

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
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.,
a Nevada corporation; RISE SYSTEMS
& ENTERPRISE LLC, a Utah limited
25 liability company; RISE SYSTEMS &
26 ENTERPRISE LLC, a Nevada limited
27 liability company; SOAR
INTERNATIONAL LIMITED
LIABILITY COMPANY, a Utah
28 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 THIRD FEE
APPLICATION**

) Date: November 18, 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 Defendants.)

23 Thomas A. Seaman, the Court-appointed Receiver (“Receiver”) for
 24 defendants Digital Altitude, LLC, Digital Altitude Limited; Aspire Processing LLC;
 25 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”), hereby respectfully submits
 this third interim application for approval and payment of fees and reimbursement of
 expenses (the “Application”). This Application covers the period from October 1,
 2018, through July 31, 2019 (“Third Application Period”), and seeks interim
 approval of \$29,758.00 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

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 Third Application Period, the Receiver and his staff spent
9 146.1 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 \$2,118,607.07 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 \$29,758.00 in fees incurred from October 1, 2018, through July 31,
14 2019. The fees were incurred at hourly rates ranging from \$60 to \$400 per hour and
15 the weighted average hourly rate was \$204 per hour.

16 Inception-to-date through July 31, 2019 the total Receiver’s fees are
17 \$237,192, or 11.2% of receipts.

18 **A. SCOPE OF RECEIVER’S WORK**

19 As set forth in the Receiver’s fourth interim report, with the underlying
20 litigation having been resolved, the Receiver is concluding the affairs of the
21 receivership estate and is holding cash in the amount of \$1,713,845.87. During the
22 application period the following work has been performed:

- 23
- 24 • Supported the FTC with accounting information in connection with
25 obtaining Final Judgments and settlements the named defendants;
 - 26 • Complied with subpoena’s for records of the receivership entities;
 - 27 • Continued efforts to recover funds from merchant account reserves;
 - 28 • Liquidated certain personal property in connection with Final
Judgments.

- 1 • Continued efforts for the return of \$515,000 inadvertently overpaid to
- 2 Paradise Media Ventures, a company that provided purported sales
- 3 training credentials thereby assisting Digital Altitude’s scheme;
- 4

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

6 Inception-to-date through July 31, 2019, the Receiver has collected

7 \$2,118,607.07, disbursed \$404,761.20, and is holding cash in the amount of

8 \$1,713,845.87.

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

10 The attached Exhibit A to this Application provides a summary by timekeeper

11 of the total fees for the Third Application Period of \$29,758.00, as well as a detailed

12 listing of every task performed by the Receiver or his agents. The Receiver’s fees

13 have declined considerably as the case moves toward conclusion. The fees were

14 incurred by month as follows:

15	October 2018	\$6,030.00
16	November 2018	\$56.00
17	December 2018	\$272.50
18	January 2019	\$2,843.50
19	February 2019	\$1,540.50
20	March 2019	\$6,801.00
21	April 2019	\$1,688.00
22	May 2019	\$4,325.50
23	June 2019	\$3,398.50
24	<u>July 2019</u>	<u>\$2,802.50</u>
25	Total	\$29,758.00

26 The Receiver and his agents expended 146.1 hours administering the affairs

27 of the receivership estate at a total cost of \$29,758.00. In order to efficiently

28 manage the receivership estate and minimize fees, the Receiver delegates work to

1 lower priced employees of the Receiver at rates ranging from \$60 to \$210 per hour.
 2 These employees worked 123.6 hours at an average hourly rate of \$168.00, bringing
 3 the weighted average hourly rate to \$204 per hour. Prior to being nominated to
 4 serve as receiver by the FTC, the Receiver agreed to cap the blended hourly rate at
 5 \$210 for the duration of the appointment.

6
 7 **IV. SUMMARY OF CHARGES BY TASK**

8 The following summarizes the charges listed in the attached Exhibit A by
 9 category of fees:

<u>Task</u>	<u>Hours</u>	<u>Amount</u>
Accounting and Reporting	33.7	\$6,056.00
Consumer Relations	14.0	\$2,176.00
Litigation & Support	2.8	\$315.00
Project Management	50.4	\$9,197.00
Receiver	22.5	\$9,000.00
Receivership Administration	6.4	\$504.00
Research Files	1.4	\$238.00
Sell Liquidate Assets	12.0	\$2,040.00
Takeover Property	2.9	\$232.00
Total	146.1	\$29,758.00

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21 Accounting and Reporting. This cost category collects cost of accounting for
 22 receipts and disbursements of the receivership estate, banking, and preparation of
 23 deposits and checks. For the Third Application Period, 33.7 hours were spent on
 24 these tasks for a total of \$6,056.00. A Quickbooks was created and bank accounts
 25 were established for the receivership estate, and other miscellaneous tasks set forth
 26 in the attached Exhibit A. The average hourly rate was \$180.

27 Consumer relations. The costs include responding to consumer inquiries and
 28 maintaining the receivership website. For the Third Application Period, 14.0 hours

1 were spent on these tasks for a total of \$2,176.00. The average hourly rate was
2 \$155.

