

1 **Krista Freitag**
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4 Receiver

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 vs.

13 ALVIN R. BROWN, FIRST
CHOICE INVESTMENT, INC.,
14 and ADVANCED CORPORATE
ENTERPRISES, INC., d/b/a A-
15 CORP ENTERPRISES a/k/a
ACORP DEVELOPMENT a/k/a A-
16 CORP INVESTMENT,

17 Defendants.

) CASE NO. CV 13-01629-ABC
) (VBKx)

) **SECOND INTERIM**
) **APPLICATION FOR APPROVAL**
) **AND PAYMENT OF FEES AND**
) **COSTS OF KRISTA FREITAG,**
) **RECEIVER**

) Date: January 6, 2014

) Time: 10:00 a.m.

) Ctrm: 680

) United States Courthouse

) Edward R. Roybal Federal Building

) 255 East Temple Street

) Los Angeles, CA 90012-3332

) Judge: Hon. Audrey B. Collins
)
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)

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21 Krista Freitag (“Receiver”), the Court-appointed Receiver herein, files her
22 second interim fee application. This is the Receiver’s second fee application in this
23 case.

24 With this application, for the period from July 1, 2013 through September 30,
25 2013, the Receiver respectfully requests that the Court award and authorize for
26 immediate payment \$11,370.38 in interim fees and \$930.21 in interim cost
27 reimbursement.
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1 Detailed descriptions of the services rendered are contained in Exhibit A
2 attached to the Declaration of Krista L. Freitag (“Freitag Declaration”) filed
3 concurrently herewith. Exhibit B to the Freitag Declaration is a chart reflecting the
4 hours and fees billed to each category of services on a monthly basis during the period
5 from July 1, 2013 through September 30, 2013. Exhibit C thereto is a summary of
6 costs (advanced by Receiver). During the period from July 1, 2013 through
7 September 30, 2013, the Receiver and her staff have spent 80 hours at an overall
8 blended billing rate of \$142.13 per hour. The Receiver has discounted all fees by ten
9 percent (10%) from regular hourly billing rates.

10 On September 5, 2013, the Court entered an order (Docket No. 50) on the
11 Receiver’s first interim fee application (Docket No. 35). With the order, the Court
12 allowed the Receiver \$32,911.50 in interim fees (80 percent of the \$41,139.38 in fees
13 requested) and \$12,319.36 in interim costs (100 percent of the costs requested), all of
14 which allowed amounts have now been paid. The Court ordered \$8,227.88 (20
15 percent of the \$41,139.38 in fees requested) held back, subject to further order of the
16 Court at the conclusion of the receivership.

17 **I.**

18 **INTRODUCTION**

19 Concurrently with the filing of this fee application, Receiver is filing a report
20 recommending a procedure for winding up this receivership (“Receiver’s Report
21 (3Q13)”). This recommendation is based in part on her belief that “the low hanging
22 fruit has been harvested,” and future efforts are not likely to bring additional dollars
23 into the estate – absent undertaking significant litigation, for which one estate lacks
24 the appetite, and for which the other estates lack the funding. Asset searches indicate
25 that the receivership entities own no real property. The business records available to
26 Receiver are incomplete (and likely to stay that way). Key witnesses have asserted
27 their 5th Amendment rights against self-incrimination, and/or are located outside of the
28 United States. The Receiver and her counsel have worked with numerous parties to

1 obtain records regarding transfers to Canada that might be recoverable, but have been
2 unable to obtain them, and face the prospect of commencing a legal proceeding in
3 Canada to do so. Further, the Receiver has little evidence suggesting that litigation
4 would ultimately bear fruit for the estates, and in fact has draft documentation
5 suggesting that some targets may have defenses against any basic fraudulent transfer
6 claims.

7 The Receiver and her counsel receive regular calls from investors asking that
8 the receivership be wound up now, and the money on hand returned to investors –
9 rather than “rolling the dice” and spending that money on litigation, in hopes of
10 increasing the pot. The Court too has expressed concern over the preservation of
11 estate funds to return to investors, addressing the issue in its recent ruling on fee
12 applications. See Docket No. 50. Accordingly, the Receiver recommends that she
13 commence winding up the receivership in the fashion described in the accompanying
14 Receiver’s Report (3Q13).

15 Receiver has recovered several hundred thousand dollars, the balance of which
16 – after costs of administration – will be returned to investors. While Receiver wishes
17 a greater recovery were possible, she believes that the likely recovery under the wind-
18 up procedure proposed herein is the best possible outcome under the circumstances.
19 When the Securities & Exchange Commission (“Commission”) first presented this
20 case to Receiver, it was administratively insolvent, and presented a clear risk to
21 Receiver and her counsel that they would go unpaid for their efforts. Receiver took
22 the case anyway, and that risk has paid off for investors, in the form of the
23 distributions described in the accompanying Receiver’s Report (3Q13) – distributions
24 that were not thought possible at the outset of this case, and were made possible by the
25 efforts of and risks undertaken by Receiver and her counsel. The Receiver
26 respectfully requests that the Court consider these factors when evaluating this fee
27 application.
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II.

STATEMENT OF THE CASE

A. Procedural Posture

On March 7, 2013, the Securities and Exchange Commission ("Commission") filed a complaint (Docket No. 3) initiating the instant litigation against Defendants Alvin R. Brown, First Choice Investment, Inc. ("Defendant FCI")¹ and Advanced Corporate Enterprises, Inc.² alleging violations of various securities laws.

At the Commission's request, on March 7, 2013, the Court entered its order (Docket No. 5) appointing Receiver as a temporary receiver for Defendant FCI and Defendants ACorp and the entities they control and manage with full powers of an equity receiver. Thereafter, Defendant Brown stipulated to the appointment of Receiver on a permanent basis (Docket No. 17). On April 8, 2013, the Court so ordered (Docket No. 18).

On May 6, 2013, the Receiver filed an interim report and request for instructions regarding the scope of Receiver's authority (Docket No. 19). On May 23, 2013, the Court entered an order extending the Receiver's rights and responsibilities to two of Defendant's affiliated entities, First Choice Energy Partners, LP, a/k/a First

¹ Defendant Al Brown appears to have operated two different entities under the name First Choice Investment, Inc. – with First Choice Investment, Inc. incorporated in Nevada in 2008, and First Choice Investments, Inc. (with an "s"), incorporated in Nevada in 2012; investment records and communications generally do not appear to delineate between the two, thus the Receiver has consolidated all Defendant FCI activity.

² Defendant Al Brown appears to have operated two different entities under the name Advanced Corporate Enterprises, Inc.:

(a) one incorporated in California in approximately 2005, which appears to have focused primarily on American investors and to have raised the majority of its funds in or prior to 2009 ("Defendant ACorp – CA"); and

(b) a second one incorporated in Nevada in approximately 2011 (February is file date), which appears to have focused primarily on Canadian investors ("Defendant ACorp – NV").

Business records and communications generally do not appear to delineate between the two; however, the financial records available to the Receiver reflect ACorp-CA operations (e.g., tax returns filed under ACorp-CA through 2010). Bank records used to prepare the 'sources and uses' included in the Receiver's Preliminary Accounting and Report (2Q13) appear to reflect primarily Canadian investor activity.

1 Choice Oil and Gas Energy Partners (“Defendant FCEP”) and Advanced Concepts
2 Enterprises, Inc. (“Defendant ACE”).

3 **B. Receivership Activities**

4 **1. Recovery of Defendant FCEP Funds on Deposit with Colorado Law**
5 **Firm**

6 In the course of her investigation, Receiver discovered significant funds on
7 deposit in the client trust account of The Wilson Law Firm, P.C. in Fort Collins,
8 Colorado on behalf of Defendant FCEP. The Colorado law firm cooperated with
9 Receiver, and ultimately turned over to her the sum of \$182,750, along with
10 documentary evidence regarding investor names, contact information, and respective
11 contributions. Since that recovery, Defendant FCEP investors³ have contacted
12 Receiver and her counsel repeatedly, requesting that she not spend any of these dollars
13 attempting to recover additional assets of Defendant FCEP, but instead, conclude the
14 receivership and return the money to Defendant FCEP investors as quickly as
15 possible. Receiver’s counsel has conferred significantly with the Defendant FCEP
16 investors (through their purported representative), regarding the process for winding
17 up the receivership and distributing funds back to investors, including the tax
18 consequences of such distributions for Defendant FCEP investors. The Defendant
19 FCEP estate is the only estate with sufficient cash on hand to finance any litigation –
20 should the Court order it.

21 **2. Receiver’s Accounting**

22 In an effort to locate from where the receivership entities raised money, and
23 where it went, the Receiver has performed a detailed “sources and uses” accounting
24 from original bank records for Defendant FCI, Defendant FCEP, Defendant ACorp –
25 NV, Defendant ACE (two accounts only), and a summary “sources and uses” from
26

27 ³ The FCEP investors appear to act through investor Mr. Richard LaFontaine, who purports to speak on behalf of and
28 report to the FCEP investor body as a whole, in an effort to avoid the additional receivership expenses entailed with the
Receiver and/or her counsel having to communicate with each investor individually.

1 financial records provided to her for Defendant ACorp – CA, due to lack of
2 underlying supporting documentation for Defendant ACorp - CA. Very limited
3 Defendant ACE bank records and/or financial records are available after 2008, and
4 thus a detailed sources and uses has not been prepared for Defendant ACE. In late
5 October 2013, Receiver received from an independent accountant, Quickbooks
6 records for the period from 2004 through 2008 for Defendant ACE. To date, a basic
7 summary of the Quickbooks financial records has been performed. The Receiver is in
8 the process of performing limited additional review of the financial records provided
9 to determine if there is any probability of obtaining additional information which
10 would aid in recovery of investor funds. If anything is gained from said review, the
11 Receiver will notify the Court.

12 That accounting is attached as an exhibit to the Receiver’s Report (3Q13) filed
13 concurrently herewith, and is summarized in detail therein.

14 **3. Efforts to Locate and Obtain Additional Records**

15 Bank records shows that nearly \$2 million of ACorp - NV funds appear to have
16 made it across the border into Canada. Receiver has been able to trace \$659,383 to
17 Donato Prezioso (an individual believed to reside in Canada). Receiver has been able
18 to trace another \$1,240,552 million to accounts maintained at Canadian Imperial Bank
19 of Commerce (“CIBC”). Based upon Defendant Brown’s financial records, it also
20 appears that \$778,943 of ACorp – CA funds were wired internationally. The
21 Receiver, directly or through counsel, has worked with CIBC, the Commission, the
22 equivalent securities regulator in Canada, and the Royal Canadian Mounted Police in
23 an effort to obtain records sufficient to learn the identity of the holder(s) of the
24 account(s) and to locate Donato Prezioso. Those parties have informed Receiver that
25 they are unable to locate and/or provide the Receiver with the requested information,
26 and Receiver is informed and believes that in order to get it, she would have to
27 commence a legal proceeding in Canada. Not only does the Receiver lack a firm
28 belief that such efforts would result in a recovery at some point, the Defendant ACorp

1 estates lack the funds to prosecute the Canadian procedure (or to spend estate
2 resources to conduct additional *legal* investigation beyond that which has been done,
3 needed to gain confidence that the effort would be worthwhile).

4 **4. Vanatta Litigation**

5 On July 30, 2013, investor Fred Vanatta filed a motion (Docket No. 38)
6 requesting that the Court allow him to intervene in the instant litigation to seek relief
7 from the Court's Preliminary Injunction (Docket No. 18) to pursue state court
8 litigation ("Oregon Litigation") against defendant First Choice Investment, Inc. and
9 defendant Advanced Corporate Enterprises, Inc. That litigation is currently pending
10 in state court in Marion County, Oregon as Case No. 13C17105. In the Oregon
11 Litigation, Mr. Vanatta asserts claims for breach of Oregon's securities laws and
12 financial elder abuse arising out of Mr. Vanatta's investment in FCI. In the Oregon
13 Litigation, Mr. Vanatta seeks the return of the \$17,500 he invested, plus treble
14 damages, attorneys' fees and interest. The Receiver filed an opposition to the motion
15 (Docket No. 44) and the Court ultimately entered an order denying the motion
16 (Docket No. 49)

17 **5. The Recommended Wrap Up of the Receivership**

18 Concurrently with the filing of this fee application, Receiver is filing a report
19 recommending a procedure for winding up this receivership. This recommendation is
20 based in part on her belief that "the low hanging fruit has been harvested," and future
21 efforts are not likely to bring additional dollars into the estate – absent undertaking
22 significant litigation, for which one estate lacks the appetite, and for which the other
23 estates lack the funding. Asset searches indicate that the receivership entities own no
24 real property. The business records available to Receiver are incomplete (and likely to
25 stay that way). Key witnesses have asserted their 5th Amendment rights against self-
26 incrimination, and/or are located outside of the United States. The Receiver has little
27 evidence suggesting that litigation would ultimately bear fruit for the estates.
28

1 The Receiver and her counsel receive regular calls from investors asking that
2 the receivership be wound up now, and the money on hand returned to investors –
3 rather than “rolling the dice” and spending that money on litigation, in hopes of
4 increasing the pot. The Court too has expressed concern over the preservation of
5 estate funds to return to investors, addressing the issue in its recent ruling on fee
6 applications. See Docket No. 50. Accordingly, the Receiver is recommending that
7 the receivership be wound up in the fashion described in the accompanying Receiver’s
8 Report (3Q13).

9 **C. Financial Position of Receivership Estates**

10 As of October 4, 2013, the Receiver has approximately \$156,089.21 in cash on
11 hand across all four estates, all of which cash appears to be unencumbered. Accrued
12 administrative expenses total approximately \$34,537.15 and consist of the following:

- 13 (1.) \$11,370.38 Receiver’s Fees requested concurrently herewith;
14 (2.) \$ 930.21 Receiver’s Costs requested concurrently herewith; and
15 (3.) \$22,236.56 Legal Fees and Costs requested herein.

16 As described above, while Receiver wishes a greater recovery were possible,
17 she believes that the likely recovery under the wind-up procedure proposed
18 concurrently herewith is the best possible outcome under the circumstances. When
19 the Commission first presented this case to Receiver, it was administratively
20 insolvent, and presented a clear risk to Receiver and her counsel that they would go
21 unpaid for their efforts. Receiver took the case anyway, and that risk has paid off for
22 investors, in the form of the distributions described in the accompanying Receiver’s
23 Report – distributions that were not thought possible at the outset of this case, and
24 were made possible by the efforts of and risks undertaken by Receiver and her
25 counsel.

26 **D. Allocation of Fees Among Entities**

27 The Receiver presently has four distinct receivership estates under her control –
28 one for each of the entities the Court has placed into receivership. The Receiver

1 intends to allocate the fees and costs awarded under this application pro rata among
2 the estates based on the cash positions of the estates as of October 4, 2013, the date
3 used in the most recent interim and accompanying Receiver’s Report (3Q13) (Docket
4 No. 52). Accordingly, the estates will bear the following percentage of fees and costs
5 awarded under this application:

- 6 (1) FCI 9.15%
- 7 (2) A-Corp 0.73%
- 8 (3) FCEP 89.18 %
- 9 (4) ACE 0.93%

10 The instant fee application is interim in nature, and the present allocation of
11 fees and costs among the estates may be “trued up” at a later time, to the extent
12 necessary to ensure that each estate bears its fair share of administrative expenses.

13 **III.**

14 **SUMMARY AND DESCRIPTION OF SERVICES AND CHARGES**

15 The Receiver's work during the period from July 1, 2013 through September 30,
16 2013 falls into the following categories:

- 17 A. General Receivership
- 18 B. Asset Investigation & Recovery
- 19 C. Reporting
- 20 D. Legal Matters & Pending Litigation

21 **A. General Receivership (“A”)**

22 During the period from July 1, 2013 through September 30, 2013, the Receiver
23 (a) conferred with investors and prospective tax accountant, (b) handled general
24 administrative matters including reviewing mail, emails and other correspondence
25 directed to the Receivership Entities, (c) administered payables and the bank accounts
26 of the Receivership Entities; and (d) maintained and updated the Receiver’s website
27 with case information and documents.
28

Name	Title	Rate	Hours	Fees
K. Freitag	Receiver	\$247.50	8.20	\$2,029.50
G. Rodriguez	Director	\$180.00	.90	\$162.00
L. Ryan	Associate Director	\$157.50	6.30	\$992.25
TOTAL				\$3,183.75
Avg. Hourly Rate		\$206.74		

B. Asset Investigation & Recovery (“B”)

Services in this category include time spent during the period from July 1, 2013 through September 30, 2013 on (a) conferred with counsel regarding Canadian recovery and asset searches, (b) pursued and continued review of bank, email and accounting records, (c) preparation of accounting summaries; and (d) securing receivership estate assets, including recovery of personal property.

Name	Title	Rate	Hours	Fees
K. Freitag	Receiver	\$247.50	10.40	\$2,574.00
G. Rodriguez	Director	\$180.00	2.60	\$468.00
L. Ryan	Associate Director	\$157.50	31.60	\$4,095.00
K. McClain	Administrative	\$67.50	11.40	\$529.88
TOTAL				\$7,666.88
Avg. Hourly Rate		\$136.91		

C. Reporting (“C”)

This category contains time spent by the Receiver, with the assistance of counsel, preparing her First Interim Application for Approval and Payment of Fees and Costs to Krista Freitag, Receiver (non-billable) and commencement of her Receiver Report (3Q13), which was filed on November 19, 2013 and concurrently herewith on November 19, 2013.

Name	Title	Rate	Hours	Fees
K. Freitag	Receiver	\$247.50	7.90	\$346.50
TOTAL				\$346.50
Avg. Hourly Rate		\$43.86		

1 These services are required by the Court’s orders, local rules, Commission
 2 guidelines and similar requirements; are necessary to allow the Court, the
 3 Commission and parties in interest to evaluate the cost-effectiveness of the
 4 receivership; and thus benefited the estates accordingly.

5 **D. Legal Matters & Pending Litigation (“D”)**

6 Services in this category include the Receiver’s work on (a) review of Vanatta
 7 litigation matter.

Name	Title	Rate	Hours	Fees
K. Freitag	Receiver	\$247.50	.70	\$173.25
TOTAL				\$173.25
Avg. Hourly Rate		\$247.50		

12 **E. Costs**

13 Receiver requests reimbursement of a total of \$903.21 in costs actually
 14 advanced by the firm on behalf of the receivership estates, broken down as follows:

Type of Cost	Amount
Overnight Delivery	\$19.01
Postal	\$7.57
Travel Expenses	\$545.63
Storage/Moving	\$198.00
Other IT	\$160.00
TOTAL	\$930.21

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IV.

THE REQUESTED FEES ARE REASONABLE AND SHOULD BE APPROVED

A. Efficient Staffing – Customary Rates

The Receiver believes her request is fair and reasonable and that the fees and costs incurred were necessary to the administration of the receivership estate. The Receiver's request for compensation is based on her customary billing rates charged in similar matters, discounted by ten percent (10%). Pursuant to agreement with the Commission, the Receiver has discounted the hourly rates of her professionals by 10 percent. This discount saved the estates \$1,263.38 ($\$12,633.75 \times .10$) during the period covered by this application.

The blended hourly rate for all services provided by the Receiver during the Application Period is \$142.13. The Receiver's billing rates are comparable or less than those charged in the community on similarly complex matters.

The services that were performed were essential to the estates and benefited creditors and other parties-in-interest. This fee application has been submitted to the Commission in accordance with the Commission's rules on the compensation of professionals for receivers.

B. Costs

The Receiver also requests Court approval of reimbursement of \$930.21 in costs advanced by her. A summary of costs is included as Exhibit C to the Freitag Declaration.

V.

CONCLUSION

The Receiver has worked diligently and efficiently in fulfilling her duties and has provided valuable service in that regard. Based on the foregoing, Receiver respectfully requests that the Court enter an order in substantially the form submitted as Exhibit "1" herewith:

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- (1) awarding and authorizing for immediate payment \$11,370.38 in interim fees;
- (2) awarding and authorizing for immediate payment \$930.21 in reimbursement of costs advanced by Receiver; and
- (3) granting such other relief as the Court may find just and proper.

Dated: November 19, 2013

By: 
Krista L. Freitag, Receiver

EXHIBIT 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ALVIN R. BROWN, FIRST CHOICE
INVESTMENT, INC., and
ADVANCED CORPORATE
ENTERPRISES, INC., d/b/a A-CORP
ENTERPRISES a/k/a ACORP
DEVELOPMENT a/k/a A-CORP
INVESTMENT,

Defendants.

CASE NO. CV 13-01629-ABC (VBKx)

**[PROPOSED] ORDER
APPROVING SECOND INTERIM
APPLICATION FOR APPROVAL
AND PAYMENT OF FEES AND
COSTS OF KRISTA L. FREITAG,
RECIEVER**

Ctrm: 680
United States Courthouse
Edward R. Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012-3332
Judge: Hon. Audrey B. Collins

The Second Interim Application for Approval and Payment of Fees and Costs (“Fee Application”) of the Court appointed Receiver, Krista L. Freitag (“Receiver”), came on regularly for hearing on January 6, 2014 at 10:00 a.m, United States District Judge Audrey B. Collins presiding. Christopher V. Hawkins appeared on behalf of Sullivan Hill Lewin Rez & Engel (“Sullivan Hill”) as counsel for the Receiver and there were no other appearances at the hearing.

The Court having considered the Fee Application, the supporting Declaration of Krista L. Freitag filed on November 19, 2013, the representations of counsel at the hearing; no opposition to the Fee Application having been filed; notice appearing proper; and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Receiver is awarded interim fees in the amount of \$11,370.38, plus interim costs in the amount of \$930.21, for a total interim award of \$12,300.59 for the period of July 1, 2013 through September 30, 2013, as prayed for in the Fee Application.

IT IS SO ORDERED.

Dated: _____, 2014

HON. AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE