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11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 NATIONAL AUDIT DEFENSE
18 NETWORK, INC., et al.,

19 Defendants.

CV-S-02-0131-LDG (PAL)

FINAL JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST
WESTON J. COOLIDGE,
ORYAN MANAGEMENT, INC.,
AND AL RODRIGUES

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21 Plaintiff, the Federal Trade Commission (“Commission”), commenced this action
22 on January 30, 2002, by filing its Complaint for Injunctive and Other Equitable Relief
23 pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
24 § 53(b), charging that Defendants National Audit Defense Network, Inc. (“NADN”), Tax
25 Coach, Inc. dba Tax Ready (“Tax Ready”), Robert Bennington, individually and as an
26 officer of NADN and Tax Ready, Cort Christie, individually and as an officer of NADN,
27 and Al Rodrigues (“Rodrigues”) were engaged in deceptive acts or practices in violation
28 of Section 5 of the FTC Act, 15 U.S.C. § 45, and that NADN and Tax Ready were

1 engaged in violations of Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e, all
2 in connection with a money-back guarantee of refunds as part of the advertising, offering
3 for sale, and sale of tax savings programs and services. On January 17, 2003, the
4 Commission filed an Amended Complaint (“Amended Complaint”), alleging the same
5 practices, but adding Oryan Management, Inc. (“Oryan”), and Weston J. Coolidge
6 (“Coolidge”), individually and as an officer of NADN, as additional Defendants
7 regarding the two counts under Section 5 of the FTC Act. (Only the Corporate
8 Defendants were charged with violations of the Truth in Lending Act.)

9 On October 12, 2005, the Court granted summary judgment in favor of the
10 Commission against Defendants Coolidge and Oryan (Doc. #107). On July 24, 2009, the
11 Court granted summary judgment in favor of the Commission against Defendant
12 Rodrigues. This Order applies to these three defendants.

13 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

14 **FINDINGS**

- 15 1. This Court has jurisdiction over the subject matter of this case and
16 jurisdiction over all parties. Venue in the District of Nevada is proper.
- 17 2. The activities of Defendants Coolidge, Oryan, and Rodrigues were in or
18 affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 19 3. The Commission’s Amended Complaint states claims upon which relief
20 may be granted against Defendants Coolidge, Oryan, and Rodrigues under Sections 5(a)
21 and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
- 22 4. This Order is in addition to, and not in lieu of, any other civil or criminal
23 remedies that may be provided by law.
- 24 5. Entry of this Order is in the public interest.

25 **DEFINITIONS**

26 For purposes of this Order, the following definitions shall apply:

- 27 1. “Individual Defendants” means Weston J. Coolidge and Al Rodrigues.
28 2. “Corporate Defendant” means Oryan Management, Inc., and its successors

1 and assigns.

2 3. “Defendants” means both of the Individual Defendants and the Corporate
3 Defendant, individually, collectively, or in any combination.

4 4. “Document” is equal in scope and synonymous in meaning to the usage of
5 the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
6 graphs, charts, photographs, audio and video recordings, computer records, and any other
7 data compilations from which information can be obtained and translated, if necessary,
8 through detection devices into reasonably usable form. A draft or non-identical copy is a
9 separate document within the meaning of the term.

10 5. “Consumer” means an actual or potential purchaser, customer, member, or
11 subscriber.

12 6. “Person” means a natural person, organization, or other legal entity,
13 including a corporation, partnership, proprietorship, association, cooperative, government
14 or governmental subdivision or agency, or any other group or combination acting as an
15 entity.

16 7. “Timely manner” means within the time required by the Truth in Lending
17 Act, 15 U.S.C. §§ 1601-1666j, for transactions to which it applies, or within the time
18 period a Defendant has represented to a consumer prior to that consumer’s purchase,
19 **provided** that if neither of these is applicable, “timely manner” means within ten (10)
20 business days.

21 8. “Credit-Related Product” means any product, program, or service which is
22 advertised, offered for sale, or sold as a method by which persons may establish or obtain
23 any extension of credit or credit device, including, but not limited to, credit cards, loans,
24 or financing, or as a method to consolidate, liquidate, or reduce debts.

