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<p>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</p> <p>7325 S. Potomac Street Centennial, Colorado 80112</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL,</p> <p>Plaintiff,</p> <p>v.</p> <p>COLORADO HUMANE SOCIETY &amp; S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual;</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General ALISSA HECHT GARDENSWARTZ, 36126* LEEANN RICHEY, 38742* JAY SIMONSON, 24077* 1525 Sherman Street, 7<sup>th</sup> Floor Denver, CO 80203 (303) 866-5079</p> <p style="text-align: right;">*Counsel of Record for Plaintiff.</p>	<p>Case No.: 2008 CV 2659</p> <p style="text-align: center;">Div: 202</p>
<p><del>PROPOSED</del> <b>STIPULATED ORDER APPOINTING CUSTODIAN AND ISSUING PRELIMINARY INJUNCTIVE RELIEF</b></p>	

This cause coming to be heard on Plaintiff's Unopposed Motion for Entry of Stipulated Order Appointing Custodian and Issuing Preliminary Injunctive Relief ("Motion"), counsel for Plaintiff and Defendants Mary C. Warren and Robert Warren present, and Defendant Stephenie Gardner, *pro se* available upon request, the Court, having been fully advised on the matter and good cause having been shown, hereby **FINDS:**

1. Jurisdiction and venue are proper pursuant to Section 302(1) of the Colorado Revised Nonprofit Corporation Act, Colo. Rev. Stat. § 7-121-101, *et seq.*
2. Defendant, the Colorado Humane Society & S.P.C.A., Inc. ("CHS") is a nonprofit corporation committed to the welfare of animals that provides shelter and care to animals, and was formed and has operated over one hundred years for charitable purposes. CHS's principal place of business is located at 2760 S. Platte River Drive, Englewood, CO 80110, therefore the corporation resides in Arapahoe County.

3. Defendants, Mary C. Warren, Robert W. Warren, and Stephenie L. Gardner, respectively act as CHS's Executive Director and member of the Board of Directors, Director of Development, and Director of Operations (hereinafter collectively referred to as the "Individual Defendants").

4. Plaintiff, the State of Colorado by and through Attorney General John W. Suthers, is charged with protecting charitable assets pursuant to common law and C.R.S. § 24-31-101(5), and pursuant to C.R.S. § 7-134-301(1)(b) is authorized to petition this Court for dissolution of CHS. In a proceeding for judicial dissolution, the Court has the power under C.R.S. § 7-134-302(3) to issue injunctions, appoint a receiver or custodian *pendente lite* with all the powers and duties the Court directs, take other action to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing is held.

5. Pursuant to applicable law, the Court may appoint a custodian *pendente lite* for CHS and its assets ("CHS Assets"), including without limitation any and all cash, bank, deposit, and trust accounts; credit accounts; permits certificates, and licenses; accounts receivable, notes receivable, and other receivables; business investments and interests, whether legal or equitable, direct or indirect, in other business enterprises; tangible personal property; goods; general intangibles; payment intangibles; real property; interests in real property; claims, causes of action, and choses of action of any kind or nature; judgments; files, records, books, minutes, and other documents whether written or electronic; furniture, inventory, supplies, equipment, and fixtures; leases and mortgages; rents, revenue, and income; donations, bequests, devises, and gifts; passwords and keys; promissory notes; contents of safety deposit boxes; contents of storage units; securities, investments, and investment property; patents, trademarks, and copyrights; contracts and agreements; instruments, chattel paper, intellectual property, and letter-of-credit rights; together with: (i) all substitutions and replacements for, and products of, any of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) in the case of all tangible personal property and goods, all accessions; and (iv) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed to, or used in connection with, any tangible personal property whether now owned or hereafter acquired, and (v) any and all other things of value relating to the foregoing.

6. This Court finds that Waverton Group, LLC, a Colorado limited liability company with office at 4101 East Louisiana Avenue, Suite 300, Denver, Colorado, 80246, is qualified and suitable to be appointed as Custodian for CHS and CHS Assets. Waverton Group, LLC's resume is submitted herewith as Attachment A.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** the Plaintiff and the Individual Defendants knowingly and voluntarily agree to the entry of the following Stipulated Order Appointing Custodian and Issuing Preliminary Injunctive Relief ("Order") without any admission of wrongdoing by the Individual Defendants or any prejudice to Plaintiff's ability to prosecute the claims against the Individual Defendants in Plaintiff's Complaint:

1. Appointment: Waverton Group, LLC is hereby appointed as custodian *pendente lite* (the “Custodian”) for CHS, CHS Assets, and any claims against CHS and CHS Assets (“CHS Claims”). This appointment shall be effective immediately and shall continue in effect until terminated or modified by further Order of this Court. CHS, CHS Assets, and CHS Claims shall be collectively referred to herein as the “Custodianship Estate.”

