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SEAMAN, Court-Appointed Receiver

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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 THIRD 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 Third 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” (respectively, the “Freeze Order” and

1 “TRO”). On March 9, 2018 the Court issued a Preliminary Injunction and  
2 continued the receivership. The Receiver filed his Receiver’s First Report on  
3 March 1, 2018 which provided an accounting through February 28, 2018. This  
4 Receiver’s Second Report was filed on June 22, 2018. The Receiver’s Third Report  
5 covers the period from June 1, 2018 through September 30, 2018 (“the Reporting  
6 Period”).

## 7 **II. STATUS REPORT**

8 **A. Frozen Funds:** The Receiver has continued to take possession of the  
9 Receivership Entities’ frozen funds in accordance with the TRO and Preliminary  
10 Injunction. A number of bank accounts of the Receivership Entities were frozen  
11 upon entry of the TRO. Based upon information gathered from Digital Altitude’s  
12 digital books and records, the Receiver identified additional non-named parties and  
13 took actions to freeze their bank accounts. On February 28, 2018, the Receiver filed  
14 his “Notice of Identification of Nonparties as Receivership Parties pursuant to  
15 Temporary Restraining Order.” [See Docket # 82]. Since that time, additional  
16 accounts have been identified and have also been frozen, and/or turned over.  
17 During the Reporting Period, the Receiver took possession of a total of \$171,386.75  
18 previously held at various banks and financial institutions. Through September 30,  
19 2018, the Receiver has taken possession of \$2,009,149.22.

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 efforts to collect the funds are ongoing. While most merchant account processors  
27 have been cooperative, one merchant account processor in Mexico has not  
28 cooperated and claims to have depleted the entire reserve. The Receiver is currently

1 considering whether he has recourse to redress this processor's recalcitrance  
2 (mindful that there are potential jurisdictional hurdles to overcome), and is assessing  
3 and considering the practicalities involved as well.

4 **C. Release of Funds to Individual Defendants:** In accordance with this  
5 Court's prior Orders, the Receiver authorized the release of frozen funds to Four  
6 Defendants – Alan Moore, Mary Dee, Michael Force, and Sean Brown. This Court  
7 recently issued an Order granting the FTC's motion to terminate the release of  
8 frozen funds for living expenses of Defendants.

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

16 **E. Additional assets.** The Receiver continues to investigate the location  
17 and amount of any reserves held by merchant account processors. In addition, the  
18 Receiver is also informed that Digital Altitude made a series of erroneous payments  
19 and overpaid \$515,000 to a company named Paradise Media Ventures, LLC  
20 ("PMV"), which is owned and operated by an individual named John Souza. The  
21 overpayment was made in connection with a contractual dispute that was settled  
22 soon before my appointment. PMV was apparently to have been paid \$600,000 in  
23 settlement (together with \$5,000 interim weekly payments prior to making this  
24 larger payment), but following the Receiver's investigation (which included  
25 interviews with Mary Dee leading to her providing a declaration concerning the key  
26 facts of this dispute), Digital Altitude made two erroneous \$5,000 interim payments  
27 to PMV, and followed that by making an addition \$505,000 in overpayments in the  
28 process of satisfying the \$600,000 settlement obligation to PMV. The Receiver has

1 recently completed his investigation into this matter and is in the process of  
2 attempting to resolve this with PMV and Mr. Souza. Through its counsel, to dayt,  
3 PMV has disputed the Receiver’s demand for return of the overpayments, and the  
4 Receiver may need to seek the assistance of the Court if the matter is not resolved.

5 The Receiver is also investigating potential damage claims against third  
6 parties. The Receiver will not file any actions against these third parties without  
7 first seeking Court approval.

8 **III. ACCOUNTING**

9 Attached collectively as **Exhibit A** to this Third Report is a Profit and Loss  
10 Statement and General Ledger for the receivership from June 1, 2018 through  
11 September 30, 2018, as well as a Balance Sheet as of September 31, 2018.  
12 A Standardized Fund Accounting Report (“SFAR”) is also provided. For the latest  
13 reporting period, gross receipts were \$171,386.75. Inception-to-date gross receipts  
14 are \$1,873,810. During the reporting period, the Receiver disbursed \$228,558.  
15 Inception-to-date the Receiver has disbursed \$230,689. The Receiver is holding  
16 cash in the amount of \$1,814,509 as of September 30, 2018.

17 **IV. RECEIVER FEES**

18 The Receiver is filing concurrently herewith the Receiver’s Second Fee  
19 Application for the period from April 1, 2018 to September 30, 2018. The  
20 Receiver’s Second Fee Application seeks approval to pay Receiver fees in the  
21 amount of \$69,548.00 and costs of \$2,423.51 for a total award of \$71,971.51. Also,  
22 the Receiver will concurrently file his Second Application for Payment of  
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1 Receiver’s Counsel Fees, in which he will seek this Court’s approval to pay  
2 outstanding counsel fees/costs, including \$70,464.00 in fees and \$774.51 in costs.

3 The total receiver fees for the duration of the receivership are \$207,434 and  
4 are 10.3% of the gross receipts to the estate.

5 **CONSUMER RELATIONS:**

6 To foster communication with interested parties, the Receiver established the  
7 website [www.digitalaltitudereceiver.com](http://www.digitalaltitudereceiver.com). The Receiver continues to update this site  
8 regularly. Interested parties may sign up to the website to receive notification of  
9 website updates by email.

10 Dated: October 25, 2018

THOMAS A. SEAMAN, TEMPORARY  
RECEIVER

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By: Thomas A. Seaman  
THOMAS A. SEAMAN

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14

15 Dated: October 25, 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,  
Court-Appointed Receiver

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