

1 LANCE N. JURICH (SBN 132695)  
ljurich@loeb.com  
2 BENJAMIN R. KING (SBN 205447)  
bking@loeb.com  
3 LOEB & LOEB LLP  
10100 Santa Monica Blvd., Suite 2200  
4 Los Angeles, CA 90067  
Telephone: 310.282.2000  
5 Facsimile: 310.282.2200

6 Attorneys for THOMAS A.  
SEAMAN, Court-Appointed Receiver

7 Thomas Seaman, CFA  
8 Court-Appointed Receiver  
3 Park Plaza, Suite 550  
9 Irvine, CA 92614  
Telephone (949) 222-0551  
10 Facsimile (949) 222-0661

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,  
14 Plaintiff,

15 v.

16 DIGITAL ALTITUDE LLC, a  
17 Delaware limited liability company;  
DIGITAL ALTITUDE LIMITED,  
18 United Kingdom company; ASPIRE  
PROCESSING LLC, a Nevada limited  
19 liability company; ASPIRE  
PROCESSING LIMITED, a United  
20 Kingdom company; ASPIRE  
VENTURES LTD., a United Kingdom  
21 company; DISC ENTERPRISES INC.,  
a Nevada corporation; RISE SYSTEMS  
22 & ENTERPRISE LLC, a Utah limited  
liability company; RISE SYSTEMS &  
23 ENTERPRISE LLC, a Nevada limited  
liability company; SOAR  
24 INTERNATIONAL LIMITED  
LIABILITY COMPANY, a Utah  
25 limited liability company; THE  
UPSIDE, LLC, a California limited  
26 liability company; THERMOGRAPHY  
FOR LIFE, LLC, also d/b/a LIVING  
27 EXCEPTIONALLY, INC., a Texas  
limited liability company; MICHAEL  
28 FORCE, individually and as an officer,

Case No.: 2:18-cv-00729 JAK-MRW

Assigned to Hon. John A. Kronstadt

**MOTION OF RECEIVER  
THOMAS A. SEAMAN FOR  
APPROVAL TO PAY INTERIM  
FEES AND COSTS TO  
RECEIVER'S COUNSEL, LOEB  
& LOEB, LLP**

[Concurrently filed with supporting  
Declaration of Benjamin R. King]

Date: June 11, 2018

Time: 8:30 a.m.

Place: Courtroom 10B  
350 W. First Street  
Los Angeles, 90012

**Complaint Filed: January 29, 2018**

1 member and/or manager of Digital  
2 Altitude LLC and Soar International  
3 Limited Liability Company; MARY  
4 DEE, individually and as an officer,  
5 member and/or manager of Digital  
6 Altitude LLC, Digital Altitude Limited,  
7 Aspire Processing LLC, RISE Systems  
8 & Enterprise LLC, The Upside, LLC,  
9 and Thermography for Life, LLC;  
10 MORGAN JOHNSON, individually and  
11 as an officer, member and/or manager of  
12 Digital Altitude LLC and RISE Systems  
13 & Enterprise LLC; ALAN MOORE,  
14 individually and as an officer, member  
15 and/or manager of Digital Altitude LLC  
16 and Aspire Processing Limited; and  
17 SEAN BROWN, individually and as an  
18 officer, member and/or manager of  
19 Aspire Processing LLC, Disc  
20 Enterprises Inc. and RISE Systems &  
21 Enterprise LLC,  
22  
23 Defendants.  
24

25 Thomas A. Seaman, the Court-appointed Temporary Receiver (“Receiver”)  
26 for defendants Digital Altitude, LLC, Digital Altitude Limited; Aspire Processing  
27 LLC; Aspire Processing Limited; Aspire Ventures Ltd; Disc Enterprises Inc.; RISE  
28 Systems & Enterprise LLC (Utah); RISE Systems & Enterprise LLC (Nevada); Soar  
International Limited Liability Company; The Upside, LLC; Thermography for  
Life, LLC, d/b/a Living Exceptionally, Inc., and each of their subsidiaries, affiliates,  
successors, and assigns (the “Receivership Entities”), by and through his counsel of  
record, Loeb & Loeb, LLP, respectfully moves the Court for entry of an order  
authorizing him to pay attorneys’ fees in the amount of \$62,200.00 and to reimburse  
costs in the amount of \$774.51 incurred from January 29, 2018 through March 31,  
2018 (the “First Interim Fee Period”) (this “Motion”).

