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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-0729 JAK (MRWx)
**ORDER RE STIPULATED
PRELIMINARY INJUNCTION
AGAINST THE UPSIDE, LLC**

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

On January 29, 2018, Plaintiff, the Federal Trade Commission, 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) (Docket No. 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 Company, The Upside, LLC, Thermography for Life, LLC, d/b/a Living

1 Exceptionally, Inc., Michael Force, Mary Dee, Morgan Johnson, Alan Moore, and
2 Sean Brown (collectively, “Defendants”). Dkt. 5.

3 The Court granted the application, issuing a temporary restraining order
4 (“TRO”) on February 1, 2018, including an asset freeze, appointment of a receiver,
5 immediate access to Defendants’ business premises, and other temporary relief.
6 Dkt. 34. The TRO also ordered Defendants to appear on February 15, 2018 and
7 show cause why a preliminary injunction should not issue against them. The
8 parties stipulated to a continuance of the show cause hearing and the court granted
9 that request, extending the TRO and continuing the hearing to March 5, 2018. Dkt.
10 61. Prior to the hearing, the FTC and Defendant The Upside, LLC agreed to the
11 entry of a preliminary injunction for the duration of this litigation. The terms of the
12 stipulated preliminary injunction are set out below.

13 **FINDINGS**

14 A. This Court has jurisdiction over the subject matter of this case, and
15 there is good cause to believe that it will have jurisdiction over all parties hereto
16 and that venue in this district is proper.

17 B. In order to avoid litigation and as part of a process to settle the action
18 between the FTC and Defendant Upside, the FTC and Defendant Upside have
19 agreed to the entry of this Order.

20 C. The FTC and Defendant Upside have agreed that there is a need for:
21 (a) the continued appointment of a Receiver over the Receivership Entities; (b)
22 maintaining the freeze over Defendant The Upside, LLC’s assets; and (c) the
23 ancillary relief ordered below. *See, e.g., FTC v. World Wide Factors, Ltd.*, 882 F.2d
24 344, 347 (9th Cir. 1989) (the Court “need only . . . find some chance of probable
25 success on the merits” in order to award preliminary relief). *See also FTC v. am.*
26 *Nat’l Cellular, Inc.*, 810 F.2d 1511, 15-12-14 (9th Cir. 1987) (upholding
27 preliminary injunction including asset freeze and appointment of a receiver). An
28 asset freeze is appropriate equitable relief permitted by the FTC Act and the

1 inherent equitable powers of the Court. *See FTC v. H.N. Singer, Inc.*, 668 F.2d
2 1107, 1112-13 (9th Cir. 1982) (Section 13(b) of the FTC Act “provides a basis” for
3 a preliminary injunction “freezing assets”).

4 D. Weighing the equities and considering Plaintiff’s likelihood of
5 ultimate success on the merits, a preliminary injunction with an asset freeze, the
6 appointment of a receiver, and other equitable relief, is in the public interest.

7 E. This Court has authority to issue this Order pursuant to Section 13(b)
8 of the FTC Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the All
9 Writs Act, 28 U.S.C. § 1651.

10 F. The FTC is an independent agency of the United States and no
11 security is required of any agency of the United States for the issuance of a
12 preliminary injunction. Fed. R. Civ. P. 65(c).

13 DEFINITIONS

14 For the purposes of this Order, the following definitions shall apply:

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

22 B. “**Defendant(s)**” means Corporate Defendants, Michael Force, Mary
23 Dee, Morgan Johnson, Alan Moore, and Sean Brown, individually, collectively, or
24 in any combination.

25 C. “**Document**” is synonymous in meaning and equal in scope to the
26 usage of “document” and “electronically stored information” in Federal Rule of
27 Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
28 photographs, sound and video recordings, images, Internet sites, web pages,

1 websites, electronic correspondence, including e-mail, chats, and instant messages,
2 contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books,
3 written or printed records, handwritten notes, telephone or videoconference logs,
4 telephone scripts, receipt books, ledgers, personal and business canceled checks
5 and check registers, bank statements, appointment books, computer records,
6 customer or sales databases and any other electronically stored information,
7 including Documents located on remote servers or cloud computing systems, and
8 other data or data compilations from which information can be obtained directly or,
9 if necessary, after translation into a reasonably usable form. A draft or non-
10 identical copy is a separate document within the meaning of the term.