2. Oath: Within five (5) business days of the entry of this Order, the Custodian shall file an Oath of Custodian with this Court accepting the appointment and agreeing to fully and faithfully exercise all powers and discharge all duties under this Order, any subsequent directives of this Court, and applicable law.

3. Bond: Pursuant to the discretion given to the Court under C.R.S. § 7-134-303(2), the Custodian shall post no bond at this time.

4. Possession of Assets: The Custodian is hereby directed and empowered to take immediate control of CHS Assets and to hold CHS Assets for this Court *in custodia legis*. The Custodian shall operate, manage, administer, and preserve the Custodianship Estate, subject to the supervision and exclusive control of this Court.

5. Powers of Custodian: The Custodian shall exercise all of the powers of CHS, through or in place of its Board of Directors or Officers, to the extent necessary to manage the affairs of CHS in the best interests of CHS and its members and Claimants. Any provision of law to the contrary notwithstanding, the Custodian is the only acting officer, director, or member of CHS until further order of this Court. The Custodian is hereby given the powers and authority usually held by custodians and reasonably necessary to accomplish the purpose of this Custodianship, including without limitation the following specific powers which may be exercised without further order of this Court:

a. To take immediate control of the Custodianship Estate, to the exclusion of all others;

b. To manage, operate, rent, maintain, lease, protect, and otherwise control the Custodianship Estate as reasonably necessary to maximize the value and prevent diminution in the value of the Custodianship Estate;

c. To retain security personnel as necessary to secure the Custodianship Estate;

d. To change all locks and passwords related to the Custodianship Estate;

e. To collect all receipts, revenues, income, profits, proceeds, rents, receivables, deposits, notes, judgments, donations, bequests, devises, gifts, and other benefits from the operation and management of the Custodianship Estate;

f. To pay taxes, insurance, utility charges, rent, and other expenses and costs reasonably incurred in managing and preserving the Custodianship Estate;

- g. To hire, on a contract basis whenever possible, or as employees where required by applicable federal law, the personnel necessary to operate, manage, and preserve the Custodianship Estate;
- h. To retain or terminate any existing CHS employees, agents, servants, volunteers, independent contractors, and affiliates;
- i. To contract for and obtain such services, utilities, supplies, equipment, and goods as are reasonably necessary to operate, manage, and preserve the Custodianship Estates and to make such repairs to CHS Assets as the Custodian may reasonably deem necessary provided that no contract shall extend beyond the termination of the Custodianship without the permission of this Court;
- j. To make, enforce, modify, negotiate, and enter into such leases (including equipment leases), contracts, and other agreements as the Custodian may reasonably deem appropriate to operate, manage, and preserve the Custodianship Estate provided that no such lease, contract, or other agreement shall extend beyond the termination of the Custodianship without the permission of this Court;
- k. To open, transfer, and change all bank, trade, trust, and other deposit accounts relating to the Custodianship Estate, so that all such accounts are in the name of the Custodian;
- l. To close any bank, trade, trust, and other deposit accounts and transfer the funds in such accounts to a bank account in the name of the Custodian;
- m. To invest the capital of the Custodianship Estate, without the permission of this Court, in savings accounts or in securities backed by the full faith and credit of the United States;
- n. To have immediate, continuing, and exclusive access to any and all mail or other correspondence relating to the Custodianship Estate;
- o. To obtain, renew, and modify all insurance policies that the Custodian deems reasonably necessary to operate, manage, and preserve the Custodianship Estate and the interest of the Custodian and the parties to this action;
- p. To apply for, obtain, maintain, and renew as reasonably necessary all trademarks, copyrights, patents, licenses, certificates, permits, and other registrations required to operate, manage, and preserve the Custodianship Estate. Licenses and permits shall be obtained in the name of CHS wherever possible, and where not possible, in the name of the Custodian;
- q. To enter into contracts for those services reasonably necessary to aid the Custodian in the administration of the Custodianship, including without limitation the retention of attorneys and accountants, with all reasonable expenses incurred in connection therewith deemed to be expenses of the Custodianship, provided

that no such contract shall extend beyond the termination of the Custodianship without the permission of this Court;

