

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

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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. )

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**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND  
MONETARY JUDGMENT AS TO DEFENDANTS DIGITAL INCOME SYSTEM, INC.,  
DEREK JONES FOLEY, AND WILLIAM FOLEY**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed on November 16, 2020, its complaint against Digital Income System, Inc., Derek Jones Foley, William Foley, Christopher Brandon Frye, Jennifer Hedrick, and Kaitlyn Scott (collectively, “Defendants”)

seeking a permanent injunction and other equitable relief (“Complaint”), pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b(b), and the FTC’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Business Opportunities” (the “Business Opportunity Rule”), 16 C.F.R. Part 437, as amended, and an *ex parte* motion for temporary restraining order pursuant to FED. R. CIV. P. 65(b). On November 17, 2020, this Court granted the FTC’s motion and entered a temporary restraining order (“TRO”). The Commission and Defendants Digital Income System, Inc., Derek Jones Foley, William Foley, and Kaitlyn Scott filed a stipulated preliminary injunction, which this Court entered and ordered on December 21, 2020. The Commission and Defendants Digital Income System, Inc., Derek Jones Foley, and William Foley (collectively, “Settling Defendants”) now stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment as to Defendants Digital Income System, Inc., Derek Jones Foley, and William Foley (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties hereto.
2. The Complaint charges that Settling Defendants participated in deceptive acts or practices in violation of Sections 5(a) and 19 the FTC Act, 15 U.S.C. § 45(a) and 57b(b), and the FTC’s Trade Regulation Rule entitled Business Opportunity Rule, 16 C.F.R. Part 437.
3. Settling Defendants 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.
4. Settling Defendants and the Commission 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 as, for example, stuffing envelopes from the purchaser's home.

B. “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.

C. “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.

D. “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 Settling 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 or service to assist in the creation or development of a Business Opportunity or an Investment Opportunity.

### **II. PROHIBITION AGAINST MISREPRESENTATIONS**

IT IS FURTHER ORDERED that Settling 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 goods or services advertised, marketed, promoted, offered for sale, or sold by Defendants or any of them will earn or are likely to earn substantial income;

B. That Defendants or any of them 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 three million five hundred ninety-five thousand dollars (\$3,595,000) is entered in favor of the Commission and against Settling Defendants as monetary relief. Of this amount, six hundred thousand dollars (\$600,000) is joint and several with Defendant Christopher Brandon Frye; two hundred seventeen thousand four hundred twenty-six dollars (\$217,426) is joint and several with Defendant Jennifer Hedrick; and one hundred seventy-one thousand five hundred (\$171,500) is joint and several with Defendant Kaitlyn Scott.

B. In partial satisfaction of this judgment, Defendant Derek Jones Foley is ordered to pay the Commission thirty thousand dollars (\$30,000), which, as Defendant Derek Jones Foley stipulates, his undersigned counsel will hold in escrow by April 29, 2021, for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

C. In partial satisfaction of the monetary judgment, any assets held by third parties in the name of, or for the benefit of, Settling Defendants must be transferred to the Receiver, including but not limited to, the following assets:

1. Within ten (10) business days of receiving notice of this Order, Wells Fargo Bank, its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Digital Income System, Derek Jones Foley, William Foley, or Online Profit Network, including but not limited to:
  - a. Account No. ....1589;
  - b. Account No. ....2280;
  - c. Account No. ....4191;
  - d. Account No. ....4622;

- e. Account No. ....5873;
  - f. Account No. ....9442.
2. Within ten (10) business days of receiving notice of this Order, Chase Bank, its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, \$82,200 from:
- a. Account No. ....0627 in the names of William and Deborah Foley.
3. Within ten (10) business days of receiving notice of this Order, Truist Financial Corporation (BB&T), its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Derek Jones Foley, William Foley, Legacy Marketing, Legacy Infomedia, BizSites & Guides, or BBL Mobile, including but not limited to:
- a. Account No. ....1582;
  - b. Account No. ....2877;
  - c. Account No. ....3791;
  - d. Account No. ....8312.
4. Within ten (10) business days of receiving notice of this Order, Marcus by Goldman Sachs, its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Derek Jones Foley or William Foley, including but not limited to:

- a. Account No. ....3192.
5. Within ten (10) business days of receiving notice of this Order, Acorn Securities, its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Derek Jones Foley or William Foley, including but not limited to:
    - a. Account No. ....6830.
  6. Within ten (10) business days of receiving notice of this Order, Robinhood, its parent corporation, subsidiaries, principals, and agents must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Derek Jones Foley or William Foley, including but not limited to:
    - a. Account No. ....4311.
  7. Within ten (10) business days of receiving notice of this Order, PayArc, its parent corporation, subsidiaries, principals, and agents shall must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, the \$16,479.76 located in the reserve fund for Legacy Marketing Systems (William Foley), merchant number 926700022045771.
  8. Within ten (10) business days of receiving notice of this Order, EVO Payments International, LLC, must transfer to the Receiver by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, the \$9,903.09 located in the reserve fund held for Legacy Marketing Systems (Deborah/William Foley), merchant numbers 0000271503760206 / 0152090000889782.

