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

) Case No.: 2:18-cv-00729 JAK-MRW
)
) Assigned to Hon. John A. Kronstadt

) **RECEIVER'S SECOND FEE**
) **APPLICATION**

) Date: January 28, 2019
) 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 Receiver (“Receiver”) for
 26 defendants Digital Altitude, LLC, Digital Altitude Limited; Aspire Processing LLC;
 27 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”), hereby respectfully submits
 this second interim application for approval and payment of fees and reimbursement
 of expenses (the “Application”). This Application covers the period from April 1,
 2018, through September 30, 2018 (“Second Application Period”) and seeks interim
 approval of \$64,406.50 in fees.

29 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

30 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
 33

1 of Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why
2 a Preliminary Injunction Should Not Issue” (the “TRO”). On February 5, 2018, the
3 Receiver assumed possession of the Receivership Entities. The TRO directed the
4 Receiver to file an application for payment of fees and costs 60 days following the
5 TRO. On March 9, 2018, the Court granted a Preliminary Injunction and confirmed
6 the appointment of the Receiver (the “PI Order”).

7 **II. APPLICATION**

8 During the Second Application Period, the Receiver and his staff spent
9 375.1 hours executing the duties set forth in the TRO; and the subsequent PI Order.
10 Since the time of his appointment the Receiver has taken possession of
11 \$2,009,149.22 in funds turned over by financial institutions of the Receivership
12 Entities and their subsidiaries and affiliates. By this Application, the Receiver seeks
13 approval of \$64,406.50 in fees incurred from April 1, 2018, through September 30,
14 2018. The fees were incurred at hourly rates ranging from \$60 to \$400 per hour and
15 the weighted average hourly rate was \$172 per hour.

16 **A. SCOPE OF RECEIVER’S WORK**

17 As set forth in the Receiver’s second interim report, the Receiver is making
18 significant progress asserting control over the Receivership Entities and identifying
19 and taking possession of assets and is holding cash in the amount of \$1,814,508.63.
20 During the application period the following work has been performed:

- 21 • Demanded and collected funds in frozen accounts;
- 22 • Prepared a status report to the Court providing a status of steps taken to
23 implement the TRO, the financial condition of the enterprise, the
24 decision to suspend operations and recommendations for proceeding;
- 25 • Administered Defendants’ requests for release of frozen funds in
26 accordance with the Preliminary Injunction.
- 27 • Identified credit card processing companies and merchant accounts;
- 28

- 1 • Preserved the Receivership Entities’ digital records, including
- 2 documents, a database used to manage sales calls, coaching session
- 3 videos, emails, accounting information, and other digital records. The
- 4 enterprise is highly mechanized, and the extent of digital information is
- 5 vast; assisted the parties with access to same.
- 6 • Held discussions with the company’s outside accountants regarding
- 7 taxes, 1099s, books and records, and assistance with future filing
- 8 requirements;
- 9 • Identified, demanded and recovered \$190,000 transferred to two
- 10 affiliates’ attorney’s client trust account in order to mitigate the
- 11 affiliates potential personal liability for consumer credit card
- 12 chargebacks for accounts the affiliates had established for the benefit of
- 13 Digital Altitude. The funds have been recovered in full.
- 14 • Identified and pursued recovery of an overpayment of \$500,000 to a
- 15 party that provided purported sales training credentials; demanded and
- 16 are negotiating return of the funds. The Court’s assistance may be
- 17 necessary.
- 18 • Considered damage claims against third parties.
- 19 • Replied to consumer inquiries.
- 20

21 **B. Receivership Accounting - Receipts and Disbursements**

22 To date through September 30, 2018, the Receiver has collected
23 \$2,009,149.22, disbursed \$230,688.59, and is holding cash in the amount of
24 \$1,814,508.63.

25 **III. SUMMARY OF RECEIVER'S FEES**

26 Exhibit A provides a summary by timekeeper of the total fees for the Second
27 Application Period of \$64,406.50, as well as a detailed listing of every task
28 performed by the Receiver or his agents. The Receiver’s fees have declined

1 considerably as the case moves toward conclusion. The fees were incurred by
 2 month as follows:

3	April 2018	\$20,513.00
4	May 2018	\$9,986.50
5	June 2018	\$13,440.00
6	July 2018	\$9,384.00
7	August 2018	\$8,975.00
8	<u>September 2018</u>	<u>\$2,108.00</u>
9	Total	\$64,406.50

10 The Receiver and his agents expended 375.1 hours administering the affairs
 11 of the receivership estate at a total cost of \$64,406.50. In order to efficiently
 12 manage the receivership estate and minimize fees, the Receiver delegates work to
 13 lower priced employees of the Receiver at rates ranging from \$60 to \$210 per hour.
 14 These employees worked 321.1 hours at an average hourly rate of \$133, bringing
 15 the weighted average hourly rate to \$172 per hour.

