMENT AND FINANCIAL  
SERVICES, DANIEL W. PORTER,  
ROBERT D. GOETSCH, ROBERT  
BENNINGTON, ALAN L. RODRIGUES,  
WESTON J. COOLIDGE, ADAM  
MANGABANG, JEFFREY KLINGENBERG,  
RICH KLINGENBERG,  
MICHELLE M. HERNANDEZ,  
LEE PANELLI, ALR, INC. d/b/a  
SUCCESS MATRIX GROUP,  
MARY ORIE, ADA ADVENTURE, INC.,  
G&J EAGLE ENTERPRISES,  
CHRISTINE REID, and JOSEPH M. PROKOP,  
  
Defendants.

CV-S-04-0455-LDG-JRL

PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION

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**UNITED STATES' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION  
AGAINST DEFENDANTS NADN; ALAN RODRIGUES; ROBERT BENNINGTON;  
WESTON COOLIDGE; ADAM MANGABANG; JEFFREY KLINGENBERG; RICH  
KLINGENBERG; LEE PANELLI; ALR, INC. d/b/a SUCCESS MATRIX GROUP;  
MARY ORIE; G&J EAGLE ENTERPRISES; and CHRISTINE REID  
(EXPEDITED HEARING REQUESTED)**

National Audit Defense Network (“NADN”) runs a tax-scam boilerroom that sells three products: (1) bogus home-based businesses; (2) a phony website-modification plan called Shopn2000 that falsely claims an Americans with Disabilities Act (“ADA”)-related tax credit;<sup>1</sup> and (3) worthless incorporation services.

The Shopn2000 website-modification program is particularly egregious. NADN tells prospective Shopn2000 customers that they can help persons with disabilities by purchasing (for free) their own “Internet mall” website and then ostensibly paying \$10,475 (consisting of \$2,495 in cash plus a \$7,980 sham promissory note) to modify the website up to three times to “comply” with the ADA. NADN falsely tells customers that by paying for these so-called modifications every year they can claim a yearly \$5,000 ADA tax credit and \$5,475 business tax deduction.

In fact, NADN customers don't each purchase a separate website—there is only one Shopn2000 website, on which they are each given accounts—and the purported modifications are useless to persons with disabilities. The entire program is a cruel hoax for both the “Internet mall” purchasers—who may think that they are buying a unique website for disabled users that also gives purchasers a tax break—and for any disabled users who might try to buy products through the website. NADN's management has sold more than 17,000 of these sham Shopn2000

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<sup>1</sup> The real name of the tax credit is the “disabled access” tax credit; it is located at 26 U.S.C. (“IRC”) § 44. The one Shopn2000 website (sold thousands of times) has two addresses: [www.mallforall.com](http://www.mallforall.com) and [www.shopn2000.com](http://www.shopn2000.com).

products<sup>2</sup> over its own lawyers' protests, who warned that NADN, its management, and its salespersons could face "**civil and/or criminal sanctions**" for selling the Shopn2000 program.<sup>3</sup>

NADN's employees also prepare federal-income-tax returns that improperly claim these business tax deductions and credits. These tax-liability understatements have cost the United States Treasury an estimated \$324 million in lost tax revenue so far.<sup>4</sup> We have brought this suit and filed this motion to stop this massive fraud.

NADN—which claims to be a network of nearly 1,000 former IRS agents, CPAs and tax attorneys who have "switched sides"<sup>5</sup>—has been sued by the Federal Trade Commission ("FTC") and the Nevada Attorney General's Office for deceptive trade practices and has filed a Chapter 11 bankruptcy.<sup>6</sup> None of these actions has slowed the breakneck pace of NADN's sales.<sup>7</sup> Instead, NADN's general manager has set up a parallel sales and return-preparation company to take over in case NADN is shut down.<sup>8</sup> NADN also is ramping up its return-preparation efforts in the waning days of this return-filing season, charging customers to prepare tax returns which

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<sup>2</sup> Sue Cutler Decl. at ¶ 7.

<sup>3</sup> David Gordon Decl. at ASH044 (emphasis in original).

<sup>4</sup> Cutler Decl. at ¶ 14 (estimating tax loss at \$324 million for past three years).

<sup>5</sup> Marion Goyette Decl. at GOY051 ([www.awayirs.com](http://www.awayirs.com) home page).

<sup>6</sup> *Federal Trade Commission v. National Audit Defense Network, et al.*, No. CV-S-02-0131-RCJ-PAL (D. Nev. filed Jan. 30, 2002); *State of Nevada v. National Audit Defense Network, et al.*, No. A445977 (Clark County, Nev. filed Feb. 4, 2002); *In re: National Audit Defense Network*, No. 03-17306-lk (USBC Nev. filed Jun. 11, 2003).

<sup>7</sup> Cutler Decl. at ¶ 21.

<sup>8</sup> Cutler Decl. at ¶ 5. Compare [www.awayirs.com](http://www.awayirs.com) to [www.successmatrixgroup.com](http://www.successmatrixgroup.com) website, Goyette Decl. at GOY051-112.

claim improper credits and deductions.<sup>9</sup>

The company's sales efforts and fraudulent return-preparation should be stopped before NADN causes more harm to its 50,000 customers<sup>10</sup>—who each pay up to \$40,000 for NADN's worthless products<sup>11</sup>—and the United States Treasury. Therefore, pursuant to Fed. R. Civ. P. 65(a) and (b) and L.R. 65, the United States moves for a temporary restraining order (with notice) and subsequent preliminary injunction against Mary Orié<sup>12</sup> and the other above-named defendants (“the TRO defendants”). We are not moving for a TRO against the other named defendants because each has signed a stipulated permanent injunction, filed herewith. The Government requests that the Court schedule an emergency hearing on this TRO request. Following the TRO, the Government requests that the Court enter a preliminary injunction, barring the same activity while the suit is pending.

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<sup>9</sup> Thompson Decl. at Attachment 1, which is a memorandum from Weston Coolidge to Mary Orié, written after Coolidge was contacted by the IRS and Department of Justice, in which Coolidge commands Orié to continue preparing returns containing fraudulent deductions and credits, as explained below.

<sup>10</sup> Cutler Decl. at ¶ 11. In the complaint, we allege that NADN has 100,000 customers. This number, which we believe to be accurate, comes from two sources—an attorney representing NADN and a current employee who chose not to submit a declaration. Therefore, for purposes of this motion and brief, we are estimating tax losses caused by NADN scams based on 50,000 customers, a number supported in the record.

<sup>11</sup> *Id.* at ¶16.

<sup>12</sup> The Government is seeking a more limited injunction against Orié, whose activities are limited to return preparation. Therefore, the term “TRO defendants” does not include Orié.

## I. FACTS

### A. The Defendants

NADN is a 470-employee, Las Vegas-based<sup>13</sup> corporation that sells tax products including home-based businesses. NADN also represents customers in audits and prepares federal-income-tax returns. NADN's phone number is 1-800-AWAY-IRS and its websites are [www.awayirs.com](http://www.awayirs.com), [www.nadncorporations.com](http://www.nadncorporations.com), and [www.developyourbusiness.org](http://www.developyourbusiness.org).<sup>14</sup> NADN also operates another website that touts the Shopn2000 program at [www.nadn-biz.com](http://www.nadn-biz.com).<sup>15</sup>

### Free Trade Enterprises (d/b/a Oryan Management and Financial Services)

("Oryan") is a California-based corporation that created and maintains a website, located at both [www.shopn2000.com](http://www.shopn2000.com) and [www.mallforall.com](http://www.mallforall.com). Oryan supplies accounts (designated with 5-digit PINs sometimes called ZIP codes) on this website to NADN for distribution to customers, which Oryan has given three different names: **Shopn2000; TaxBreak 2000; and MallforAll** ("the Shopn2000 program").<sup>16</sup> Oryan's own website is [www.oryanmanagement.com](http://www.oryanmanagement.com).<sup>17</sup>

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<sup>13</sup> Cutler Decl. Attachment 2, transcript of August 27, 2003 Bankruptcy Code § 341 hearing (8/27/03 Tr.), at 5:19-21. Included in this 470 figure are ten employees located in NADN's Santa Monica, California office. 8/27/03 Tr. at 6:7-9.

<sup>14</sup> Goyette Decl. at GOY051-80, 113-55.

<sup>15</sup> This website address redirects you to <http://www.oryan-biz.com/index.cfm?p=NADN>. Oryan Management's owner Robert Goetsch is listed as the domain registrant, but the website contains advertisements and contact information for NADN, not Oryan. *Id.* at GOY184-89.

<sup>16</sup> Internally, the website scam was known to Oryan and NADN as the TaxBreak2000 and TaxBreak3000 programs. The name "TaxBreak" offers insight into how Oryan and NADN viewed and marketed the program. *See, e.g.*, Gordon Decl. at ASH012-19, which is a draft of the NADN-Oryan contract.

<sup>17</sup> Goyette Decl. at GOY178, 190-91.

**Robert Bennington** is a former co-owner and co-founder (with Cort Christie, who is not a defendant) of NADN who remained with NADN as a sales manager after he sold his NADN shares in 2003.<sup>18</sup>

**Weston J. Coolidge** is NADN's sole officer and director and is (indirectly) its majority shareholder.<sup>19</sup> Coolidge was also president of Oryan Management, Inc. ("OMI"), through which defendants Daniel Porter and Oryan Management and Financial Services conducted business.<sup>20</sup>

**Alan L. Rodrigues** has run NADN's day-to-day operations for at least the past three years and presently is NADN's general manager.<sup>21</sup>

**ALR, Inc., d/b/a Success Matrix Group** ("SMG") is Rodrigues's company, which sells many of the same products as NADN, including the Shopn2000 program. SMG's website is [www.successmatrixgroup.com](http://www.successmatrixgroup.com).<sup>22</sup>

**Jeffrey Klingenberg, Rich Klingenberg, and Lee Panelli** are former NADN salesmen and supervisors who now work at and sell tax products through SMG.<sup>23</sup>

**Adam Mangabang** is a former NADN salesperson and current supervisor of NADN's

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<sup>18</sup> James Smallwood Decl. at ¶ 13.

<sup>19</sup> Cutler Decl. at Attachment 2, 8/27/03 Tr. at 17:18.

<sup>20</sup> Gordon Decl. at ASH002-05, 176 (Coolidge's resignation letter and "help" fax, plus OMI check signed by Hernandez to the Joseph Prokop-owned "Pro Punter").

<sup>21</sup> Cutler Decl. at Attachment 1, transcript of July 15, 2003 Bennington interview (7/15/03 Tr.) at 19:14-16.

<sup>22</sup> Cutler Decl. at ¶ 5; Goyette Decl. at GOY081-112 (SMG website information).

<sup>23</sup> Cutler Decl. at ¶ 5.

“Preferred Client Services,” formerly known as “Advanced Services” and “Elite Services,” sales department, which sells tax products.<sup>24</sup>

**G&J Eagle Enterprises, Inc.**, (“G&J Eagle”) is a Nevada corporation associated with NADN that has issued fraudulent IRS Forms 1099 for NADN customers who purchased the Shopn2000 program.<sup>25</sup>

**Christine Reid** is Coolidge’s longtime assistant who was listed as president of G&J Eagle until the end of 2003 and who prepared IRS Forms 1099 for NADN customers who bought a Shopn2000 program.<sup>26</sup>

**Mary Orié** runs NADN’s return-preparation department and directs her employees to prepare and file tax returns.<sup>27</sup>

**Daniel W. Porter** is the founder and former owner of Oryan, which began distributing the Shopn2000 program in 2000.<sup>28</sup>

**Robert D. Goetsch** is the current owner of Oryan, which he purchased from Porter in September, 2002, after the IRS executed a search warrant on Oryan.<sup>29</sup>

**ADA Adventure, Inc.** is a company related to Oryan that purportedly would pay off Shopn2000 owners’ promissory notes—sham notes designed to create a higher tax credit—owed

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<sup>24</sup> *Id.* at ¶ 23.

<sup>25</sup> *Id.* at ¶ 20.

<sup>26</sup> *Id.* at ¶ 20; Thompson Decl. at ¶ 20.

<sup>27</sup> Thompson Decl. at ¶ 4.

<sup>28</sup> Andrew Orgell Decl. at ¶¶ 7-8.

<sup>29</sup> *Id.* at ¶ 29.

to Oryan.<sup>30</sup> ADA Adventure, Inc. may have stopped doing business.

**Michelle M. Hernandez** is Oryan's former office manager and is ADA Adventure's president.<sup>31</sup>

**Joseph M. Prokop** is a longtime Oryan employee/contractor who has sold the Shopn2000 program and has trained distributors, including NADN's sales force, to sell the Shopn2000 program.<sup>32</sup>

**B. The Initial Sales Pitch**

NADN's initial sales pitch begins with an apparently benign offer of free tax-saving tips. NADN uses the Internet and radio, offering "free" tapes and booklets that contain "101 Tax Tips" to entice potential customers to call NADN's toll-free number.<sup>33</sup>

When potential customers call in for the free tape, they speak to an employee in NADN's "inbound department." The inbound department salesperson generally limits the sales pitch to marketing a \$1,412.95 NADN membership, audit protection (representation before the IRS), or return preparation.<sup>34</sup> Even this limited sales pitch contains false and misleading statements, including that: (1) the membership fee is tax deductible;<sup>35</sup> (2) NADN guarantees members \$3,000

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<sup>30</sup> Pauline Cox Decl. at Attachment 4.

<sup>31</sup> Gordon Decl. at ASH190-94.

<sup>32</sup> Gordon Decl. at ASH170-188.

<sup>33</sup> Vivian Robinson Decl. at ¶ 3; Valerie Weinstein Decl. at ¶ 4; Goyette Decl. at GOY051-80 ([www.awayirs.com](http://www.awayirs.com) home page).

<sup>34</sup> Smallwood Decl. at ¶ 7-8.

