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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

**SECOND MOTION OF  
RECEIVER THOMAS A.  
SEAMAN FOR APPROVAL TO  
PAY INTERIM FEES AND COSTS  
TO RECEIVER'S COUNSEL,  
LOEB & LOEB, LLP**

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

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 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”), by and through his counsel of  
record, Loeb & Loeb, LLP, respectfully moves the Court for entry of an order  
authorizing him to pay attorneys’ fees in the amount of \$70,464.00 and to reimburse  
costs in the amount of \$329.89 incurred from April 1, 2018 through August 31,  
2018 (the “Second Interim Fee Period”) (this “Motion”).

29 **I. PROCEDURAL BACKGROUND AND RETENTION OF COUNSEL**

30 1. 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”).

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

15 3. As stated above, this Motion pertains to legal services provided to  
16 Receiver for the period from April 1, 2018 through August 31, 2018. In the  
17 concurrently filed “Receiver’s Second Fee Application,” the Receiver has  
18 summarized the activities of the Receiver during this time frame, and the Receiver  
19 over the same period has obtained invaluable advice and assistance from Loeb in  
20 connection with this litigation and the conduct of the activities described in the  
21 Receiver’s fee application. During the applicable period, Loeb has assisted the  
22 Receiver in connection with several receivership matters, including an ongoing  
23 dispute with Paradise Media Ventures, LLC (“PMV”) and its principal John Souza  
24 concerning a large overpayment made by Digital Altitude, LLC to PMV shortly  
25 before this receivership was established, the Receiver’s efforts to recover retainer  
26 funds held by counsel to the receivership entities, the Receiver’s efforts to end  
27 chargeback activity related to receivership assets, the investigation of potential  
28 claims the receivership entities may hold against certain third parties (including

1 document requests and review of same), the preparation and filing of the Receiver's  
 2 reports and fee applications, responding to inquiries from individual defendants  
 3 concerning access to the books and records of the receivership entities (for their use  
 4 in defense of this lawsuit or for tax purposes), and the receiver's evaluation and  
 5 response to the FTC's position that certain of the receivership entities had waived  
 6 the attorney client privilege with respect to various matters.

7 4. The primary attorneys responsible for the day-to-day representation of  
 8 Receiver are the same as they were for the initial period covered by the Receiver's  
 9 first application for counsel fees, as follows:

11 <b>Attorney</b>	<b>Title/Position</b>	<b>Standard Hourly Billing Rate</b>	<b>Discounted Hourly Billing Rate</b>
12 Lance N. Jurich (Admitted in 1988)	Partner	\$875.00	\$695.00
13 Benjamin R. King (Admitted in 1999)	Partner	\$750.00	\$595.00

15  
 16 5. The billing rates listed above are the rates negotiated between the  
 17 Receiver and Loeb and not the rates normally billed to Loeb's other clients for  
 18 similar services. For example, Lance Jurich's billing rate for 2018 is \$875.00 and  
 19 Benjamin King's billing rate for 2018 is \$750.00. Of these attorneys, the bulk of the  
 20 services to Receiver have been provided by partner Benjamin R. King (with the  
 21 lowest billing rate of all involved Loeb partners). While Loeb has associates who  
 22 stand ready to assist with this matter, the assistance that the Receiver has required  
 23 thus far has not been of the type that can be efficiently and effectively handled by an  
 24 associate. Most, if not all, of the work performed thus far has involved high-level  
 25 advice requiring a strong background in, and understanding of, receivership law,  
 26 negotiation, and procedure. This matter has not involved thus far the type of  
 27 standard litigation activities where associate and paralegal help is most readily  
 28

1 utilized, including such things as preparing standard motion papers or propounding  
2 and responding to written discovery or producing documents.

3 **II. SERVICES RENDERED BY RECEIVER’S COUNSEL DURING**  
4 **THE SECOND INTERIM APPLICATION PERIOD**

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

11 7. The major categories of work performed by, and advice provided by,  
12 Receiver’s counsel are summarized as follows:

- 13 • Assisted the Receiver in revising, finalizing, and filing, his Second Interim  
14 Report to this Court and supporting documentation;
- 15 • Assisted receiver in discussions with FTC and defendants, including  
16 discussions and negotiations surrounding access to documents, privilege  
17 issues, and the un-freezing of assets defendant living expenses;
- 18 • Investigated the facts concerning the ongoing dispute involving PMV and  
19 John Souza, including correspondence and discussions with PMV’s  
20 counsel as well as defendant Mary Dee, and preparation of a declaration of  
21 Mary Dee that will either serve as a basis for resolving the dispute or be  
22 filed in connection with proceedings to force turnover of the overpaid  
23 amounts;
- 24 • Assist receiver in seeking return of funds from various third parties,  
25 including legal retainers and reversal of chargeback funds;
- 26 • Assisted the Receiver in revising, finalizing, and filing, his initial fee  
27 applications.

