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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,
vs.
DIGITAL ALTITUDE LLC, ET AL.,
Defendants.

No. 2:18-cv-00729 JAK (MRWx)
**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT
AGAINST THE UPSIDE, LLC**

JS-6: The Upside, LLC Only

This matter comes before the court upon the stipulation of Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), and Settling Defendant The Upside, LLC (“Upside”) for the entry of a Permanent Injunction against Upside.

On January 29, 2018, the FTC filed its Complaint for a Permanent Injunction And Other Relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) (Dkt. 1). Pursuant to Fed. R. Civ. P. 65(b), the FTC also filed an ex parte application for a temporary restraining order, asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue against 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

1 Company, The Upside, LLC, Thermography for Life, LLC, d/b/a Living
2 Exceptionally, Inc., Michael Force, Mary Dee, Morgan Johnson, Alan Moore, and
3 Sean Brown (collectively, “Defendants”). Dkt. 5.

4 The Court granted the application, issuing a temporary restraining order
5 (“TRO”) on February 1, 2018, including an asset freeze, appointment of a receiver,
6 immediate access to Defendants’ business premises, and other temporary relief.
7 Dkt. 34. The TRO also ordered Defendants to appear on February 15, 2018 and
8 show cause why a preliminary injunction should not issue against them. The
9 parties stipulated to a continuance of the show cause hearing and the court granted
10 that request, extending the TRO and continuing the hearing to March 5, 2018. Dkt.
11 61. Prior to the hearing, the FTC and Defendant The Upside, LLC agreed to the
12 entry of a preliminary injunction for the duration of this litigation. This Court
13 entered a Preliminary Injunction on March 7, 2018. Dkt. 107. The Commission and
14 Defendant Upside now stipulate to the entry of this Stipulated Order for Permanent
15 Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in
16 this action between them.

17 THEREFORE, IT IS ORDERED as follows:

18 **FINDINGS**

- 19 A. This Court has jurisdiction over this matter.
20 B. The Complaint charges that Defendant Upside participated in
21 deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.
22 C. Only for purposes of this action, Defendant admits the facts necessary
23 to establish jurisdiction.
24 D. Defendant Upside waives any claim that it may have under the Equal
25 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
26 through the date of this Order, and agrees to bear its own costs and attorney fees.
27 E. Defendant Upside and the Commission waive all rights to appeal or
28 otherwise challenge or contest the validity of this Order.

1 **DEFINITIONS**

2 For the purpose of this Order, the following definitions apply:

3 A. **“Acquirer”** or **“Acquiring Bank”** means a business organization,
4 Financial Institution, or an agent of a business organization or Financial Institution
5 that has authority from an organization that operates or licenses a credit card
6 system (e.g., Visa, MasterCard, American Express or Discover) to authorize
7 Merchants to accept, transmit, or process payment by credit card through the credit
8 card system for money, products, or anything else of value.

9 B. **“Business Coaching Program”** means any program, plan, or product,
10 including those related to work-at-home-opportunities, that is represented,
11 expressly or by implication, to train or teach a participant or purchaser how to
12 establish a business or earn money or other consideration through a business or
13 other activity.

14 C. **“Corporate Defendants”** means Digital Altitude LLC; Digital
15 Altitude Limited; Aspire Processing LLC; Aspire Processing Limited; Aspire
16 Ventures Ltd; Disc Enterprises Inc.; RISE Systems & Enterprise LLC (Utah);
17 RISE Systems & Enterprise LLC (Nevada); Soar International Limited Liability
18 Company; The Upside, LLC; Thermography for Life, LLC, d/b/a Living
19 Exceptionally, Inc., and each of their subsidiaries, affiliates, successors, and
20 assigns.

21 D. **“Credit Card Laundering”** means: (a) presenting or depositing into,
22 or causing or allowing another to present or deposit into, the credit card system for
23 payment, a Credit Card Sales Draft generated by a transaction that is not the result
24 of a credit card transaction between the cardholder and the Merchant; (b)
25 employing, soliciting, or otherwise causing or allowing a Merchant, or an
26 employee, representative, or agent of a Merchant, to present to or deposit into the
27 credit card system for payment, a Credit Card Sales Draft generated by a
28 transaction that is not the result of a credit card transaction between the cardholder

1 and the Merchant; or (c) obtaining access to the credit card system through the use
2 of a business relationship or an affiliation with a Merchant, when such access is not
3 authorized by the Merchant Account agreement or the applicable credit card
4 system.

