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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

**RECEIVER'S SECOND INTERIM
REPORT**

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 Defendants.)

23 Thomas A. Seaman, the Court-appointed Temporary Receiver (“Receiver”))
 24 for defendants Digital Altitude, LLC, Digital Altitude Limited; Aspire Processing)
 25 LLC; Aspire Processing Limited; Aspire Ventures Ltd; Disc Enterprises Inc.; RISE)
 26 Systems & Enterprise LLC (Utah); RISE Systems & Enterprise LLC (Nevada); Soar)
 27 International Limited Liability Company; The Upside, LLC; Thermography for)
 28 Life, LLC, d/b/a Living Exceptionally, Inc., and each of their subsidiaries, affiliates,)
 successors, and assigns (the “Receivership Entities”), respectfully submits this)
 Receiver’s Second Report to advise this Court and interested parties with the status)
 of the Receiver’s activities and preliminary findings.

23 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

24 Plaintiff Federal Trade Commission (“FTC”) filed the above-captioned)
 25 action, under seal, on January 29, 2018. On Thursday, February 1, 2018, this Court)
 26 entered its “*Ex Parte* Temporary Restraining Order With Asset Freeze, Appointment)
 27 of Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why)
 28 a Preliminary Injunction Should Not Issue” (the “TRO”). On March 9, 2018 the

1 Court issued a Preliminary Injunction and continued the receivership. The Receiver
2 filed his Receiver's First Report on March 1, 2018 which provided an accounting
3 through February 28, 2018.¹ This Receiver's Second Report covers the period from
4 March 1, 2018 through May 31, 2018 ("the Reporting Period"). The Receiver will
5 file another report for the quarter ending August 30, 2018 in September, 2018.

6 **II. STATUS REPORT**

7 **A. Frozen Funds:** The Receiver has continued to take possession of the
8 Receivership Entities' frozen funds in accordance with the TRO and Preliminary
9 Injunction. A number of bank accounts of the Receivership Entities were frozen
10 upon entry of the TRO. Based upon information gathered from Digital Altitude's
11 digital books and records, the Receiver identified additional non-named parties and
12 took actions to freeze their bank accounts. On February 28, 2018, the Receiver filed
13 his "Notice of Identification of Nonparties as Receivership Parties pursuant to
14 Temporary Restraining Order." [See Docket # 82]. Since that time, additional
15 accounts have been identified and have also been frozen. A list of funds recovered
16 from these additional entities which total \$444,481.14 is provided in **Exhibit A**.
17 During the Reporting Period, the Receiver took possession of a total of \$652,809.29
18 previously held at various banks and financial institutions. Through May 31, 2018,
19 the Receiver took possession of a total of \$1,873,810.47.

20 **B. Merchant Account Payment Processors:** Most of Digital Altitude's
21 customers paid their fees with a credit card and Digital Altitude used a very large
22 network of merchant accounts to facilitate the payment of members' fees. The
23 Receiver has provided notice of the freeze order and TRO to known merchant
24 account processors and has instructed them that charge-backs requested by
25 cardholders cannot be paid from the reserves in these accounts. The Receiver's
26

27 ¹ The accounting period for the Receiver's First Report was from his initial
28 appointment through February 23, 2018. There were no receipts or disbursements to
report for the remainder of February of 2018.

1 investigation into the existence of additional merchants and merchant accounts is
2 ongoing and, as before, notice that the accounts are to be frozen will be provided
3 when additional processors are identified. The Receiver's efforts to collect the
4 funds are ongoing. This includes the Receiver's recovery of \$171,386.75 in early
5 June. While most merchant account processors have been cooperative, one
6 merchant account processor in Mexico has not cooperated and claims to have
7 depleted the entire reserve. The Receiver is currently considering whether he has
8 recourse to redress this processor's recalcitrance (mindful that there are potential
9 jurisdictional hurdles to overcome), and is assessing and considering the
10 practicalities involved as well.

11 **C. Release of Funds to Individual Defendants:** Four Defendants – Alan
12 Moore, Mary Dee, Michael Force, and Sean Brown – have petitioned the Receiver
13 to release \$5,000 for their personal expenses in accordance with the TRO. The
14 appropriate substantiation was provided, and the Receiver directed the respective
15 banks to release \$5,000 from the frozen accounts. The Preliminary Injunction in
16 this matter provides that additional funds may be released to Defendants Michael
17 Force and Mary Dee for essential living expenses. In accordance with the TRO and
18 Preliminary Injunction the Receiver has released \$19,588.87 to Michael Force and
19 \$34,704.03 to Mary Dee. An accounting of funds released to date is provided in
20 **Exhibit B.**

21 **D. Personal Property:** As reported previously, upon his takeover of
22 Digital Altitude's business premises in Orem, Utah, the Receiver took possession of
23 all computers located there but abandoned various cubicles, desks, chairs, monitors,
24 and headsets which were of limited value, if any (and the expenses of selling the
25 same would likely exceed any proceeds of any sale). Since the Receiver's First
26 Report, the Receiver has not become aware of any additional personal property used
27 in the conduct of the Receivership Entities.

