

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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 Case In Yefore the co(Y)9**

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

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, receipts, books, ledgers, personal and business canceled checks
 5 | and check registers, bank statements, appointment books, computer records,
 6 | customer or sales database and any other electronically stored information,

7

8

9

10

atabase)Tj 01009 Tc 70.0009-1566 2)Tj 0 -1.6storedlectny olectnust r(ps, Td il#k atabase)Tj95005

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 gateway, insurance company, business, or Person who receives actual notice
2 of this Order (by service or otherwise) 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 otherwise 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 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 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 (DK#4), 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1) The identification number of each such account or Asset;
- 2) The balance of each such account, 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 and from the accounts, including wire transfers and wire transfer instructions,

1 A. Completed financial statements on 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
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

3 D. The same business day as any ~~repat~~ ~~riation~~, (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~~ ~~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 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 ~~an~~ ~~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) (and cern3m0 -1.657 TD [quired e.(.rde

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 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 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) 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 powers of an equity receiver. The
7 Receiver shall be solely the agent of the Court in acting as Receiver under this

8 A the aged XI. APPOINTDUTIES AND RECE6VER

9 IT IS FURTHER ORDERED

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5

10

15

20

25

1 necessary or advisable: (1) securing the location by changing the locks and alarm
2 codes and disconnecting any

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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 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' representative agents, and assistants, as well as
15 Defendants' representatives and Defendants themselves, reasonable access to the
16 premises of the Receivership Entities, 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' representative 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 including receipt of Assets derived from any activity that is the subject of the
2 Complaint in this matter, and 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 or records relating
6 to, the Receivership Entities shall, upon entry 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 contempt or a contempt citation.

27
28

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 XVI. NON-INTERFERENCE WITH THE RECEIVER

2 IT IS FURTHER ORDERED that Defendant The Upside, LLC; its
3 officers, agents, and employees, and other Persons in active concert or
4 participation with it, who receive actual

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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. 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 seize, 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 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
28

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.**

15
16 Dated: March 6, 2018



17
18
19 **JOHN A. KRONSTADT**
20 **UNITED STATES DISTRICT JUDGE**

21
22
23
24
25
26
27
28