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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

**NOTICE OF MOTION AND
THIRD MOTION OF RECEIVER
THOMAS A. SEAMAN FOR
APPROVAL TO PAY INTERIM
FEES AND COSTS TO
RECEIVER'S COUNSEL, LOEB
& LOEB, LLP; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

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

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,

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Defendants.

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NOTICE OF MOTION AND MOTION

**TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR
COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, on November 18, 2019, at 8:30 a.m. or as soon thereafter as this matter may be heard, Thomas A. Seaman, the Court-appointed Temporary Receiver (“Receiver”) for defendants Digital Altitude, LLC, Digital Altitude Limited; Aspire Processing LLC; Aspire Processing Limited; Aspire Ventures Ltd; Disc Enterprises Inc.; RISE 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, will and hereby respectfully moves the Court for entry of an order authorizing him to pay attorneys’ fees in the amount of \$87,755.50 and to reimburse costs in the amount of \$1,301.22 incurred from September 1, 2018 through July 31, 2019 (the “Third Interim Fee Period”) (this “Motion”). The Motion will be heard in Courtroom 10B at the above-captioned Court located at 350 W. First Street, Los Angeles, CA, 90012, the Honorable John A. Kronstadt presiding.

Good cause exists for granting the Motion because the requested fees were for necessary services required by Receiver, the work was actually performed and costs actually incurred in an efficient and reasonable manner, and the rates and amounts charged for the legal work performed were reasonable.

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1 This Motion is based on this Notice of Motion and Motion, the attached
2 Memorandum of Points and Authorities in support hereof, the concurrently filed
3 Declaration of Benjamin R. King (and all exhibits thereto), all the pleadings and
4 files in this action, and such other matters as may be presented at the hearing of this
5 Motion.

6 Dated: August 15, 2019

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

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9 By: /s/ Benjamin R. King
Benjamin R. King
10 Attorneys for THOMAS A. SEAMAN,
Court-Appointed Receiver
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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND AND RETENTION OF COUNSEL

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

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

20 3. On April 6, 2018, Loeb filed its First Application for Fees and
21 Expenses through March 31, 2018 (“First Loeb Fee Motion”) [Docket No. 144.]
22 The FTC filed a notice of non-opposition to both fee requests. [Docket No. 153.]
23 On July 2, 2018, a hearing was held in which the First Loeb Fee Motion, was
24 granted. [Docket No. 183.]

25 4. On October 25, 2018, Loeb filed its Second Application for Fees and
26 Expenses through August 31, 2018 (“Second Loeb Fee Motion”) [Docket No. 253.]
27 A supplemental submission in support of the Second Loeb Fee Motion was later
28 filed. [Docket No. 270.] The Second Loeb Fee Motion was not opposed, and was

1 granted in part (with a reduction applied in paralegal Fiona McKeown’s hourly rate
 2 from \$375/hr to \$300/hr). [Docket No. 279.]

3 5. As stated above, this Motion pertains to legal services provided to
 4 Receiver for the period from September 1, 2018 through July 31, 2019. In the
 5 concurrently filed “Receiver’s Third Fee Application,” the Receiver has summarized
 6 the activities of the Receiver during this time frame, and the Receiver over the same
 7 period has obtained invaluable advice and assistance from Loeb in connection with
 8 this litigation and the conduct of the activities described in the Receiver’s Third Fee
 9 Application. During the applicable period, in addition to generally monitoring the
 10 matter and communicating with the parties as needed, Loeb has assisted the
 11 Receiver in connection with several receivership matters, including: (1) an ongoing
 12 dispute with Paradise Media Ventures, LLC (“PMV”) and its principal John Souza
 13 concerning a large overpayment made by Digital Altitude, LLC to PMV shortly
 14 before this receivership was established (which included a motion for turnover of
 15 the funds and a motion for the Receiver’s reappointment to facilitate an action for
 16 recovery of the overpaid funds in the State of Georgia); (2) the Receiver’s ongoing
 17 efforts to investigate potential claims the receivership entities may hold against
 18 certain third parties; (3) the preparation and filing of the Receiver’s reports and fee
 19 applications; (4) the Receiver’s evaluation and response to the FTC’s position that
 20 certain of the receivership entities had waived the attorney client privilege with
 21 respect to various matters; and (5) addressing a class action filed against Digital
 22 Altitude, LLC after Receiver’s appointment. The primary attorneys responsible for
 23 the day-to-day representation of Receiver are the same as they were for the initial
 24 period covered by the Receiver’s first application for counsel fees, as follows:

Attorney	Title/Position	Standard Hourly Billing Rate	Discounted Hourly Billing Rate
Lance N. Jurich (Admitted in 1988)	Partner	\$900.00	\$695.00

Attorney	Title/Position	Standard Hourly Billing Rate	Discounted Hourly Billing Rate
Benjamin R. King (Admitted in 1999)	Partner	\$775.00	\$595.00
Daniel Friedman (Admitted in 1985)	Senior Counsel	\$750.00	\$575.00

6. The primary paralegal responsible for managing this matter is as follows:

Paralegal	Title/Position	Standard Hourly Billing Rate	Discounted Hourly Billing Rate
Fiona P. McKeown (Practicing since 1993)	Senior Paralegal	\$380.00	\$300.00

7. The billing rates listed above are the rates negotiated between the Receiver and Loeb and not the rates normally billed to Loeb’s other clients for similar services. For example, Lance Jurich’s standard billing rate for 2019 is \$900.00, Benjamin King’s standard rate is \$775.00, Daniel Friedman’s standard billing rate for 2019 is \$750.00, and paralegal Fiona McKeown’s standard rate is \$380.00 (but again, these rates have been significantly discounted for this matter). Of these attorneys, the bulk of the services to Receiver have been provided by partner Benjamin R. King (with the lower billing rate of the two Loeb partners). Attorney Daniel Friedman performed a very limited role in preparing evidentiary objections in connection with the Receiver’s motion for turnover from PMV. While Loeb has associates who stand ready to assist with this matter, the assistance that the Receiver has required thus far has not been of the type that can be efficiently and effectively handled by an associate. Most, if not all, of the work performed thus far has involved high-level advice requiring a strong background in, and understanding

1 of, receivership law, negotiation, and procedure. Other than the preparation of fee
2 applications, this matter has not involved thus far the type of standard litigation
3 activities where associate and paralegal help is most readily utilized, including such
4 things as preparing standard motion papers or propounding and responding to
5 written discovery or producing documents.

6 **II. SERVICES RENDERED BY RECEIVER'S COUNSEL DURING**
7 **THE THIRD INTERIM APPLICATION PERIOD**

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

14 9. The major categories of work performed by, and advice provided by,
15 Receiver's counsel are summarized as follows:

- 16 • Further investigated the facts concerning the ongoing overpayment dispute
17 involving PMV and John Souza, including correspondence and settlement
18 discussions with PMV's counsel as well as defendant Mary Dee, and
19 preparation of a declaration of Mary Dee in connection with this dispute;
- 20 • Prepared a motion for turnover from third-party PMV for overpayments it
21 received from DA (which this Court denied without prejudice to Receiver
22 pursuing the dispute in a separate action against PMV);
- 23 • Prepared a motion for reappointment of Receiver which this Court granted
24 to facilitate a potential new action against PMV in the State of Georgia;
- 25 • Assisted the Receiver in revising, finalizing, and filing, his Third and
26 Fourth Interim Reports to this Court and supporting documentation; and
- 27 • Assisted the Receiver in revising, finalizing, and filing, his second fee
28 application.

1 10. The total amount of attorneys' fees incurred for these activities (after
2 Loeb's discount on its rates is applied), is \$87,755.50. Most of these fees are related
3 to the Receiver's dispute with PMV. These fees and costs are broken down in detail
4 not only in the accompanying Loeb invoices which reflect task billing (and not
5 block billing) to show the specific work, but also in the summary charts prepared in
6 the format this Court requires in its Initial Standing Order in this matter [Docket
7 No. 65] and attached to the concurrently filed King Decl. as Exhibits B and C,
8 respectively.