D. In partial satisfaction of the monetary judgment, within ten (10) business days of entry of this Order, William Foley must turn over to the Receiver his 2015 Lexus IS 250 automobile and his 2018 Toyota Highlander automobile for liquidation.

E. In partial satisfaction of the monetary judgment, within ten (10) business days of entry of this Order, Derek Jones Foley must turn over to the Receiver his 2017 Land Rover SUV automobile for liquidation.

F. Upon completion of all asset transfers, as specified in this Section III, the remainder of the judgment is suspended, subject to the Subsections below.

G. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Defendant Digital Income System, signed on November 24, 2020;
2. the Financial Statement of Defendant Derek Jones Foley, signed on November 24, 2020, including the attachments;
3. the Financial Statements of Defendant William Foley, signed on November 30, 2020, and March 30, 2021, including the attachments; and
4. the e-mail communication between Julio Gutierrez and Harold Kirtz, dated April 5, 2021, at 1:30 pm.

H. The suspension of the judgment will be lifted as to any Settling Defendant if, upon motion by the Commission, the Court finds that that Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

I. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Settling Defendant in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint and allegedly caused by Settling Defendants), less any payment previously made



pursuant to this Section, plus interest computed from the date of entry of this Order.

#### **IV. ADDITIONAL MONETARY PROVISIONS**

A. Settling 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 assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Settling Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers), which Settling Defendants previously submitted 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.

E. 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 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 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 relief is to be deposited to the U.S. Treasury as disgorgement. Settling Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this subsection.

F. The asset freeze is modified to permit the payments and transfers identified in Section III. Upon completion of those payments and transfers, the asset freeze is dissolved.

## V. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Settling 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, any Settling Defendant 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 Settling 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 its possession, custody, or control within 30 days after entry of this Order. 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 Settling 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. Settling Defendants must provide truthful and complete information, evidence, and testimony. Settling 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 Settling Defendants obtain acknowledgments of receipt of this Order:

- A. Settling 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, any Settling Defendant, for any business that he or it, 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 Settling Defendants delivered a copy of this Order, Settling Defendants must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **VIII. COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that each Settling Defendant make timely submissions to the Commission:

- A. One year after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury, in which:
  1. Each Settling 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 that Settling Defendant; (b) identify all of that Settling 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 Settling Defendant must describe if he or it knows or should know due to that Settling Defendant's own involvement); (d) describe in detail whether and how that Settling 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 Settling 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 that Settling Defendant performs services whether as an employee or otherwise and any entity in which that Settling Defendant has any ownership interest; and (c) describe in detail that Settling Defendant's 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 Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that that Settling 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, Settling 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 that Settling Defendant performs services whether as an employee or otherwise and any entity in which that Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against that Settling 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, Inc.; Matter No. X210004.

## **IX. RECORDKEEPING**

IT IS FURTHER ORDERED that each Settling Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Settling Defendant, for any business that that Settling Defendant, 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 Settling Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended:

A. Within 14 days of receipt of a written request from a representative of the Commission, any Settling Defendant must: 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 Settling Defendants. Settling Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

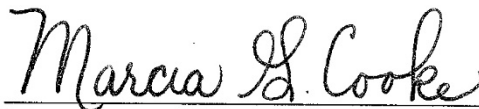
C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Settling Defendants or any individual or entity affiliated with Settling Defendants, without the necessity of identification or prior notice. Nothing 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 any Settling Defendant, 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.

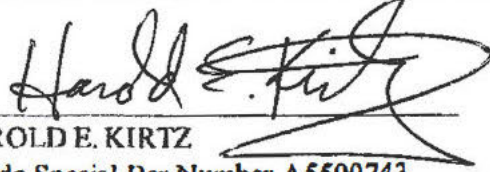
SO ORDERED, this 1<sup>st</sup> day of July 2021.

A handwritten signature in cursive script that reads "Marcia G. Cooke". The signature is written in black ink and is positioned above a horizontal line.

MARCIA G. COOKE  
United States District Judge

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF FEDERAL TRADE COMMISSION:**



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LARA TUMEH  
Florida Special Bar Number A5502699  
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FEDERAL TRADE COMMISSION

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Attorney for Defendant William Foley

**DEFENDANTS:**



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DIGITAL INCOME SYSTEM, INC.  
By: Derek Jones Foley, owner



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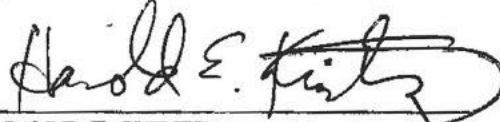
DEREK JONES FOLEY, individually and as  
owner, officer and manager of Digital Income  
System, Inc.

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WILLIAM FOLEY, individually and as officer and  
manager of Digital Income System, Inc.

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF FEDERAL TRADE COMMISSION:**



HAROLD E. KIRTZ

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Federal Trade Commission

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FEDERAL TRADE COMMISSION

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**Attorney for Defendant William Foley**

**DEFENDANTS:**

DIGITAL INCOME SYSTEM, INC.

By: Derek Jones Foley, owner

DEREK JONES FOLEY, individually and as  
owner, officer and manager of Digital Income  
System, Inc.

*William Foley*  
WILLIAM FOLEY, individually and as officer and  
manager of Digital Income System, Inc.