29 **I. PROCEDURAL BACKGROUND AND RETENTION OF COUNSEL**

30 1. Plaintiff Federal Trade Commission (“FTC”) filed the above-captioned  
31 action, under seal, on January 29, 2018. On Thursday, February 1, 2018, this Court  
32 entered its “*Ex Parte* Temporary Restraining Order With Asset Freeze, Appointment

1 of Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why  
2 a Preliminary Injunction Should Not Issue” (the “TRO”).

3 2. This Court’s TRO provided that the Receiver may retain counsel as  
4 necessary to carry out his duties. [Docket No. 16, p. 16, ¶ 8.] This authority was  
5 extended as part of this Court’s subsequently entered Preliminary Injunction issued  
6 on March 9, 2018. [Docket No. 111, p. 21.] The Receiver retained the law firm of  
7 Loeb & Loeb LLP (“Loeb”) to represent him and assist him in carrying out his  
8 duties in this matter, based upon Loeb’s strong experience and reputation in the area  
9 of representation of receivers in matters such as this. In addition, the Receiver  
10 selected Loeb based upon its offer of significant reductions in Loeb’s standard rates  
11 for this representation. Loeb has also successfully represented Receiver in the past –  
12 including as to prior FTC Act enforcement matters similar to this one – and  
13 therefore Receiver was very confident in Loeb’s ability to represent him well in this  
14 matter.

15 3. As stated above, this Motion pertains to legal services provided to  
16 Receiver for the period from January 29, 2018 through March 31, 2018. In the  
17 concurrently filed “Receiver’s First Fee Application,” the Receiver has summarized  
18 the activities of the Receiver during this time frame, and the Receiver over the same  
19 period has obtained invaluable advice and assistance from Loeb in connection with  
20 this litigation and the conduct of the activities described in the Receiver’s fee  
21 application. The Receiver has benefited from the advice of counsel in connection  
22 with such matters as interpreting his obligations under the TRO and PI, effectuating  
23 the takeover of the receivership entities and assets in a manner which comports with  
24 this Court’s directives, preparation for testimony at the extended Preliminary  
25 Injunction hearing held by this Court on March 5-6, 2018, preparation and filing of  
26 the Receiver’s First Report and Inventory (the “First Report” [Docket No. 93.]),  
27 efforts of the Receiver to identify, recover, and claw back assets of the Receivership  
28 Entities for the benefit of the Receivership Estate, providing notice of additional

1 receivership entities to this Court and the parties, and in interfacing with the parties  
 2 in this matter and responding to inquiries concerning the Receiver’s activities,  
 3 decisions, and overall role in this matter.

4 4. The primary attorneys responsible for the day-to-day representation of  
 5 Receiver are as follows:

Attorney	Title/Position	Standard Hourly Billing Rate	Discounted Hourly Billing Rate
Lance N. Jurich (Admitted in 1988)	Partner	\$875.00	\$695.00
Benjamin R. King (Admitted in 1999)	Partner	\$750.00	\$595.00

11  
 12 5. The billing rates listed above are the rates negotiated between the  
 13 Receiver and Loeb and not the rates normally billed to Loeb’s other clients for  
 14 similar services. For example, Lance Jurich’s billing rate for 2018 is \$875.00 and  
 15 Benjamin King’s billing rate for 2018 is \$750.00. Of these attorneys, the bulk of the  
 16 services to Receiver have been provided by partner Benjamin R. King (with the  
 17 lowest billing rate of all involved Loeb partners). While Loeb has associates who  
 18 stand ready to assist with this matter, the assistance that the Receiver has required  
 19 thus far has not been of the type that can be efficiently and effectively handled by an  
 20 associate. Most, if not all, of the work performed thus far has involved high-level  
 21 advice requiring a strong background in, and understanding of, receivership law and  
 22 procedure. The advice has included assisting the Receiver in carrying out his duties  
 23 under the TRO and PI while navigating between a number of sometimes competing  
 24 interests. It has also included a short trial proceeding in early February 2018 to  
 25 determine whether a Preliminary Injunction would be issued and whether the  
 26 receivership would be continued. The matter has *not* involved thus far the type of  
 27 standard litigation activities where associate and paralegal help is most readily  
 28

1 utilized, including such things as preparing standard motion papers or propounding  
2 and responding to written discovery or producing documents.