<sup>35</sup> Donna St. Martin-Smith Decl. at ¶ 6 (NADN to St. Martin-Smith that the fee was a "tax  
(continued...)

of new deductions merely for signing up;<sup>36</sup> and (3) NADN guarantees that its return-preparation service will automatically yield members \$3,000 of new deductions.<sup>37</sup> One customer, Valerie Weinstein, also was falsely told that she didn't need to do anything different than she was doing before—which didn't include running a business—to obtain the additional \$3,000 in tax savings.<sup>38</sup>

Callers who become customers are later called by salespersons in higher-level sales departments, such as Mangabang's so-called Preferred Client Services (formerly "Advanced Services") department,<sup>39</sup> which has its own website, [www.developyourbusiness.org](http://www.developyourbusiness.org).<sup>40</sup> When an Advanced Services employee contacts them, customers discover that the incredible tax savings promised during the \$1,412.95 membership sales pitch were based on customers making *additional* purchases.<sup>41</sup> Customers are pressured to purchase or run an NADN-created bogus home-based business such as an "NADN referral business" to drive new customers to NADN,<sup>42</sup>

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<sup>35</sup>(...continued)  
credit").

<sup>36</sup> Smallwood Decl. Attachment 1 at 37.

<sup>37</sup> Weinstein Decl. at ¶ 8.

<sup>38</sup> *Id.* at ¶ 8.

<sup>39</sup> Cutler Decl. at ¶ 23; Weinstein Decl. at ¶¶ 12-14.

<sup>40</sup> Goyette Decl. at GOY 144-55.

<sup>41</sup> Smallwood Decl. at ¶ 10.

<sup>42</sup> Smallwood Decl. at ¶ 10. NADN also falsely tells potential customers that the Shopn2000 qualifies for home-based-business tax deductions in addition to the ADA tax credit. As a result, some customers have improperly claimed the Shopn2000-related tax credits and

(continued...)



and to place the home-based businesses in NADN-incorporated Nevada corporations.<sup>43</sup>

One sales department, nicknamed the “last gasp room,”<sup>44</sup> focuses on selling a monthly \$39.95 audit-defense membership to customers who haven’t purchased anything recently.<sup>45</sup> Some of NADN’s salespersons even claim to be tax experts<sup>46</sup> although they receive, at most, four hours of tax training before they begin selling NADN’s tax products.<sup>47</sup>

NADN’s so-called customer service department is an arm of the sales department.<sup>48</sup> Dissatisfied customers who request refunds are routed to a department *named* “customer service,” but the employees to whom the customers speak aren’t there to provide customer service. Instead of serving customers, the employees do whatever it takes to convince customers to reconsider their requests for refund.<sup>49</sup>

NADN’s tax-scam products fall into three categories: the Shopn2000 website program;

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<sup>42</sup>(...continued)  
deductions and also have improperly claimed home-based-business tax deductions. Cutler Decl. at ¶ 25.

<sup>43</sup> Weinstein Decl at ¶¶ 12-14; Thompson Decl. at ¶ 14.

<sup>44</sup> Smallwood Decl. at ¶ 19.

<sup>45</sup> *Id.*

<sup>46</sup> Weinstein Decl. at ¶ 12.

<sup>47</sup> Smallwood Decl. at ¶¶ 4-6. Smallwood describes how, in his first stint with NADN in 2002, NADN conducted a week-long training session for salespersons, including only four hours of tax training. Smallwood later describes how NADN’s training session shrank to four hours *total* when Smallwood rejoined NADN in 2003.

<sup>48</sup> *Id.* at ¶ 15.

<sup>49</sup> *Id.* at ¶¶ 15-16.

other sham home-based businesses; and incorporation services.

**C. NADN sells the Shopn2000 Program by Falsely Claiming It Will Help persons with disabilities and Qualify the Purchaser for a \$5,000 ADA Tax Credit and \$5,475 Tax Deduction**

1. *The Shopn2000 website doesn't sell anything—it merely directs users to merchants and then collects commissions if the users buy anything.*
  - a. Shopn2000 is a portal site, through which individual “owners” can earn commissions.

The Shopn2000 website, [www.shopn2000.com](http://www.shopn2000.com), is a searchable “portal” website that categorizes and lists particular products and merchants, including Nordstrom, Avon, and Buy.com. Oryan, which developed the concept, owns the [www.shopn2000.com](http://www.shopn2000.com) website, and provides contracts to NADN for sale to the public, calls the website a “virtual mall.” NADN and Oryan tell purchasers that they are each buying a separate Shopn2000 “website,” which is then purportedly “modified” for \$10,475 (\$2,495 cash plus a \$7,980 sham promissory note) to allow the NADN customer to claim a \$5,000 disabled-access tax credit and a \$5,475 business-related deduction.

Oryan and NADN have attempted to persuade customers to buy a Shopn2000 website together with a “modification” to claim the ADA tax credit. The first year’s modification was the addition of a text-only version of the Shopn2000 website, readable by screen-reader software and therefore purportedly helpful to blind customers. The next modification focused on hearing-impaired customers; Oryan’s original owner Porter added a “chat” feature that purportedly permitted all users, including hearing-impaired users, to “talk” to Oryan employees via a computer. The third-year modification, implemented by Oryan’s current owner, Goetsch, involved voice-recognition software that supposedly permitted mobility-impaired customers to

navigate the Shopn2000 website without using a mouse or a keyboard.<sup>50</sup> Oryan has now merged the text-only and voice-shopping functions into a single modification and dropped the chat function. Thus, Oryan and NADN are now offering only one modification.<sup>51</sup> As demonstrated below, these purported website modifications are shams. But the modifications aren't the only shams here; customers aren't even buying separate websites.

In reality, contrary to NADN's sales pitch, customers aren't purchasing their own websites, but instead are just purchasing an *account* on the one Shopn2000 website, designed with a five-digit personal identification number ("PIN").<sup>52</sup> And they aren't purchasing their own "disability" modifications either; they receive the so-called modifications *automatically* (in theory, whether they paid for them or not) upon account activation.<sup>53</sup> Although Oryan and NADN call these customers "website owners" or "mall owners," the more accurate term is "PIN owners." PINs are used to track commissions due to each PIN owner. The [www.shopn2000.com](http://www.shopn2000.com) website is displayed as shown below:

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<sup>50</sup> Orgell Decl. at ¶¶ 9, 27, and 29.

<sup>51</sup> Cox Decl. at Attachment 2.

<sup>52</sup> Thomas Niccum Decl. at ¶ 33.

<sup>53</sup> *Id.*, at ¶¶ 38-39.







# MALL FOR ALL SHOP'N 2000

**Search** [Advanced Search](#)  
 Popular Seaches: [Yahoo](#), [Ebay](#), [HDTV](#), [Sony](#), [Digital Camera](#), [Flowers](#)

<b>Categories</b>		<b>Stores</b>	<b>Shopn2000.com/50322</b>	<b>Great Deals</b>
<b>Apparel</b>		<b>Health &amp; Personal Care</b>		<a href="#">Hot Products</a>
Accessories, <a href="#">Baby &amp;</a>		Bath, <a href="#">Beauty</a> , <a href="#">Dental</a> , <a href="#">Fitness</a> , <a href="#">Fragrance</a>		<a href="#">Special Offers</a>
<a href="#">Kid</a> , <a href="#">Men</a> , <a href="#">Shoes</a> , <a href="#">Women</a>		<a href="#">More...</a>		<b>My Shopping</b>
<b>Books &amp; CD / DVD</b>		<b>Home &amp; Garden</b>		<a href="#">Advanced Search</a>
<a href="#">Books</a> , <a href="#">CD</a> , <a href="#">DVD</a> , <a href="#">Magazines</a>		<a href="#">Appliances</a> , <a href="#">Bed &amp; Bath</a> , <a href="#">Furnishings</a> ,		<a href="#">Shopping Bag</a>
<b>Computers</b>		<a href="#">More...</a>		<a href="#">Preferences</a>
<a href="#">Accessories</a> , <a href="#">Desktop</a> , <a href="#">Internet</a> , <a href="#">Memory</a> ,		<b>Jewelry &amp; Watches</b>		<a href="#">Change Mail</a>
<a href="#">More...</a>		<a href="#">Jewelry</a> , <a href="#">Watches</a>		<b>Mall Tools</b>
<b>Electronics</b>		<b>Office</b>		<a href="#">Impaired Assistance</a>
<a href="#">Audio</a> , <a href="#">Cameras</a> , <a href="#">Communications</a> , <a href="#">More...</a>		<a href="#">Equipment</a> , <a href="#">Furniture</a> , <a href="#">Supplies</a>		<a href="#">What Is Mall For All?</a>
<b>Flowers &amp; Gifts</b>		<b>Toys &amp; Games</b>		<a href="#">Terms Of Use</a>
<a href="#">Flowers</a> , <a href="#">Gifts</a>		<a href="#">Games</a> , <a href="#">Toys</a> , <a href="#">Video Games</a>		<a href="#">Contact Us</a>
<b>Food &amp; Beverage</b>		<b>Travel</b>		<a href="#">Privacy</a>
				<b>Showcase</b>
				<a href="#">NoMo Odor</a>
				<a href="#">PhGel</a>

### Today's Specials

- All orders at [cutterbuck.com](#) receive **Free Standard Shipping**.
- **Free 3-5 day Shipping with purchase of any new Dell Home System. Offer expires 3/17**
- **50% off Like-New CD Shower Companion**

<b>Hot Products</b>	<b>Special Offers</b>				
					
Norah Jones - Feels Like Home [Hyper CD] *	Sterling Silver Floating Heart Earrings & Pendant Set	Palm Zire 71 Handheld Organizer	Women's Isaac Mizrahi Raincoat	PowerShot S400 Digital Camera	Sex And The City: The Complete First Five Seasons

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On the display above, the "Shopn2000.com/50322" heading located directly below the "Search" button identifies the unique PIN (50322 in this case) to which a commission will be paid if a customer "clicks through" this website and purchases a product from merchant's website. The PINs aren't unique as NADN claims. Oryan has actually sold some of the same

PINs twice: once to “Mallforall.com” purchasers and once to “Shopn2000.com” purchasers.<sup>54</sup>

For example, if a customer were interested in purchasing a “hot product” such as the Norah Jones CD shown at the bottom of the “screen shot” displayed above, the customer would click on the product and be taken to the merchant’s website who is selling that CD. Once at the merchant’s website, the customer could input address and payment information and purchase the CD from that merchant, thereby earning a small commission (usually 1-2%) for the owner of PIN 50322.

In addition to clicking on products, customers can search by typing in keywords (*e.g.*, “DVD players”) and search results will be displayed. Alternatively, customers can browse categories such as “Electronics,” “Office,” and “Travel.” Search results (products) are displayed by price. And from these results, a customer can click-through to purchase a displayed product.

From a moneymaking standpoint, the NADN-sold Shopn2000 website was destined to be and has been a monumental failure for PIN owners. Thus, most PIN owners have earned no commissions at all,<sup>55</sup> and those that have earned commissions haven’t earned much. In the four years that Oryan has sold its Shopn2000 PINs, including through NADN, the thousands of PIN owners have together generated less than \$24,000 in identified commissions.<sup>56</sup> Therefore, based

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<sup>54</sup> *Id.* at ¶ 31. For example, there is a 90210 Mallforall PIN and a 90210 Shopn2000 PIN.

<sup>55</sup> Orgell Decl. at ¶ 20.

<sup>56</sup> Michael Shea Decl. at ¶¶ 13-15. Shea works for LinkShare, which is a middleman that gathers merchants together and permits any website owner (Oryan did this with [www.shopn2000.com](http://www.shopn2000.com) and [www.mallforall.com](http://www.mallforall.com)) to link to the merchants’ websites. The website owner earns a commission if a customer “clicks through” the owner’s website and purchases something from a merchant’s website. LinkShare tracks commissions, collects money from (continued...)

on an estimate of 10,000 PIN accounts sold by NADN alone,<sup>57</sup> the average PIN owner has earned \$2.40 in commissions since the Shopn2000 scheme began in 2000. Yet PIN owners are charged \$10,475 per year—on paper, at least—to “modify” their Shopn2000 accounts, which earn only pennies per year.

- b. Customers can also shop through a “text-only” version of the website, added solely to purportedly enable NADN and Oryan customers to qualify for the § 44 tax credit.

Purportedly to permit blind persons to shop online—although really to claim a tax credit—Oryan added a text-only version of the Shopn2000 website.<sup>58</sup> A text-only version can be used by blind users who have screen-reader software that reads text audibly. If this text-only version worked—the version didn’t work during the two weeks in which computer expert Niccum recently evaluated the Shopn2000 website<sup>59</sup>—customers could complete purchases in much the same way as on the main graphical website, by clicking through the text-only version and purchasing products from a merchant’s website.

The text-only version also permits users to browse categories, click on links to merchants’ websites, and purchase products, thereby earning commissions for PIN owners. By

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<sup>56</sup>(...continued)

some merchants, and pays the commissions due to website owners. Some merchants may have paid commission checks directly to Oryan, so the total amount of commissions may be higher than \$24,000.

<sup>57</sup> Cutler Decl. at ¶ 7. Niccum’s test of 1,000 (of a possible 100,000) random Mallforall PINs yielded 72 valid PINs; his test of 2,000 random Shopn2000 PINs yielded 86 valid PINs. Niccum Decl. at ¶ 40.

<sup>58</sup> Orgell Decl. at ¶ 9; Cox Decl. Attachment 4.

<sup>59</sup> Niccum Decl. at ¶ 12.

clicking on the graphical site's "Impaired Assistance" link and then on a "text-only" link, the following text-only version appears:

Navigation [skip to departments](#)  
[go to non-accessible page](#)      [Home](#) | [Vision](#) | [Shop\\*N](#) | [Links](#) | [Contact](#)

**Welcome to  
MallForAll/33712**

MallForAll is the ideal place to start your next webscursion of shopping with great stores you will know and recognize and dozens of new and exciting vendors.

**Departments** [skip to selections](#) |  
[Accessible Stores](#) | [Apparel](#) | [Electronics](#) | [Entertainment & Sports](#) | [Financial](#) |  
[Food & Drink](#)  
[Gifts](#) | [Health & Beauty](#) | [Home & Office](#) | [Learning](#) | [Car & Travel](#)

Choose a Department from the list above to update the list of Categories below.

**You are in Merchandise mode** - Switch to [Store mode?](#)

Your selection will open in a new browser window.

Search for Merchandise.  Use keyword

Categories	Merchandise	Showcase
<a href="#">Accessible</a>	<b>Spicy Cocktail Pick Set</b> - Liven up a platter of hors d'oeuvres with these nifty picks and even pigs in a blanket will seem like a delicacy! Set includes 4 picks expressing	<b>National Audit Defense Network</b> - Take control of your Federal Income Tax situation by using our tax-saving strategies and audit protection services.
<a href="#">Other</a>		<b>phGel</b> - PH-Gel, for cleaner, healthier skin.
<a href="#">Accessible</a>		-
<b>Local Info</b>		
<a href="#">Local Weather</a>		
<a href="#">Movie Listings</a>		
<a href="#">Local TV</a>		

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- c. Commissions are awarded through a random process, unless a customer chooses a particular 5-digit PIN.