25 9. The terms “and” and “or” in this Order shall be construed conjunctively or
26 disjunctively as necessary, to make the applicable phrase or sentence inclusive rather
27 than exclusive.

1 **I.**

2 **PROHIBITED REPRESENTATIONS**

3 **IT IS THEREFORE ORDERED** that, in connection with the marketing,
4 advertising, promotion, labeling, distribution, offer for sale, or sale of any product or
5 service, each Defendant, whether acting directly or indirectly through any corporation,
6 partnership, subsidiary, division, agent, or other device, and each Defendant's officers,
7 agents, servants, employees, and attorneys, and all persons in active concert or
8 participation with each Defendant who receive actual notice of this Order by personal
9 service or otherwise, are hereby permanently restrained and enjoined from falsely
10 representing, misrepresenting, or omitting any material term or condition of sale,
11 including, but not limited to:

- 12 A. The availability of refunds to consumers;
13 B. The time within which refunds will be provided to consumers; and
14 C. The procedures consumers must follow to request and obtain a refund.

15 **II.**

16 **CONDUCT REGARDING MONEY-BACK GUARANTEES AND REFUNDS**

17 **IT IS FURTHER ORDERED** that, in connection with the marketing,
18 advertising, promotion, labeling, distribution, offer for sale, or sale of any product or
19 service, each Defendant, whether acting directly or indirectly through any corporation,
20 partnership, subsidiary, division, agent, or other device, and each Defendant's officers,
21 agents, servants, employees, and attorneys, and all persons in active concert or
22 participation with each Defendant who receive actual notice of this Order by personal
23 service or otherwise, are hereby permanently restrained and enjoined from:

- 24 A. Failing to disclose clearly and conspicuously to the consumer prior to
25 purchase all material terms and conditions of any money-back guarantee or refund policy
26 or, if no money-back guarantee or refund policy exists, that fact. Material terms and
27 conditions include, but are not limited to:

- 28 1. All time periods applicable to refund requests, including any time

1 period within which a refund must be requested;

2 2. All procedures consumers must follow to request or to obtain a
3 refund;

4 3. All differences in refund policies among the products or services
5 such Defendant sells or offers for sale; and

6 4. All material terms and conditions of any extension or revision of a
7 refund period; and

8 B. Failing to take all actions necessary to effectuate any money-back
9 guarantee or refund policy, including, but not limited to:

10 1. Processing all refund requests and inquiries in a timely manner;

11 2. Maintaining equipment and personnel adequate to receive and
12 process all refund requests in a timely manner;

13 3. Accepting the return of product from any consumer who has
14 requested a refund;

15 4. Allowing a consumer to request a refund before receipt of any
16 product or service;

17 5. Providing any return authorization number or similar mechanism
18 required as part of a money-back guarantee or refund policy; and

19 6. Providing the products or services that are the subject of the money-
20 back guarantee or refund policy sufficiently in advance to allow the
21 consumer to exercise the refund option.

22 **III. MONETARY RELIEF**

23 **IT IS FURTHER ORDERED** that:

24 A. Judgment in the amount of \$325,136.66 is hereby entered, jointly and
25 severally, against Defendants Coolidge, Oryan, and Rodrigues;

26 B. Judgment in the additional amount of \$158,224.44 is hereby entered solely
27 against Defendant Rodrigues (which amount represents the difference between
28 \$483,361.10, the total amount for which Defendant Rodrigues is liable as reflected in

1 Doc. ##130 and 131, and \$325,136.66, the amount for which Defendant Rodrigues is
2 jointly and severally liable with Defendants Coolidge and Oryan);

3 C. Any funds received by the Commission pursuant to this Order shall be
4 deposited into a fund administered by the Commission or its agent to be used for
5 equitable relief, including, but not limited to, restitution and any attendant expenses for
6 the administration of any monetary fund. In the event that direct restitution to consumers
7 is wholly or partially impracticable or funds remain after restitution is completed, the
8 Commission may apply any remaining funds for such other equitable relief, including but
9 not limited to consumer information remedies, as the Commission determines to be
10 reasonably related to the activities found by the Court in this matter to have been in
11 violation of Section 5 of the FTC Act, 15 U.S.C. § 45. Any funds not used for such
12 equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement.
13 Defendants shall have no right to challenge the Commission's choice of remedies or the
14 manner of distribution. No portion of any payments under this Order shall be deemed a
15 payment of any fine, penalty, punitive assessment, or forfeiture;

16 D. Defendants relinquish all dominion, control, and title to any funds received
17 by the Commission pursuant to this Order, to the fullest extent permitted by law.
18 Defendants shall make no claim to or demand for return of the funds, directly or
19 indirectly, through counsel or otherwise;

20 E. Within ten (10) business days of the Court's entry of this Order,
21 Defendants shall furnish to the Commission, in accordance with 31 U.S.C. § 7701, their
22 taxpayer identification numbers (Social Security number or employer identification
23 number), which shall be used for purposes of collecting and reporting on any delinquent
24 amount arising out of this Order; and

25 F. Within ten (10) business days of the Court's entry of this Order, the
26 Individual Defendants are further required to provide the Commission with clear, legible,
27 and full-sized photocopies of all valid driver's licenses they possess, which will be used
28 for collection, reporting, and compliance purposes.

1 **IV. CUSTOMER LISTS**

2 **IT IS FURTHER ORDERED** that Defendants, whether acting directly or
3 indirectly through any corporation, partnership, subsidiary, division, agent, or other
4 device, and their officers, agents, servants, employees, and attorneys, and all persons in
5 active concert or participation with them who receive actual notice of this Order by
6 personal service or otherwise, are hereby permanently restrained and enjoined from:

7 A. Disclosing, using, or benefitting from customer information, including the
8 name, address, telephone number, email address, social security number, other
9 identifying information, or any data that enables access to a customer's account
10 (including a credit card, bank account, or other financial account), of any person which
11 any Defendant obtained prior to entry of this Order in connection with the advertising,
12 offering for sale, and sale of tax savings programs and services sold through NADN or
13 Tax Ready; and

14 B. Failing to dispose of such customer information in all forms in their
15 possession, custody, or control within thirty (30) calendar days after entry of this Order.
16 Disposal shall be by means that protect against unauthorized access to the customer
17 information, such as by burning, pulverizing, or shredding any papers, and by erasing or
18 destroying any electronic media, to ensure that the customer information cannot
19 practicably be read or reconstructed.

20 ***Provided, however,*** that customer information need not be disposed of, and may
21 be disclosed, to the extent requested by a government agency or required by a law,
22 regulation, or court order.

23 **V.**

24 **MONITORING COMPLIANCE OF SALES PERSONNEL**

25 **IT IS FURTHER ORDERED** that, in connection with any business which is
26 operated by any Defendant or in which any Defendant is the majority owner of the
27 business or directly or indirectly manages or controls the business, and which involves
28 the advertising, offering for sale, or sale of any product or service which is marketed with

1 a money-back guarantee, such Defendant is hereby permanently restrained and enjoined
2 from:

3 A. Failing to take reasonable steps sufficient to monitor and ensure that all
4 employees and independent contractors engaged in sales or other customer service
5 functions comply with Sections I and II of this Order. Such steps shall, at a minimum,
6 include the following:

7 1. Listening to the oral representations made by persons engaged in
8 sales or other customer service functions;

9 2. Establishing a procedure for receiving and responding to consumer
10 complaints;

11 3. Ascertaining the number and nature of consumer complaints
12 regarding transactions in which each employee or independent contractor is
13 involved;

14 4. Examining the initial and rebuttal scripts, training materials, notices,
15 contracts, and sales materials used by all employees and independent
16 contractors to ascertain whether they comply with this Order; and

17 5. Monitoring a sample of telemarketing calls by having non-
18 commissioned employees or contractors listen to telemarketers' oral
19 presentations and keep records regarding any misrepresentations;

20 B. Failing to investigate promptly and fully any consumer complaint to which
21 this Section V applies; and

22 C. Failing to take corrective action with respect to any sales person whom
23 such Defendant determines is not complying with this Order, which may include training,
24 disciplining, and/or terminating such sales person.

25 ***Provided, however,*** that this Section V does not authorize or require a Defendant
26 to take any action that violates any federal, state, or local law or ordinance.

1 VI.

2 COMPLIANCE MONITORING

3 IT IS FURTHER ORDERED that, for the purpose of monitoring and
4 investigating compliance with any provision of this Order,

5 A. Within ten (10) business days of receipt of written notice from a
6 representative of the Commission and in addition to the reports required by Paragraph B
7 of Section VII below, Defendants each shall submit written reports, which are true and
8 accurate and sworn to under penalty of perjury; produce documents for inspection and
9 copying; appear for deposition; and provide entry during normal business hours to any
10 business location in each Defendant's possession or direct or indirect control to inspect
11 the business operation;

12 B. In addition, the Commission is authorized to use all other lawful means
13 including but not limited to the following:

14 1. Obtaining discovery from any person, without further leave of court,
15 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45,
16 and 69; and

17 2. Having its representatives pose as consumers and suppliers to
18 Defendants, their employees, or any other entity managed or controlled in
19 whole or in part by any Defendant, without the necessity of identification
20 or prior notice; and

21 C. Defendants each shall permit representatives of the Commission to
22 interview any employer, consultant, independent contractor, representative, agent, or
23 employee who has agreed to such an interview, relating in any way to any conduct
24 subject to this Order. The person interviewed may have counsel present.

25 *Provided, however*, that nothing in this Order shall limit the Commission's lawful
26 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
27 §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or
28 information relevant to unfair or deceptive acts or practices in or affecting commerce

1 (within the meaning of 15 U.S.C. § 45(a)(1)).

2 **VII.**

3 **COMPLIANCE REPORTING BY DEFENDANTS**

4 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
5 of this Order may be monitored:

6 A. For a period of five (5) years from the date of entry of this Order,

7 1. Each Individual Defendant shall notify the Commission of the
8 following:

9 a. Any changes in such Defendant's residence, mailing
10 addresses, and telephone numbers, within ten (10) business days of
11 the date of such change;

12 b. Any changes in such Defendant's employment status
13 (including self-employment) and any change in such Defendant's
14 ownership in any business entity, within ten (10) business days of
15 the date of such change. Such notice shall include the name and
16 address of each business that such Defendant is affiliated with,
17 employed by, creates or forms, or performs services for; a detailed
18 description of the nature of the business; and a detailed description
19 of such Defendant's duties and responsibilities in connection with
20 the business or employment; and

21 c. Any changes in such Defendant's name or use of any aliases
22 or fictitious names within ten (10) business days of the date of such
23 change; and

24 2. Defendants shall notify the Commission of any changes in structure
25 of the Corporate Defendant or any business entity that any Defendant
26 directly or indirectly controls, or has an ownership interest in, that may
27 affect compliance obligations arising under this Order, including but not
28 limited to: incorporation or other organization; a dissolution, assignment,

1 sale, merger, or other action; the creation or dissolution of a subsidiary,
2 parent, or affiliate that engages in any acts or practices subject to this
3 Order; or a change in the business name or address, at least thirty (30)
4 calendar days prior to such change, *provided* that with respect to any such
5 change in the business entity about which a Defendant learns less than
6 thirty (30) calendar days prior to the date such action is to take place, such
7 Defendant shall notify the Commission as soon as is practicable after
8 obtaining such knowledge;

9 B. One hundred eighty (180) calendar days after the date of entry of this Order
10 and annually thereafter for a period of five (5) years, Defendants each shall provide a
11 written report to the Commission, which is true and accurate and sworn to under penalty
12 of perjury, setting forth in detail the manner and form in which they have complied and
13 are complying with this Order. This report shall include, but not be limited to:

- 14 1. For each Individual Defendant:
 - 15 a. Such Defendant's then-current residence address, mailing
16 addresses, and telephone numbers;
 - 17 b. Such Defendant's then-current employment status (including
18 self-employment), including the name, addresses, and telephone
19 numbers of each business that such Defendant is affiliated with,
20 employed by, or performs services for; a detailed description of the
21 nature of the business; and a detailed description of such
22 Defendant's duties and responsibilities, in connection with the
23 business or employment; and
 - 24 c. Any other changes required to be reported under Paragraph A
25 of this Section VII; and
- 26 2. For all Defendants:
 - 27 a. A copy of each acknowledgment of receipt of this Order,
28 obtained pursuant to Section IX below; and

1 receive actual notice of this Order by personal service or otherwise, are hereby restrained
2 and enjoined from failing to create and retain the following records:

3 A. Accounting records that reflect the cost of goods or services sold, refunds
4 (if any), revenues generated, and the disbursement of such revenues;

5 B. Personnel records accurately reflecting: the name, address, and telephone
6 number of each person employed in any capacity by such business, including as an
7 independent contractor; that person's job title or position; the date upon which the person
8 commenced work; and the date and reason for the person's termination, if applicable;

9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, dollar amounts refunded, quantity of items or services purchased, and
11 description of items or services purchased, to the extent such information is obtained in
12 the ordinary course of business;

13 D. Complaints and refund requests (whether received directly or indirectly,
14 such as through any third party) and any responses to those complaints or requests;

15 E. Copies of all sales scripts, training materials, advertisements, or other
16 marketing materials; and

17 F. All records and documents necessary to demonstrate full compliance with
18 each provision of this Order, including but not limited to, copies of acknowledgments of
19 receipt of this Order, required by Sections IX and X below, and all reports submitted to
20 the Commission pursuant to Sections VI and VII above.

21 **IX.**

22 **DISTRIBUTION OF ORDER BY DEFENDANTS**

23 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of
24 entry of this Order, Defendants shall deliver copies of the Order as directed below:

25 A. Corporate Defendant must deliver a copy of this Order to (1) all of its
26 principals, officers, directors, and managers; (2) all of its employees, agents, and
27 representatives who engage in conduct related in any way to the promise, offer,
28 provision, payment, or denial of refunds or other fulfillment of a money-back guarantee;

1 and (3) any business entity resulting from any change in structure set forth in Paragraph
2 A.2 of Section VII. For current personnel, delivery shall be within five (5) business days
3 of service of this Order upon Corporate Defendant. For new personnel, delivery shall
4 occur prior to them assuming their responsibilities. For any business entity resulting
5 from any change in structure set forth in Paragraph A.2 of Section VII, delivery shall be
6 at least ten (10) business days prior to the change in structure;

7 B. Individual Defendant as control person: For any business that an Individual
8 Defendant controls, directly or indirectly, or in which such Defendant has a majority
9 ownership interest, such Defendant must deliver a copy of this Order to (1) all principals,
10 officers, directors, and managers of that business; (2) all employees, agents, and
11 representatives of that business who engage in conduct related in any way to the promise,
12 offer, provision, payment, or denial of refunds or other fulfillment of a money-back
13 guarantee; and (3) any business entity resulting from any change in structure set forth in
14 Paragraph A.2 of Section VII. For current personnel, delivery shall be within five (5)
15 business days of service of this Order upon such Defendant. For new personnel, delivery
16 shall occur prior to them assuming their responsibilities. For any business entity
17 resulting from any change in structure set forth in Paragraph A.2 of Section VII, delivery
18 shall be at least ten (10) business days prior to the change in structure;

19 C. Individual Defendant as employee or non-control person: For any business
20 where an Individual Defendant is not a controlling person of a business but otherwise
21 engages in conduct related in any way to the promise, offer, provision, payment, or
22 denial of refunds or other fulfillment of a money-back guarantee, such Defendant must
23 deliver a copy of this Order to all principals and managers of such business before
24 engaging in such conduct; and

25 D. Defendants must secure a signed and dated statement acknowledging
26 receipt of the Order, within thirty (30) calendar days of delivery, from all persons
27 receiving a copy of the Order pursuant to this Section IX.
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X.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

Dated: _____

11 June 2010

UNITED STATES DISTRICT JUDGE