

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>
Plaintiff: STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL v. Defendants: COLORADO HUMANE SOCIETY & S.P.C.A, INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual	
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	
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.

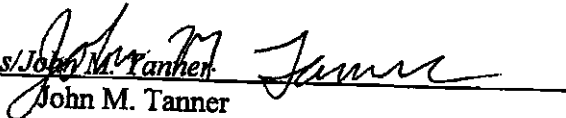
circulation in the Denver, Colorado area containing the appropriate information and notices. For the Court's convenience, a proposed Claim of Creditor is attached hereto as Exhibit A. For the Court's convenience, a proposed Order is submitted herewith.

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:

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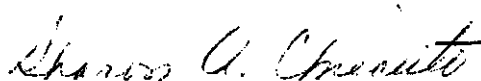
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