28

1 **E. Books and Records:** Upon his takeover, the Receiver did not find any
2 business-related books and records at the premises in Orem, Utah, and to date the
3 Receiver has not taken possession of any paper records, aside from a handful of
4 scripts and papers on coaches' desks. The Receivership Entities are believed to
5 have conducted their enterprise almost entirely in the digital world using web-based
6 systems. The Receiver allowed the FTC access to conduct a back-up of the digital
7 books and records that have been identified, with the assistance of the Receiver's
8 IT consultants. There are many such systems and the Receiver's investigation and
9 efforts to control and preserve the digital data are ongoing. The digital books and
10 records are voluminous and include financial information and sales materials styled
11 as written course materials.

12 **F. Cutting Off Sales Contacts With Customers.** The Receiver has
13 ceased the collection of fees and payments from all websites directed to consumers.
14 Nevertheless, funds continued to trickle in to Digital Altitude because some Digital
15 Altitude sales people continued to process customer orders after the date of the
16 TRO, or payments were in transit from sales arising before the TRO. Since the time
17 that the Receiver assumed possession on February 5, 2018 through February 9,
18 2018, consumers have paid an additional \$208,546. Of this amount, \$36,048 was
19 paid to the Receiver and \$172,498 was paid to merchant accounts that are holding
20 the funds. This Court may wish to consider if it is appropriate for the Receiver to
21 return these post TRO payments to consumers or otherwise hold them for
22 administration in a future claim process for the benefit of all aggrieved consumers
23 should the FTC prevail on its claims. The amount collected by the Receiver is
24 therefore included in the entry for cash held by the Receiver with a corresponding
25 liability entry on the receivership balance sheet.

26 **G. Additional assets.** The Receiver continues to investigate the location
27 and amount of any reserves held by merchant account processors. The Receiver is
28 informed that two joint venture sales partners were holding approximately \$190,000

1 of frozen funds that they had transferred to an attorney's client trust account. The
2 Receiver demanded return of the funds and those funds were remitted to the
3 Receiver on April 30, 2018. In addition, the Receiver is also informed that Digital
4 Altitude made a clerical error and overpaid \$515,000 to an individual named John
5 Souza in connection with a purported recently settled contractual dispute.
6 Mr. Souza was apparently to have been paid \$600,000 in settlement, but according
7 to the Receiver's calculations received \$1,105,000 in settlement payments plus
8 \$10,000 in settlement-related overpayments. The Receiver is in the process of
9 obtaining turnover of the excess funds to the receivership, but Mr. Souza (through
10 his counsel) has disputed the Receiver's demand and the Receiver may need to seek
11 the assistance of the Court if the funds are not returned.

12 **III. SUSPENSION OF DEFENDANTS' BUSINESS OPERATIONS**

13 As previously reported the Receiver suspended business operations in
14 accordance with the TRO and Preliminary Injunction because the Receiver
15 determined in his business judgment that the business cannot be operated lawfully
16 and profitably. [See Docket # 34, at Section XII.S] The Receiver has not resumed
17 operations, and has no plans to do so, as he has not determined a feasible means of
18 resuming operations in a lawful and profitable manner.

19 **IV. ACCOUNTING**

20 Attached collectively as **Exhibit C** to this Second Report is a Profit and Loss
21 Statement and General Ledger for the receivership from March 1, 2018 through
22 May 31, 2018, as well as a Balance Sheet as of May 31, 2018. For the latest
23 reporting period, gross receipts were \$652,809.29. Inception-to-date gross receipts
24 are \$1,873,810.47. During the reporting period and inception-to-date, the Receiver
25 disbursed \$2,130.78. The Receiver is holding cash in the amount of \$1,871,679.69
26 as of May 31, 2018.

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1 **V. RECEIVER FEES**

2 As set forth in the Receiver’s First Fee Application [*See* Docket # 143], the
3 Receiver incurred fees of \$137,886 incurred through March 31, 2018. The matter is
4 pending hearing on July 2, 2018. The fees have declined significantly in the
5 reporting period and are as follows:

6	April, 2018	\$18,200.50
7	May, 2018	\$9,261.50

8 The total receiver fees for the duration of the receivership are \$165,348 and
9 are 8.8% of the gross receipts to the estate. The Receiver and his counsel anticipate
10 making a second fee application concurrent with the filing of the Receiver’s next
11 report for the April through July time period.

12 **VI. CONSUMER RELATIONS:**

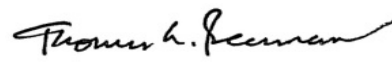
13 To foster communication with interested parties, the Receiver established the
14 website www.digitalaltitudereceiver.com. The Receiver continues to update this site
15 regularly. Interested parties may sign up to the website to receive website updates by
16 email.

17 Dated: June 22, 2018

THOMAS A. SEAMAN, TEMPORARY
RECEIVER

18

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By: 
THOMAS A. SEAMAN

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21

22 Dated: June 22, 2018

LOEB & LOEB LLP
LANCE N. JURICH
BENJAMIN R. KING

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By: /s/ Benjamin R. King
Benjamin R. King
Attorneys for THOMAS A. SEAMAN,
Temporary Receiver

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