5 E. **“Credit Card Sales Draft”** means any record or evidence of a credit
6 card transaction.

7 F. **“Defendant(s)”** means all of the Individual Defendants and the
8 Corporate Defendants, individually, collectively, or in any combination.

9 G. **“Financial Institution”** means any institution the business of which is
10 engaging in financial activities as described in section 4(k) of the Bank Holding
11 Company Act of 1956 (12 U.S.C. § 1843(k)). An institution that is significantly
12 engaged in financial activities is a Financial Institution.

13 H. **“Individual Defendant(s)”** means Michael Force, Mary Dee,
14 Morgan Johnson, Alan Moore, and Sean Brown.

15 I. **“Investment Opportunity”** means anything, tangible or intangible,
16 that is offered, offered for sale, sold, or traded based wholly or in part on
17 representations, either express or implied, about past, present, or future income,
18 profit, or appreciation.

19 J. **“Merchant”** means (a) any Person or entity engaged in the sale or
20 marketing of any goods or services, or soliciting a charitable contribution, or (b)
21 any Person or entity who applies for or obtains Payment Processing services.

22 K. **“Merchant Account”** means any account with an Acquiring Bank or
23 other Financial Institution, service provider, payment processor, independent sales
24 organization, or other entity that enables an individual, a business, or other
25 organization to accept payments of any kind.

26 L. **“Payment Processing”** means providing a Person, directly or
27 indirectly, with the means used to charge or debit accounts through the use of any
28 payment method or mechanism, including, but not limited to, remotely created

1 payment orders, remotely created checks, ACH debits, or debit, credit, prepaid, or
2 stored value cards. Whether accomplished through the use of software or
3 otherwise, Payment Processing includes, among other things: (a) reviewing and
4 approving Merchant applications for payment processing services; (b) providing
5 the means to transmit sales transactions data from Merchants to Acquiring Banks
6 or other Financial Institutions; (c) clearing, settling, or distributing proceeds of
7 sales transactions from Acquiring Banks or Financial Institutions to Merchants; or
8 (d) processing chargebacks or returned remotely created payment orders, remotely
9 created checks, or ACH checks.

10 M. **“Person”** means a natural person, organization, or other legal entity,
11 including a corporation, limited liability company, partnership, proprietorship,
12 association, cooperative, government or governmental subdivision or agency, or
13 any other group or combination acting as an entity.

14 N. **“Receiver”** means the receiver appointed in Section IV. J of the
15 Preliminary Injunction (Docket No. 111) and any deputy receivers that shall be
16 named by the receiver.

17 O. **“Receivership Entities”** means The Upside, LLC as well as any other
18 entity that has conducted any business related to Defendants’ marketing and sale of
19 purported money-making opportunities to consumers, including receipt of Assets
20 derived from any activity that is the subject of the Complaint in this matter, and
21 that the Receiver determines is controlled or owned by Upside.

22 P. **“Settling Defendant”** means The Upside, LLC.

23 **ORDER**

24 **I. PROHIBITIONS RELATED TO THE SALE OF BUSINESS**

25 **COACHING PROGRAMS AND INVESTMENT OPPORTUNITIES**

26 **IT IS ORDERED** that the Settling Defendant is permanently restrained and
27 enjoined from:
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1 A. Creating, advertising, marketing, promoting, offering for sale, or
2 selling, or assisting others in creating, advertising, marketing, promoting, offering
3 for sale, or selling any Business Coaching Program or any Investment Opportunity;

4 B. Holding, directly or through a third-Person, any ownership or other
5 financial interest in any business entity that is creating, advertising, marketing,
6 promoting, offering for sale, or selling, or that assists others in creating,
7 advertising, marketing, promoting, offering for sale, or selling any Business
8 Coaching Program, any Investment Opportunity, or any product to assist in the
9 creation or development of a Business Coaching Program or an Investment
10 Opportunity.

11 **II. PROHIBITIONS RELATED TO MERCHANT ACCOUNTS**

12 **IT IS FURTHER ORDERED** that Settling Defendant is permanently
13 restrained and enjoined from:

14 A. Credit Card Laundering;

15 B. Making, or assisting others in making, directly or by implication, any
16 false or misleading statement in order to obtain Payment Processing services; and

17 C. Engaging in any tactics to avoid fraud and risk monitoring programs
18 established by any Financial Institution, Acquiring Bank, or the operators of any
19 payment system, including, but not limited to, tactics such as balancing or
20 distributing sales transactions among multiple Merchant Accounts or merchant
21 billing descriptors; splitting a single sales transaction into multiple smaller
22 transactions; or using shell companies to apply for a Merchant Account.

