

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, CO 80112	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case Number: 2008cv2659</p> <p style="text-align: center;">Division: 202</p>
<p>Plaintiff: STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>v.</p> <p>Defendants: COLORADO HUMANE SOCIETY & S.P.C.A, INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual</p>	
<p>Attorney for Custodian: John M. Tanner, #16233 Fairfield and Woods, P.C. 1700 Lincoln Street, Suite 2400 Denver, CO 80203 Phone: 303.830.2400 Fax: 303.830.1033 Email: jtanner@fwlaw.com</p>	
CUSTODIAN'S MOTION FOR ORDER TO PRESENT AND FILE CLAIMS	

Waverton Group, LLC, as custodian, by and through its attorneys, Fairfield and Woods, P.C., hereby moves this Court for an Order requiring presentation and filing of claims, and as grounds therefor states as follows:

1. In the Order appointing custodian, the custodian was instructed to “use reasonable efforts to inventory the Property and Claims, to assess the condition of the company and the custodianship estate. . . .”
2. The custodian has endeavored to assess the liabilities of the company, but until the Court enters a deadline before which claims (“Claims”) must be filed (the “Bar Date”), the custodian cannot be certain that it has, in fact, identified all Claims. The custodian suggests June 18, 2009 as the Bar Date.

3. The custodian recommends that Claimants be required to state in their Claims the following:

- a. Complete name (or names if more than one Claimant is on one Claim form);
- b. Complete street address (or addresses) specifically prohibiting the use of Post Office boxes;
- c. Telephone number (or numbers);
- d. Fax number (or numbers);
- e. Email address (or addresses);
- f. The exact amount, components, and nature of the Claim as it existed on December 16, 2008;
- g. The date the Claim arose;
- h. The preference of repayment or priority status of the Claim;
- i. The nature and value of any security held by any Claimant or Claimants;
- j. Whether their Claim bears any interest and, if so, the basis for Claiming interest;
- k. A description of the basis of the Claim;
- l. Document (or documents) in support of the Claim;
- m. The nature and value of any offset or counterclaim; and
- n. Whether the Claimant has appointed an attorney-in-fact on behalf of the Claimant and, if so, the full identity of the said attorney-in-fact. In the case of a licensed attorney, the attorney should signify its appearance as provided by the Rules of this Court.

4. The custodian further requests that the Claimants be required to submit their Claims by sworn and notarized statement.

5. The custodian further requests that in order to participate in the custodianship action, all Claimants be required by this Court to dismiss any other pending

claims against the Colorado Humane Society & S.P.C.A., Inc. To allow otherwise would be to allow a Claimant to proceed with the same action in two different venues giving the possibility of conflicting results and greatly reducing the value of the custodianship, i.e., having all claims resolved in one case at one time.

6. Unlike bankruptcy actions, there is no automatic stay prohibiting a Claimant from proceeding against a company in custodianship in a separate action. Controlling precedent indicates that if a Claimant obtains an actual judgment in another action, that judgment is binding upon the custodian. *E.g., Riehle, as Custodian v. Margolies*, 279 U.S. 218 (1929).

7. As a result of the foregoing authority, a Claimant in the custodianship could continue to pursue an action elsewhere, and the custodian would be forced either to defend the action in a distant court, which would greatly reduce the efficiency of the custodianship, or have default entered against the Company in an amount over which the custodian had no control. That claim would likely be binding.¹

8. By requiring Claimants in the custodianship to drop other claims, this Court would simply be requiring that all Claims regarding the Custodianship Estate be heard in the custodianship court. This is neither a novel nor unusual approach to custodianships.

9. The custodian further requests that this Court enter an Order approving the notice of the Order to Present and File Claims by publication in a newspaper of general

¹ The law allowing claims to proceed against a corporation in custodianship appears to be limited to legal claims. Equitable claims against a company in custodianship are improper unless brought in this Court in the first instance, and this Court has issued a stay against such actions in the Order Appointing Custodian.

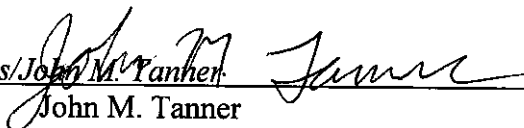
circulation in the Denver, Colorado area containing the appropriate information and notices. For the Court's convenience, a proposed Claim of Creditor is attached hereto as Exhibit A. For the Court's convenience, a proposed Order is submitted herewith.

10. No Rule 121 consultation was conducted because (a) this is a matter of custodianship administration, and it is not clear anyone has standing to object; and (b) if others do have standing to object, however, it is every potential claimant of the estate, and they are too many and may be unknown to the custodian to make such consultation possible, let alone reasonable.

WHEREFORE, Waverton Group, LLC, as custodian, prays that this Court enter an Order: (a) that Claims be filed consistent with the Claim of Creditor form attached as Exhibit A, (b) that all Claims be filed by June 18, 2009 or be forever barred, (c) requiring Claimants to dismiss, without prejudice, any other claims against the Company in other forums in order to be allowed to file a Claim in the custodianship, and for such other and further relief as this Court deems just and proper.

Respectfully submitted this 28TH day of May, 2009.

FAIRFIELD AND WOODS, P.C.

By: 
John M. Tanner

ATTORNEYS FOR CUSTODIAN

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via Lexis/Nexis, by placing a copy in the United States Mail, postage prepaid, or via email, this 28th day of May, 2009, addressed to the following:

VIA LEXIS/NEXIS TO:

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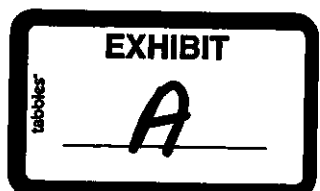
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Waverton Group, LLC, Custodian


By: s/Sharon A. Chiecuto
Sharon A. Chiecuto

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, Colorado 80112	
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual; Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Waverton Group, LLC as custodian Richard A. Block, Managing Member 4101 East Louisiana Avenue Suite 300 Denver, Colorado 80246 Office: 303-781-9900 Fax: 303-781-4311 Email: rblock@xpn.com	Case Number: 2008-CV-2659 Division: 202
CLAIM OF CREDITOR	

Comes now _____
(the "Claimant" or the "Claimants" if more than one), whose coordinates are as follows:
address [*do not use Post Office Box*]: _____

telephone number: _____
fax number: _____
email address: _____
being first duly sworn, deposes and says:



1. Colorado Humane Society & S.P.C.A., Inc., a Colorado nonprofit corporation (the "Company") was, on December 16, 2008, and still is, indebted or liable to this Claimant.

2. The total amount the Company owes to Claimant on this date, including Principal, Interest, and Additional Charges is \$ _____, (the "Claim")

3. The consideration, basis, or ground for this Claim is as follows: the Company obtained _____ [please specify, e.g. goods, services, credit, money, etc.] by _____ [please specify how obtained, e.g. agreement, promissory note, etc.] and that the Company has refused or failed to pay the reasonable value thereof.

4. The Claim consists of the following Principal and Interest calculated to the date of this Claim:

Principal (on December 16, 2008)	\$ _____
Interest (to December 16, 2008)	\$ _____
Interest Rate (to the date of default)	_____ %
Total amount of Principal and Interest	\$ _____
Penalties	\$ _____
Total of Claim	\$ _____

5. Claimant Claims priority or preference from the assets in the hands of the custodian _____ [please specify authority for priority or preference, e.g. wages, taxes, etc.].

6. The Claim consists of \$ _____ in additional charges ("Additional Charges") for _____ [please specify, e.g. reasonable attorneys' fees, penalties, etc.]. The basis for claiming Additional Charges is _____

7. True and correct copies of the documents supporting this Claim, including without limitation, subcontracts, invoices, and statements of account, are attached hereto.

8. This claim is filed as an unsecured Claim a secured Claim [*please strike one*]. Claimant Claims as its security the following:

Assets Encumbered	_____
Security Instruments	_____
County	_____
State	_____
Reception Number	_____
Recorded Lien Statement	_____
If Mechanic's Lien, Date of First Work	_____
If Mechanic's Lien, Date of Last Work	_____

9. True and correct duplicates of each and every instrument securing this Claim, including, without limitation UCC Financing Statements and Recorded Lien Statements, are attached hereto.

10. Claimant has filed a legal action against the Company as follows:

[*please specify court and case number*] and has has not [*please strike one*] received a judgment against the Company.

11. Claimant has credited any and all payments made by the Company under this Claim and this Claim is not subject to any set-off, counterclaim, or right of recoupment in favor of the Company or in favor of the custodian as against the Claim.

