

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Civil No. 1:20-cv-24721-Ungaro/Reid**

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
DIGITAL INCOME SYSTEM, INC.,)
a Florida corporation,)
)
DEREK JONES FOLEY, aka Derek)
Jones, individually and as an owner,)
officer, and/or manager of)
Digital Income System, Inc.,)
)
WILLIAM FOLEY, individually and)
as an owner, officer, and/or)
manager of Digital Income)
System, Inc.,)
)
CHRISTOPHER BRANDON FRYE,)
Individually,)
)
JENNIFER HEDRICK,)
Individually, and)
)
KAITLYN SCOTT,)
Individually,)
)
Defendants.)

FINAL DEFAULT JUDGMENT AS TO DEFENDANTS
CHRISTOPHER BRANDON FRYE AND KAITLYN SCOTT

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) (“Complaint”). Defendants Christopher Brandon Frye and Kaitlyn Scott failed to file Answers to the Complaint. The Clerk of Court has entered a default against the two Defendants. The Court now enters a Judgment on the Default.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

- A. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties hereto.
- B. The Plaintiff's Complaint states claims upon which relief may be granted under Sections 5(a) the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled Business Opportunity Rule, 16 C.F.R. Part 437.
- C. Venue in the United States District Court for the Southern District of Florida is proper pursuant to 28 U.S.C. § 1391(b)(2), (c)(1), (c)(2), and (d) and 15 U.S.C. § 53(b).
- D. The activities of Defendants Frye and Scott are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- E. Defendants Frye and Scott failed to file any responsive pleading as required by Federal Rule of Civil Procedure 12(a). The Clerk entered an Entry of Default as to Defendants Frye and Scott on December 23, 2020.
- F. The factual allegations in the Plaintiff's Complaint are taken as true against Defendants Frye and Scott. Those allegations and the evidence supporting them establish that Defendants Frye and Scott violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Business Opportunity Rule, 16 C.F.R. Part 437.
- G. The Court now finds that, in connection with the advertising, marketing, promotion, offering for sale, or sale of purported "memberships" in Digital Income System, Inc., Defendants Frye and Scott have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing to consumers, expressly or by implication, that purchasers of Digital Income System purported "memberships" will earn or are likely to earn substantial income.
- H. The Court further finds that, in connection with the offer for sale, sale, or Promotion of a business opportunity, Defendants Frye and Scott failed to furnish prospective purchasers with the disclosure document and attachments required by the Business Opportunity Rule, within the time period prescribed by the Rule, in violation of the Business Opportunity Rule, 16 C.F.R. §§ 437.2 and 437.3(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

I. The Court further finds that Defendants Frye and Scott made earnings claims to prospective purchasers in connection with the offering for sale, sale, or promotion of a business opportunity while, among other things, (1) lacking a reasonable basis for the earnings claims at the time they were made; (2) lacking written substantiation for the earnings claims at the time they were made; or (3) failing to provide an earnings claim statement to each prospective purchaser, in violation of the Business Opportunity Rule, 16 C.F.R. § 437.4(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

J. The Court further finds that Defendants Frye and Scott made earnings claims in the general media in connection with the offering for sale, sale, or promotion of a business opportunity while, among other things, (1) lacking a reasonable basis for the earnings claims at the time they were made; (2) lacking written substantiation for the earnings claims at the time they were made; or (3) failing to state in immediate conjunction with those claims (i) the beginning and ending dates when the represented earnings were achieved, and (ii) the number and percentage of all persons who purchased Defendants' business opportunity prior to those ending dates who achieved at least the stated level of earnings in violation of the Business Opportunity Rule, 16 C.F.R. § 437.4(b), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

K. The Court further finds that, in connection with the offer for sale, sale, or promotion of a business opportunity, Defendants Frye and Scott misrepresented a specific level or range of actual or potential sales or gross or net income or profits that a prospective purchaser may earn or that prior purchasers have earned, in violation of the Business Opportunity Rule, 16 C.F.R. § 437.6(d), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

L. The Court further finds that, in connection with the offer for sale, sale, or promotion of a business opportunity, Defendants Frye and Scott misrepresented the likelihood that Digital Income System will find locations, outlets, accounts, or customers for the purchasers by providing leads of other consumers who might be interested in purchasing the Digital Income System, in violation of the Business Opportunity Rule, 16 C.F.R. § 437.6(j), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

M. Defendants Frye and Scott are likely to continue to engage in the activities alleged in the Complaint or otherwise violate Section 5 of the FTC Act 15 U.S.C. § 45, and the Business

Opportunity Rule, 16 C.F.R. Part 437, unless they are prohibited from doing so by order of the Court.