16 Prior to being nominated to serve as receiver by the FTC, the Receiver agreed
 17 to cap the blended hourly rate at \$210 for the duration of the appointment. In the
 18 Receiver’s First Fee Application the blended hourly rate was \$217.83, and the
 19 Receiver reduced his fee request by \$5,141.50 accordingly. In the second
 20 application period the blended hourly rate is \$172. Cumulatively over the duration
 21 of the appointment, the blended rate is \$201. The Receiver therefore requests
 22 approval of the previously withheld \$5,141.50. The Receiver also seeks
 23 reimbursement of the Receiver of travel expenses of \$2,423.51, primarily for the
 24 initial takeover the Utah offices. A list of expenses is attached as Exhibit B. The
 25 Receiver therefore seeks approval of fees and costs in the amount \$71,971.51.

26 **IV. SUMMARY OF CHARGES BY TASK**

27 The following summarizes the charges listed in Exhibit A by category of fees:
 28

	<u>Task</u>	<u>Hours</u>	<u>Amount</u>
1			
2	Accounting and Reporting	34.0	\$5,817.50
3	Consumer Relations	84.6	\$7,123.00
4	Project Management	131.5	\$23,227.00
5	Receiver	54.0	\$21,600.00
6	Receivership Administration	57.3	\$4,438.00
7	Research Files	5.4	\$950.00
8	Takeover Property	8.3	\$1,251.00
9	<u>Total</u>	<u>375.1</u>	<u>\$64,406.50</u>

9 Accounting and Reporting.

10 This cost category collects cost of accounting for receipts and disbursements
 11 of the receivership estate, banking, and preparation of deposits and checks. For the
 12 Second Application Period, 34.0 hours were spent on these tasks for a total of
 13 \$5,817.50. A Quickbooks was created and bank accounts were established for the
 14 receivership estate, and other miscellaneous tasks set forth in Exhibit A. The
 15 average hourly rate was \$171.

16 Consumer relations.

17 The costs include responding to consumer inquiries and maintaining the
 18 receivership website. For the Second Application Period, 84.6 hours were spent on
 19 these tasks for a total of \$7,123.00. The average hourly rate was \$84.

20 Project Management.

21 In total, 131.5 hours at were spent and preserving and managing digital
 22 information, assisting the Receiver with identifying and taking possession of
 23 receivership assets, managing financial matters, assisting the Receiver and
 24 document requests of the FTC, and otherwise managing the affairs of the
 25 receivership estate. The total cost was \$23,227.00 and was incurred at \$177 per
 26 hour.

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1 Receiver.

2 This category is only used by the Receiver and includes work to manage the
3 myriad requirements of the receivership estate as set forth in the Scope of the
4 Receiver's work above. During this Second Application Period, the initial seizure
5 of the Receivership Entities, identifying and marshalling assets, investigating the
6 nature of the enterprise and its assets, reporting to the Court, dealing with
7 Defendants and interested parties, as well as developing a plan for the receivership
8 estate were the primary focus of the Receiver's efforts. The Receiver spent
9 54.0 hours, or approximately 6% of his time in the Second Application Period on
10 these tasks. At his hourly rate of \$400, the total amount is \$21,600.

11 Receivership Administration.

12 The work is comprised of document preservation and organization, and
13 review and processing of incoming mail, which provides invaluable clues to locating
14 assets and other matters requiring the attention of the Receiver, replying to
15 consumers emails and calls, and assisting the Receiver with administrative tasks.
16 This category consumed 57.3 hours for a total of \$4,438.00, or \$77 per hour.

17 Research Files.

18 This category includes investigative work in reviewing accounting and other
19 business records to locate assets and understand the business operations. The hours
20 worked were 5.4 for a total of \$950.00, or \$176 per hour.

21 Takeover Property.

22 This category covers the cost of the seizure of the Receivership Entities
23 including the company premises, bank accounts, and real property assets as
24 discussed above. For the Second Application Period, 8.3 hours were spent on these
25 tasks for a total of \$1,251.00. The average hourly rate was \$151.

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**V. THE FEES COSTS ARE REASONABLE
AND SHOULD BE ALLOWED**

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

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

As a preliminary matter, the TRO and PI Order confer on the Receiver substantial duties and powers, including to conduct such investigation and discovery as is necessary to locate and account for all receivership assets, take such action as is necessary and appropriate to assume control over and preserve receivership assets,

1 and employ attorneys and others to investigate and, where appropriate, institute,
2 pursue, and prosecute all claims and causes of action of whatever kind and nature.
3 See TRO, Part IX; PI Order, Part IX.

4 The Receiver believes the rates and the total fees and expenses charged are
5 reasonable in view of the challenges and circumstances encountered and respectfully
6 requests an order approving the total fees and costs submitted in the amount of
7 \$71,971.51.

8 **VI. CONCLUSION**

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

11 Date: October 25, 2018

Respectfully submitted,

12 

13 _____
14 Thomas A. Seaman

15 APPROVED AS TO FORM AND CONTENT:

16 _____
17 */s/ Benjamin R. King*

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