11 D. **“Exempt Accounts”** means the JPMorgan Chase Bank, N.A. bank
12 accounts held in the name of The Upside, LLC and bearing account numbers
13 ending in 2598 and 2655, and the CitiBank, N.A. bank account held in the name of
14 The Upside, LLC and bearing an account number ending in 3896.

15 E. **“Individual Defendant(s)”** means Michael Force, Mary Dee, Morgan
16 Johnson, Alan Moore, and Sean Brown, individually, collectively, or in any
17 combination.

18 F. **“Person”** means a natural person, organization, or other legal entity,
19 including a corporation, partnership, proprietorship, association, cooperative,
20 government or governmental subdivision or agency, or any other group or
21 combination acting as an entity.

22 G. **“Premises”** or **“location”**, as used herein and as applicable to Upside,
23 excludes the personal residence of any current Upside employees, managers,
24 members, or agents.

25 H. **“Receiver”** means the receiver appointed in Section XI of this Order
26 and any deputy receivers that shall be named by the receiver.

27 I. **“Receivership Entities”** means The Upside, LLC as well as any other
28 entity that has conducted any business related to Defendants’ marketing and sale of

1 | purported money-making opportunities to consumers, including receipt of Assets
2 | derived from any activity that is the subject of the Complaint in this matter, and
3 | that the Receiver determines is controlled or owned by Upside.

4 | **ORDER**

5 | **I. PROHIBITED BUSINESS ACTIVITIES**

6 | **IT IS THEREFORE ORDERED** that Defendant The Upside, LLC, its
7 | officers, agents, and employees, and all other Persons in active concert or
8 | participation with it, who receive actual notice of this Order by personal service or
9 | otherwise, whether acting directly or indirectly, in connection with the advertising,
10 | marketing, promoting, or offering for sale of any goods or services, are
11 | **preliminarily restrained and enjoined** from misrepresenting or assisting others in
12 | misrepresenting, expressly or by implication, any material fact, including, but not
13 | limited to:

14 | A. Consumers who purchase Defendants' purported money-making
15 | opportunities will earn or are likely to earn substantial income;

16 | B. Consumers who purchase Defendants' purported money-making
17 | opportunities will receive business coaching that will provide what the consumers
18 | need to build a successful online business; and

19 | C. Any other fact material to consumers concerning any good or service,
20 | such as: the total costs; any refund policy; any material restrictions, limitations, or
21 | conditions; or any material aspect of its performance, efficacy, nature, or central
22 | characteristics.

23 | **II. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

24 | **IT IS FURTHER ORDERED** that Defendant The Upside, LLC, its
25 | officers, agents, and employees, and all other Persons in active concert or
26 | participation with it, who receive actual notice of this Order, whether acting
27 | directly or indirectly, are hereby **preliminarily restrained and enjoined** from:
28 |

1 A. Selling, renting, leasing, transferring, or otherwise disclosing, the
2 name, address, birth date, telephone number, email address, credit card number,
3 bank account number, Social Security number, or other financial or identifying
4 information of any Person that any Defendant obtained in connection with any
5 activity that pertains to the subject matter of this Order; and

6 B. Benefitting from or using the name, address, birth date, telephone
7 number, email address, credit card number, bank account number, Social Security
8 number, or other financial or identifying information of any Person that any
9 Defendant obtained in connection with any activity that pertains to the subject
10 matter of this Order.

11 Provided, however, that The Upside, LLC may disclose such identifying
12 information to a law enforcement agency, to its attorneys as required for its
13 defense, as required by any law, regulation, or court order, or in any filings,
14 pleadings or discovery in this action in the manner required by the Federal Rules of
15 Civil Procedure and by any protective order in the case.

16 **III. ASSET FREEZE**

17 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC and their
18 representatives, officers, agents, and employees, and all other Persons in active
19 concert or participation with t, who receive actual notice of this Order, whether
20 acting directly or indirectly, are hereby **preliminarily restrained and enjoined**
21 from:

22 A. Transferring, liquidating, converting, encumbering, pledging, loaning,
23 selling, concealing, dissipating, disbursing, assigning, relinquishing, spending,
24 conveying, gifting, withdrawing, granting a lien or security interest or other
25 interest in, or otherwise disposing of any Assets that are:

- 26 1) owned or controlled, directly or indirectly, by any Defendant;
- 27 2) held, in whole or in part, for the benefit of any Defendant;
- 28 3) in the actual or constructive possession of any Defendant; or

1 4) owned or controlled by, in the actual or constructive possession
2 of, or otherwise held for the benefit of, any corporation,
3 partnership, asset protection trust, or other entity that is directly
4 or indirectly owned, managed, or controlled by any Defendant.