r. To borrow from third parties and claimants of the Custodianship Estate on an unsecured basis and on such other reasonable terms as may be acceptable to the Custodian, funds to meet the capital needs of the Custodianship Estate in excess of the income from the Custodianship Estate;

s. To issue Custodian's Certificates in exchange for funds advanced by third parties or claimants during the term of this Custodianship, provided that the Custodian shall give notice to all parties who have entered an appearance in this action and obtain prior approval of this Court. Such Custodian's Certificates shall be a first and prior lien and a preference claim upon the Custodianship Estate, or a portion of it at the Custodian's election;

t. To institute such legal actions as the Custodian deems reasonably necessary to collect accounts and debts, enforce agreements relating to the Custodianship Estate, to protect the Custodianship Estate, and to recover possession of the Custodianship Estate from persons or entities who may now, have in the past, or will in the future wrongfully possess or occupy any part of the Custodianship Estate;

u. To do such other lawful acts not inconsistent with this Order as the Custodian reasonably deems necessary to operate, manage, and preserve the Custodianship Estate, and to exercise such other powers as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or by the laws of the United States of American; and

v. To petition this Court to clarify or supplement this Order with further or other instructions, directions, or powers during the pendency of this Custodianship action.

6. Duties of Custodian: The Custodian is hereby subject to the usual duties of Custodians, including without limitation the following specific duties:

a. To operate, control, and preserve the Custodianship Estate consistent with this Order, further Orders of this Court, and any Instructions from this Court;

b. To serve a copy of this Order within thirty (30) days after the date this Order is entered upon any persons or entities in possession of CHS or CHS Assets, any known Creditors and Claimants of the Custodianship Estate, and upon any other persons or entities affected by the entry of this Order, or such time thereafter as the Custodian identifies persons or entities in possession of CHS or CHS Assets, any known Creditors and Claimants of the Custodianship Estate, and upon any other persons or entities affected by the entry of this Order;

c. The Custodian is hereby instructed to file with this Court and serve upon the parties to the Custodianship action, within thirty (30) days after the date this

Order is entered, a preliminary report setting out the identity, location, and value of CHS Assets and CHS Claims in the Custodianship Estate. Further, at the time the Custodian makes its preliminary report, the Custodian shall make recommendations to this Court regarding the continued operation of CHS and the further disposition of the Custodianship Estate;

d. The Custodian is hereby instructed to make calendar monthly reports of the condition of the Custodianship Estate as of the twentieth day of each month, within thirty (30) days of the twentieth day of each month, until the Custodian is satisfied that less frequent reporting is necessary. At that time and upon prior notice in the Custodian's Report, the Custodian may report within thirty (30) days of the twentieth day of every other month or every third month, but no less often than quarterly. The Custodian shall not be required to, but as reasonably necessary may, follow generally accepted accounting principles or use auditors or accountants in the preparation of reports to this Court; and

e. In operating the Custodianship Estate, the Custodian shall not engage in speculation with CHS Assets, nor shall the Custodian engage in new business ventures;

7. Sales of CHS Assets: In situations where the Custodian believes it is necessary or desirable to liquidate any particular asset, the Custodian shall first request an Order of this Court approving the sale of the asset. With such approval, the Custodian shall sell the Asset with reasonable dispatch and convert the asset into money, and discharge all reasonable expenses, costs, and disbursements in connection with the sale of that asset to the extent possible. Sales of CHS Assets by the Custodian are subject to the following instructions:

a. All sales by the Custodian are in the nature of Judicial Sales, and as such the Custodian shall follow the common law rules applicable to Judicial Sales in conducting any sales of CHS Assets;

b. No sale of CHS Assets shall be final until confirmed by Order of this Court;

c. The Custodian need not obtain prior Court approval to sell or otherwise dispose of any tangible personal CHS Assets having a depreciated aggregate value, as reflected on CHS books of less than \$10,000;

d. The Custodian may conduct a private or public sale, provided that all sales of CHS Assets by the Custodian shall be subject to competitive bidding except sales of CHS Assets controlled by Paragraph 7(c) herein above; and

e. Any Claimant wishing to bid-in its Claim, whether secured or unsecured, shall submit an offer specifying the components of the bid within twenty (20) days of the Custodian's request to this Court to conduct a sale of CHS Assets. The Custodian or any party to this Custodianship action shall file objections to the bid within fifteen (15) days thereafter.

8. Capital of the Custodianship Estate: The Custodian is hereby authorized to apply the capital of the Custodianship Estate and the revenues collected by the Custodian in connection with the operation, management, and preservation of the Custodianship Estate in the following order of priority:

- a. First, to pay the Custodian's time charges incurred in connection with this Custodianship and to prepay or reimburse the out-of-pocket expenses of the Custodian;
- b. Second, to pay the necessary and reasonable administrative costs of operating, managing, and preserving the Custodianship Estate, including the fees of any professionals engaged by the Custodian;
- c. Third, to repay any Custodian's Certificates, with interest;
- d. Fourth, to pay the priority Claims against the Custodianship Estate; and
- e. Fifth, to pay the general unsecured Claims against the Custodianship Estate.

9. Cooperation: By execution of this Order, the Court hereby terminates current CHS Officers' and Directors' responsibility and authority over CHS and CHS Assets. The current CHS Officers and Directors shall reasonably cooperate with the Custodian in connection with all matters regarding transition and operation of the Custodianship Estate, and any sale of CHS Assets. The current CHS Officers and Directors shall make themselves available to assist the Custodian during normal business hours, upon reasonable notice, for a period not to exceed thirty (30) days. For any work requested by the Custodian of the current CHS Officers and Directors, the Directors and Officers may motion this Court for reasonable compensation.

10. Turnover of CHS Assets: All persons and entities now or hereafter in possession of any CHS Assets shall forthwith and without further order of this Court surrender all CHS Assets to the Custodian. Without limiting the generality of the foregoing order, turnover of CHS Assets to the Custodian shall occur as follows:

- a. The parties to the Complaint and Motion, and all persons and entities in active concert and participation with the parties to the Complaint and Motion, shall deliver to the Custodian all CHS Assets within their possession or control, including without limitation any receipts, revenues, income, profits, proceeds, rents, receivables, deposits, notes, judgments, donations, bequests, devises, gifts, and other benefits from the operation and management of CHS; tangible assets; records, files, and documents whether in written or electronic form; evidence and documentation of intellectual properties owned or controlled by CHS; computers, hard drives, backup tapes, and all other media for the CHS computer network; all CHS accounting records, bank statements and records; checking account statements and records; check registers; copies of paid and unpaid invoices; cancelled checks; usernames and passwords required for access to any CHS accounts; and all other CHS financial records;

b. All persons having notice of this Order, and having oral or written agreements with the CHS for the supply of goods or services, including without limitation all computer software, communication, and other data services; centralized banking services; payroll services; insurance; utility; or other services to CHS shall turnover such goods and services as may be required by the Custodian in working condition; ;

c. The Custodian shall be entitled to the continued use of CHS's current telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the entry of this Order shall be paid by the Custodian in accordance with the ordinary course of CHS business and such supplier, or such other practices as may be agreed upon by the Custodian and the supplier, or as may be ordered by this Court;

d. Subject to the provisions of Paragraph 11 herein below (Document Depository), all attorneys, accountants, engineers, architects, and other professionals who have represented CHS, and all who claim under them, are hereby ordered to deliver immediately over to the Custodian all documents, files, and information concerning CHS and CHS Assets that they have in their possession and control. Any claims for non-payment for services rendered shall be presented as a claim against the Custodianship Estate and shall not be used as a defense to turning-over as set forth in the provisions of this Paragraph 10;

e. All privileges in connection with professional representation of CHS and CHS Assets shall accrue to the sole benefit of the Custodian and the Custodianship Estate, and may only be waived by the Custodian with consent of this Court;

f. If the Custodian determines, after reasonable inquiry, that a person or entity is in violation of the provisions of this Paragraph 10, the Custodian is instructed to give written notice thereof to the person or entity violating the provisions of this Paragraph 10, with a copy of this Order attached, demanding turnover of CHS Assets. If the person or entity in possession or control of CHS Assets fails or refuses to turnover any CHS Assets after receiving notice, the Custodian shall file a Request for an Order to Show Cause with this Court; and

g. The provisions of this Paragraph 10 comprise a traditional Turnover Order, and as such, are Case Management Orders and not Injunctions.

11. Document Depository: In order to (i) establish a uniform method of identifying documents for use in all proceedings related to this Custodianship action; (ii) minimize the duplication of production efforts by requesting and producing parties; (iii) ensure the continued existence of relevant documents; and (iv) reduce the aggregate costs of producing and maintaining documents, the Custodian is hereby instructed to establish a depository for documents (the "Document Depository"):

- a. For the purpose of this Order, the term “Document” shall mean any document directly or indirectly related to this Custodianship action that are in the possession of the parties to the Complaint and Motion on the date of this Order;
- b. The Document Depository may consist of a facility designated by the Custodian and located within this District under the control of the Custodian in which all Documents will be stored until further Order of this Court. At the election of the Custodian, the Document Depository may consist of a web site on the Internet;
- c. The parties to the Complaint and Motion and the Custodian shall designate Documents subject to a claim of privilege, immunity, or confidentiality that are to be placed in the Document Depository. Such Documents shall be under seal (the “Sealed Documents”). The Sealed Documents placed into the Document Depository shall only be unsealed pursuant to an Order of this Court; and
- d. With respect to any written or electronic documents required to be surrendered to the Custodian under this Order, the Custodian may, in the Custodian’s sole discretion, accept photocopies of such documents if accompanied by the certificate of the person delivering the copy that such document is a true, correct, and complete copy of the original. In such event, the Custodian shall have the right at any reasonable time, after giving reasonable notice, to inspect the originals of such documents.

12. Injunctive Relief: Except as may be expressly authorized by this Court after notice and a hearing, the parties to the Complaint and Motion are hereby enjoined from:

- a. Collecting or holding any CHS Assets, or any receipts, revenues, income, profits, proceeds, rents, receivables, deposits, notes, judgments, donations, bequests, devises, gifts, and other benefits thereof;
- b. Withdrawing or disbursing any funds from any CHS bank, trade, trust, and other deposit accounts belonging to the Custodianship Estate;
- c. Terminating or causing to be terminated any license, permit, certificate, registration, contract, lease, or other agreement relating to the Custodianship Estate;
- d. Discontinuing, altering, interfering with, or terminating the supply of goods or services to CHS, including without limitation all computer software, communication, and other data services, centralized banking services, payroll services, insurance, and utilities, as may be required by the Custodian;
- e. Buying, selling, or otherwise transferring any CHS Assets not in the possession or control of the Custodian;

- f. Removing, altering, erasing, or destroying any records, files, or documents, whether written or electronic, relating to the Custodianship Estate without written consent of the Custodian;
- g. Holding themselves out as, acting as, or attempting to take any and all actions of any kind or nature as officers, directors, members, managers, representatives, employees, agents, servants, volunteers, independent contractors, or affiliates of CHS or the Custodianship Estate; and
- h. Otherwise interfering with the operation of the Custodianship Estate, the exercise of the Custodian's powers, or the discharge of the Custodian's duties.

Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person, entity, or agency shall also be bound by the provisions of this Paragraph 12.

13. Law Enforcement: The Custodian is authorized, without breaching the peace and if necessary with the assistance of the Arapahoe Sheriff or other local peace officers, to enter and secure any premises, wherever located or situated, in order to take possession, custody, or control of, or to identify the location or existence of, the Custodianship Estate.

14. Liability of the Custodian: The Custodian shall enjoy the limited judicial immunity usually applicable to custodians. All who are acting, or have acted, on behalf of the Custodian at the request of the Custodian are protected and privileged with the same limited judicial immunity usually applicable to custodians. In order to avail the agents of the Custodian with these protections and privileges, the Custodian should file a notice of agency with this Court.

15. Claims Against CHS, CHS Assets, the Custodianship Estate, and the Custodian: All actions that purport to seek equitable relief against CHS, CHS Assets, the Custodianship Estate, or the Custodian are hereby stayed regardless of venue or jurisdiction. The Custodian is instructed to file a Request for an Order to Show Cause if any person or entity files any pleading in any other court seeking equitable relief against CHS, CHS Assets, the Custodianship Estate, or the Custodian without first seeking relief from this stay in this Court. All civil legal proceedings wherever located, including without limitation arbitration proceeding; foreclosure activities, bankruptcy actions; or default proceedings, to the extent such actions and proceedings interfere with this Court's exclusive control over the Custodianship Estate, are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

16. Custodian's Compensation: The Custodian's compensation for services under this Order and the Custodians reasonable out-of-pocket expenses shall be prepaid or reimbursed pursuant to Waverton's Hourly Rates and Expense Reimbursement Policies for the Colorado Humane Society Custodianship submitted herewith as Attachment B.

\* \* \*

DATED this 16<sup>th</sup> day of December, 2008.

A handwritten signature in cursive script, reading "Cheryl L. Post". The signature is written in black ink and is positioned above a horizontal line.

District Court Judge  
Arapahoe County District Court