After navigating to the [www.Shopn2000.com](http://www.Shopn2000.com) website and searching for and finding a product, interested customers can “click through” to the merchant’s website and purchase the product on that site. Shopn2000 owners receive a commission for any purchases made, ranging between 1% and 20% of the purchase price.

A corporation known as LinkShare tracks all purchases made by customers after passing through the Shopn2000 website to merchants’ sites. Merchants then pay LinkShare, which in turn pays Oryan any commissions due.<sup>60</sup> Presumably, Oryan then pays PIN owners these commissions. Oryan tracks each owner’s commissions by using the five-digit PIN assigned to each PIN owner.<sup>61</sup> Commissions are the only way that PIN owners can make money from the Shopn2000 program. And, as explained below, the system’s amateurish design ensures that PIN owners will make little, if any money, and certainly nowhere near enough to cover their purchase and modification costs.

When someone visits [www.Shopn2000.com](http://www.Shopn2000.com), the website randomly generates an owner’s PIN and attaches it to the visitor for the duration of his visit, to ensure that the PIN owner receives credit for any purchases that the visitor makes.<sup>62</sup> When the next person visits the website, a different owner’s PIN is attached to the visitor, ensuring that each PIN owner can

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<sup>60</sup> Shea Decl. at ¶¶ 5, 13-15.

<sup>61</sup> See Gordon Dec. at ASH123-164, which lists (by five-digit PIN) commissions received.

<sup>62</sup> Niccum Decl. at ¶¶ 46-47.



receive commissions from Shopn2000 visitors who don't select a particular PIN. Once a PIN is randomly attached to a visitor, that number will not be generated again until all other PINs have been generated.<sup>63</sup> If there are 10,000 Shopn2000 owners, then any particular owner's number will be attached to every 10,000th visitor. Given that [www.Shopn2000.com](http://www.Shopn2000.com) doesn't have millions of visitors and most website visitors don't make purchases,<sup>64</sup> the likelihood of earning a commission through this random process is minuscule.

Alternatively, if a customer—for example, a PIN owner or her friend—knows the PIN to which any commissions should be assigned, the visitor can enter the PIN at the outset.<sup>65</sup> Computer expert Niccum notes that users are not prompted on arrival or at any other point to enter a PIN and there is no explanation on the site of what PINs are or why they are important.<sup>66</sup> Therefore, there is no reason to think that visitors will choose to select a PIN unless the visitor has been asked to do so by a PIN owner.

2. *Profits are an afterthought in the Shopn2000 sales pitch.*

a. Written promotional materials emphasize tax savings, not profits.

NADN and Oryan's written promotional statements thinly mask the true nature of the Shopn2000 program—a tax credit with no business purpose. NADN's promotional website contains the following sales pitch for the Shopn2000 program:

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<sup>63</sup> *Id.* at ¶¶ 46, 75. Either the PIN-generation process is truly random or it goes in sequence. Either way, on average, any one PIN will only be generated again after all other PINs have been generated.

<sup>64</sup> *Id.* at ¶ 77.

<sup>65</sup> *Id.* at ¶ 75.

<sup>66</sup> *Id.*

**Putting the Power of the Internet and  
the Americans With Disabilities (ADA) Act to work for you!**

- Would you like to have your own business?
- A business that requires little time and even less effort?
- An Internet business that has a positive cash position from the start?
- Would you like to save \$6,000-\$8,000 in taxes?

National Audit Defense Network has developed a tax incentive program that enables individuals and businesses to enjoy one of the most advantageous Tax Credits offered today; a tax credit based on the Americans with Disabilities Act of 1990. MallForAll combines the Internet with the ADA Tax Credit, providing an average \$6,000 to \$8,000 in tax savings per client.<sup>67</sup>

This promotional website's single-minded emphasis on taxes (the source of the "positive cash position from the start") demonstrates that non-tax profits are at most a mere afterthought in the Shopn2000 scheme. The "FAQ" section states:

Will I make money with my MallForAll.com site?

Since your MallForAll.com site is a business, you can have income. Income from sales commissions and advertising revenue will be reported to you via 1099. But remember many tax impacting benefits are available to ""Business Owners"" [sic] that are not available to the Normal Taxpayer. Tax Deductions for rents, utilities, telephone, automobile expenses, entertainment, and more are available to ""Business Owners""[sic]. The sooner you participate in the program the sooner you may be able to take advantage of the "Business Owner" benefits.<sup>68</sup>

One NADN salesman wrote about profits in starker terms. When a customer asked if he could make money—beyond tax credits—off of the Shopn2000 website, the NADN salesman

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<sup>67</sup> Goyette Decl. at GOY156.

<sup>68</sup> *Id.*, at GOY161.

said “Stop worrying about what you will make off site. That’s found money if it comes.”<sup>69</sup>

b. NADN telemarketers stress *only* the tax benefits.

NADN’s telephone sales pitch jettisons any pretense that NADN is selling a real business and confirms that it is selling a purported tax credit wrapped in a so-called website. NADN salespersons have guaranteed customers various levels of tax benefits from buying a Shopn2000 website, from \$5,000 per year to \$15,000 per year.<sup>70</sup> When NADN salesman Smallwood and his supervisor sold one customer six Shopn2000 programs, the programs were pitched exclusively as a way to reduce taxes, not as a business.<sup>71</sup> Even when a then 77-year-old customer, Vivian Robinson, told an NADN salesperson that she didn’t own or know how to use a computer (and therefore didn’t know how to make money through the website), the NADN salesperson assured her that she would be able to take the tax credit.<sup>72</sup>

Even when a customer affirmatively stated that she didn’t want to own or run a business, NADN sold a purported Shopn2000 business to her. Pauline Cox, a quadriplegic, told an NADN salesperson that she didn’t want to run a business; the salesperson told Cox that merely signing up and paying for a website would qualify her for the tax deductions.<sup>73</sup> NADN’s salespersons

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<sup>69</sup> Bradford Howard Decl. at ¶ 15-16.

<sup>70</sup> Howard Decl. at ¶¶ 14, 25; Robinson Decl. at ¶ 6; St. Martin-Smith Decl. at ¶ 14 (\$10,475 tax savings).

<sup>71</sup> Smallwood Decl. ¶ 12.

<sup>72</sup> Robinson Decl. at ¶ 7 (Robinson is now 79; she bought this in 2002).

<sup>73</sup> Cox Decl. at ¶ 8.

also told Ms. Robinson, the 77-year-old customer, that just purchasing the website entitled her to claim the IRC § 44 disabled-access (a/k/a ADA) tax credit.<sup>74</sup>

NADN telemarketers also fail to mention the \$7,980 promissory notes during the sales pitch; they don't disclose information until after charging \$2,495 on a customer's credit card.<sup>75</sup> NADN has a cancellation period, 72 hours, which starts after payment, not after receipt of the Shopn2000 contracts, including the promissory note.<sup>76</sup> Not surprisingly, many customers don't receive the contracts until after the 72-hour cancellation period has expired.<sup>77</sup> NADN's telemarketers likely don't mention the promissory notes because customers may shy away from purchasing the Shopn2000 product if they are told that it costs \$10,475, more than the purported tax savings. This omission also further highlights what is demonstrated below, that these promissory notes are shams, intended solely to artificially inflate the cost of "website modifications" so as to claim the maximum ADA tax credit.

The declarations submitted with this motion demonstrate that NADN salespersons and customers overwhelmingly have emphasized the tax benefits of purchasing the Shopn2000 program. However, NADN's salespersons didn't even mention how much money, if any, other PIN owners had made through commissions. NADN and Oryan also don't offer customers the option to purchase a Shopn2000 PIN account without also purchasing the purported website

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<sup>74</sup> Robinson Decl. at ¶ 6.

<sup>75</sup> *See, e.g., id.* at ¶ 9.

<sup>76</sup> Robinson Decl. at ¶ 9; Cutler Decl. at Attachment 1, 7/15/03 Tr. at 50:5-6 (Rodrigues describing the 72-hour refund policy that starts upon payment, not receipt of documents).

<sup>77</sup> *See, e.g.,* Robinson Decl. at ¶ 9; Kathleen Delaney Decl. at Attachments 1-18.

modifications. Customers such as Robinson and Cox didn't even understand what the modifications were and made that clear to NADN. Instead, everyone involved in these transactions focused on one thing: easy money from tax breaks.

3. *There is just one Shopn2000 website, and new PIN owners get an account on that one website.*

Oryan's contracts with PIN owners state that Oryan will deliver modifications to owners within 30 days after purchasing the modifications. This suggests that Oryan has constructed and sold each customer an unmodified website, which Oryan then changes to "comply" with the ADA. Instead, there is just one Shopn2000 website, not a separate one for each customer. Each new PIN owner simply gets a five-digit account number with access to that one Shopn2000 website. And because that one Shopn2000 website already includes the so-called modifications, a newly-minted PIN owner isn't modifying the website at all. NADN's claim that each PIN owner is buying a separate website and separate modifications is a sham, providing only window dressing for the fraudulent tax credits and deductions.

Therefore, any tax claims that are based on each NADN customer owning a separate Shopn2000 website that is modified must fail. PIN owners own accounts, not websites. The Shopn2000/90210 PIN owner, for example, can't change whether voice-shopping is available to customers using her PIN to complete a transaction.<sup>78</sup> Accessibility of the Shopn2000 website is entirely outside the PIN owner's control, much as accessibility of a person's bank's website is outside the control of a bank account holder. In essence, Oryan and NADN are running one of

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<sup>78</sup> Niccum Decl. at ¶ 39.

the oldest swindles in the book: they have sold the one [www.Shopn2000.com](http://www.Shopn2000.com) website thousands of times, each time falsely claiming that the purchaser is getting his own website.

Porter, Oryan's original owner, tried to mask this "one website" problem from the outset, requiring website designer Orgell to create separate folders and templates for each PIN owner so Porter could claim that each PIN owner received his or her own website and own modifications. But Goetsch, Oryan's current owner, abandoned this approach,<sup>79</sup> and with it any pretense that each PIN owner actually owns a website.

4. *The PINs cost nothing, yet to get the advertised tax benefits PIN owners purportedly pay \$10,475 per year to "modify" them.*

There is no up-front cost to purchase a Shopn2000 PIN account. Instead, PIN owners agree to pay Oryan 20% of their commissions, up to \$2,500, as a purported purchase price. But because Shopn2000 is a sham, most owners earn no commissions and therefore pay nothing for the PIN account.<sup>80</sup>

But PIN owners pay dearly for the purported "website modifications." NADN, on behalf of Oryan, charges a per-modification fee of \$2,495 in cash and requires PIN owners to sign a purported eight-year, \$7,980 promissory note.<sup>81</sup> Assuming the promissory note is legitimate, which it is not, the total modification fee is therefore \$10,475. Not coincidentally, the maximum

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<sup>79</sup> *Id.* at ¶ 51.

<sup>80</sup> Orgell Decl. at ¶ 22.

<sup>81</sup> *See, e.g.,* Robinson Decl. at ¶¶ 9, 13. Robinson's declaration also states that NADN offered the third-year modification in 2003 for just \$1,750. If the same modification was available for less than \$10,475, then NADN and Oryan can hardly claim that the \$10,475 purported modification cost was reasonable. And only reasonable modification costs can be deducted under IRC § 44. *See* § 44 discussion, *infra*.

tax credit allowable under § 44 is reached after disabled-access expenses reach \$10,250.<sup>82</sup>

5. *The promissory note is illusory.*

NADN has told PIN owners four different stories about why they don't need to worry about repaying the promissory notes.

- a. Story number one: ADA Adventure, Inc. would pay off the promissory note in the first year.

For at least one year, NADN and Oryan told customers that a third-party corporation, ADA Adventure, Inc., would pay Oryan on its customers' behalf in exchange for ADA Adventure listing banners on owners' Shopn2000 purported websites. ADA Adventure, Inc. was a sham corporation, but Oryan employee Michelle Hernandez signed—as president of ADA Adventure, Inc.—contracts vowing to pay off customers' promissory notes.<sup>83</sup> According to Oryan's current owner, Goetsch, ADA Adventure agreed to pay each PIN owner \$2,752 per quarter to place 10 banners on the owner's purported website. This would supposedly extinguish each \$7,980 note within the first year. NADN and Oryan promised this to Pauline Cox, among others.<sup>84</sup>

This story is, of course, absurd. Even with a conservative estimate of 10,000 PIN owners, this would mean quarterly payments from ADA Adventure to Oryan of more than \$2.75 million for listing 10 banners on the single [www.Shopn2000.com](http://www.Shopn2000.com) website shared by all PIN owners.

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<sup>82</sup> See 26 U.S.C. § 44. The first \$250 of disabled-access expenses is disregarded, and there is a \$.50 credit for each dollar spent above that amount, up to a \$5,000 credit.

<sup>83</sup> Gordon Decl. at ASH190-94.

<sup>84</sup> Cox Decl. at ¶ 10.

Goetsch admits that ADA Adventure never followed through on its supposed contractual obligation to place the banners or pay down owners' promissory notes.<sup>85</sup> But for at least one year NADN and Oryan falsely told customers that this was how their promissory notes would be paid.<sup>86</sup> The goal, of course, was to persuade customers that the promissory notes, and resulting ostensible \$10,475 "modification charge," were legitimate, while reassuring customers that they would never have to pay off the note. Thus, customers were led to believe that for their \$2,495 payment they could get a \$5,000 tax credit and a \$5,475 tax deduction.

- b. Story number two: the promissory note could be paid off at \$2.00 per click.

Second, NADN salespersons tell prospective customers that if anyone (including a PIN owner) clicks one of the three "sponsored link" banners displayed on the Shopn2000 website, Oryan would deduct \$2.00 per click from the PIN owner's promissory note, regardless of whether any merchandise is purchased.<sup>87</sup> This means that an owner could simply click on sponsored links 4,000 times and "pay off" the promissory note. Not surprisingly, NADN and two obscure companies are listed as the sponsored links.<sup>88</sup> Once the promissory note is paid off in this magical way, the \$2.00 per click "income" vanishes and PIN owners can earn income only through commissions from click-throughs leading to actual purchases on merchants' websites.