23 **III. PROHIBITION AGAINST MISREPRESENTATIONS**

24 **IT IS FURTHER ORDERED** that Settling Defendant, its officers, agents,
25 and employees, and all other Persons in active concert or participation with any of
26 them, who receive actual notice of this Order, whether acting directly or indirectly,
27 in connection with the advertising, marketing, promoting, or offering for sale of
28 any good or service, are permanently restrained and enjoined from misrepresenting

1 or assisting others in misrepresenting, expressly or by implication, any material
2 fact, including, but not limited to:

3 A. Consumers who purchase Defendants' goods or services will earn or
4 are likely to earn substantial income;

5 B. Consumers who purchase Defendants' goods or services will receive
6 business coaching that will provide what the consumers need to build a successful
7 online business; and

8 C. Any other fact material to consumers concerning any good or service,
9 such as: the total costs; any refund policy; any material restrictions, limitations, or
10 conditions; or any material aspect of its performance, efficacy, nature, or central
11 characteristics.

12 **IV. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

13 A. Judgment in the amount of \$140,983.03 dollars is entered in favor of
14 the Commission against Settling Defendant as equitable monetary relief.

15 B. Pacific Mercantile Bank is ordered, within seven (7) days of entry of
16 this Order, to transfer all funds (totaling approximately \$1,000) held in the
17 following account to the Commission by electronic fund transfer in accordance
18 with instructions provided by a representative of the Commission: Account No.
19 xxxxxx0308, held in the name of The Upside, LLC.

20 C. Settling Defendant is ordered to fully cooperate with Pacific
21 Mercantile Bank and the Commission in transferring such funds to the
22 Commission, including promptly signing any document necessary or appropriate to
23 transfer such funds to the Commission. Upon the transfer listed in Subsection B,
24 above, the remainder of the judgment is suspended, subject to the Subsections
25 below.

26 D. The Commission's agreement to the suspension of part of the
27 judgment is expressly premised upon the truthfulness, accuracy, and completeness
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1 of Settling Defendant's sworn financial statements and related documents
2 (collectively, "financial representations") submitted to the Commission, namely:

- 3 1. the Financial Statement of Settling Defendant signed by Gerard
4 Joseph on February 27, 2018, including the attachments;
- 5 2. the declaration signed by Gerard Joseph on February 15, 2018;
- 6 3. the additional documentation submitted by email from Settling
7 Defendant's counsel David Michail to Commission counsel Laura Basford dated
8 February 9, 2018, attaching bank statements and correspondence.

9 E. The suspension of the judgment will be lifted as to Settling Defendant
10 if, upon motion by the Commission, the Court finds that Settling Defendant failed
11 to disclose any material asset, materially misstated the value of any asset, or made
12 any other material misstatement or omission in the financial representations
13 identified above.

14 F. If the suspension of the judgment is lifted, the judgment becomes
15 immediately due as to Settling Defendant in the amount specified in Subsection A
16 above, plus interest computed from the date of entry of this Order.

17 G. Settling Defendant relinquishes dominion and all legal and equitable
18 right, title, and interest in all assets transferred pursuant to this Order and may not
19 seek the return of any assets.

20 H. The facts alleged in the Complaint will be taken as true, without
21 further proof, in any subsequent civil litigation by or on behalf of the Commission,
22 including in a proceeding to enforce its rights to any payment or monetary
23 judgment pursuant to this Order, such as a nondischargeability complaint in any
24 bankruptcy case.

25 I. The facts alleged in the Complaint establish all elements necessary to
26 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
27 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
28 estoppel effect for such purposes.

1 J. Settling Defendant acknowledges that its Taxpayer Identification
2 Number (Social Security Numbers or Employer Identification Numbers), which
3 Settling Defendant previously submitted to the Commission, may be used for
4 collecting and reporting on any delinquent amount arising out of this Order, in
5 accordance with 31 U.S.C. §7701.

6 K. All money paid to the Commission pursuant to this Order may be
7 deposited into a fund administered by the Commission or its designee to be used
8 for equitable relief, including consumer redress and any attendant expenses for the
9 administration of any redress fund. If a representative of the Commission decides
10 that direct redress to consumers is wholly or partially impracticable or money
11 remains after redress is completed, the Commission may apply any remaining
12 money for such other equitable relief (including consumer information remedies)
13 as it determines to be reasonably related to Defendants' practices alleged in the
14 Complaint. Any money not used for such equitable relief is to be deposited to the
15 U.S. Treasury as disgorgement. Settling Defendant has no right to challenge any
16 actions the Commission or its representatives may take pursuant to this Subsection.