5 B. Opening or causing to be opened any safe deposit boxes, commercial
6 mail boxes, or storage facilities titled in the name of any Defendant or subject to
7 access by any Defendant, except as necessary to comply with written requests from
8 the Receiver acting pursuant to its authority under this Order;

9 C. Incurring charges or cash advances on any credit, debit, or ATM card
10 issued in the name, individually or jointly, of any Corporate Defendant or any
11 corporation, partnership, or other entity directly or indirectly owned, managed, or
12 controlled by any Defendant or of which any Defendant is an officer, director,
13 member, or manager. This includes any corporate bankcard or corporate credit
14 card account for which any Defendant is, or was on the date that this Order was
15 signed, an authorized signor; or

16 D. Cashing any checks or depositing any money orders or cash received
17 from consumers, clients, or customers of any Defendant.

18 The Assets affected by this Section shall include: (1) all Assets of The
19 Upside, LLC as of February 1, 2018 (the date the TRO was entered); and (2)
20 Assets obtained by The Upside, LLC after February 1, 2018 if those Assets are
21 derived from any activity that is the subject of the Complaint in this matter or that
22 is prohibited by this Order. Notwithstanding the foregoing, this Section shall not
23 affect the Exempt Accounts. This Section does not prohibit any transfers to the
24 Receiver or repatriation of foreign Assets specifically required by this order.

25 **IV. DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

26 **IT IS FURTHER ORDERED** that any financial or brokerage institution,
27 Electronic Data Host, credit card processor, payment processor, merchant bank,
28 acquiring bank, independent sales organization, third party processor, payment

1 gateway, insurance company, business entity, or Person who receives actual notice
2 of this Order (by service or otherwise) and that has held, controlled, or maintained
3 custody, through an account or otherwise, of (a) any Document on behalf of
4 Defendant The Upside, LLC or any Asset that has been owned or controlled,
5 directly or indirectly, by Defendant The Upside, LLC; held, in part or in whole, for
6 the benefit of Defendant The Upside, LLC; in the actual or constructive possession
7 of Defendant The Upside, LLC; or owned or controlled by, in the actual or
8 constructive possession of, or otherwise held for the benefit of, any corporation,
9 partnership, asset protection trust, or other entity that is directly or indirectly
10 owned, managed or controlled by Defendant The Upside, LLC; or (b) any
11 Document or Asset associated with credits, debits or charges made on behalf of
12 Defendant The Upside, LLC, including reserve funds held by payment processors,
13 credit card processors, merchant banks, acquiring banks, independent sales
14 organizations, third party processors, payment gateways, insurance companies, or
15 other entities, shall:

16 A. Hold, preserve, and retain within its control and prohibit the
17 withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance,
18 disbursement, dissipation, relinquishment, conversion, sale, or other disposal of
19 any such Document or Asset, as well as all Documents or other property related to
20 such Assets, except by further order of this Court;

21 B. Deny any Person, except the Receiver, access to any safe deposit box,
22 commercial mail box, or storage facility that is titled in the name of Defendant The
23 Upside, LLC, either individually or jointly, or otherwise subject to access by
24 Defendant The Upside, LLC;

25 C. If they have not done so already in compliance with the TRO
26 previously issued in this matter (Dkt. 34), provide Plaintiff's counsel and the
27 Receiver, within three (3) business days of receiving a copy of this Order, a sworn
28 statement setting forth:

- 1) The identification number of each such account or Asset;
- 2) The balance of each such account, or a description of the nature and value of each such Asset as of the close of business on the day on which this Order is served, and, if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the Person or entity to whom such account or other Asset was remitted; and
- 3) The identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. If they have not done so already in compliance with the TRO previously issued in this matter (Dkt. 34), upon the request of Plaintiff's counsel or the Receiver, promptly provide Plaintiff's counsel and the Receiver with copies of all records or other Documents pertaining to such account or Asset, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage facilities

Provided, however, that this Section does not prohibit any transfers to the Receiver or repatriation of foreign Assets specifically required by this order.