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<sup>85</sup> *Id.* at Attachment 2.

<sup>86</sup> Cox Decl. at ¶ 13, 17.

<sup>87</sup> Orgell Decl. at ¶ 24-25.

<sup>88</sup> See graphical and text-only Shopn2000 screen captures, *supra*, listing the sponsored links in the "Showcase" area as NADN, "NoMo Odor," and "PhGel."



Oryan and NADN don't claim that Oryan had a contract with the companies listed as "sponsored links" whereby the sponsor would pay Oryan \$2.00 per click. This \$2.00-per-click "income" appears to have been conjured out of thin air.

NADN and Oryan didn't even bother issuing IRS Forms 1099 to PIN owners for the 2001 tax year to reflect any amounts "earned" when PIN owners "clicked-down" their promissory notes.<sup>89</sup> And when NADN did issue Forms 1099 to PIN owners for the 2002 and 2003 tax year, it issued these forms through a shell corporation named G&J Eagle—run by NADN associate Christine Reid—that has nothing to do with the Shopn2000 program.<sup>90</sup> Further, the amounts shown on these Forms 1099 don't tally with the number of clicks shown on the PIN owners' "back office," a feature of each Shopn2000 account that records the number of clicks.<sup>91</sup>

- c. Story number three: Oryan will forgive or buy back the promissory note.

Third, at least one owner was told that Oryan would forgive the promissory note, making it a non-recourse note. The owner, Bradford Howard, even got that promise in writing. In response to Howard's questions, an employee speaking for NADN assured Howard that he could simply give back the purported website and that would extinguish the promissory note.<sup>92</sup> In addition, the employee wrote that Oryan was making so much money on the Shopn2000 program

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<sup>89</sup> Cutler Decl. at ¶ 20; Howard Decl. at ¶ 34.

<sup>90</sup> Cutler Decl. at ¶ 20.

<sup>91</sup> Howard Decl. at ¶¶ 33, 35.

<sup>92</sup> *Id.* at ¶ 14. The response came from a TaxReady employee speaking on behalf of NADN. TaxCoach, Inc. d/b/a TaxReady is NADN's former return-preparation arm owned by Bennington, which was later folded into NADN.

that Oryan would simply ignore any outstanding balance on the note.<sup>93</sup>

- d. Story number four: PIN owners can reduce their promissory note by referring others to purchase the Shopn2000 program.

Fourth, NADN is now offering a new purported method to pay down the promissory notes—referring new potential customers to become PIN owners.<sup>94</sup> For each new potential customer referred who then becomes a PIN owner, a current PIN owner will receive a \$500 credit against her promissory note. This new incentive system—which generates more income for NADN but creates more tax-scheme victims—makes the Shopn2000 program look very much like an Internet mall pyramid scheme that the FTC shut down as a consumer fraud.<sup>95</sup>

In sum, regardless of which of these four stories NADN tells to customers, one thing is clear. NADN treats the promissory notes as shams and makes it clear that potential customers need not worry about paying them back.

6. *The so-called “website modifications” are useless, needlessly complex, and poorly designed.*

Porter, Oryan’s original owner, planned to charge Shopn2000 purchasers \$10,475 for “ADA modifications” each year so the PIN owners could annually claim a \$5,000 tax credit and \$5,475 tax deduction.<sup>96</sup> When Goetsch took over Oryan, he apparently decided to abandon the chat function—although he didn’t refund any PIN owner’s chat modification fee—and sell the

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<sup>93</sup> *Id.* at ¶ 13.

<sup>94</sup> Bradford Howard 2nd Decl. at Attachment 9.

<sup>95</sup> *See, e.g.*, Goyette Decl. at GOY200-224, press release and stipulated injunction entered in *FTC v. Bigsmart.com LLC, et al.*, Docket No. CIV 01 0466 PHX ROS (D. AZ, filed March 12, 2001).

<sup>96</sup> Orgell Decl. at ¶ 9.

purported websites bundled with the parallel text-only version and voice-recognition software together as a single “modification.”<sup>97</sup> Instead of selling new modifications every year, Goetsch reportedly wanted to sell a new website to existing customers every year so they could claim the tax credits.<sup>98</sup>

- a. No rational business person would ask a website designer intentionally to make a “nonaccessible” website and then simultaneously make a text-only “accessible” site

The entire idea of intentionally designing a website that is inaccessible to persons with disabilities and then immediately “modifying” it to be “accessible,” is counterintuitive and inefficient.<sup>99</sup> But when Porter hired Andrew Orgell, a website designer, Porter told Orgell to do just that: Porter wanted Orgell to design a website that was unusable to disabled persons and then to “modify” it by adding a text-only version (which an appropriately equipped computer can read audibly) to permit blind persons to use it.<sup>100</sup> Orgell told Porter that it would be much easier to design the website with the accessibility features built-in from the start. Porter rejected that suggestion because Porter said that the § 44 tax credit required that Oryan sell the accessibility features as modifications, not built-ins.<sup>101</sup>

Porter also mandated that Orgell design the website so that each PIN owner would have a

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<sup>97</sup> Cox Decl. at Attachment 4 (describing the three modifications); Orgell Decl. at ¶¶ 9, 27-28.

<sup>98</sup> Orgell Decl. at ¶ 33.

<sup>99</sup> Niccum Decl. at ¶ 62.

<sup>100</sup> Orgell Decl. at ¶¶ 8-9.

<sup>101</sup> *Id.* at ¶¶ 8-9.

folder, and each folder would contain a separate (but essentially identical) template.<sup>102</sup> Orgell told Porter that it would be easier to create and then modify one template—which determines what a user sees when viewing a website—shared by all PIN owners. Porter rejected this suggestion, claiming that—to qualify for the ADA tax credit—each owner needed to demonstrate that he or she had a *separate* website that Oryan then modified, and that a shared template would not achieve this.<sup>103</sup> In sum, Porter chose a needlessly complicated website structure solely to obtain the ADA tax credit—Shopn2000's real target.

It appears that the current Goetsch-conceived Shopn2000 website is designed more simply, with one template (or two, if you count the text-only version), as Orgell had suggested to Porter.<sup>104</sup> This simplification confirms that there is just one Shopn2000 website with PIN-designated accounts, thereby barring any claim that each PIN owner actually owns a separate website.

- b. The first-year modification—adding a parallel text-only website—was made needlessly complex and could have been done easily and cheaply.

Orgell and his successors also designed the so-called *modifications* to be needlessly complex and, in the case of the second- and third-year modifications, useless. The first-year modification, which remains part of the modifications being sold for \$10,475, involved setting up a parallel text-only version of the main (graphical) website. Blind Internet users can use

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<sup>102</sup> *Id.* at ¶¶ 10-14.

<sup>103</sup> *Id.* at ¶¶ 10-14.

<sup>104</sup> Niccum Decl. at ¶¶ 60, 62; Orgell Decl. at ¶ 31.

screen readers, which read out loud the text (including textual descriptions of graphics) contained on a website, but can't read graphics. Orgell had designed the main Shopn2000 website with graphics that didn't have textual descriptions, thereby deliberately making it worthless for blind users. Instead of simply adding textual descriptions of these graphics to the main website, thereby making it usable for blind people with a screen reader, Porter directed Orgell to construct a *separate* text-only template/website without graphics. Orgell complied, constructing the separate, text-only site that has been sold as a \$10,475 "accessibility modification" since the beginning of the Shopn2000 program.<sup>105</sup>

Setting up a text-only version of a website is simple. Computer expert Niccum notes that adding a text-only version of the graphical Shopn2000 website would only take 40 hours and cost \$4,000.<sup>106</sup> And because there is only one Shopn2000 website with multiple PIN accounts, Oryan would only need to spend this money once, not thousands of times for the thousands of PIN owner. In other words Oryan would pay \$4,000 once and then charge thousands of pin owners \$10,475 each (really \$2,495 each if one ignores the sham promissory notes) for purported modifications to their purported "separate" websites.

Further, this single text-only site is flawed. The text-only site is unusable for extended periods, generating an error message whenever a customer clicks on a product or company banner.<sup>107</sup> This means that if the text-only site is the only method for blind users to shop on

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<sup>105</sup> Orgell Decl. at ¶ 9-10.

<sup>106</sup> Niccum Decl. at ¶ 35.

<sup>107</sup> *Id.* at ¶¶ 42-44.

Shopn2000.com, then blind users can't complete any shopping while the text-only site is broken. And as the computer expert Niccum points out, PIN owners can't receive any income from the text-only site if it doesn't work.<sup>108</sup> Oryan's disregard for the text-only site confirms that the text-only site is a sham, useful only as an NADN tax-break marketing tool and not as a tool to help disabled persons use the Internet.

The most egregious—even cruel—deception involving the text-only version of the Shopn2000 website is that it links primarily to websites inaccessible to persons with disabilities. Only a handful of disabled-accessible websites are listed among the hundreds of vendors displayed.<sup>109</sup> Therefore, if any blind users find their way onto the Shopn2000 text-only site—which was purportedly designed solely for their use—they would be led into virtual dead ends when they attempt to click through to purchase a product or visit a vendor's website. This is not a case of a legitimate business making a legitimate attempt to provide access to persons with disabilities. It is a brazenly fraudulent tax scam.

- c. The second-year modification—a “chat function” for hearing-impaired users—was apparently so useless that Oryan removed it.

Oryan's second-year modification purportedly allows any [www.shopn2000.com](http://www.shopn2000.com) visitors, including those with hearing-impairments, to contact Oryan to get any questions answered immediately through a computer “chat” function.<sup>110</sup> A chat function permits a user to communicate immediately with another computer user, instead of sending sequential e-mails,

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<sup>108</sup> *Id.* at ¶ 44.

<sup>109</sup> *Id.* at ¶¶ 64-65.

<sup>110</sup> Orgell Decl. at ¶ 27.

each responding to the former e-mail. Chat is the written, computerized equivalent of a telephone conversation.<sup>111</sup>

The Shopn2000 chat function is useless for three reasons. First, because chat technology is available for free or, at most \$8.99 per month, there was no reason (other than to create window dressing for a tax scam) to create a new chat function and then charge PIN owners \$10,475 each for this so-called modification. Alternatively, Oryan's computer programmers could have purchased a \$229 program to add chat to the one Shopn2000 website.<sup>112</sup> And Oryan would only need to add this chat function once, to the sole Shopn2000 website, not to the thousands of PIN owners' accounts at \$10,475 each.

Second, there is no reason to have a chat function for the Shopn2000 website. This shopping website contains no time-sensitive material requiring an immediate response. Instead, Oryan could have offered its telephone number for questions. Deaf persons frequently have TTD devices that permit them to use telephones. Shopn2000.com website designer Orgell says Oryan received fewer than 10 chat messages per day when there were 7,000 Shopn2000 PIN owners.<sup>113</sup> This averages to fewer than one chat message per PIN owner, per year. And Oryan and NADN charged a purported \$10,475 (including a genuine \$2,495 in cash) for this so-called accessibility feature that could be replaced with a phone line.

And third, the chat function has vanished from the Shopn2000 website, further

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<sup>111</sup> Niccum Decl. at ¶ 50.

<sup>112</sup> *Id.* at ¶ 53.

<sup>113</sup> Orgell Decl. at ¶ 27.

demonstrating that the function was useless. By the time Niccum first viewed the site, it was gone, but there is plenty of evidence that Oryan and NADN once sold this as the second-year Shopn2000 modification.<sup>114</sup> Goetsch got rid of the chat function entirely, yet Oryan and NADN haven't refunded the purchase price to or voided the promissory notes for any PIN owners who purchased this so-called modification.

- d. The third-year modification—a voice-shopping program for mobility-impaired customers—is difficult to download and duplicates programs already found on most mobility-impaired users' computers.

Mobility-impaired users may use programs—such as voice-recognition software—that permit them to operate a computer solely through voice commands. If a disabled computer user requires such tools, in all likelihood she ensures that her computer has the tools pre-installed or purchases them as soon as possible. A computer would be useless to a disabled user without them.

Oryan offers a free, downloadable program to Shopn2000 website visitors that allows visitors to navigate by voice the Shopn2000 website. This is usable *only* at that website. This program therefore duplicates—with much less usefulness—what mobility-impaired users likely already have installed on their computers.<sup>115</sup>

Even if the program were useful, most visitors can't download it. When Niccum, a non-disabled computer expert, tried in March, 2004 to download the program on his high-speed

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<sup>114</sup> See, e.g., *id.* at ¶¶ 27-28.

<sup>115</sup> Niccum Decl. at ¶ 65.



Internet connection, the download attempt repeatedly failed.<sup>116</sup> Niccum eventually was able to use the program, but doing so only revealed a bigger flaw.

That flaw: the voice-shopping program doesn't permit voice shopping once the user leaves www.Shopn2000.com and clicks-through to a merchant's site. The program is therefore useless. The voice-shopping function navigates a user to a merchant's website, but doesn't permit voice-shopping while at the website.<sup>117</sup> Voice-shopping users are led to water but not allowed to drink. Despite these basic flaws, Oryan and NADN still sell the voice-shopping program and text-only "modifications" for a purported \$10,475.

7. *Designing the entire Shopn2000 website from scratch would cost no more than \$10,000-\$15,000.*

Niccum, who is the president of a firm that designs websites and develops software, looked at how the Shopn2000 website works and how it was designed. Based on his review, Niccum determined that a competent web designer could create the same site, without the flaws in the present version, within three to four weeks. This would cost, at most, \$10,000-\$15,000.<sup>118</sup> Therefore, for the \$10,475 "modification cost" purportedly paid by just one of the thousands of PIN owners, someone could create a *working* Internet mall website. If NADN has 10,000 PIN owners, as estimated, then the per-owner cost to create a new, working website would be between \$1.00 and \$1.50. This nearly free cost corresponds to the \$0 up-front cost that PIN owners actually pay for their PINs, as opposed to the inflated \$10,475 fee for purported

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<sup>116</sup> *Id.* at ¶ 55.

<sup>117</sup> *Id.* at ¶ 57.

<sup>118</sup> *Id.* at ¶ 35.

“modifications.” Independent of the purported modification-related tax breaks, Oryan and NADN have valued the Shopn2000 PIN accounts as nearly worthless, and for good reason.

