

DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac Street Centennial, Colorado 80112 Phone: 303-649-6355	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
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 STEPHANIE L. GARDNER, an individual;  Defendants.	
Attorney for Defendant Mary C. Warren: Fredric M. Winocur, No. 22112 R. Livingston Keithley, No. 35786 KAMLET REICHERT, LLP Address:      1515 Arapahoe Street Tower I, Suite 1600 Denver, CO 80202 Phone No.:   303-825-4200 Fax No.:      303-825-1185 E-mail:       fwinocur@kamletlaw.com	Case No. 2008 CV 2659  Division: 404
<b>DEFENDANT MARY C. WARREN’S OBJECTION TO CUSTODIAN’S SIXTH          REPORT, AND RESPONSE IN OPPOSITION TO CUSTODIAN’S MOTION TO          APPROVE REPORT</b>	

COMES NOW, Defendant Mary C. Warren (“Mrs. Warren”), by and through her undersigned counsel Kamlet Reichert, LLP, and hereby files her Objection to the Custodian’s Sixth Report (the “Sixth Report”) submitted by the Custodian to the Court on June 9, 2009, and opposing the Custodian’s Motion to approve that Report (“Motion”), and states as follows:

1. Mrs. Warren opposes the Custodian’s Sixth Report because the Sixth Report shows the Custodian continues to act outside the scope of his authority granted by this Court.
2. First, Mrs. Warren continues and renews her objection to the Custodian’s discussion of the preparation of forms and a procedure for receiving Requests for Proposal to Provide Permanent Management for the Colorado Humane Society. As further identified in Mrs.

Warren's Objection to the Custodian's Combined Fourth and Fifth Reports, the Custodian was never granted authority by this Court to prepare such a process to install a *permanent* board, or delegate his interim management responsibilities pending trial.

3. As the Custodian had noted in his Third Report, he was initially contemplating such a request-for-proposal process, but represented in the Third Report that he would file a bona-fide motion at a later time with this Court seeking permission to actually commence that process.
4. However, rather than seek permission, the Custodian simply drafted and issued a Request for Proposal, and continues to spend valuable time, money, and resources in pursuit of this unauthorized process. The Custodian completely *ignores* that he has been appointed for the entire pendency of this action, and not for a specific period to 'wind up' CHS or to otherwise try and transfer his powers to someone else. *See In re Gourmet Services, Inc.*, 142 B.R. 216, 218 (Bankr. S.D. Ohio 1992); *Leone Indus. V. Associated Packaging, Inc.*, 795 F.Supp. 117, 120 (D.N.J. 1992); *Burns-Kish Funeral Homes, Inc. v. Kish Funeral Homes, LLC*, 889 N.E.2d 15, 26 (Ind. App. 2008). Mrs. Warren incorporates by reference and renews her objection on this issue as further articulated in her previous Objection, pursuant to C.R.C.P. 10(c), and believes this Court should reject any such Request for Proposal process and reject the Custodian's application for compensation to any extent that he seeks compensation for having initiated this process without authority to do so.
5. Mrs. Warren also renews her objection to the continued assertion by the Custodian that he can evade this Court's oversight authority by including a section entitled "Informational Report," *see* Sixth Report at ¶ 23, and incorporates by reference her objection to this issue as further articulated in her Objection to the Custodian's Combined Fourth and Fifth Reports, pursuant to C.R.C.P. 10(c).
6. Concerning new issues in the Sixth Report, Mrs. Warren first objects to the Custodian's assertions and suggestions that he is to "wind down" the custodianship, *see* Sixth Report at ¶ 14. The Custodial Order contains no provisions giving the Custodian authority to 'wind down' or terminate CHS or its operations, absent an express order from this Court to do so.
7. Mrs. Warren also takes certain issue with the lack of clarity in the Custodian's expense reports for the Custodian's services. The Custodian represents that CHS is purportedly experiencing a "cash shortage," which has hampered CHS's ability to pay the Custodian. *See* Sixth Report at ¶ 15. However, there are certain anomalies in the Custodian's bills for which this Court should request further information.
8. For example, the Custodian lists \$5,695.54 in "expenses" in the Sixth Report, in addition to the Custodian's fees for the month. However, 99.5% of these are comprised of "Professional Fees" for individuals who appear to be employees or agents of the Custodian. *See* Exhibit 3 to Sixth Report, at 2. Pursuant to the Custodian's rate sheet submitted as Exhibit B to the Motion to Appoint Custodian on December 16, 2008, the Custodian is to charge only \$85 per hour for services of its "other executives," and \$55