V. FINANCIAL DISCLOSURES

IT IS FURTHER ORDERED that, if it has not done so already in compliance with the TRO previously issued in this matter (Dkt. 34), within five (5) calendar days of the issuance of this Order, Defendant The Upside, LLC shall prepare and deliver to Plaintiff's counsel and the Receiver:

1 A. Completed financial statements on the forms attached to this Order as
2 **Attachment B** (Financial Statement of Corporate Defendant) for each business
3 entity under which Defendant The Upside, LLC conducted business; and

4 B. Completed **Attachment C** (Consent to Release and Request for Copy
5 of Tax Return) for Defendant The Upside, LLC.

6 **VI. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

7 **IT IS FURTHER ORDERED** that, if it has not done so already in
8 compliance with the TRO previously issued in this matter (Dkt. 34), within five (5)
9 days following the issuance of this Order, Defendant The Upside, LLC shall:

10 A. Provide Plaintiff's counsel and the Receiver with a full accounting,
11 verified under oath and accurate as of the date of this Order, of all Assets,
12 Documents, and accounts outside of the United States which are: (1) titled in the
13 name, individually or jointly, of Defendant The Upside, LLC; (2) held by any
14 Person or entity for the benefit of Defendant The Upside, LLC or for the benefit of,
15 any corporation, partnership, asset protection trust, or other entity that is directly or
16 indirectly owned, managed or controlled by Defendant The Upside, LLC; or (3)
17 under the direct or indirect control, whether jointly or singly, of Defendant The
18 Upside, LLC;

19 B. Take all steps necessary to provide Plaintiff's counsel and Receiver
20 access to all Documents and records that may be held by third parties located
21 outside of the territorial United States of America, including signing the Consent to
22 Release of Financial Records appended to this Order as **Attachment D**;

23 C. Transfer to the territory of the United States and all Documents and
24 Assets located in foreign countries which are: (1) titled in the name, individually or
25 jointly, of Defendant The Upside, LLC; (2) held by any Person or entity for the
26 benefit of Defendant The Upside, LLC or for the benefit of, any corporation,
27 partnership, asset protection trust, or other entity that is directly or indirectly
28 owned, managed or controlled by Defendant The Upside, LLC; or (3) under the

1 direct or indirect control, whether jointly or singly, of Defendant The Upside, LLC;
2 and

3 D. The same business day as any repatriation, (1) notify the Receiver and
4 counsel for Plaintiff of the name and location of the financial institution or other
5 entity that is the recipient of such Documents or Assets; and (2) serve this Order on
6 any such financial institution or other entity.

7 **VII. NON-INTERFERENCE WITH REPATRIATION**

8 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC , its
9 officers, agents, and employees, and all other Persons in active concert or
10 participation with it, who receive actual notice of this Order, whether acting
11 directly or indirectly, are hereby **preliminarily restrained and enjoined** from
12 taking any action, directly or indirectly, which may result in the encumbrance or
13 dissipation of foreign Assets, or in the hindrance of the repatriation required by this
14 Order, including, but not limited to:

15 A. Sending any communication or engaging in any other act, directly or
16 indirectly, that results in a determination by a foreign trustee or other entity that a
17 “duress” event has occurred under the terms of a foreign trust agreement until such
18 time that all Defendant The Upside, LLC’s Assets have been fully repatriated
19 pursuant to this Order; or

20 B. Notifying any trustee, protector or other agent of any foreign trust or
21 other related entities of either the existence of this Order, or of the fact that
22 repatriation is required pursuant to a court order, until such time that all
23 Defendants’ Assets have been fully repatriated pursuant to this Order.

24 **VIII. CONSUMER CREDIT REPORTS**

25 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports
26 concerning Defendant The Upside, LLC pursuant to Section 604(a)(1) of the Fair
27 Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any
28

1 credit reporting agency from which such reports are requested shall provide them
2 to Plaintiff.

3 **IX. PRESERVATION OF RECORDS**

4 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC, its
5 officers, agents, and employees, and all other Persons in active concert or
6 participation with any of them, who receive actual notice of this Order, whether
7 acting directly or indirectly, are hereby **preliminarily restrained and enjoined**
8 from:

9 A. Destroying, erasing, falsifying, writing over, mutilating, concealing,
10 altering, transferring, or otherwise disposing of, in any manner, directly or
11 indirectly, Documents that relate to: (1) the business, business practices, Assets, or
12 business or personal finances of any Defendant; (2) the business practices or
13 finances of entities directly or indirectly under the control of any Defendant; or (3)
14 the business practices or finances of entities directly or indirectly under common
15 control with any other Defendant; and

16 B. Failing to create and maintain Documents that, in reasonable detail,
17 accurately, fairly, and completely reflect Defendant The Upside, LLC's incomes,
18 disbursements, transactions, and use of its Assets.