3 **II. SERVICES RENDERED BY RECEIVER'S COUNSEL DURING**  
4 **THE FIRST INTERIM APPLICATION PERIOD**

5 6. As did the Receiver, the Receiver's counsel kept detailed and  
6 segregated records of the billable time for which the Receiver now seeks authority  
7 to pay. Attached as Exhibit "A" to the concurrently filed King Decl. is a set of  
8 invoices prepared by Loeb's billing department (and redacted for privilege) setting  
9 forth the specific tasks performed and the time spent performing those tasks by  
10 Loeb's timekeepers identified above.

11 7. The major categories of work performed by, and advice provided by,  
12 Receiver's counsel are summarized as follows:

- 13 • Prepared for and attended takeover of DA business in Orem Utah;
- 14 • Assisted receiver in post-takeover discussions with FTC and defendants,  
15 including discussions and negotiations surrounding whether the business  
16 should continue to be operated, scope and application of the TRO (and  
17 later, the PI), and the un-freezing of assets in certain cases for essential  
18 living expenses of the individual defendants;
- 19 • Assisted the Receiver in revising, finalizing, and filing, his First Interim  
20 Report to this Court and supporting documentation;
- 21 • Assisted Receiver in preparing for, and attended on behalf of Receiver, the  
22 preliminary injunction hearing proceedings (at which receiver testified  
23 twice); and
- 24 • Assist receiver in seeking return of funds from various third parties.

25 8. The total amount of attorneys' fees incurred for these activities (after  
26 Loeb's discount on its rates is applied), is \$62,200.00. These fees and costs are  
27 broken down in detail not only in the accompanying Loeb invoices which reflect  
28 task billing (and not block billing) to show the specific work, but also in the

1 summary charts prepared in the format this Court requires in its Initial Standing  
 2 Order in this matter [Docket No. 65] and attached to the concurrently filed King  
 3 Decl. as Exhibits B and C, respectively.

4 9. The costs incurred on behalf of the Receivership Estate through Loeb  
 5 during the same period total \$774.51. The detail for such costs is included on the  
 6 invoices attached collectively to the King Decl. as Exhibit A, and are summarized as  
 7 follows:

Cost	Amount
AIRFARE (LAX/SLC)	\$379.60
LODGING (in Orem Utah)	\$154.94
ONLINE RESEARCH	\$10.40
OUT OF TOWN MEALS	\$18.43
OUT-OF-TOWN TRAVEL	\$173.87
PHOTOCOPY	\$31.20
POSTAGE	\$6.07
	<b>\$774.51</b>

### 18 **III. REASONABLENESS OF THE LOEB'S FEES AND COSTS**

19 10. "As a general rule, the expenses and fees of a receivership are a charge  
 20 upon the property administered." *Gaskill v. Gordon*, 27 F. 3d 248, 251 (7th Cir.  
 21 1994). These expenses include the fees and expenses of this Receiver and his  
 22 professionals, including Loeb & Loeb, LLP. Decisions regarding the timing and  
 23 amount of an award of fees and costs to the Receiver and his Professionals are  
 24 committed to the sound discretion of the Court. *See SEC v. Elliot*, 953 F. 2d 1560,  
 25 1577 (11th Cir. 1992) (rev'd in part on other grounds, 998 F.2d 922 (11th Cir.  
 26 1993)).

27 11. In allowing fees, a court should consider "the time, labor and skill  
 28 required, but not necessarily that actually expended, in the proper performance of

1 the duties imposed by the court upon the receiver[], the fair value of such time, labor  
2 and skill measured by conservative business standards, the degree of activity,  
3 integrity and dispatch with which the work is conducted and the result obtained.”  
4 *United States v. Code Prods. Corp.*, 362 F. 2d 669, 673 (3d Cir. 1966) (internal  
5 quotation marks omitted). In practical terms, receiver and professional  
6 compensation thus ultimately rests upon the result of an equitable, multi-factor  
7 balancing test involving the “economy of administration, the burden that the estate  
8 may be able to bear, the amount of time required, although not necessarily  
9 expended, and the overall value of the services to the estate.” *In re Imperial 400*  
10 *Nat’l, Inc.*, 432 F. 2d 232, 237 (3d Cir. 1970). Regardless of how this balancing test  
11 is formulated, no single factor is determinative and “a reasonable fee is based [upon]  
12 all circumstances surrounding the receivership.” *SEC v. W.L. Moody & Co.*,  
13 *Bankers (Unincorporated)*, 374 F. Supp. 465, 480 (S.D. Tex. 1974).

14 12. As stated above, the Receiver retained Loeb in part for its vast expertise  
15 in the representation of receivers in complex matters such as this.

16 13. Loeb staffed this matter with attorneys in its Los Angeles office,  
17 choosing attorneys that have particular expertise in the representation of receivers  
18 and in financial investigation matters which this matter has implicated. While  
19 certain attorneys have had limited roles in this matter, the attorneys who primarily  
20 performed services are:

- 21 • Lance N. Jurich, a partner in Loeb’s Los Angeles Creditor’s Rights  
22 And Bankruptcy Department, is a very experienced attorney who has  
23 served for 30 years specializing in the areas of bankruptcy,  
24 receiverships, restructuring, workouts and turnarounds, and effectively  
25 representing Loeb’s clients’ interests related to federal and state  
26 bankruptcy and state-court creditors’ rights proceedings. A copy of  
27 Mr. Jurich’s Bio is attached as Exhibit D to the King Decl.  
28

- 1 • Benjamin R. King, also a partner in Loeb's Los Angeles Creditor's  
2 Rights And Bankruptcy Department, is a commercial litigator and  
3 creditors' rights attorney who has substantial experience and expertise  
4 representing receivers, is a member of the Board of Directors for the  
5 Los Angeles/Orange County Chapter of the California Receiver's  
6 Forum, and specializes in the employment of prejudgment remedies  
7 such as receiverships and injunctive remedies. In his 19-year career,  
8 Mr. King has represented both receivers and secured lenders seeking  
9 the appointment of receivers in both state and federal court. A copy of  
10 Mr. King's Bio is attached as Exhibit E to the King Decl.

11 14. My review of the invoices that Loeb has provided me to date (which  
12 are attached to the King Decl. as Ex. A) reflect, in my opinion, an efficient approach  
13 to the various tasks I have asked Loeb to undertake thus far in this matter. I believe  
14 Loeb's experience in this matter has avoided the need for significant additional fees  
15 that may have been incurred by less experienced counsel in terms of additional  
16 research and analysis time which Loeb has performed quickly or avoided the need  
17 for altogether.

18 15. The standard hourly rates as stated above for Messrs. Jurich and King  
19 are reasonable for attorneys of like experience in the relevant Los Angeles market,  
20 and are comparable to those the Receiver has seen in connection with other matters  
21 in which the Receiver has used counsel other than Loeb. *See* King Decl., ¶ 4.  
22 Nevertheless, as stated above, Loeb has already agreed to significant discounted  
23 rates well below such standard rates. *See id.*

24 16. Finally, several additional factors weigh in favor of full reimbursement  
25 of the fees sought, including that: (1) the Receiver and his counsel undertook the  
26 responsibilities of this case with no guarantee that sufficient funds would be  
27 recovered to compensate them for their work; (2) the time-sensitive nature of this  
28 case required a significant amount of work in a relatively short time period; (3) the



1 defendants' counsel took an early strategy making an issue of the sufficiency of the  
2 Receiver's work and analysis in this matter, making the Receiver a central witness  
3 in the proceedings leading to the Preliminary Injunction in this matter; and (4) Loeb  
4 has efficiently staffed and conducted its representation of the Receiver, including by  
5 having its partner with the lowest partner billing rate (Mr. King) handle most aspects  
6 of the Receiver's representation.

7 17. As indicated in the Receiver's First Report, the Receivership Estate is  
8 in possession of sufficient funds to pay the amounts requested in the Receiver's First  
9 Interim Fee Applications for Receiver's and Loeb's fees/costs.

10 18. Other than the Receiver's concurrently filed application for  
11 reimbursement of his fees, there have been no prior or other requests for approval of  
12 fees and expenses.

13 **FOR THESE REASONS**, the Receiver requests that the Court enter an  
14 Order approving this Application.

15 Date: April 6, 2018

Respectfully submitted,



18 Thomas A. Seaman \_\_\_\_\_

19 APPROVED AS TO FORM AND CONTENT:

21 /s/ Benjamin R. King

22 Benjamin R. King  
23 Lance N. Jurich  
24 LOEB & LOEB LLP  
25 10100 Santa Monica Blvd., Suite 2200  
26 Los Angeles, California 90067  
27 Telephone: 310-282-2000  
28 Facsimile: 310-282-2200

Attorneys for Receiver, Thomas A. Seaman