3 Litigation & Support. This category covers a variety of functions related to
4 the support of litigation on behalf of the receivership or investor/victims and
5 replying to subpoena's and discovery requests. 2.8 hours for a total of \$315.00 were
6 spent on this category during the Third Application Period. The average hourly rate
7 was \$113.

8 Project Management. In total, 50.4 hours at were spent preserving and
9 managing digital information, assisting the Receiver and document requests of the
10 FTC, and otherwise managing the affairs of the receivership estate. The total cost
11 was \$9,197.00 and was incurred at \$182 per hour.

12 Receiver. This category is only used by the Receiver and includes work to
13 manage the receivership estate. The Receiver spent 22.5 hours, or approximately
14 1% of his time in the Third Application Period on these tasks. At his hourly rate of
15 \$400, the total amount is \$9,000.

16 Receivership Administration. The work is comprised of document
17 preservation and organization, and review and processing of incoming mail, which
18 provides invaluable clues to locating assets and other matters requiring the attention
19 of the Receiver, replying to consumers emails and calls, and assisting the Receiver
20 with administrative tasks. This category consumed 6.4 hours for a total of \$504.00,
21 or \$79 per hour.

22 Research Files. This category includes investigative work in reviewing
23 accounting and other business records to locate assets and understand the business
24 operations. The hours worked were 1.4 for a total of \$238.00, or \$170 per hour.

25 Sell Liquidate Assets. This category includes work in preparing assets for
26 sale, such as commissioning appraisals or opinions of value of assets and retaining
27 listing brokers or auctioneers, ordering title reports and UCC reports for assets,
28 preparing the assets for sale, including cleaning and non-capital repairs, entertaining

1 offers and negotiating sales, documenting sales, and administering escrows or
2 auctions to conclude the sales. The hours worked were 12.0 for a total of \$2,040.00,
3 or \$170 per hour. The efforts resulted in cash receipts to the estate of \$59,990.22 in
4 the application period.

5 Takeover Property. This category covers the cost of the seizure of the
6 Receivership Entities including the company premises, bank accounts, and real
7 property assets as discussed above. For the Third Application Period, 2.9 hours
8 were spent on these tasks for a total of \$232.00. The average hourly rate was \$80.

9
10 **V. THE FEES COSTS ARE REASONABLE**
11 **AND SHOULD BE ALLOWED**

12 "As a general rule, the expenses and fees of a receivership are a charge upon
13 the property administered." *Gaskill v. Gordon*, 27 F. 3d 248, 251 (7th Cir. 1994).
14 These expenses include the fees and expenses of this Receiver and his professionals,
15 including Loeb & Loeb, LLP. Decisions regarding the timing and amount of an
16 award of fees and costs to the Receiver and his Professionals are committed to the
17 sound discretion of the Court. *See SEC v. Elliot*, 953 F. 2d 1560, 1577 (11th Cir.
18 1992) (rev'd in part on other grounds, 998 F.2d 922 (11th Cir. 1993)).

19 In allowing fees, a court should consider "the time, labor and skill required,
20 but not necessarily that actually expended, in the proper performance of the duties
21 imposed by the court upon the receiver, the fair value of such time, labor and skill
22 measured by conservative business standards, the degree of activity, integrity and
23 dispatch with which the work is conducted and the result obtained." *United States v.*
24 *Code Prods. Corp.*, 362 F. 2d 669, 673 (3d Cir. 1966) (internal quotation marks
25 omitted). In practical terms, receiver and professional compensation thus ultimately
26 rests upon the result of an equitable, multi-factor balancing test involving the
27 "economy of administration, the burden that the estate may be able to bear, the
28 amount of time required, although not necessarily expended, and the overall value of

1 the services to the estate." *In re Imperial 400 Nat'l, Inc.*, 432 F. 2d 232, 237 (3d Cir.
2 1970). Regardless of how this balancing test is formulated, no single factor is
3 determinative and "a reasonable fee is based [upon] all circumstances surrounding
4 the receivership." *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*,
5 374 F. Supp. 465, 480 (S.D. Tex. 1974).

6 As a preliminary matter, the TRO and PI Order confer on the Receiver
7 substantial duties and powers, including to conduct such investigation and discovery
8 as is necessary to locate and account for all receivership assets, take such action as is
9 necessary and appropriate to assume control over and preserve receivership assets,
10 and employ attorneys and others to investigate and, where appropriate, institute,
11 pursue, and prosecute all claims and causes of action of whatever kind and nature.
12 See TRO, Part IX; PI Order, Part IX.

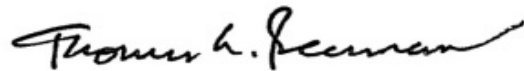
13 The Receiver believes the rates and the total fees and expenses charged are
14 reasonable in view of the challenges and circumstances encountered and respectfully
15 requests an order approving the total fees and costs submitted in the amount of
16 \$29,758.00.

17
18 **VI. CONCLUSION**

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

21 Date: August 15, 2019

Respectfully submitted,

22 
23 _____

24 Thomas A. Seaman
25
26
27
28

1 APPROVED AS TO FORM AND CONTENT:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

 /s/ Benjamin R. King
Benjamin R. King
Lance N. Jurich
LOEB & LOEB LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Telephone: 310-282-2000
Facsimile: 310-282-2200

Attorneys for Receiver, Thomas A. Seaman