19 **X. REPORT OF NEW BUSINESS ACTIVITY**

20 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC, its
21 officers, agents, and employees, and all other Persons in active concert or
22 participation with it, who receive actual notice of this Order, whether acting
23 directly or indirectly, are hereby **preliminarily restrained and enjoined** from
24 creating, operating, or exercising any control over any business entity, whether
25 newly formed or previously inactive, including any partnership, limited
26 partnership, joint venture, sole proprietorship, or corporation, without first
27 providing Plaintiff's counsel and the Receiver with a written statement disclosing:
28 (1) the name of the business entity; (2) the address and telephone number of the

1 business entity; (3) the names of the business entity's officers, directors, principals,
2 managers, members, and employees; and (4) a detailed description of the business
3 entity's intended activities.

4 **XI. APPOINTMENT OF RECEIVER**

5 **IT IS FURTHER ORDERED** that Thomas Seaman, C.P.A. is appointed
6 Receiver for the Receivership Entities with full powers of an equity receiver. The
7 Receiver shall be solely the agent of this Court in acting as Receiver under this
8 Order.

9 **XII. DUTIES AND AUTHORITY OF RECEIVER**

10 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized
11 to accomplish the following:

12 A. Assume full control of The Upside by removing, as the Receiver
13 deems necessary or advisable, any director, officer, independent contractor,
14 employee, attorney, or agent of any Receivership Entity from control of,
15 management of, or participation in, the affairs of The Upside LLC;

16 B. Take exclusive custody, control, and possession of all Assets and
17 Documents of, or in the possession, custody, or under the control of, any
18 Receivership Entity, wherever situated;

19 C. Conserve, hold, manage, and prevent the loss of all Assets of the
20 Receivership Entities, and perform all acts necessary or advisable to preserve the
21 value of those Assets. The Receiver shall assume control over the income and
22 profits therefrom and all sums of money now or hereafter due or owing to the
23 Receivership Entities. The Receiver shall have full power to sue for, collect, and
24 receive, all Assets of the Receivership Entities and of other Persons or entities
25 whose interests are now under the direction, possession, custody, or control of, the
26 Receivership Entities. Provided, however, that the Receiver shall not attempt to
27 collect any amount from a consumer if the Receiver believes the consumer's debt
28 to the Receivership Entities has resulted from the deceptive acts or practices or

1 other violations of law alleged in the Complaint in this matter, without prior Court
2 approval;

3 D. Obtain, conserve, hold, manage, and prevent the loss of all Documents
4 of the Receivership Entities, and perform all acts necessary or advisable to
5 preserve such Documents. The Receiver shall: divert mail; preserve all
6 Documents of the Receivership Entities that are accessible via electronic means
7 (such as online access to financial accounts and access to electronic documents
8 held onsite or by Electronic Data Hosts, by changing usernames, passwords or
9 other log-in credentials; take possession of all electronic Documents of the
10 Receivership Entities stored onsite or remotely; take whatever steps necessary to
11 preserve all such Documents; and obtain the assistance of the FTC's Digital
12 Forensic Unit for the purpose of obtaining electronic documents stored onsite or
13 remotely;

14 E. Choose, engage, and employ attorneys, accountants, appraisers, and
15 other independent contractors and technical specialists, as the Receiver deems
16 advisable or necessary in the performance of duties and responsibilities under the
17 authority granted by this Order;

18 F. Make payments and disbursements from the receivership estate that
19 are necessary or advisable for carrying out the directions of, or exercising the
20 authority granted by, this Order, and to incur, or authorize the making of, such
21 agreements as may be necessary and advisable in discharging his or her duties as
22 Receiver. The Receiver shall apply to the Court for prior approval of any payment
23 of any debt or obligation incurred by the Receivership Entities prior to the date of
24 entry of this Order, except payments that the Receiver deems necessary or
25 advisable to secure Assets of the Receivership Entities, such as rental payments;

26 G. Take all steps necessary to secure and take exclusive custody of each
27 location from which the Receivership Entities operate their businesses. Such steps
28 may include, but are not limited to, any of the following, as the Receiver deems

1 necessary or advisable: (1) securing the location by changing the locks and alarm
2 codes and disconnecting any internet access or other means of access to the
3 computers, servers, internal networks, or other records maintained at that location;
4 and (2) requiring any Persons present at the location to leave the premises, to
5 provide the Receiver with proof of identification, and/or to demonstrate to the
6 satisfaction of the Receiver that such Persons are not removing from the premises
7 Documents or Assets of the Receivership Entities. Law enforcement personnel,
8 including, but not limited to, police or sheriffs, may assist the Receiver in
9 implementing these provisions in order to keep the peace and maintain security. If
10 requested by the Receiver, the United States Marshal will provide appropriate and
11 necessary assistance to the Receiver to implement this Order and is authorized to
12 use any necessary and reasonable force to do so;