28

1           8.       The total amount of attorneys' fees incurred for these activities (after  
2 Loeb's discount on its rates is applied), is \$70,464.00.50. These fees and costs are  
3 broken down in detail not only in the accompanying Loeb invoices which reflect  
4 task billing (and not block billing) to show the specific work, but also in the  
5 summary charts prepared in the format this Court requires in its Initial Standing  
6 Order in this matter [Docket No. 65] and attached to the concurrently filed King  
7 Decl. as Exhibits B and C, respectively.

8           9.       The costs incurred on behalf of the Receivership Estate through Loeb  
9 during the same period total \$329.89. The detail for such costs is included on the  
10 invoices attached collectively to the King Decl. as Exhibit A, and are summarized as  
11 follows:

<b>Cost</b>	<b>Amount</b>
LOCAL TRAVEL	\$128.22
MESSENGER/COURIER	\$162.65
ONLINE RESEARCH	\$29.60
OUT-OF-TOWN TRAVEL	\$9.42
	<b>\$329.89</b>

### 20 **III. REASONABLENESS OF THE LOEB'S FEES AND COSTS**

21           10.       “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,  
27 1577 (11th Cir. 1992) (rev'd in part on other grounds, 998 F.2d 922 (11th Cir.  
28 1993)).

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

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

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

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

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

- 3 • Benjamin R. King, also a partner in Loeb's Los Angeles Creditor's  
4 Rights And Bankruptcy Department, is a commercial litigator and  
5 creditors' rights attorney who has substantial experience and expertise  
6 representing receivers, is a member of the Board of Directors for the  
7 Los Angeles/Orange County Chapter of the California Receiver's  
8 Forum, and specializes in the employment of prejudgment remedies  
9 such as receiverships and injunctive remedies. In his 19-year career,  
10 Mr. King has represented both receivers and secured lenders seeking  
11 the appointment of receivers in both state and federal court. A copy of  
12 Mr. King's Bio is attached as Exhibit E to the King Decl.

13 14. My review of the invoices that Loeb has provided me to date (which  
14 are attached to the King Decl. as Ex. A) reflect, in my opinion, an efficient approach  
15 to the various tasks I have asked Loeb to undertake thus far in this matter. I believe  
16 Loeb's experience in this matter has avoided the need for significant additional fees  
17 that may have been incurred by less experienced counsel in terms of additional  
18 research and analysis time which Loeb has performed quickly or avoided the need  
19 for altogether.

20 15. The standard hourly rates as stated above for Messrs. Jurich and King  
21 are reasonable for attorneys of like experience in the relevant Los Angeles market,  
22 and are comparable to those the Receiver has seen in connection with other matters  
23 in which the Receiver has used counsel other than Loeb. *See* King Decl., ¶ 4.  
24 Nevertheless, as stated above, Loeb has already agreed to significant discounted  
25 rates well below such standard rates. *See id.*

26 16. Finally, several additional factors weigh in favor of full reimbursement  
27 of the fees sought, including that: (1) the Receiver and his counsel undertook the  
28 responsibilities of this case with no guarantee that sufficient funds would be



1 recovered to compensate them for their work; (2) the time-sensitive nature of this  
2 case required a significant amount of work in a relatively short time period; (3) the  
3 defendants' counsel took an early strategy making an issue of the sufficiency of the  
4 Receiver's work and analysis in this matter, making the Receiver a central witness  
5 in the proceedings leading to the Preliminary Injunction in this matter; and (4) Loeb  
6 has efficiently staffed and conducted its representation of the Receiver, including by  
7 having its partner with the lowest partner billing rate (Mr. King) handle most aspects  
8 of the Receiver's representation.

9 17. As indicated in the Receiver's First Report, the Receivership Estate is  
10 in possession of sufficient funds to pay the amounts requested in the Receiver's First  
11 Interim Fee Applications for Receiver's and Loeb's fees/costs.

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

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

19 Date: October 25, 2018

Respectfully submitted,



THOMAS A. SEAMAN

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1 APPROVED AS TO FORM AND CONTENT:

2

3       /s/ Benjamin R. King

4 Benjamin R. King  
5 Lance N. Jurich  
6 LOEB & LOEB LLP  
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11 Attorneys for Receiver, THOMAS A. SEAMAN

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