N. Plaintiffs have established through admitted facts and competent evidence in the record that the Defendant Digital Income System violated FTC Act, 15 U.S.C. § 45, and that Defendants Frye and Scott are individually liable for their actions. Plaintiffs have established through competent evidence in the record that Defendant Frye's net unjust gains from the conduct alleged in the Complaint amount to at least \$600,000; and that Defendant Scott's net unjust gains from the conduct alleged in the Complaint amount to at least \$171,500.

O. Plaintiffs are therefore entitled to equitable monetary relief against Defendant Frye in the amount of \$600,000 for which Defendant Frye is liable and against Defendant Scott in the amount of \$171,500 for which Defendant Scott is liable.

P. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

Q. Entry of this Order is in the public interest.

R. Defendants Frye and Scott, by their inaction, waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

S. Defendants Frye and Scott, by their inaction, waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. "Business Opportunity" means a commercial arrangement in which: (1.) A Seller solicits a prospective Purchaser to enter into a new business; (2.) The prospective Purchaser makes a required payment; and (3.) The Seller, expressly or by implication, orally or in writing, represents that the Seller or one or more Designated Persons will: (i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the Purchaser; or (ii) Provide outlets, accounts, or customers, including Internet outlets, accounts, or customers, for the Purchaser's goods or services; or (iii) Buy back

any or all of the goods or services that the Purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including providing payment for such services.

B. “Corporate Defendant” means Digital Income System, Inc.

C. “Defaulting Defendants” means Christopher Brandon Frye and Kaitlyn Scott.

D. “Document” is synonymous in meaning and equal in scope to the usage of “document” and “electronically stored information” in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, internet sites, web pages, websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements (including advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases, and any other electronically stored information, including Documents located on remote servers or cloud computing systems, and other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

E. “Investment Opportunity” means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

F. “Receiver” means the receiver appointed in this action, Curt Miner, Esq., and any deputy receivers that he names.

ORDER

I. BAN ON SALE OR MARKETING OF BUSINESS OPPORTUNITIES AND INVESTMENT OPPORTUNITIES

IT IS ORDERED that Defaulting Defendants are permanently restrained and enjoined from:

A. Creating, advertising, marketing, promoting, offering for sale, or selling, or assisting others in creating, advertising, marketing, promoting, offering for sale, or selling any Business Opportunity or any Investment Opportunity; and

B. Holding, directly or through a third-person, any ownership or other financial interest in any business entity that is creating, advertising, marketing, promoting, offering for sale, or selling, or that assists others in creating, advertising, marketing, promoting, offering for sale, or selling any Business Opportunity, any Investment Opportunity, or any product to assist in the creation or development of a Business Opportunity or an Investment Opportunity.

II. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defaulting Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or sale of any goods or services, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That consumers who purchase any Defendant's goods or services will earn or are likely to earn substantial income;

B. That Digital Income System or any Defendant will find locations, outlets, accounts, or customers for the purchaser; and

C. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. MONETARY JUDGMENT

A. Judgment in the amount of \$600,000 as to Defendant Frye and \$171,500 as to Defendant Scott is entered in favor of the Commission against the Defaulting Defendants as equitable monetary relief.

B. Defendant Christopher Brandon Frye is ordered to pay the Commission six hundred thousand dollars (\$600,000), and Defendant Kaitlyn Scott is ordered to pay the

Commission one hundred seventy-one thousand and five hundred dollars (\$171,500). Such payment, less any amounts turned over by financial institutions or by the Receiver through the disposal of various assets, must be made within 14 days after the Receiver's report regarding the disposal of such assets and made by electronic fund transfer in accordance with payment instructions provided by a representative of the Commission.