Shopn2000 PIN accounts are nearly worthless because there are no functions or content on the Shopn2000 site to attract new users and entice users to return. Niccum notes that “the lack of useful functions or other compelling content spells doom for a website.”<sup>119</sup> And even if the lack of useful functions didn’t spell doom here, Shopn2000.com’s utter lack of search-engine optimization—which increases a website’s chances of being listed highly on a Google or Yahoo keyword search—certainly spells doom for the website.<sup>120</sup>

There is a much cheaper, and better, alternative. Potential PIN owners could instead design their own website for nearly nothing, sign up with Amazon or LinkShare for free, and compete with Shopn2000 PIN owners.<sup>121</sup> If NADN and Oryan had disclosed all these facts to potential PIN owners, and hadn’t mentioned tax benefits that arise from overpricing based on phony promissory notes, it’s unlikely that anyone would have paid \$10,475, or even the \$2,495 cash cost, to buy a Shopn2000 PIN-designated account.

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<sup>119</sup> *Id.* at ¶ 66.

<sup>120</sup> *Id.* at ¶¶ 73-74.

<sup>121</sup> *Id.* at ¶ 79.

8. *NADN's own attorneys identified Shopn2000 as a sham.*

NADN's technical department, a supposed "dream team"<sup>122</sup> that employs lawyers, CPAs, and enrolled agents (EAs), some of whom are former IRS employees, noticed many of the same flaws identified above and warned NADN's management not to sell the Shopn2000 program.

In April, 2001, five technical department employees, including three lawyers and its director, former IRS employee Robert Stovall, wrote a 14-page memorandum outlining why the Shopn2000 program was meritless.<sup>123</sup> The memorandum—which was shared with Oryan's owner, Porter<sup>124</sup>—gave three main reasons why purported Shopn2000 websites would not generate the claimed tax advantages, and concluded that Oryan should not sell the Shopn2000 program.

First, the memorandum stated that IRC § 44 (the up-to \$5,000 disabled-access a/k/a "ADA" tax credit) did not apply to "modifications" to websites generally, and certainly not to the Shopn2000 website. The memorandum next stated that the \$10,475 per-website "modification" cost—for merely adding a text-only version of the website—was unreasonable. And third, the memorandum noted that the Shopn2000 program was being marketed as a tax product, not as a business. They noted that this lack of a business purpose negates *any* claim for business-related

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<sup>122</sup> Goyette Decl. at GOY055.

<sup>123</sup> Gordon Decl. at ASH030-44.

<sup>124</sup> A copy of this memo was seized during the execution of an IRS search warrant on Oryan's offices. *Id.* at ¶ 3. Porter drafted a disjointed, incomplete response to NADN's memo. *Id.* at ASH046-53.

tax credits or deductions, including the \$5,000 tax credit and \$5,475 tax deduction.<sup>125</sup>

The memorandum concluded that “it is clear from all of the research that we cannot meet our regulatory burden of finding a one-in-three chance of this program being sustained on its merits within the IRS.”<sup>126</sup> The technical department’s memo also warned that “the company, its officers and its employees who organized or assisted in organizing this program or who were involved (directly or indirectly) in the sale of this program could conceivably be subjected to **criminal and/or civil penalties under IRC §§ 6700, 6701 and 7206.**”<sup>127</sup>

Despite this negative assessment and disturbing warning by NADN’s own attorneys, NADN, through general manager Rodrigues, and Oryan chose to sell the Shopn2000 program.

Presumably to ward off potential criminal and civil repercussions, NADN and Oryan sought out another lawyer to write a more-favorable opinion. They found one in Michael Potter, who was already handling estate-planning issues for NADN’s customers.<sup>128</sup> Potter’s opinion letter concluded that the ADA applies to websites. Potter’s letter then erroneously concluded that purchasers of Shopn2000 website modifications may be entitled to claim the ADA tax credit. However, the letter also stated that Potter didn’t investigate key issues such as whether the modification costs were reasonable or whether the PIN owners could make money.<sup>129</sup> And further, Potter concluded that NADN and Oryan could sell the Shopn2000 program *only if* the

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<sup>125</sup> *Id.* at ASH030.

<sup>126</sup> *Id.* at ASH043.

<sup>127</sup> *Id.* at ASH043-44 (emphasis in original).

<sup>128</sup> *Id.* at ASH066-82; Cutler Decl. at Attachment 2, 8/27/03 Tr. at 90:19-21.

<sup>129</sup> Gordon Decl. at ASH078-79.

sales pitch stressed a business purpose.<sup>130</sup> As demonstrated below, NADN barely mentions a business purpose in its sales pitch, but instead stresses the claimed tax benefits.

NADN and Oryan also sought and received a securities-related opinion letter, written by attorney Julie Cloud Murray, which concluded that the Shopn2000 program was not an investment contract and therefore was not covered by federal securities laws. Murray bolstered her opinion by stressing that Oryan wasn't selling a profit-making website; it was selling a tax deduction.<sup>131</sup> That opinion letter stated that "where [as here] a contract pertains to dealing in tax benefits, it is not an investment contract because the expectation of tax deductions does not equate with the expectation of profits or earnings. . . ."<sup>132</sup>

NADN's own hand-picked attorneys, plus NADN's technical department, saw major problems with the Shopn2000 program that were never remedied. But that didn't stop NADN from selling more than 17,000 Shopn2000 programs in the three years following the issuance of these opinion letters.

9. *NADN, through G&J Eagle, generated false IRS Forms 1099 for Shopn2000 owners.*

Although NADN and Oryan claim that customers can pay down their promissory notes through the \$2.00 per-click process, no customer received an IRS Form 1099 reflecting that he or she had received any such income for 2000 or 2001.<sup>133</sup> This is true even though some customers,

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<sup>130</sup> *Id.* at ASH077.

<sup>131</sup> *Id.* at ASH061-65.

<sup>132</sup> *Id.* at ASH065.

<sup>133</sup> Cutler Decl. at ¶ 20.

including Bradford Howard, were clicking on banners in 2001 to reduce their promissory note balance.<sup>134</sup>

Presumably NADN and Oryan later recognized that, to make the sham promissory notes appear real, they needed to issue 1099s to demonstrate that the Shopn2000 promissory notes were being paid down at the \$2.00-per-click rate. In 2002 and 2003, an NADN-related entity called G&J Eagle Enterprises issued Forms 1099 to NADN's customers who had bought Shopn2000 programs.<sup>135</sup> There are two problems with this: first, G&J Eagle wasn't a party to any of the transactions, and second, the Forms 1099 issued didn't correspond to the number of clicks made.

None of the contracts presented to NADN's customers reflected that G&J Eagle played any role in paying down the promissory notes.<sup>136</sup> The only entity that ever claimed to play this role is ADA Adventure, but Goetsch claims that ADA Adventure never paid a dime toward any promissory notes.<sup>137</sup> G&J Eagle's role remains a mystery to those who received Forms 1099; Howard said that he "had not even heard of them until [he] received the Form 1099."<sup>138</sup>

Further, the Forms 1099 don't accurately reflect the purported income earned at the \$2.00-per-click rate. Howard's clicks should have added up to nearly double the amount of purported income that was reflected on the G&J Eagle-issued 1099s for 2002 and 2003. NADN

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<sup>134</sup> Howard Decl. at ¶ 34.

<sup>135</sup> Cutler Decl. at ¶ 20.

<sup>136</sup> *See, e.g.*, Gordon Decl. at ASH190-194.

<sup>137</sup> Cox Decl. at Attachment 2.

<sup>138</sup> Howard Decl. at ¶ 35.

return-preparer Julia Thompson also had to ask Christine Reid, G&J Eagle's then-president, to issue corrected Forms 1099 for customers who didn't "earn" as much income as claimed on the G&J Eagle-issued Forms 1099.<sup>139</sup>

**D. Wholly Apart from the Sham Website Scam, NADN is Promoting Sham Home-Based Businesses with No Profit Motive and Claiming Inflated Deductions**

As noted above, NADN's false promises of \$3,000 per year of tax savings are based primarily on customers starting or purchasing a sham home-based business (which could include a Shopn2000 PIN) and falsely claiming personal expenses as business-related tax deductions. NADN salespersons mislead customers by: (1) overstating the likelihood of obtaining business-related tax deductions; and (2) selling customers purported home-based businesses that lack a profit motive. These false and misleading statements are detailed in three places: a salesman's declaration and attached training materials; NADN's publications; and customers' declarations.

A former salesman, James Smallwood, describes the home-based business sales pitch:

Many of NADN's claims about how much customers could save on their taxes were based on customers taking home-based business deductions. Therefore, part of our sales pitch was to convince customers to own a home-based business; it didn't matter what type, as long as the customer could claim the tax deductions. . . . Those customers that didn't already have a business or didn't want to buy a Shopn2000/Mallforall/TaxBreak website were offered an "NADN referral business." The referral business involved having present customers refer new customers to NADN. The referral business generated losses, and were marketed almost exclusively as a tax-reduction tool, and not as a viable business.<sup>140</sup>

NADN trained Smallwood to explain to customers that they don't need to try to make a

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<sup>139</sup> Thompson Decl. at ¶ 20.

<sup>140</sup> Smallwood Decl. at ¶ 10.

profit at their business. To avoid having the IRS detect and disregard their so-called businesses as shams, NADN's salespersons told customers to start a new business every three years, essentially to fly under the IRS's radar.<sup>141</sup>

To convince customers to create or purchase home-based businesses, Smallwood and his fellow NADN salespersons stated:

(1) "I don't care if you make a profit, as long as you are doing something that you can claim as a business"; (2) "drop your business card off somewhere on the way to work, and you can write off all of your commuting expenses"; and (3) "when you go to dinner with your wife, drop your business card off and you can write off the dinner as a business expense."<sup>142</sup>

Smallwood didn't come up with these false statements on his own; his training materials contain similar statements. On the "Zingers" script, provided to Smallwood during his training session, NADN falsely claims that:

These are government-mandated tax breaks for home based businesses, so why not take advantage of them? You are already doing 90% of the work. You are already going out to eat; you are already paying your mortgage. All you have to do now is log all this. It's a simple matter of record keeping. Does that make sense? Can you see the tax savings buy turning your expenses into deductions?<sup>143</sup>

Return preparer Julia Thompson has been inundated with customers to whom NADN's salespersons gave false home-based-business promises and who expect their tax returns to reflect these promises. Thompson's clients have relayed these false sales pitches, made by NADN salespersons, "few of whom have any formal tax training," such as one customer who was told

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<sup>141</sup> Smallwood Decl. at ¶ 11.

<sup>142</sup> *Id.* at ¶ 9.

<sup>143</sup> *Id.* Attachment 1 at 36.



categorically (and falsely) that she could claim her personal stock trading as a business.<sup>144</sup> The IRC and cases provided factors, including how much time was spent trading stocks, to determine whether an activity can qualify as a business for tax purposes. The salesperson gave the customer this erroneous advice without first determining whether the customer's stock trading *could* qualify as a business.

Customers such as Valerie Weinstein have verified that NADN's salespersons falsely pitched home-based-business deductions. NADN's salespersons falsely told Weinstein that she could claim: "(1) a deduction for using my car (\$.36/mile up to 20,000 miles), regardless of the purpose of my trip; (2) a deduction of 50% for all meals eaten out (100% deduction if the meal cost more than \$75); and (3) an "educational tax credit" for using NADN's tax services."<sup>145</sup>

NADN also suggests to its customers that they wait until the end of the year before preparing documentary evidence of their business expenses. NADN suggests that at year's end its customers can figure out how large a deduction they want, and implicitly suggests that customers should fabricate records to support these made-up deductions.<sup>146</sup>

**E. NADN and SMG Set Up Nevada Corporations for Customers, Claiming False Tax Savings and Suggesting That Customers Can Use Corporations to Hide from Creditors**

NADN's salespersons and the NADN and SMG websites also sell incorporation services by giving customers false information about tax advantages of incorporating generally, and

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<sup>144</sup> Thompson Decl. at ¶ 15.

<sup>145</sup> Weinstein Decl. at ¶ 6.

<sup>146</sup> St. Martin-Smith Decl. at ¶ 21.

particularly in Nevada. On their websites, [www.nadncorporations.com](http://www.nadncorporations.com), and [www.successmatrixgroup.com](http://www.successmatrixgroup.com), SMG and NADN suggest that corporations provide asset protection and have a lower tax rate than most individuals. These statements are true. However, NADN and SMG wildly overstate the tax advantages that corporations enjoy over sole proprietorships. By making these false and misleading claims, SMG and NADN sell their incorporation service to unsophisticated customers, such as Donna St. Martin-Smith.

St. Martin-Smith, who was unemployed and earning only unemployment benefits when NADN sold her a Shopn2000 website, a limited liability company (LLC), and a living trust, was told that NADN could make her “a tax-exempt person.”<sup>147</sup> In particular, the NADN salesperson told her that by incorporating in Nevada, she could avoid paying federal and state income taxes. NADN salespersons also told her that, by “layering” corporations, she could “roll over” profits from one corporation to another, and avoid paying income taxes.<sup>148</sup>

NADN return-preparer Julia Thompson’s customers have relayed to her similar false sales pitches that NADN salespersons have used on them. These false statements included: (1) putting assets in a corporation will make income from the assets tax-free; (2) putting a Shopn2000 website “business” into a corporation will shield all income from taxation; and (3) customers can write off the entire cost of a Shopn2000 website by placing it in a corporation.<sup>149</sup>

Valerie Weinstein was told, after paying \$1,412.95 for her NADN audit-defense and tax-

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<sup>147</sup> *Id.* at ¶ 3.

<sup>148</sup> *Id.* at ¶¶ 24-25.

<sup>149</sup> Thompson Decl. at ¶ 14.

return-preparation membership, that she and her housemate could take advantage of the promised tax savings only by each purchasing a corporation from NADN. The additional cost for each corporation was \$3,195.<sup>150</sup> NADN provided no explanation as to how the corporation would reduce Weinstein's taxes.

Vivian Robinson paid for an LLC, based on NADN's tax-savings representations, but never signed any documents establishing the company. When Robinson called to ask for her money back, NADN's employee refused her request and told her that the LLC had already been set up, notwithstanding the lack of a signature.<sup>151</sup>

NADN and SMG provide a calculator detailing the amount of taxes that NADN claims a person can expect to save by incorporating with NADN or SMG. The following graphic from the [www.nadncorporations.com](http://www.nadncorporations.com) website (replicated on SMG's website as well)<sup>152</sup> shows how much tax a sole proprietor with \$100,000 in gross profit and \$20,000 in expenses could purportedly save by incorporating.

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<sup>150</sup> Weinstein Decl. at ¶ 13.

<sup>151</sup> Robinson Decl. at ¶ 18.

<sup>152</sup> SMG apparently recently added this calculator to its website, as it does not appear in the website printed out and attached to the Goyette Decl. at GOY081-111. However, the calculator was available at <http://www.successmatrixgroup.com/smgcalc.html> when this web page was visited on April 10, 2004—after the TRO exhibits were photocopied and bound for sending to the Court on Monday, April 12.

NADN unequivocally states that, merely by incorporating, the sole proprietor would (not could) save \$27,569. One glaring difference between the two columns is the “Allowable Corporate Expenses,” which the viewer is falsely told include unspecified items that can’t be deducted by sole proprietors.

Elsewhere on the same website, NADN lists some of these purported corporation-only expenses: business losses; legal fees; office equipment; and insurance.<sup>153</sup> Most of the expenses listed are, if legitimately incurred, deductible for *any* legitimate business—primarily ordinary and necessary business expenses under § 162—and not “corporation expenses” deductible only if the business has incorporated.<sup>154</sup> The only listed expense clearly not deductible to a sole

**COMPARE YOUR  
CORPORATE TAX  
- VS -  
INDIVIDUAL TAX**

**Your Total Gross Income is \$100,000  
Your Total Expenses are \$20,000**

<b>* TAX COMPARISON *</b>		
<b>Item</b>	<b>Individual Investor John Doe</b>	<b>Corporate Investor John Doe, Inc.</b>
<b>Revenues</b>	\$100,000	\$100,000
<b>Expenses</b>	\$20,000	\$20,000
<b>* Allowable Corporate Expenses *</b>	\$0.00	\$15,000
<b>Gross Profit</b>	\$80,000	\$65,000
<b>Federal Income Tax</b>	\$19,579	\$0.00
<b>Self Employment Tax</b>	\$12,240	\$0.00
<b>Corporate Tax</b>	\$0.00	\$11,250
<b>State Tax Avg - 7%</b>	\$7,000	\$0.00
<b>Total Taxes Paid</b>	\$38,819	\$11,250
<b>Total Net</b>	\$41,181	\$53,750

**Your Tax Savings would be \$27,569**

\* "Allowable Corporate Expenses" include items that can not be deducted as a sole-proprietorship or partnership. Please speak with one of our Corporate Consultants about these Allowable Deductions. \*

<sup>153</sup> Cantrell Decl. at CAN026-72. SMG apparently added this same misleading list to its website very recently. See <http://www.successmatrixgroup.com/whyinc.htm#lowering> (visited April 10, 2004).

<sup>154</sup> See, e.g., 26 U.S.C. § 162.

proprietor are “incorporation costs.”

The websites’ entire corporate/non-corporate comparison is also misleading because this hypothetical small corporation (already subject to a 15% tax) shown on the graphic presumably at some point must distribute its “total net” to the shareholders or employees, who would then pay an additional federal income tax. It’s not tax savings; it’s tax deferral at best, or a tax increase (double taxation through the corporation) at worst.

This combination of false and misleading written and oral representations about tax benefits on SMG’s and NADN’s websites, combined with NADN’s hard-sell techniques, has led NADN’s and SMG’s customers to waste money on corporations they have no use for, to obtain tax benefits they either are not entitled to or could obtain without incorporating.

**F. NADN’s Return-Preparation Department Prepares Fraudulent Federal-Income-Tax Returns**

NADN’s return-preparation department,<sup>155</sup> which prepared 4,747 federal-income-tax returns for tax year 2002 alone,<sup>156</sup> prepares and files federal-income-tax returns claiming the bogus home-based business deductions and the Shopn2000 tax credit and deduction. As demonstrated below, many home-based-business deductions and all Shopn2000-related credits and deductions on NADN-prepared returns are invalid.

Mary Orie supervises other tax-return preparers at NADN and mandates that they prepare returns claiming the tax benefits that NADN promises to its home-based business and

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<sup>155</sup> NADN formerly ran its return-preparation activities through the Bennington-owned Tax Coach, Inc. d/b/a Tax Ready. Smallwood Decl. at ¶ 17; Cutler Decl. at Attachment 2, 7/15/03 Tr. at 56:10-59:13; Howard Decl. ¶¶ 18-21.

<sup>156</sup> Cutler Decl. at ¶ 22.

Shopn2000 customers. For example, Orié has threatened to fire employees who have questioned the business purpose (and therefore the deductibility) of the Shopn2000 program or who have refused to sign tax returns claiming Shopn200-related deductions and credits.<sup>157</sup>

Orié keeps NADN's false-tax-return mill going through such threats, and by telling return preparers to stop asking questions.<sup>158</sup> Orié falsely told Julia Thompson, a return preparer, that the IRS had "cleared" the Shopn2000 program.<sup>159</sup> NADN president Coolidge has pressured Orié to keep preparing returns that claim the fraudulent tax deductions and credits.<sup>160</sup> Orié's willingness to compel her return preparers to prepare and file tax returns containing false deductions and credits enhances NADN's tax-scam sales. NADN can continue to sell tax-scam products to customers who see tax returns filed with deductions and credits that exceed the product's cost.

**G. Rodrigues's Successor Company Sells the Shopn2000 Tax Scam**

Apparently anticipating that a court—either this court, the Bankruptcy Court, or a Nevada state court—may shut down NADN, Rodrigues is now using another company, SMG, to sell the Shopn2000 product. In addition to selling Shopn2000 and incorporation services, SMG's website also lists home-based business consulting, audit-protection, and return-preparation services, mirroring NADN's primary products and services.<sup>161</sup> Given that SMG commenced its tax-related activities much more recently than NADN, the United States has not had time to

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<sup>157</sup> Thompson Decl. at ¶¶ 8-9, 13, 17.

<sup>158</sup> *Id.* at ¶ 9.

<sup>159</sup> *Id.* at ¶ 11.

<sup>160</sup> *Id.* at Attachment 1.

<sup>161</sup> Goyette Decl. at GOY087.

evaluate the propriety of these activities. Therefore, the United States takes no present position on whether SMG's home-based business and return-preparation activities are subject to penalty. This issue will be further developed during the discovery process.

SMG's website is very similar to NADN's website, and for good reason. SMG is selling the same Shopn2000 program, and is using some former NADN salesmen who already know the Shopn2000 sales pitch.<sup>162</sup> NADN's former salesmen, including Jeff Klingenberg, Rich Klingenberg, and Lee Panelli, work for Rodrigues at SMG. While at NADN and now at SMG, these three have sold and/or supervised others who sold the Shopn2000 program.<sup>163</sup>

## II. ARGUMENT

Where a party seeks a TRO and—as the Government is requesting here—the Court holds a hearing after notifying the defendant, the TRO motion is generally treated as a preliminary injunction motion.<sup>164</sup> If the Court instead grants the Government's TRO motion without holding a hearing—perhaps because one or more of the defendants cannot be timely served—then the Court must find that the nature of harm to the Government merits imposing an *ex parte* TRO for the shorter of 30 days (15 days plus a 15-day extension) or the earliest possible hearing date.<sup>165</sup>

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<sup>162</sup> Cutler Decl. at ¶ 5.

<sup>163</sup> *Id.*

<sup>164</sup> *Walker v. O'Bannon*, 487 F. Supp. 1151, 1153 Fn. 6 (W.D. Pa. 1980), *citing Dilworth v. Riner*, 343 F.2d 226 (5th Cir. 1965) and *Wright & Miller*, Federal Practice & Procedure: Civil § 2951.

<sup>165</sup> L.R. 65 specifies a 15-day limit (with a 15-day extension) for TROs, instead of Fed. R. Civ. P. 65's 10-day limit (and 10-day extension). *See also Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999). Congress contemplated that courts might impose TROs when it passed the abusive-tax-scheme injunction section, IRC § 7408. *See S.*

(continued...)

Due to the urgent need to halt irreparable harm, “a preliminary injunction is customarily granted on . . . procedures that are less formal and on evidence that is less complete than a trial on the merits. A party thus is not required to prove his case in full” at the preliminary injunction stage.<sup>166</sup>

Because IRC §§ 7407 and 7408 set forth the criteria for injunctive relief, the Government need only meet the statutes’ criteria for a court to issue a preliminary injunction.<sup>167</sup> In a decision granting an FTC-requested TRO and subsequent preliminary injunction, this Court noted that, since harm to the public interest is presumed in a statutory-injunction case, the Government need show only: “(1) a likelihood of success on the merits and (2) that the equities weigh in favor of granting the temporary relief.”<sup>168</sup>

Although § 7402 is a statutory-injunction section, one court has required a showing of

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<sup>165</sup>(...continued)

Rept, PL 94-455, 10/4/76, p. 359. Further, because the Government is not requesting an *ex parte* TRO, this memorandum will evaluate both the TRO and preliminary injunction relief by using solely the preliminary injunction standards. But because TRO motions are evaluated under the traditional equitable factors test, the discussion of IRC §7402 demonstrates that the requested TRO should be granted under that test as well.

<sup>166</sup> *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). See *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986) (“Affidavits and other hearsay materials are often received in preliminary injunction proceedings.”).

<sup>167</sup> See *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (“The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction.”).

<sup>168</sup> *F.T.C. v. Int’l Charity Consultants*, 1994 WL 263887 \*2 (D. Nev. 1994), citing *F.T.C. v. Worldwide Factors, Ltd.*, [1989-2 TRADE CASES ¶ 68,707], 882 F.2d 344, 346 (9th Cir. 1989).



the traditional equitable factors.<sup>169</sup> We nevertheless contend that these factors need not be considered because IRC § 7402 specifically authorizes injunctions that are “necessary or appropriate” to enforce the internal revenue laws. In any event, the Government can easily satisfy the equitable-factors test here. The Ninth Circuit’s equitable-factors test blends the four factors considered by other Circuits into two: “the likelihood of the movant’s success on the merits and the relative balance of potential hardships to the plaintiff, defendant, and public.”<sup>170</sup> The evidence submitted with this motion establishes that the Court should enjoin the TRO defendants under §§ 7402, 7407, and 7408 from: (1) promoting their abusive tax schemes or other similar schemes; and (2) preparing *any* federal tax returns for others. The Court should also enjoin Orié under §§ 7407 and 7408 from preparing any federal tax returns for others.

**A. Injunctive relief is warranted under IRC § 7408 because the TRO defendants have promoted abusive tax schemes and prepared false tax returns, violating IRC §§ 6700 and 6701.**

Section 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under §§ 6700 or 6701 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Under § 6700, any plan or arrangement “having some connection to taxes can serve as a ‘tax shelter’ and will be an ‘abusive’ tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits of

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<sup>169</sup> *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984) (“the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the . . . use of the equitable remedy.”).

<sup>170</sup> *State of Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1388-89 (9th Cir. 1988).

participation.”<sup>171</sup> To establish a violation of § 6700 warranting an injunction under § 7408, the

United States must show that:

(1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.<sup>172</sup>

Alternatively, if the defendants organized or participated in the sale of a plan or arrangement and made or caused another person to make a “gross valuation overstatement as to any material matter,” then the defendants are subject to penalty under § 6700. A gross valuation overstatement exists where the purported value of any property or services is more than double the correct valuation, and the overstatement relates directly to an income-tax credit or deduction.<sup>173</sup> There is no scienter requirement for gross valuation overstatements; if the statement was made, it is subject to penalty regardless of whether the person making the statement knew or had reason to know it was a gross valuation overstatement.<sup>174</sup>

Section 6701 is violated when a person prepares or assists in the preparation of “any portion of a return, affidavit, claim, or other document,” that he “knows (or has reason to believe) will be used in connection with any material matter” under the tax laws and that he knows will

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<sup>171</sup> *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

<sup>172</sup> *Estate Pres. Servs.*, 202 F.3d at 1098 (citing IRC §§ 6700(a), 7408(b)).

<sup>173</sup> IRC §§ 6700 (a)(2)(B), 6700(b).

<sup>174</sup> *United States v. Campbell*, 704 F. Supp. 715, 726 (N.D. Tex. 1988), *aff'd* 897 F.2d 1317 (5th Cir. 1990).

“result in an understatement of the liability for tax.”<sup>175</sup> There is overwhelming evidence submitted in support of the Government’s motion establishing that the TRO defendants have been violating §§ 6700 and 6701, and will continue to do so unless enjoined. Further, Orié has violated § 6701 and will continue to do so unless enjoined.

1. *The claimed tax benefits for the Shopn2000 program are false and therefore the TRO defendants’ tax-related marketing statements violate § 6700.*

NADN and Oryan promoted the Shopn2000 program by claiming that PIN owners could claim \$10,475 in tax benefits (a \$5,000 § 44 disabled-access credit and \$5,475 § 162 business tax deduction) for “modifying” the purported websites to “comply with the ADA.” These tax-related claims are false because: (1) the purported websites weren’t marketed as *bona fide* businesses; (2) the sole Shopn2000 website isn’t a place of public accommodation, isn’t covered by the ADA, and therefore is ineligible for a § 44 credit; and (3) the “modification” costs (including the promissory note) weren’t real, necessary, or reasonable and therefore the PIN owners can’t claim the § 44 credit or § 162 “ordinary and necessary” business deduction.

- a. The purported websites weren’t marketed as *bona fide* businesses, lack economic substance, and therefore aren’t entitled to any business deductions.

Only *bona fide* businesses are permitted to claim business deductions and credits, including the \$5,000 § 44 disabled-access tax credit and the \$5,475 ordinary and necessary business expense under § 162 taken here.<sup>176</sup> The Supreme Court has noted that “[T]o be engaged

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<sup>175</sup> IRC § 6701.

<sup>176</sup> Both §§ 44 and 162 permit only businesses—and only “eligible small businesses” in (continued...)

in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and . . . the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify."<sup>177</sup>

A taxpayer claiming a business deduction or credit must demonstrate that the purported business was undertaken with a "dominant hope and intent of realizing a profit."<sup>178</sup> If the primary focus of promotional materials is a tax benefit, then the purported "business" lacks economic substance and is therefore disregarded for tax purposes.<sup>179</sup> In a case, like the present one, where the Tax Court noted that this "was a paradigmatic case of how an investor could win

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<sup>176</sup>(...continued)

§ 44—to take the tax credit and deduction. *See, e.g., Mercer v. Commissioner*, 376 F.2d 708, 709 (9th Cir. 1967). Aside from the requirements regarding gross receipts and the number of employees, there is nothing in § 44, or the case law applying § 44, that provides guidance on what is meant by the term "eligible small business." However, in the absence of applicable authority, the case law under § 162 provides a reasonable standard to apply in determining when a business claiming the § 44 credit lacks economic substance, and is therefore not an "eligible small business."

<sup>177</sup> *Groetzinger v. Commissioner*, 480 U.S. 23, 35 (1987) (citing *Higgins v. Commissioner*, 312 U.S. 212, 217 (1940)). *See also Gregory v. Helvering*, 293 U.S. 465, 469 (1935) (holding that one must look "beyond the form of the transaction" to the transaction's economic substance).

<sup>178</sup> *Vorsheck v. Commissioner*, 933 F.2d 757, 758 (9th Cir. 1991) (taxpayer "has burden to show she entered transaction with a profit motive."). *See also Mercer*, 376 F.2d at 711 (test is subjective, not whether the profit expectation was reasonable); *and see* 26 C.F.R. § 1.183-2, which lists factors by which to gauge business intent, including the time and effort expended by the taxpayer, amount of occasional profits, and the success of the taxpayer in carrying out other similar or dissimilar activities.

<sup>179</sup> *Vorsheck*, 933 F.2d at 758. *Vorsheck* cites *Ferrell v. Commissioner*, 90 T.C. 1154 (1988), which noted, at 1183, that profit motive must be independent of tax savings. *See also United States v. Music Masters, Ltd.*, 621 F. Supp. 1046, 1056 (W.D. N.C. 1985), *aff'd*, 816 F.2d 674 (table) (4th Cir. 1987) (holding that a tax scam was disregarded because it lacked economic substance).

even by losing,” the court went on to say that “[w]here, as here, the promised tax benefits are suspiciously excessive and the transaction as a whole is entered into and carried out with a complete indifference to profit, it is clear what the parties intended to accomplish.”<sup>180</sup> NADN and Oryan have demonstrated the same indifference to profit in their design and marketing of the scheme.

As demonstrated above, NADN and Oryan have marketed the Shopn2000 program as a tax break, not a business. Even their internal name for the website program—TaxBreak 2000—highlights how Shopn2000 is a tax-driven product. The layout of the website and the uselessness and overvaluation of the purported modifications also demonstrate that the Shopn2000 program is merely a tax-break-delivery vehicle. Customers don’t investigate further because they are told that the Shopn2000 program is a no-lose situation: even if they never make a dime in profit, the Government (in the form of tax credits and deductions) will pay them back more than the \$2,495 that most actually paid for the program. The promissory notes don’t count toward the modification costs in any event, because the promissory notes are shams—marketed as non-recourse and “paid off” not with real money but with the phony \$2.00-per-click scheme.

Former employees and customers have confirmed that the Shopn2000 program was entered into and carried out with a complete indifference to profit. NADN’s salespersons could not truthfully tell customers that they could claim business tax credits and deductions for the Shopn2000 program.<sup>181</sup> Former salesman Smallwood sold six purported websites to one

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<sup>180</sup> *Ferrell*, 90 T.C. 1154 (internal citations omitted).

<sup>181</sup> Notwithstanding NADN’s tax-centric sales pitch, some customers may have purchased  
(continued...)

customer, solely for the tax benefits.<sup>182</sup> Cox told the salesperson specifically that she didn't want a business and the salesperson responded that merely by paying NADN the money qualified Cox for the tax break. Even NADN and Oryan's shared website, [www.nadn-biz.com](http://www.nadn-biz.com), stresses only the tax benefits when describing how the purported websites can make a profit.

NADN's own lawyers noted that the purported websites lacked a business purpose and cited many of the same cases we have cited. In their April 11, 2001 memorandum, NADN's lawyers concluded that, based on the "substance over form" and "economic substance" doctrines, the Shopn2000 program was a sham, absent "substantial changes" in the program.<sup>183</sup> NADN and Oryan never made these changes, yet they continued to sell the Shopn2000 program.

And finally, even the attorney hired by Oryan and NADN after receiving the April 11 memorandum stated that Shopn2000 purchasers could only claim the § 44 credit if the program was marketed as a business, not as a tax break. Despite this warning from their hand-picked attorney, NADN and Oryan continued to market Shopn2000 as a tax break, not a business.

- b. The sole Shopn2000 website is not a "place of public

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<sup>181</sup>(...continued)  
a Shopn2000 PIN and intended to make a non-tax profit. Assuming the PIN owners can demonstrate that they subjectively intended to make a profit and took appropriate steps to do so, these customers may be entitled to take legitimate business deductions such as advertising costs, if they incurred any. Their subjective intentions will be evaluated on a case-by-case basis when PIN owners are audited. However, under no circumstances can PIN owners claim a tax deduction or credit for the so-called website modification costs, which are neither ordinary and necessary business expenses nor entitled to the § 44 disabled-access tax credit. Further, the fact that a few PIN owners may have tried to make a profit doesn't vitiate NADN's false sales pitch or diminish the propriety of enjoining NADN.

<sup>182</sup> Smallwood Decl. at ¶ 12.

<sup>183</sup> Gordon Decl. at ASH043.

accommodation” under the ADA, and therefore any “modification costs” are ineligible for the § 44 tax credit.

To claim a tax credit under §44(c), an eligible small business must demonstrate that the claimed expenses were incurred because the business was required to comply with the ADA. Even assuming that the PIN owners or Oryan had paid funds to make the Shopn2000 website accessible to people with disabilities, they would not be eligible for the § 44 tax credit because these funds would not have been paid to *comply* with the ADA.

The ADA affects private businesses only through title I and title III. Title I of the ADA prohibits employment-based discrimination by employers against their employees on the basis of disability. Title I is not applicable here because there is no indication that the PIN owners, NADN, or Oryan improved their purported website as an accommodation to permit qualified persons with disabilities to perform essential job elements.<sup>184</sup> Title III is inapplicable to Oryan and the PIN owners because Shopn2000 website is not a “place of public accommodation” as defined by title III of the ADA.<sup>185</sup>

Section 302(a) of the ADA prohibits discrimination against persons with disabilities by any person who owns, operates, or leases a place of public accommodation.<sup>186</sup> The term “public accommodation” is defined in § 301(7) and includes 12 specific categories of businesses, only

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<sup>184</sup> 42 U.S.C. §§ 12111-12117.

<sup>185</sup> 42 U.S.C. § 12181.

<sup>186</sup> 42 U.S.C. § 12182; 28 C.F.R. § 36.201(a). Section 303 of the ADA also affects alterations and new construction by ‘commercial facilities,’ which includes a much broader range of facilities than the narrower term ‘public accommodations.’ 42 U.S.C. § 12183; 28 C.F.R. §§ 36.401-402. IRC § 44, however, does not permit tax credits for commercial facility-related changes, only for changes to “public accommodations.”

one of which is arguably applicable here: “(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.”<sup>187</sup> The Shopn2000 website and individual PINs are not a “shopping center, or other sales or rental establishment” because the Shopn2000 website links only to other online vendors, which may themselves be places of public accommodation.<sup>188</sup> Further, the Shopn2000 website is not a business at all, but was designed from inception as a tax shelter masquerading as a business.

Categorizing the Shopn2000 website as a place of public accommodation would also lead to a gross distortion of the common-sense definition of “shopping centers and other sale or retail establishments.” The Shopn2000 website offers only a link to online merchants selling products. The only revenue generated by the website is through commissions for products sold by those merchants. Because the Shopn2000 website serves only as a means of redirecting visitors to other retail establishments, it is more akin to a billboard company that merely displays the advertising of other companies’ products than to a shopping center. Creating an advertisement alone does not create a “shopping center or other sale or retail establishment”—particularly where the ultimate business purpose of the website containing the advertisement is to claim a tax credit and not to make a profit.

Strong public policy concerns weigh heavily against declaring the Shopn2000 website as a place of public accommodation. Online companies can easily track the identity of websites that

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<sup>187</sup> 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104.

<sup>188</sup> 28 C.F.R. pt. 36, app. B at 587-588 (noting that wholesale establishments are not places of public accommodation where they derive revenue only from other businesses and not by selling to the public).



link directly to their products and can encourage companies to link to them by offering commissions. For instance, the popular online book seller, Amazon.com, offers an ‘Associate Program’ that enables anyone with a website to earn up to a 10% commission fee by simply placing a link on their website to specific products on the Amazon.com website. Many private citizens own their own websites to display pictures, tell friends and relatives of their travels, or for a variety of other personal reasons. Many also like to describe their personal hobbies or list their favorite books—and online companies such as Amazon.com encourage linking to their website from such listings through their Associate Program. If the court were to find that the Shopn2000 website and PINs are places of public accommodation, then anyone with such a website would also own a place of public accommodation under the ADA. Such an interpretation would expand the definition of places of public accommodation far beyond common sense.

- c. The modification costs weren’t paid or incurred, necessary, or reasonable; therefore PIN owners can’t claim them under §§ 44 or 162.

Both §§ 44 and 162 generally require that any costs claimed as a deduction or credit be actually “paid or incurred,” and that they be necessary.<sup>189</sup> Section 44 also requires that the costs be “reasonable” and § 162 requires that the costs be “ordinary.”<sup>190</sup> Because the promissory notes

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<sup>189</sup> Section 44(c)(3) uses a double-negative and actually requires that the ADA-compliance costs not be “unnecessary to accomplish” the purposes described in § 44(c)(2). Section 162’s test for whether an expense was necessary differs from, and more inclusive than, § 44’s test. *See, e.g., Welch v. Helvering*, 290 U.S. 111, 113 (1933) (any business expense that is appropriate and helpful to business development qualifies as necessary under § 162).

<sup>190</sup> Necessary business expenses that don’t qualify as ordinary can’t be deducted immediately, but can—in some circumstances—be capitalized. *See, e.g., Commissioner v. Tellier*, 383 U.S. 687, 689 (1966). A transaction’s form, not substance, controls its tax treatment.

(continued...)

were illusory, the amount of the promissory note could never qualify under either section as a cost “paid or incurred.”<sup>191</sup> This fact alone eliminates any claim for a credit or deduction under §§ 44 or 162 for the \$7,980 promissory note that most PIN owners signed and claimed on their tax returns as part of the purported modification cost.

But the modification costs also were not reasonable and not necessary, as required under § 44(c)(3). To date, only one case, *Hubbard v. Commissioner*,<sup>192</sup> has discussed the § 44 reasonableness and necessity standards. The *Hubbard* court looked to the ADA for guidance to determine whether an optometrist’s expense of installing a special medical device for certain patients qualified as reasonable and necessary for § 44. The court noted that purchase of this equipment permitted the optometrist, the only one in a three-county area, to treat patients that he could not treat before. The court concluded that, under these particular facts, the optometrist had purchased the device to comply with the ADA’s requirement that businesses not discriminate against disabled customers. The ADA requires that businesses remove existing barriers only if there is a “readily achievable” solution—a solution that is “easily accomplishable and able to be

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<sup>190</sup>(...continued)

*See, e.g., Weiss v. Stern*, 265 U.S. 242, 254 (1922). Here, the transaction’s substance—PIN owners pay a purported \$10,475 in exchange for nothing, because there is only one website that is already “modified” when a new owner is assigned a PIN—makes clear that the expense was neither ordinary nor necessary and was paid solely to claim a tax benefit.

<sup>191</sup> *See, e.g., Music Masters*, 621 F. Supp. at 1054 (disregarding promissory notes that were marketed as non-recourse). Even if Oryan took a different view, *i.e.*, that the promissory notes were enforceable, NADN’s marketing of the Shopn2000 program while claiming that the notes were non-recourse is a false statement that is subject to penalty.

<sup>192</sup> T.C. Memo. 2003-245.

carried out without much difficulty or expense."<sup>193</sup> Therefore, the *Hubbard* court agreed that a fix of some type was “not unnecessary” under the ADA; the only remaining question was whether the remedy chosen was reasonable.

Once the Court determined that the optometrist was required under the ADA to implement a “readily achievable” fix for the problem, the Court needed to determine whether the cost was reasonable. The Court evaluated the cost (approximately \$17,000) by comparing it to the value to the optometrist (whose gross receipts were nearly \$600,000 that year) and the value to his disabled customers, and found the cost was reasonable.

In *Hubbard*, the Tax Court distinguished its earlier decision in *Fan v. Commissioner*,<sup>194</sup> in which the court denied a § 44 tax credit. In *Fan*, the court disallowed a § 44 credit for a dentist who had been using a notepad and pen to communicate with his deaf patients and who later purchased a device to communicate with his deaf patients. Because the dentist had accommodated his disabled patients with the crude, but effective, pen and paper technique, the court determined that the dentist was already in compliance with the ADA. Therefore, the dentist could not deduct the cost of this unnecessary communication device under § 44.

Using the same standards enunciated in *Hubbard*, the purported modifications here—the text-only site, chat function, and voice shopping—are unnecessary and unreasonable. First, the graphical site (the main Shopn2000.com website) is readable by a screen reader and therefore the text-only version is unnecessary. The chat function—which Goetsch removed from the website, even though some PIN owners purportedly paid \$10,475 for it—also is unnecessary. Oryan had

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<sup>193</sup> *Id.* (quoting 42 U.S.C. (“the ADA”) § 12181(9) (2000)).

<sup>194</sup> 117 T.C. 32, 34-35, 37 (2001 WL 830346) (2001).

e-mail and a telephone to handle inquiries; the chat function added nothing to these pre-existing modes of communicating. The voice-shopping function is nearly impossible to download, works only on the Shopn2000 website and therefore doesn't help mobility-impaired customers actually purchase products, and duplicates hardware and software that mobility-impaired users likely already have. Therefore, this so-called modification is unnecessary to address any difficulties encountered by mobility-impaired users.

Oryan also claims in its promotional materials that it is *required* to modify the purported websites (and therefore the modifications are necessary under § 44) to comply with the ADA's standards for private websites. In support, Oryan points to the website-design regulations in Section 508 of the Rehabilitation Act and to the World Wide Web Consortium ("W3C") website-design guidelines. However, private websites aren't required to comply with either of these so-called requirements. The ADA requires public accommodations to provide disabled and non-disabled persons equal opportunity to their goods, services, and programs, but public accommodations are not required to comply with Section 508. Section 508 requires federal government, and *only* federal government, websites to meet certain disabled-access standards.<sup>195</sup> And the W3C guidelines are just that—guidelines, crafted by web designers, to help other web designers make websites more accessible. Even W3C acknowledges that its guidelines aren't mandatory: "W3C is not a legislative body and the Web Content Accessibility Guidelines specification is not a regulation."<sup>196</sup> Oryan wasn't required to comply with either the Section 508 standards or the W3C guidelines.

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<sup>195</sup> Section 508 is codified at 29 U.S.C. § 794d.

<sup>196</sup> Goyette Decl. at GOY195-96.

The \$10,475 per-modification cost for each modification also is wildly unreasonable. First, the purported websites, when “modified,” have earned no income and have no reasonable prospect of ever earning sufficient income to cover the \$10,475 per-year modification cost. Therefore, none of the modifications is reasonable in light of the value to the PIN owner, especially in comparison to *Hubbard*, in which the optometrist paid \$17,000 for a modification but had grossed nearly \$600,000 in the same year. As demonstrated above, the modifications also are useless or nearly useless to the users with disabilities that Oryan and NADN are purporting to help. Therefore, the \$10,475 per-year cost is an unreasonable burden, when compared to the value received by disabled users.

In addition, the \$10,475 per-year modification cost also is unreasonable in light of how much alternatives cost. Providing a phone line and e-mail negates the need for a chat function here and costs much less. A phone line also could take the place of voice shopping, especially because the voice-shopping function is useless after the customer leaves Shopn2000.com to look at or purchase a product.

Finally, the modifications actually may cost much less on the open market. As Niccum indicated in his declaration, adding a text-only site should cost no more than \$4,000. Each PIN owner’s *pro rata* share of that cost would be less than 50 cents. Adding a chat function should be free, but certainly no more than \$8.00 per month for the entire Shopn2000 website, not for each PIN owner. Each PIN owner’s *pro rata* share of that cost would be less than one cent. The price of adding the voice-shopping function can’t be calculated because there is no way to tell how much Oryan relied on Microsoft’s free products. It is clear, however, that Microsoft provides for free the voice-shopping program’s most difficult function to reproduce, speech-recognition. NADN and Oryan grossly overcharged and overvalued these so-called

modifications; even assuming they could show that §44 applied to the modifications, PIN owners could not claim a credit for any more than the reasonable price of the modifications.

- d. Based on all of the above, the TRO defendants' activities violate § 6700.

The TRO defendants' tax-scheme promotional activities are subject to penalty under § 6700. As demonstrated above, all TRO defendants (save Orié, whose activity is limited to return preparation) have organized and/or sold the Shopn2000, home-based business, and incorporation schemes. These defendants have repeatedly made or caused to be made false and fraudulent statements concerning the tax benefits of participating in their schemes. The tax-scheme statements are false and fraudulent on their face. For the Shopn2000 scheme in particular, the technical department's memo demonstrates the TRO defendants knew or had reason to know that their statements about the tax laws are false and fraudulent. Further, the statements pertain to material matters because they are likely to influence potential customers to claim falsely that they have no federal income tax liability. The TRO defendants' long history of flouting the law demonstrates that an injunction is necessary to prevent the recurrence of this misconduct while this lawsuit continues.

2. *The TRO defendants marketed the Shopn2000 program by making gross valuation overstatements.*

A gross valuation overstatement exists within the meaning of IRC § 6700 where the purported value of any property or services is more than double the correct valuation and the overstatement relates directly to an income-tax credit or deduction.<sup>197</sup> NADN and Oryan's claim

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<sup>197</sup> 26 U.S.C. § 6700(b)(1); *see also American Technology Resources v. United States*, 893 F.2d 651, 654-55 (3d Cir. 1990) (explaining that, by setting the contract price, the promoter set the claimed value, which was inflated, and therefore the promoter was subject to penalty (continued...))

about the value of the modifications—which they say are worth \$10,475 for tax purposes—is a gross valuation overstatement because the modifications were worthless or certainly were worth much less than half of \$10,475, which is \$5,237.50. If the true value of any modification is less than \$5,237.50, then NADN and Oryan made a gross valuation overstatement. As demonstrated below, the true value of all modifications was below this \$5,237.50 threshold.

First, since the promissory note was non-recourse, as NADN promised and as the \$2.00 per click payback scheme demonstrates, there is a *per se* gross valuation overstatement. NADN and Oryan say that owners could claim a \$10,475 modification value on their returns, but this was based on a \$7,980 bogus promissory note. Therefore, the true cost to PIN purchasers is \$2,495, yet customers are told to claim credits and deductions based on a \$10,475 cost. Any assertion that PIN owners could claim a tax credit or deduction based on the \$7,980 promissory note is automatically a gross valuation overstatement.<sup>198</sup>

Second, even if the promissory notes had any substance, Oryan and NADN made gross valuation overstatements. Court's don't look exclusively at the purported purchase price and assume that it equates with value.<sup>199</sup> Case law recognizes that “when peculiar circumstances tend to inflate the price at which property is sold, that price is not a proper measure of fair market

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<sup>197</sup>(...continued)  
under § 6700).

<sup>198</sup> See *Music Masters*, 621 F. Supp. at 1053 (finding gross valuation overstatement by, among other things, disregarding fake promissory notes which had a claimed value of more than double the cash paid.)

<sup>199</sup> *Music Masters*, 621 F. Supp. at 1054 (quoting *Flowers v. Commissioner*, 80 T.C. 914 (1983)).

value.” The same is true here; no rational, fully informed purchaser would have paid \$10,475 or even \$1,000 once, let alone repeatedly, for “modifications” to a free website that earned pennies per year in real commissions, but for the claimed tax credit and deduction. Therefore, we must analyze the true value of the so-called modifications to the Shopn2000 website with the help of a website expert.

Oryan offered three upgrades, each for \$10,475 and NADN sold them all. The first upgrade, adding a text-only version of the website, should have cost no more than \$4,000. And that was to do it once, not 10,000 times. Further, the text-only site has limited usefulness and was inoperable for weeks during Niccum’s review, so the value is extremely low.

The second upgrade, now removed, is a chat function. An alternative is available for free, and one higher-quality alternative is available for \$8.99 per month. Further, web designer Orgell noted that Oryan, which monitored the chat function, received fewer than 10 calls per day from the then-existing 7,000 accounts/websites. The chat volume hardly justifies having a chat function at all, given that e-mail is free and can work almost as well. Absent the purported tax savings, even an \$8.00 per month chat-function fee for the one website excessive; \$10,475 *per PIN owner* for 10,000 or more PIN owners is outrageous.

The third upgrade is hard to value because it is worthless to mobility-impaired users, the purported target audience. Once a voice-shopping user clicks through to a merchant’s website to purchase a product, the voice-shopping program ceases to function. Even if there were some use here, Niccum noted that there is no reason to design a new voice-shopping program when others are available. Despite this, Oryan still chose to design one, but it couldn’t have cost much; the hardest design element in voice-shopping program is the voice-recognition function, and Oryan



used Microsoft's free voice-recognition function in the voice-shopping program.<sup>200</sup> And as noted before, Oryan only needed to add the voice-shopping program to the website once, because there is only one Shopn2000 website.

All three purported modifications were grossly overvalued, and PIN owners were told to use the overvalued figure on their tax returns to claim credits and deductions. Therefore, the TRO defendants are subject to penalty under § 6700 and should be enjoined under § 7408.

3. *NADN's return-preparation activities are subject to penalty under § 6701.*

Bennington, Orie, and her NADN supervisors Rodrigues and Coolidge are violating § 6701 by instructing others to prepare false and fraudulent documents (tax returns) for NADN's customers. These documents falsely report that NADN's PIN owners are entitled to a \$5,000 disabled-access tax credit and \$5,475 business tax deduction. Further, the documents also include inflated and false home-based business deductions, based on their PIN ownership. Orie, Rodrigues, and Coolidge knew, and in fact intended, that these returns would be used in connection with material tax matters, and knew they would result in gross understatements of tax liability.

It is evident, especially in light of Coolidge's memo to Orie, that NADN, Bennington, Orie, Rodrigues, and Coolidge will not halt their illegal activities absent an injunction.

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<sup>200</sup> Niccum Decl. at ¶ 59.

**B. NADN, Orié, Rodrigues, Bennington, and Coolidge should be enjoined under IRC § 7407 from preparing any federal-income-tax returns**

Section 7407 authorizes a court to enjoin a person from acting as an income-tax-return preparer if that person has continually or repeatedly: (1) engaged in conduct subject to penalty under § 6694, which prohibits the preparation or submission of a return containing an unrealistic position; (2) guaranteed the payment of any tax refund or the allowance of any tax credit; or (3) engaged in any other fraudulent or deceptive conduct substantially interfering with the proper administration of the tax laws. In addition, the court must find that a narrower injunction prohibiting only specific misconduct would be insufficient to prevent further interference.<sup>201</sup>

As discussed above, NADN, Orié, Rodrigues, Bennington, and Coolidge have repeatedly and continually violated § 6694 by preparing tax returns falsely claiming \$5,000 § 44 credits and \$5,475 § 162 deductions, plus returns claiming improper home-based business deductions.<sup>202</sup> These defendants knew or should have known that these returns were frivolous because: (1) NADN's own technical department circulated a memo stating that customers could not claim the § 44 tax credit; (2) even the Potter opinion letter states that customers can't claim the § 44 tax credit if the related purported websites were marketed for their tax benefits, which they were; and (3) the return-preparation positions were based on grossly overvalued assets and blatantly false marketing statements, such as telling customers that they didn't need a business purpose to claim business deductions. These statements, and therefore deductions based on them, are facially absurd.

In addition, NADN, under Coolidge's and Rodrigues's leadership, guaranteed the

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<sup>201</sup> IRC § 7407.

<sup>202</sup> See IRC § 6694.

payment of tax refunds and the allowance of tax credits during its return-preparation sales pitch. Prospective NADN “members” such as Valerie Weinstein were told that NADN would guarantee \$3,000 in additional tax savings on members’ tax returns if the members paid for NADN’s return-preparation service. An NADN salesperson also promised Weinstein that NADN could obtain refunds for prior tax years by amending Weinstein’s previous tax returns. These and other similar statements detailed above demonstrate that NADN is subject to injunction under § 7407.

As shown above, NADN, Orié, Rodrigues, Bennington, and Coolidge will continue their abusive return-preparation activities unless they are enjoined. Rodrigues has already demonstrated, through selling Shopn2000 programs at his company SMG, that he will sell tax scams elsewhere if NADN goes out of business. A narrower injunction—barring only improper returns—will be ineffective. These five defendants should not be in the return-preparation business. The IRS should not be tasked in future with finding and reviewing every return prepared or filed by these tax scammers or those working under their direction.<sup>203</sup>

**C. Equitable considerations weigh in favor of enjoining the TRO defendants under IRC § 7402.**

Manifesting “a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,”<sup>204</sup> 26 U.S.C. § 7402 “has been used to enjoin interference with tax enforcement even when such interference does not violate

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<sup>203</sup> See *United States v. Savoie*, 594 F. Supp. 678, 685 (D.C. La., 1984) (“[a]nd in light of Savoie’s unyielding opposition to the current tax structure, we hardly need to explain that an injunction against conduct listed in subsection (b)(1) would be insufficient to safeguard tax administration from Savoie’s interference.”).

<sup>204</sup> *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). See *United States v. First Nat’l City Bank*, 568 F.2d 853 (2d Cir. 1977).

any particular tax statute.”<sup>205</sup> Here, injunctive relief under § 7402 is appropriate to prevent the TRO defendants’ repetition of tax-scam activities. Should the Court find they apply in a Section 7402 injunction case, the equitable criteria for an injunction are present: the likelihood of the movant’s success on the merits and the relative balance of potential hardships to the plaintiff, defendant, and public.<sup>206</sup>

The Government’s TRO exhibits and declarations present irrefutable evidence that the TRO defendants have cheated their customers out of millions of dollars and cheated the United States Treasury out of hundreds of millions of dollars. And in doing so, the defendants have encouraged and assisted their often unwitting customers to claim fraudulent tax deductions and credits. These activities have impeded the enforcement of the internal revenue laws. Therefore, the United States has a strong likelihood of prevailing on the merits.

The United States has suffered and will continue to suffer irreparable injury if the TRO defendants are not enjoined. The IRS estimates that NADN’s schemes have cost \$324 million in tax losses in the past three years alone. Because the defendants will not stop selling their schemes unless forced to do so, the United States Treasury, funded by United States taxpayers, will continue to lose money as long as the TRO defendants are operating. Given the audacity and breadth of their scams, involving an estimated 50,000 customers, and given the IRS’s limited resources, identifying, and recovering all lost revenue will surely be impossible.

The defendants cannot claim harm from the court order, since the order will end their

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<sup>205</sup> *Ernst & Whinney*, 735 F.2d at 1300. See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (“federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes”), *aff’d*, 827 F.2d 1144 (7th Cir. 1987).

<sup>206</sup> *Venetie*, 856 F.2d at 1388-89.

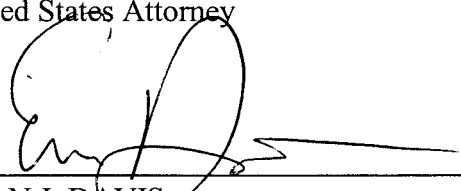
current lawbreaking activity.<sup>207</sup> Finally, the public interest is clearly served by shutting down NADN's illegal scheme.<sup>208</sup>

### III. CONCLUSION

NADN's management is pushing its return preparers to file tax returns that claim fraudulent tax credits and deductions. It is now the end of the 2003 tax-filing season although taxpayers who seeks extensions have until August 15th to file. Further, NADN is continuing to sell its tax scams, bilking its customers and the United States Treasury out of thousands of dollars each day it remains open. The TRO defendants should be temporarily restrained and thereafter preliminarily enjoined from causing more damage.

Respectfully submitted,

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<sup>207</sup> See *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (finding that injunctions requiring people to follow the law do not cause hardship).

<sup>208</sup> *United States v. Lee*, 455 U.S. 252, 253 (1982) (noting that "the broad public interest in maintaining a sound tax system is of . . . a high order.").