9 11. The costs incurred on behalf of the Receivership Estate through Loeb
10 during the same period total \$1,301.22. The detail for such costs is included on the
11 invoices attached collectively to the King Decl. as Exhibit A, and are summarized as
12 follows:

Cost	Amount
LEXIS RESEARCH	\$9.40
LOCAL TRAVEL	\$34.85
MESSENGER/COURIER	\$968.08
ONLINE RESEARCH	\$74.20
PHOTOCOPY	\$138.75
POSTAGE	\$15.94
SERVICE FEE -	\$60.00
	\$1301.22

III. REASONABLENESS OF THE LOEB'S FEES AND COSTS

21 12. "As a general rule, the expenses and fees of a receivership are a charge
22 upon the property administered." *Gaskill v. Gordon*, 27 F. 3d 248, 251 (7th Cir.
23 1994). These expenses include the fees and expenses of this Receiver and his
24 professionals, including Loeb & Loeb, LLP. Decisions regarding the timing and
25 amount of an award of fees and costs to the Receiver and his Professionals are
26 committed to the sound discretion of the Court. *See SEC v. Elliot*, 953 F. 2d 1560,
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1 1577 (11th Cir. 1992) (*rev'd in part on other grounds*, 998 F.2d 922 (11th Cir.
2 1993)).

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

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

20 15. Loeb staffed this matter with attorneys and paralegals in its Los
21 Angeles office, choosing attorneys that have particular expertise in the
22 representation of receivers and in financial investigation matters which this matter
23 has implicated. While certain attorneys and paralegals have had limited roles in this
24 matter, the attorneys and paralegal who primarily performed services are:

- 25 • Lance N. Jurich, a partner in Loeb’s Los Angeles Creditor’s Rights
26 And Bankruptcy Department, is a very experienced attorney who has
27 served for 30 years specializing in the areas of bankruptcy,
28 receiverships, restructuring, workouts and turnarounds, and effectively

1 representing Loeb's clients' interests related to federal and state
2 bankruptcy and state-court creditors' rights proceedings. A copy of
3 Mr. Jurich's Bio is attached as Exhibit D to the King Decl.

- 4 • Benjamin R. King, also a partner in Loeb's Los Angeles Creditor's
5 Rights And Bankruptcy Department, is a commercial litigator and
6 creditors' rights attorney who has substantial experience and expertise
7 representing receivers, is a member of the Board of Directors for the
8 Los Angeles/Orange County Chapter of the California Receiver's
9 Forum, and specializes in the employment of prejudgment remedies
10 such as receiverships and injunctive remedies. In his 19-year career,
11 Mr. King has represented both receivers and secured lenders seeking
12 the appointment of receivers in both state and federal court. A copy of
13 Mr. King's Bio is attached as Exhibit E to the King Decl.
- 14 • Daniel Friedman, is senior counsel in Loeb's litigation department, who
15 is an experienced trial lawyer with significant experience litigating
16 complex commercial, professional liability and entertainment cases in
17 federal and state courts, as well as in various arbitral tribunals.
- 18 • Fiona P. McKeown, paralegal currently part of both the Los Angeles
19 litigation and bankruptcy practice groups. Experience includes:
20 Assisting with large complex Bankruptcy reorganizations as well as
21 key support on large, complex cases including class actions.

22 16. The Receiver's review of the invoices that Loeb has provided to him to
23 date (which are attached to the King Decl. as Ex. A) reflect, in his opinion, that
24 Loeb took an efficient approach to the various tasks the Receiver asked Loeb to
25 undertake thus far in this matter. The Receiver believes that Loeb's experience in
26 this matter has avoided the need for significant additional fees that may have been
27 incurred by less experienced counsel in terms of additional research and analysis
28 time which Loeb has performed quickly or avoided the need for altogether.

1 17. The standard hourly rates as stated above for Messrs. Jurich, King and
2 Friedman are reasonable for attorneys of like experience in the relevant Los Angeles
3 market, and are comparable to those the Receiver has seen in connection with other
4 matters in which the Receiver has used counsel other than Loeb. *See* King Decl.,
5 ¶ 4. Nevertheless, as stated above, Loeb has already agreed to significant
6 discounted rates well below such standard rates. *See id.*

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

11 19. The Receiver previously filed First and Second Fee Applications for
12 both Receiver's fees/costs and his counsel's fees/costs and now concurrently files
13 these Third Fee Applications, but there have been no prior applications for the fees
14 or costs that are within the subject of this Application or the Receiver's concurrent
15 Third Fee Application for Receiver's fees/costs.

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

18 Dated: August 15, 2019

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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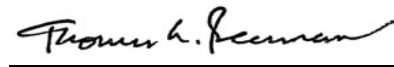
24 Date: August 15, 2019

Respectfully submitted,

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THOMAS A. SEAMAN

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