13 H. Take all steps necessary to prevent the modification, destruction, or
14 erasure of any web page or website registered to and operated, in whole or in part,
15 by any Defendants, and to provide access to all such web page or websites to
16 Plaintiff's representatives, agents, and assistants, as well as Defendants and their
17 representatives;

18 I. Enter into and cancel contracts and purchase insurance as advisable or
19 necessary;

20 J. Prevent the inequitable distribution of Assets and determine, adjust,
21 and protect the interests of consumers who have transacted business with the
22 Receivership Entities;

23 K. Make an accounting, as soon as practicable, of the Assets and
24 financial condition of the receivership and file the accounting with the Court and
25 deliver copies thereof to all parties;

26 L. Institute, compromise, adjust, appear in, intervene in, defend, dispose
27 of, or otherwise become party to any legal action in state, federal or foreign courts
28 or arbitration proceedings as the Receiver deems necessary and advisable to

1 | preserve or recover the Assets of the Receivership Entities, or to carry out the
2 | Receiver's mandate under this Order, including but not limited to, actions
3 | challenging fraudulent or voidable transfers;

4 | M. Issue subpoenas to obtain Documents and records pertaining to the
5 | Receivership, and conduct discovery in this action on behalf of the receivership
6 | estate, in addition to obtaining other discovery as set forth in this Order;

7 | N. Open one or more bank accounts at designated depositories for funds
8 | of the Receivership Entities. The Receiver shall deposit all funds of the
9 | Receivership Entities in such designated accounts and shall make all payments and
10 | disbursements from the receivership estate from such accounts. The Receiver shall
11 | serve copies of monthly account statements on all parties;

12 | O. Maintain accurate records of all receipts and expenditures incurred as
13 | Receiver;

14 | P. Allow the Plaintiffs' representatives, agents, and assistants, as well as
15 | Defendants' representatives and Defendants themselves, reasonable access to the
16 | premises of the Receivership Entities, or any other premises where the
17 | Receivership Entities conduct business. The purpose of this access shall be to
18 | inspect and copy any and all books, records, Documents, accounts, and other
19 | property owned by, or in the possession of, the Receivership Entities or their
20 | agents. The Receiver shall have the discretion to determine the time, manner, and
21 | reasonable conditions of such access;

22 | Q. Allow the Plaintiffs' representatives, agents, and assistants, as well as
23 | Defendants and their representatives reasonable access to all Documents in the
24 | possession, custody, or control of the Receivership Entities;

25 | R. Cooperate with reasonable requests for information or assistance from
26 | any state or federal civil or criminal law enforcement agency;

27 |

28 |

1 S. Suspend business operations of the Receivership Entities if in the
2 judgment of the Receiver such operations cannot be continued legally and
3 profitably;

4 T. Report at regular intervals to this Court regarding the steps taken by
5 the Receiver to implement the terms of the Order and any other matters which the
6 Receiver believes should be brought to the Court's attention;

7 U. If the Receiver identifies a nonparty entity as a Receivership Entity,
8 promptly notify the entity as well as the parties, and inform the entity that it can
9 challenge the Receiver's determination by filing a motion with the Court.
10 Provided, however, that the Receiver may delay providing such notice until the
11 Receiver has established control of the nonparty entity and its assets and records, if
12 the Receiver determines that notice to the entity or the parties before the Receiver
13 establishes control over the entity may result in the destruction of records,
14 dissipation of assets, or any other obstruction of the Receiver's control of the
15 entity; and

16 V. If in the Receiver's judgment the business operations cannot be
17 continued legally and profitably, take all steps necessary to ensure that any of the
18 Receivership Entities' web pages or websites relating to the activities alleged in the
19 Complaint cannot be accessed by the public, or are modified for consumer
20 education and/or informational purposes, and take all steps necessary to ensure that
21 any telephone numbers associated with the Receivership Entities cannot be
22 accessed by the public, or are answered solely to provide consumer education or
23 information regarding the status of operations.

