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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 FIRST FEE  
APPLICATION**

Date: June 11, 2018

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 first interim application for approval and payment of fees and reimbursement of  
 expenses (the “Application”). This Application covers the period from the time of  
 the TRO through March 31, 2018 (“First Application Period”) and seeks interim  
 approval of \$137,886 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 First Application Period, the Receiver and his staff spent  
9 656.6 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 \$1,683,714.27 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 \$137,886 in fees incurred from the time of the Receiver's appointment  
14 though March 31, 2018. The fees were incurred at hourly rates ranging from \$60 to  
15 \$400 per hour and the weighted average hourly rate was \$218 per hour.

### 16 **A. SCOPE OF RECEIVER’S WORK**

17 As set forth in the Receiver’s first 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 \$1,681,929.85.  
20 During the application period the following work has been performed:

- 21 • Seized control of company offices;
- 22 • Evaluated the operations of the enterprise and the services purportedly  
23 sold to consumers and made a determination that the enterprise could  
24 not be operated lawfully and profitably in accordance with the TRO;
- 25 • Evaluated and cancelled the APEX event in Canada and later the MME  
26 event in San Diego;
- 27 • Demanded and collected funds in frozen accounts;

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- Identified additional subsidiaries and affiliates and filed notice of the identification of additional entities with the Court;
- Prepared an extensive report to the Court providing a status of steps taken to implement the TRO, the financial condition of the enterprise, the decision to suspend operations and recommendations for proceeding;
- Identified, froze and continue to take possession of additional bank accounts and funds;
- Identified credit card processing companies and merchant accounts;
- Took possession of the Receivership Entities’ digital records, including documents, a database used to manage sales calls, coaching session videos, emails, accounting information, and other digital records. The enterprise is highly mechanized, and the extent of digital information is vast;
- Observed depositions of Mary Dee and Michael Force;
- Testified for two days at the Preliminary Injunction hearing;
- Held discussions with the company’s outside accountants regarding taxes, 1099s, books and records, and assistance with future filing requirements;
- Administered release of frozen funds to Defendants in accordance with the TRO and modified by the Preliminary Injunction;
- Established a website for consumers and interested parties.  
[www.digitalaltitudereceiver.com](http://www.digitalaltitudereceiver.com);
- Received many hundreds of requests for refunds from consumers;
- Received a flurry of purported consumer testimonials over a few day period prior to the Preliminary Injunction hearing;
- Identified and demanded return of \$190,000 transferred to two affiliates’ attorney’s client trust account in order to mitigate the

1 affiliates potential personal liability for consumer credit card  
 2 chargebacks for account the affiliates had established for the benefit of  
 3 Digital Altitude. The Receiver demanded return of the funds and may  
 4 need to seek the assistance of the Court in turning over the funds the  
 5 Receiver, however the Receiver is hopeful the parties will soon  
 6 comply; and

- 7 • Identified and pursued recovery of an overpayment of \$500,000 to a  
 8 party that provided purported sales training credentials; demanded and  
 9 are negotiating return of the funds. The Court’s assistance may be  
 10 necessary.

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

12 To date through March 31, 2018, the receiver has collected \$1,683,714.27,  
 13 disbursed \$1,784.42, and is holding cash in the amount of \$1,681,929.85. Exhibit A  
 14 provides a profit and loss statement and balance sheet for the receivership estate.  
 15 Exhibit A also provides a list of the source of funds received.

16  
 17 **III. SUMMARY OF RECEIVER'S FEES**

18 Exhibit B provides a summary by timekeeper of the total fees for the First  
 19 Application Period of \$143,027.50, as well as a detailed listing of every task  
 20 performed by the Receiver or his agents. The fees were incurred by month as  
 21 follows:

January 2018	\$1,863.00
February 2018	\$102,937.00
March 2018	\$38,227.50
Sub-total Before Discount	\$143,027.50
Blended hourly rate limit	(\$5,141.50)
Total After Discount	\$137,886.00

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1 The total fees as a percentage of the gross receipts were 8%. The Receiver's  
 2 fees are expected to decline considerably as stability is achieved. For the period  
 3 from March 16, through March 31, 2018, the fees were approximately \$13,000 at a  
 4 blended hourly rate of \$152.

5 In order to reduce fees, the Receiver delegates work to lower priced  
 6 employees of the Receiver at rates ranging from \$60 to \$210 per hour. These  
 7 employees worked 514.6 hours at an average hourly rate of \$168, bringing the  
 8 weighted average hourly rate to \$218 per hour. Prior to being nominated to serve as  
 9 receiver by the FTC, the Receiver agreed to cap the blended hourly rate at \$210.  
 10 The Receiver therefore seeks a total award of \$137,886, which is a reduction of  
 11 \$5,141.50 for the Application Period.

#### 12 IV. SUMMARY OF CHARGES BY TASK

13 The following summarizes the charges listed in Exhibit B by category of fees:

14	<u>Task</u>	<u>Hours</u>	<u>Amount</u>
15	Accounting and Reporting	8.8	\$748.00
16	Administration	51.9	\$3,195.50
17	Consumer Relations	24.8	\$4,110.50
18	Project Management	175.8	\$32,494.00
19	Receiver	142.0	\$56,800.00
20	Research Files	87.8	\$15,363.50
21	Takeover Property	165.5	\$30,316.00
22	Sub-Total Before Discount	656.6	\$143,027.50
23	Blended hourly rate limit		(\$5,141.50)
24	Total After Discount	656.6	\$137,886.00

#### 24 Accounting and Reporting.

25 This cost category collects cost of accounting for receipts and disbursements  
 26 of the receivership estate, banking, and preparation of deposits and checks. For the  
 27 First Application Period, 8.8 hours were spent on these tasks for a total of \$748. A  
 28 Quickbooks was created and bank accounts were established for the receivership

1 estate, and other miscellaneous tasks set forth in Exhibit C. The average hourly rate  
2 was \$85.

3 Administration.

4 The work is comprised of document preservation and organization, and  
5 review and processing of incoming mail, which provides invaluable clues to locating  
6 assets and other matters requiring the attention of the Receiver, replying to  
7 consumers emails and calls, and assisting the Receiver with administrative tasks.  
8 This category consumed 51.9 hours for a total of \$3,195.50, or \$62 per hour.

9 Consumer relations.

10 The costs include responding to consumer inquiries and maintaining the  
11 receivership website. For the First Application Period, 24.8 hours were spent on  
12 these tasks for a total of \$4,110.50. The average hourly rate was \$166.

13 Project Management.

14 In total, 175.8 hours at were spent and preserving and managing digital  
15 information, assisting the Receiver with identifying and taking possession of  
16 receivership assets, managing financial matters, assisting the Receiver and  
17 document requests of the FTC, and otherwise managing the affairs of the  
18 receivership estate. The total cost was \$32,494.00 and was incurred at \$160, \$170,  
19 and \$210 per hour which is a blended hourly rate of \$185 per hour.

20 Receiver.

21 This category is only used by the Receiver and includes work to manage the  
22 myriad requirements of the receivership estate as set forth in the Scope of the  
23 Receiver's work above. During this First Application Period, the initial seizure of  
24 the Receivership Entities, identifying and marshalling assets, investigating the  
25 nature of the enterprise and its assets, reporting to the Court, dealing with  
26 Defendants and interested parties, as well as developing a plan for the receivership  
27 estate were the primary focus of the Receiver's efforts. The Receiver spent  
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1 142 hours, or approximately 40% of his time in the First Application Period on these  
2 tasks. At his hourly rate of \$400, the total amount is \$56,800.

3 Research Files.

4 This category includes investigative work in reviewing accounting and other  
5 business records to locate assets and understand the business operations. The hours  
6 worked were 87.8 for a total of \$15,363.50, or \$175 per hour.

7 Takeover Property.

8 This category covers the cost of the seizure of the Receivership Entities  
9 including the company premises, bank accounts, and real property assets as  
10 discussed above. For the First Application Period, 165.5 hours were spent on these  
11 tasks for a total of \$30,316.00. The average hourly rate was \$183.

12  
13 **V. THE FEES COSTS ARE REASONABLE**  
14 **AND SHOULD BE ALLOWED**

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

22 In allowing fees, a court should consider "the time, labor and skill required,  
23 but not necessarily that actually expended, in the proper performance of the duties  
24 imposed by the court upon the receiver[], the fair value of such time, labor and skill  
25 measured by conservative business standards, the degree of activity, integrity and  
26 dispatch with which the work is conducted and the result obtained." *United States v.*  
27 *Code Prods. Corp.*, 362 F. 2d 669, 673 (3d Cir. 1966) (internal quotation marks  
28 omitted). In practical terms, receiver and professional compensation thus ultimately



1 rests upon the result of an equitable, multi-factor balancing test involving the  
2 "economy of administration, the burden that the estate may be able to bear, the  
3 amount of time required, although not necessarily expended, and the overall value of  
4 the services to the estate." *In re Imperial 400 Nat'l, Inc.*, 432 F. 2d 232, 237 (3d Cir.  
5 1970). Regardless of how this balancing test is formulated, no single factor is  
6 determinative and "a reasonable fee is based [upon] all circumstances surrounding  
7 the receivership." *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*,  
8 374 F. Supp. 465, 480 (S.D. Tex. 1974).

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


16 The Receiver believes the rates and the total fees charged are reasonable in  
17 view of the challenges and circumstances encountered and respectfully requests an  
18 order approving the total fees submitted in the amount of \$137,886.

19 **VI. CONCLUSION**

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

22 Date: April 6, 2018

Respectfully submitted,

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25  
26 Thomas A. Seaman

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