17 **V. CUSTOMER INFORMATION**

18 **IT IS FURTHER ORDERED** that Settling Defendant, its officers, agents
19 and employees, and all other Persons in active concert or participation with it, who
20 receive actual notice of this Order, whether acting directly or indirectly, are
21 permanently restrained and enjoined from:

22 A. Failing to provide sufficient customer information to enable the
23 Commission to efficiently administer consumer redress. If a representative of the
24 Commission requests in writing any information related to redress, Settling
25 Defendant must provide it, in the form prescribed by the Commission, within 14
26 days; and

27 B. Disclosing, using, or benefitting from customer information, including
28 the name, address, birth date, telephone number, email address, credit card number,

1 bank account number, Social Security number, other identifying information, or
2 any data that enables access to a customer's account (including a credit card, bank
3 account, or other financial account), that any Defendant obtained prior to entry of
4 this Order in connection with any activity that pertains to the sale of money-
5 making opportunities and/or purported educational or coaching products or
6 services provided online; and

7 C. Failing to destroy customer information that any Defendant obtained
8 prior to entry of this Order in connection with any activity that pertains to the sale
9 of money-making opportunities and/or purported educational or coaching products
10 or services provided online in all forms in Settling Defendant's possession,
11 custody, or control within 30 days after receipt of written direction to do so from a
12 representative of the Commission.

13 D. Provided, however, that customer information need not be disposed
14 of, and may be disclosed, to the extent requested by a government agency or
15 required by law, regulation, or court order.

16 **VI. COOPERATION**

17 **IT IS FURTHER ORDERED** that Settling Defendant must fully cooperate
18 with representatives of the Commission in this case and in any investigation related
19 to or associated with the transactions or the occurrences that are the subject of the
20 Complaint. Settling Defendant must provide truthful and complete information,
21 evidence, and testimony. Settling Defendant must appear and must cause Settling
22 Defendant's officers, employees, representatives, or agents to appear for
23 interviews, discovery, hearings, trials, and any other proceedings that a
24 Commission representative may reasonably request upon 5 days written notice, or
25 other reasonable notice, at such places and times as a Commission representative
26 may designate, without the service of a subpoena.

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1 **VII. RECEIVERSHIP TERMINATION**

2 **IT IS FURTHER ORDERED** that the Receiver must complete all duties
3 pertaining to Settling Defendant, within 120 days after entry of this Order, but any
4 party or the Receiver may request that the Court extend that Receiver's term for
5 good cause. Upon completion by the Receiver of all such duties, the Receivership
6 over the Settling Defendant shall be dissolved and the Receiver discharged as to
7 the Settling Defendant.

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9 **VIII. ORDER ACKNOWLEDGMENTS**

10 **IT IS FURTHER ORDERED** that Settling Defendant obtain
11 acknowledgments of receipt of this Order:

12 A. Settling Defendant, within 7 days of entry of this Order, must submit
13 to the Commission an acknowledgment of receipt of this Order sworn under
14 penalty of perjury.

15 B. For 5 years after entry of this Order, Settling Defendant must deliver a
16 copy of this Order to: (1) all principals, officers, directors, and LLC managers and
17 members; (2) all employees having managerial responsibilities for Payment
18 Processing and all agents and representatives who participate in Payment
19 Processing; and (3) any business entity resulting from any change in structure as
20 set forth in the Section titled Compliance Reporting. Delivery must occur within 7
21 days of entry of this Order for current personnel. For all others, delivery must
22 occur before they assume their responsibilities.

23 C. From each individual or entity to which Settling Defendant delivered
24 a copy of this Order, Settling Defendant must obtain, within 30 days, a signed and
25 dated acknowledgment of receipt of this Order.

26 **IX. COMPLIANCE REPORTING**

27 **IT IS FURTHER ORDERED** that Settling Defendant make timely
28 submissions to the Commission:

1 A. One year after entry of this Order, Settling Defendant must submit a
2 compliance report, sworn under penalty of perjury. In the report, Settling
3 Defendant must: (a) identify the primary physical, postal, and email address and
4 telephone number, as designated points of contact, which representatives of the
5 Commission may use to communicate with Settling Defendant; (b) identify all of
6 Settling Defendant's businesses by all of their names, telephone numbers, and
7 physical, postal, email, and Internet addresses; (c) describe the activities of each
8 business, including the goods and services offered, the means of advertising,
9 marketing, and sales, and the involvement of any other Defendant; (d) describe in
10 detail whether and how Settling Defendant is in compliance with each Section of
11 this Order; and (e) provide a copy of each Order Acknowledgment obtained
12 pursuant to this Order, unless previously submitted to the Commission.

13 B. For 20 years after entry of this Order, Settling Defendant must submit
14 a compliance notice, sworn under penalty of perjury, within 14 days of any change
15 in the following:

- 16 1) any designated point of contact; or
17 2) the structure of Settling Defendant, or any entity that Settling
18 Defendant has any ownership interest in or controls directly or
19 indirectly that may affect compliance obligations arising under
20 this Order, including: creation, merger, sale, or dissolution of
21 the entity or any subsidiary, parent, or affiliate that engages in
22 any acts or practices subject to this Order.

23 C. Settling Defendant must submit to the Commission notice of the filing
24 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or
25 against it within 14 days of its filing.

26 D. Any submission to the Commission required by this Order to be
27 sworn under penalty of perjury must be true and accurate and comply with 28
28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under

1 the laws of the United States of America that the foregoing is true and correct.
2 Executed on: _____” and supplying the date, signatory’s full name, title (if
3 applicable), and signature.

4 E. Unless otherwise directed by a Commission representative in writing,
5 all submissions to the Commission pursuant to this Order must be emailed to
6 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
7 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
8 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
9 subject line must begin: FTC v. Digital Altitude, et al. (The Upside, LLC), No.
10 X180021.

11 **X. RECORDKEEPING**

12 **IT IS FURTHER ORDERED** that Settling Defendant must create certain
13 records for 20 years after entry of the Order, and retain each such record for 5
14 years. Specifically, for any business that Settling Defendant, individually or
15 collectively with any other Defendants, is a majority owner or controls directly or
16 indirectly, must create and retain the following records in connection with Payment
17 Processing:

18 A. accounting records showing the revenues from all goods or services
19 sold;

20 B. personnel records showing, for each person providing services,
21 whether as an employee or otherwise, that person’s: name; addresses; telephone
22 numbers; job title or position; dates of service; and (if applicable) the reason for
23 termination;

24 C. records of all consumer complaints and refund requests, whether
25 received directly or indirectly, such as through a third party, and any response;

26 D. all records necessary to demonstrate full compliance with each
27 provision of this Order, including all submissions to the Commission; and

28 E. a copy of each unique advertisement or other marketing material.

1 **XI. COMPLIANCE MONITORING**

2 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling
3 Defendant's compliance with this Order, including the financial representations
4 upon which part of the judgment was suspended, and any failure to transfer any
5 assets as required by this Order:

6 A. Within 14 days of receipt of a written request from a representative of
7 the Commission, Settling Defendant must: submit additional compliance reports
8 or other requested information, which must be sworn under penalty of perjury;
9 appear for depositions; and produce documents for inspection and copying. The
10 Commission is also authorized to obtain discovery, without further leave of court,
11 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
12 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

13 B. For matters concerning this Order, the Commission is authorized to
14 communicate directly with Settling Defendant. Defendant must permit
15 representatives of the Commission to interview any employee or other person
16 affiliated with Settling Defendant who has agreed to such an interview. The person
17 interviewed may have counsel present.

18 C. The Commission may use all other lawful means, including posing,
19 through its representatives as consumers, suppliers, or other individuals or entities,
20 to Settling Defendant or any individual or entity affiliated with Defendants,
21 without the necessity of identification or prior notice. Nothing in this Order limits
22 the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20
23 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

24 **XII. RETENTION OF JURISDICTION**

25 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
26 matter for purposes of construction, modification, and enforcement of this Order.

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1 **XIII. LIMITED EFFECT OF THIS ORDER**

2 **IT IS FURTHER ORDERED** that this Order is entered pursuant to the
3 stipulation of the Settling Defendant and the FTC. The approval of the terms of this
4 Order will not affect a later determination as to whether the same or similar terms
5 proposed by the FTC are appropriate with respect to a defendant who has defaulted
6 in this matter, or whose liability is determined through proceedings in this matter.
7 Any such later determinations will be made based on a de novo review of the
8 relevant facts and circumstances.

9 **IT IS SO ORDERED.**

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13 Dated: July 5, 2018

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JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE