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4 Appearing In Pro Per  
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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF SANTA CLARA

8  
9 Steven T. Kirsch, an individual,

10 Plaintiff,

11 v.

12 Charles Cunningham et al.

13 Defendants

Case No: 2-04-SC-001196

**ORDER APPOINTING RECEIVER**

Date: September 29, 2005

Time: 1pm

Dept: 86

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18 Having considered the Application of plaintiff Kirsch, the supporting Declaration,

19 Memorandum of Points and Authorities, and the Court having determined that:

- 20
- 21 A. Good cause exists to appoint a Receiver with powers as hereinafter set forth;
- 22 B. Plaintiff must execute and file an undertaking in the sum of \$ 1,000.00 to the effect that plaintiff
- 23 will pay to defendant, all damages which defendant may sustain by reason of the ex parte
- 24 appointment of the receiver and receiver's performance of his duties, in case plaintiff shall have
- 25 procured the appointment wrongfully, maliciously, or without sufficient cause; and
- 26 C. Gerald Sorensen is qualified to act as receiver in this case,
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IT IS ORDERED that:

- 1 Gerald Sorensen is appointed receiver in this action,
- 2 On qualifying to act as receiver herein by taking and filing an oath to perform his duties as
- 3 receiver, the receiver shall be authorized to take possession and control of the documents,
- 4 records and assets, wherever located, of Katrina Hartwell (Hartwell), First Chartered
- 5 Investments, Inc. (FCI), and Chartered Financial & Investment Corporation (Chartered)
- 6 and any other business enterprise or activity of any of the defendants in this action,
- 7 including, without limitation, the following:

All accounts, contract rights, general intangibles and payment intangibles including, without limitation, contracts and accounts with subscribers or customers, all proceeds thereof, and all writings which document any of them including, without limitation, written agreements, purchase orders, invoices, receipts, checkbooks, check registers, passbooks, journals, ledgers and books of account; identity and account information for Title and Escrow companies from which defendants receive payments or other data used in or related to the businesses.

- 3 DUTIES OF RECEIVER: The receiver is granted the following powers and duties:
  - (a) To enter the premises commonly known as 1199 Howard Ave., Ste 200, Burlingame, California, in order to take possession of the Collateral; -
  - (b) To enter the premises commonly known as 510 Barkentine Lane, Redwood City, CA California, in order to take possession of the Collateral;
  - (c) To take any and all steps necessary to receive, collect and review all mail addressed to FCI, to Chartered, to Hartwell, or to Hartwell in her capacity as officer or director of either such entity or of any other business enterprise; including, without limitation, mail addressed to the locations listed in Subparagraphs (a) and (b), and to any post office boxes held in the name of FCI or Chartered or defendant in her capacity as owner of either such entity or of any other business enterprise; and, at the receiver's discretion, s/he is authorized to instruct the U.S. Postmaster to reroute, hold, and/or release said mail to the receiver. Mail the receiver reviews

1 in the performance of his duties, will promptly thereafter be made available to defendant for  
2 inspection.

3 (d) To take possession of all bank accounts of FCI, Chartered, or Hartwell in her capacity as  
4 owner of either such entity or of any other business enterprise, wherever located, and  
5 receive possession of any money on deposit in said bank accounts, and the receiver's  
6 receipt for said bank accounts or said funds shall discharge the depository bank from  
7 further responsibility for accounting to the account holder for funds for which the receiver  
8 shall give his receipt.

9 (e) To demand, collect and hold all accounts receivable of defendant, whether in his capacity as  
10 owner of FCI or Chartered or otherwise, and all proceeds thereof

11 (f) To present for payment any checks, money orders, negotiable instruments or commercial  
12 paper by means of which FCI, Chartered, or Hartwell or otherwise are compensated for  
13 products or services which they provide, and to endorse the same and collect the proceeds  
14 thereof, such proceeds to be deposited in the Cash Collateral Account described in  
15 Subparagraph (g), and thereafter used and maintained as elsewhere provided herein;

16 (g) To open and utilize bank accounts for receivership funds, including a separate account, to  
17 be denominated "Cash Collateral Account," for the initial deposit of proceeds of the  
18 accounts receivable and other items described in Subparagraphs (d), (e) and (f);

19 (h) In the receiver's sole discretion, to contact each of the accounts receivable debtors of  
20 defendant, in her capacity as owner of FCI, Chartered, or otherwise ("Account Receivable  
21 Debtors"), in order to instruct them to send no further payments to defendant, but rather to the  
22 receiver.

23 (i) If there is insufficient insurance coverage on the Collateral, the receiver shall have thirty (30)  
24 working days to procure such insurance, provided the receiver has funds available to do so  
25 during said period. The receiver shall not be personally responsible for claims that would be  
26 covered by such insurance, or for the procurement of such insurance.

27 (j) To arrange for the continuing operation of Chartered (FCI has terminated operations, per the  
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- 1 California Secretary of State's web site).
- 2 (k) To compromise debts of defendants, including Hartwell in her capacity as owner of FCI or
- 3 Chartered or any other business enterprise, and to do all things and to incur the risks and
- 4 obligations of similar businesses and enterprises; provided however, that no such risk or
- 5 obligation shall be personal to the receiver, but shall be the risk or obligation of the
- 6 receivership estate.
- 7 (l) To execute and prepare all documents and to perform all acts, either in the name of
- 8 defendant or in the receiver's own name, as the circumstances may require, which are
- 9 necessary or incidental to preserving, protecting, managing and controlling the Collateral.
- 10 (m) To employ or engage any person or firm to perform the functions described in
- 11 subparagraphs (a) through (1);
- 12 (n) To employ or engage providers of bookkeeping or accounting services which the receiver
- 13 deems necessary to assist him in the discharge of his duties;
- 14 (o) To pay and discharge out of the funds coming into his hands all the expenses of the
- 15 receivership and the costs and expenses of performing the functions described in
- 16 subparagraphs (a) through (1);
- 17 (p) To expend funds to purchase merchandise, materials, supplies and services as the receiver
- 18 deems necessary and advisable to assist him in performing his duties and to pay therefor the
- 19 ordinary and usual rates and prices out of the funds that may come into the possession of the
- 20 receiver;
- 21 (q) To borrow such funds from plaintiff as may be necessary to satisfy the costs and expenses of
- 22 the receivership, to the extent that cash, or cash derived from the assets of which the receiver
- 23 takes control is insufficient to satisfy such costs and expenses. All sums the receiver may
- 24 borrow pursuant to this paragraph shall be deemed advances to protect the assets of which
- 25 the receiver takes control. The receiver is further authorized to issue and execute such
- 26 documents as may be necessary to evidence and secure the obligation to repay the advances;
- 27 (r) The funds coming into possession of the receiver and not expended for any of the purposes
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1           herein authorized, the receiver shall hold for the payment of the judgment herein, including  
2           any past or future awards to plaintiff for costs and attorneys' fees, subject to such orders as  
3           this Court may hereinafter issue as to the disposition of such funds.

4           (s) To file, within thirty (30) days after the effective date of this appointment, an inventory  
5           setting forth a list of all assets, documents and records of which the receiver has taken  
6           possession pursuant to his appointment, and to file a supplemental inventory if he later takes  
7           possession of additional items other than Cash Collateral;

8           (t) To prepare monthly accounts pertaining to the receivables, their proceeds and any Cash  
9           Collateral of which the receiver takes control at the commencement of the receivership and  
10          upon completion, to mail such accounts to the parties and their counsel;

11          (u) To prepare periodic statements reflecting the receiver's fees and administrative costs and  
12          expenses incurred in the operation and administration of the receivership estate. Upon  
13          completion of such statements, and mailing the statements to the parties and their attorneys  
14          of record, the receiver shall pay from estate funds, if any, the amount of each statement.  
15          Despite the periodic payment of receiver's fees and administrative expenses, such fees and  
16          expenses shall be submitted to the Court for approval and confirmation in the form of either  
17          a noticed interim request for fees, a stipulation among parties, or the receiver's Final Account  
18          and Report; and

19          (v) To generally do such other things as may be necessary or incidental to the foregoing  
20          specific powers, directions and general authorities and to take actions relating to the  
21          Collateral beyond the scope contemplated by the provisions set forth above, provided the  
22          receiver obtains prior approval of this Court for any actions beyond the scope contemplated  
23          herein.

24          5. NON-INTERFERENCE WITH RECEIVER: IT IS FURTHER ORDERED that defendant  
25          Hartwell, her agents, representatives, employees and any persons acting in concert with her, are  
26          enjoined from:

27                  a. Interfering with the receiver, directly or indirectly, in the activities described in Paragraph  
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- 1                   4 (a) through 4 (1);
- 2                   b. Collecting or attempting to collect any accounts receivable of defendant Hartwell,
- 3                   including, without limitation, those of FCI and Chartered;
- 4                   c. Expending, disbursing, transferring, assigning, selling, conveying, devising, pledging,
- 5                   creating a security interest in or disposing of the whole or any part of any item described in
- 6                   Paragraph 3 or any proceeds thereof, including without limitation the assets of FCI or
- 7                   Chartered, without the prior written consent of plaintiff or the Court; and
- 8                   d. Doing any act which will, or which will tend to, defeat, prevent or hinder the preservation
- 9                   of any item described in Paragraph 3, or defeat or impair plaintiff's interest therein.
- 10                  6. **TURNOVER: IT IS FURTHER ORDERED** that pending further order of this Court,
- 11                  defendant Hartwell, her agents, employees, and all other persons with actual or constructive
- 12                  knowledge of this Order and their agents and employees, except plaintiff; shall:
- 13                  a. Turn over to the receiver the possession of all items described in Paragraph 3, wherever
- 14                  located and in whatever mode maintained (including, without limitation, information
- 15                  contained on computers and any and all software relating thereto as well as all banking
- 16                  records, statements and cancelled checks); and
- 17                  b. Turn over to the receiver all proceeds derived from the accounts receivable of
- 18                  defendant Hartwell, including, without limitation, those of FCI and Chartered,
- 19                  wherever and in whatsoever mode maintained.
- 20                  7. **DISCHARGE: IT IS FURTHER ORDERED** that, immediately upon the **satisfaction of all**
- 21                  **judgments** in which any party defendant is a judgment debtor, including all past and future
- 22                  awards to those plaintiffs of attorneys' fees or costs; or upon the completion of a valid sale or
- 23                  other disposition of the Collateral, as the case may be, and without further order of the Court, the
- 24                  receiver shall relinquish possession and control of the items described in Paragraph 3 to defendant
- 25                  if the judgment is satisfied, to the successful bidder at any sale of the any of the assets, whether
- 26                  plaintiff or another party, pending approval of the receiver's final account and report. Upon
- 27                  relinquishing possession and control of the items described in Paragraph 3, the receiver shall be
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discharged from all further duties, liabilities, and responsibilities relating to such items except to render his final account and report.

8. IT IS FURTHER ORDERED that the receiver or plaintiff may at any time apply to this Court for any further instructions or powers necessary to enable the receiver to perform his duties properly.

9. The receiver shall assume his duties and powers forthwith upon his compliance with Paragraph 2 of this Order.

Dated: \_\_\_\_\_, 2005 \_\_\_\_\_