for services of “assistants.” There is no itemization what these individuals worked on, or how they were compensated for that work.

9. Based solely upon a single entry on an expense report, Mrs. Warren is unable to discern what these individuals were working on, or whether these expense “charges” should be allowed. Indeed, in the Combined Fourth and Fifth Reports, the Custodian had charged a total of \$12,648.22 in “expenses” for which there was no supporting documentation whatsoever, in addition to the \$30,000.00 charged by the Custodian purportedly for Mr. Block’s time during that same time period.
10. Also, the CHS Income Statement provided by the Custodian seems to be missing several entries, or is wholly incomplete or incorrect. With the Combined Fourth and Fifth Report, the Custodian reported total year-to-date expenses for the ten months ending April 20 of \$408,636.16. In the Sixth Report, the Custodian reports expenses for the month between April 20 and May 20 of \$41,652.46.
11. However, the Custodian then mysteriously reports an updated year-to-date expense amount of \$508,573.03 – a discrepancy of more than \$58,000 over the reported expenses for April 20 – May 20. The variation between reported revenues likewise does not correspond to the amount that is reported for the monthly period between April 20 and May 20.
12. In sum, Mrs. Warren believes that the Custodian should be required to further explain these anomalies in the Income Statements for CHS and revise them, and to further explain and substantiate its charges of over \$18,000 in miscellaneous “expenses” in the past three months to CHS, before this Court accepts or approves the Custodian’s Sixth Report.

WHEREFORE, Mrs. Warren respectfully requests this Court reject or request further supplementation of those portions of the Custodian’s Sixth Report to which she has objected above.

Respectfully submitted this 26<sup>th</sup> day of June, 2009.

KAMLET SHEPHERD & REICHERT, LLP

/s/ Fredric M. Winocur  
Fredric M. Winocur, No. 22112  
R. Livingston Keithley, No. 35786  
1515 Arapahoe Street  
Tower One, Suite 1600  
Denver, Colorado 80202  
(303) 825-4200  
(303) 825-1185 (fax)  
fwinocur@ksrlaw.com  
*Attorney for Defendant Mary C. Warren*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26<sup>th</sup> day of June, 2009, service of the foregoing **DEFENDANT MARY C. WARREN'S OBJECTION TO CUSTODIAN'S SIXTH REPORT, AND RESPONSE IN OPPOSITION TO CUSTODIAN'S MOTION TO APPROVE REPORT** was effected via LexisNexis, properly addressed to:

John W. Suthers, Esq.  
Alissa Hecht Gardenswartz, Esq.  
Leeann Richey, Esq.  
Jay Simonson, Esq.  
Colorado Attorney General's Office  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203  
*Attorney for Plaintiff*

Kevin McGreevy, Esq.  
Ridley, McGreevy & Weisz, P.C.  
303 16<sup>th</sup> St. Suite 200  
Denver, CO 80202  
*Attorney for Robert Warren*

Ty Gee, Esq.  
Haddon, Morgan, Mueller, Jordan,  
Mackey & Foreman, P.C.  
150 E. 10<sup>th</sup> Ave.  
Denver, CO 80203  
*Attorney for Stephenie Gardner*

John M. Tanner, Esq.  
Fairfield and Woods  
1700 Lincoln Street, Suite 2400  
Denver, CO 80203  
*Attorney for Custodian Waverton Group, LLC*

In accord with C.R.C.P. 121 § 1-26(7) & (8) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

/s/ Livingston Keithley