24 Notwithstanding any of the foregoing, the Receiver shall treat the Exempt
25 Accounts as if controlled by a nonparty. Accordingly, the Exempt Accounts shall
26 not be subject to the Receiver's powers unless and until the Receiver determines
27 that the Exempt Accounts have conducted business related to Defendants'
28 marketing and sale of purported money-making opportunities to consumers,

1 including receipt of Assets derived from any activity that is the subject of the
2 Complaint in this matter, and are controlled or owned by any Defendant.

3 **XIII. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

4 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC and any
5 other Person, with possession, custody or control of property of, or records relating
6 to, the Receivership Entities shall, upon notice of this Order by personal service or
7 otherwise, fully cooperate with and assist the Receiver in taking and maintaining
8 possession, custody, or control of the Assets and Documents of the Receivership
9 Entities and immediately transfer or deliver to the Receiver possession, custody,
10 and control of, the following:

11 A. All Assets held by or for the benefit of the Receivership Entities;

12 B. All Documents of or pertaining to the Receivership Entities;

13 C. All computers, electronic devices, mobile devices and machines used
14 to conduct the business of the Receivership Entities;

15 D. All Assets and Documents belonging to other Persons or entities
16 whose interests are under the direction, possession, custody, or control of the
17 Receivership Entities; and

18 E. All keys, codes, user names and passwords necessary to gain or to
19 secure access to any Assets or Documents of or pertaining to the Receivership
20 Entities, including access to their business premises, means of communication,
21 accounts, computer systems (onsite and remote), Electronic Data Hosts, or other
22 property.

23 F. In the event that any Person or entity fails to deliver or transfer any
24 Asset or Document, or otherwise fails to comply with any provision of this
25 Section, the Receiver may file an Affidavit of Non-Compliance regarding the
26 failure and a motion seeking compliance or a contempt citation.

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1 **XIV. PROVISION OF INFORMATION TO THE RECEIVER**

2 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC shall
3 provide to the Receiver, immediately upon request:

4 A. A list of all Assets and accounts of the Receivership Entities that are
5 held in any name other than the name of a Receivership Entity, or by any Person or
6 entity other than a Receivership Entity;

7 B. A list of all agents, employees, officers, attorneys, servants and those
8 Persons in active concert and participation with the Receivership Entities, or who
9 have been associated or done business with the Receivership Entities; and

10 A description of any documents covered by attorney-client privilege or
11 attorney work product, including files where such documents are likely to be
12 located, authors or recipients of such documents, and search terms likely to
13 identify such electronic documents.

14 **XV. COOPERATION WITH THE RECEIVER**

15 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC; its
16 officers, agents, and employees, all other Persons in active concert or participation
17 with it who receive actual notice of this Order shall fully cooperate with and assist
18 the Receiver. This cooperation and assistance shall include, but is not limited to,
19 providing information to the Receiver that the Receiver deems necessary to
20 exercise the authority and discharge the responsibilities of the Receiver under this
21 Order; providing any keys, codes, user names and passwords required to access
22 any computers, electronic devices, mobile devices, and machines (onsite or
23 remotely) and any cloud account (including specific method to access account) or
24 electronic file in any medium; advising all Persons who owe money to any
25 Receivership Entity that all debts should be paid directly to the Receiver; and
26 transferring funds at the Receiver's direction and producing records related to the
27 Assets and sales of the Receivership Entities.

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1 **XVI. NON-INTERFERENCE WITH THE RECEIVER**

2 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC; its
3 officers, agents, and employees, and all other Persons in active concert or
4 participation with it, who receive actual notice of this Order, and any other Person
5 served with a copy of this Order, are hereby **restrained and enjoined** from
6 directly or indirectly:

7 A. Interfering with the Receiver's efforts to manage, or take custody,
8 control, or possession of, the Assets or Documents subject to the receivership;

9 B. Transacting any of the business of the Receivership Entities;

10 C. Transferring, receiving, altering, selling, encumbering, pledging,
11 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
12 in the possession or custody of, or in which an interest is held or claimed by, the
13 Receivership Entities;

14 D. Refusing to cooperate with the Receiver or the Receiver's duly
15 authorized agents in the exercise of their duties or authority under any order of this
16 Court; or

17 E. Harassing or interfering with the Receiver in any way.

18 **XVII. STAY OF ACTIONS**

19 **IT IS FURTHER ORDERED** that, except by leave of this Court, during
20 the pendency of the receivership ordered herein, Defendant The Upside, LLC, its
21 officers, agents, and employees, and all other Persons in active concert or
22 participation with any of them, who receive actual notice of this Order, and their
23 corporations, subsidiaries, divisions, or affiliates, and all investors, creditors,
24 stockholders, lessors, customers and other Persons seeking to establish or enforce
25 any claim, right, or interest against or on behalf of Defendants, and all others
26 acting for or on behalf of such Persons, are hereby enjoined from taking action that
27 would interfere with the exclusive jurisdiction of this Court over the Assets or
28 Documents of the Receivership Entities, including, but not limited to:

1 A. Filing or assisting in the filing of a petition for relief under the
2 Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding
3 on behalf of the Receivership Entities;

4 B. Commencing, prosecuting, or continuing a judicial, administrative, or
5 other action or proceeding against the Receivership Entities, including the issuance
6 or employment of process against the Receivership Entities, except that such
7 actions may be commenced if necessary to toll any applicable statute of
8 limitations;

9 C. Filing or enforcing any lien on any asset of the Receivership Entities,
10 taking or attempting to take possession, custody, or control of any Asset of the
11 Receivership Entities; or attempting to foreclose, forfeit, alter, or terminate any
12 interest in any Asset of the Receivership Entities, whether such acts are part of a
13 judicial proceeding, are acts of self-help, or otherwise; or

14 Provided, however, that this Order does not stay: (1) the commencement or
15 continuation of a criminal action or proceeding; (2) the commencement or
16 continuation of an action or proceeding by a governmental unit to enforce such
17 governmental unit's police or regulatory power; or (3) the enforcement of a
18 judgment, other than a money judgment, obtained in an action or proceeding by a
19 governmental unit to enforce such governmental unit's police or regulatory power.

20 **XVIII. COMPENSATION OF THE RECEIVER**

21 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by
22 the Receiver as herein authorized, including counsel to the Receiver and
23 accountants, are entitled to reasonable compensation for the performance of duties
24 pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by
25 them, from the Assets now held by, or in the possession or control of, or which
26 may be received by, the Receivership Entities. The Receiver shall file with the
27 Court and serve on the parties periodic requests for the payment of such reasonable
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1 compensation. The Receiver shall not increase the hourly rates used as the bases
2 for such fee applications without prior approval of the Court.

3 **XIX. DISTRIBUTION OF ORDER BY DEFENDANTS**

4 **IT IS FURTHER ORDERED** that Defendant The Upside, LLC shall
5 immediately provide a copy of this Order to each affiliate, telemarketer, marketer,
6 sales entity, successor, assign, member, officer, director, employee, agent,
7 independent contractor, client, attorney, spouse, subsidiary, division, and
8 representative of itself, and shall, within ten (10) days from the date of entry of this
9 Order, provide Plaintiff and the Receiver with a sworn statement that this provision
10 of the Order has been satisfied, which statement shall include the names, physical
11 addresses, phone number, and email addresses of each such Person or entity who
12 received a copy of the Order. Furthermore, Defendants shall not take any action
13 that would encourage officers, agents, members, directors, employees,
14 salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors,
15 assigns or other Persons or entities in active concert or participation with them to
16 disregard this Order or believe that they are not bound by its provisions.

17 **XX. SERVICE OF THIS ORDER**

18 **IT IS FURTHER ORDERED** that copies of this Order, as well as all other
19 filings in this case, may be served by any means, including facsimile transmission,
20 electronic mail or other electronic messaging, personal or overnight delivery, U.S.
21 Mail or FedEx, by agents and employees of Plaintiff, by any law enforcement
22 agency, or by private process server, upon any Defendant or any Person (including
23 any financial institution) that may have possession, custody or control of any Asset
24 or Document of any Defendant, or that may be subject to any provision of this
25 Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For
26 purposes of this Section, service upon any branch, subsidiary, affiliate or office of
27 any entity shall effect service upon the entire entity.

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1 **XXI. CORRESPONDENCE WITH FTC**

2 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all
3 correspondence and service of pleadings on Plaintiff shall be addressed to:

4 Andrew Hudson
5 Laura Basford
6 Jody Goodman
7 Federal Trade Commission
8 600 Pennsylvania Ave., NW
9 Mailstop CC-8528
10 Washington, DC 20580
11 Fax: 202-326-3395
12 Email: jgoodman1@ftc.gov; lbasford@ftc.gov; ahudson@ftc.gov

11 **XXII. RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
13 matter for all purposes.

14 **IT IS SO ORDERED.**

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16 Dated: March 6, 2018



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19 JOHN A. KRONSTADT
20 UNITED STATES DISTRICT JUDGE
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