C. Effective upon entry of this Order,

1. Reliant Community Federal Credit Union shall transfer all funds in Account No. x9963 held by Defendant Scott and in any other account of Defendant Scott.
2. JPMorgan Chase Bank shall transfer all funds in Account No. xxxxx3360 held by Defendant Frye and in any other account of Defendant Frye.

D. Defaulting Defendant Frye shall cause to be transferred immediately to the Federal Trade Commission all funds located in any bank accounts or other financial accounts or instruments or stored in any location, up to the amount of the judgment (less funds already collected by the Commission).

E. Defaulting Defendant Frye shall surrender to the Receiver all control, title, dominion and interest in the property at 45156 W. Zion Road, Maricopa, Arizona 85139-9106. Defaulting Defendant shall maintain and take no action to diminish the value of any asset or property referenced herein, including adding or removing any structures, fixtures, or appurtenances thereto.

F. In addition to the transfers specified in Subsections C. – E. above, immediately upon entry of this Order, Defaulting Defendants are ordered to surrender to the Receiver all control, title, dominion, interest, and possession they have to any other assets, up to the amount of the judgment amounts in this Order.

G. Defaulting Defendants shall cooperate fully with the Receiver and take such steps as the Receiver may require, including executing any documents and providing any information, documents and signatures the Receiver may deem necessary, to effectuate the assignment, transfer, sale and liquidation of the assets or properties referenced in Subsections C. - F. above.

H. Defaulting Defendants shall refrain from transferring, converting, encumbering, selling, assigning, or otherwise disposing of the assets or properties referenced above, except with the express prior written permission of the Receiver.

I. The Receiver shall, as soon as practicable, commence the sale of the unliquidated asset identified in Subsection E above using a commercially reasonable procedure, and any other assets of Defaulting Defendants that are turned over to Receiver. The Receiver shall hold the proceeds from the sale of these assets (net of Receiver's costs and fees) for transfer to the Commission in accordance with further instructions from the Commission.

J. If the Receivership has been dissolved, any asset transfers must be made to the Commission under procedures sent to Defaulting Defendants by a Commission representative.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Defaulting Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any such assets.

B. The Taxpayer Identification Number of each Defaulting Defendant, which each Defaulting Defendant must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

C. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defaulting Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

D. The asset freeze is modified to permit the cash payments, assignments, transfers, sale or liquidation identified in Section III above. Upon completion of all such transfers, the Commission may request that the Court dissolve the asset freeze as to each Defaulting Defendant.

V. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defaulting Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defaulting Defendants must provide it, in the form prescribed by the Commission, within 14 days; and

B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with any activity that pertains to the sale of any Business Opportunity or Investment Opportunity; and

C. Failing to destroy such customer information in all forms in his or her possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission. Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VI. COOPERATION

IT IS FURTHER ORDERED that Defaulting Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defaulting Defendants must provide truthful and complete information, evidence, and testimony.

Defaulting Defendants must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defaulting Defendants obtain acknowledgments of receipt of this Order:

A. Defaulting Defendants, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after entry of this Order, each Defaulting Defendant, for any business that he or she, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which each Defaulting Defendant delivered a copy of this Order, the Defaulting Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defaulting Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defaulting Defendant must submit a compliance report, sworn under penalty of perjury, in which:

1. Each Defaulting Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which

representatives of the Commission may use to communicate with Defaulting Defendant; (b) identify all of Defaulting Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defaulting Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defaulting Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Defaulting Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Defaulting Defendant performs services whether as an employee or otherwise and any entity in which Defaulting Defendant has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, each Defaulting Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following, in which:

1. Each Defaulting Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Defaulting Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Defaulting Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defaulting Defendant performs services whether as an employee or otherwise and any entity in which Defaulting

Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defaulting Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defaulting Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Digital Income System.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that each Defaulting Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Defaulting Defendant, for any business that he or she, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each unique advertisement or other marketing material.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defaulting Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defaulting Defendants must each: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defaulting Defendants. Defaulting Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defaulting Defendants or any individual or entity affiliated with Defaulting Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defaulting Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

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.

SO ORDERED, this ___23rd___ day of March, 2021.

A handwritten signature in black ink, appearing to read "Ursula Ungaro", written in a cursive style.

URSULA UNGARO
UNITED STATES DISTRICT COURT JUDGE