

<p><b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b></p> <p>7325 S. Potomac Street</p> <p>Centennial, Colorado 80112</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>In re the Receivership of the Colorado Humane Society &amp; S.P.C.A., Inc.</p>	
<p>Waverton Group, LLC as receiver 4101 East Louisiana Avenue, Suite 300 Denver, Colorado 80246 Office: 303-781-9900 Fax: 303-781-4311 Email: <a href="mailto:rblock@xpn.com">rblock@xpn.com</a></p>	<p>Case No.: _____-CV-_____ (Previously Case No. 2008-CV-2659)</p> <p>Division: 404</p>
<p><b>RECEIVER’S SPECIAL REPORT ON CLAIMS</b></p>	

Waverton Group, LLC, the receiver<sup>1</sup> over Colorado Humane Society & S.P.C.A., Inc. (the “Colorado Humane Society” or the “Corporate Defendant”) and the assets of the Colorado Humane Society (the “Assets”), respectfully makes this Receiver’s Special Report on Claims (this “Report”).

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<sup>1</sup> The receiver was initially appointed as a custodian, and converted to a receiver via the court’s order of December 1, 2009. For the sake of simplicity, actions taken by the custodian are referred to as actions by the receiver unless there is a reason for the receiver to make a distinction.

1. This Court entered its Amended Order to Present and File Claims (the "Claims Order") on July 10, 2009.
2. Following the entry of the Claims Order, the receiver mailed notice with the Claims Order to all known creditors of the Colorado Humane Society.
3. Following the entry of the Claims Order, the receiver published the Claims Order in the Denver Business Journal on July 17, 2009.
4. The Claims Order contains a provision that requires Claimants to present and file their Claims with the receiver on or before August 9, 2009 (the "Bar Date").
5. Priority Tax Claims of the United States. In the Receiver's Seventh Report filed with this Court on June 8, 2009, the receiver made the following report of an assessment by the Internal Revenue Service:

14. Internal Revenue Service. Form 990 for the fiscal year ended June 30, 2009 (the Return of Organization Exempt From Income Tax under section 501(c) of the Internal Revenue Code) was missing a Schedule B (Schedule of Contributors) for which the Internal Revenue Service assessed a penalty of \$26,477.12, which includes interest through March 23 2009. Subsequently, following efforts by the custodian to remove the assessment, the custodian advised the Internal Revenue Service that it was required to file a Claim in the Custodianship Estate if it actually intended to pursue collection of the penalty. For reasons that are not understood by the custodian, and after three hours of talking to Internal Revenue Service representatives, the custodian could find no one who understood the legal process. (The phone number for the Special Procedures office that previously handled these

matters for the Internal Revenue Service is no longer in service and there is no forwarding number.) By letter dated April 8, 2009, the Internal Revenue Service advised the custodian that it was looking into the matter. A copy of that letter is attached to this Report as Exhibit 1. Resolution of this assessment must be accomplished to wind down the Custodianship Estate.

Notwithstanding numerous efforts by the receiver throughout the past six months, the receiver has not been successful in obtaining a release or waiver of the assessment. In addition, the Internal Revenue Service has yet to file a Claim for the taxes.

Theoretically, failure to file a Claim should enable the receiver to reject the Claim and this Court to disallow the Claim. As a practical matter, that will have an entirely unsatisfactory result. Although disallowance of a Claim by the Internal Revenue Service would likely have the desirable effect of releasing the Assets in the Receivership Estate from the lien of the assessment, the obligation would simply be transferred to Waverton Group, LLC in its individual corporate capacity. The reason for this is that Federal Debt Priority Statute (31 U.S.C. §3713) pierces the cloak of judicial immunity afforded to Waverton Group, LLC by common law and by Order of this Court. The Federal Debt Priority Statute reads as follows:

§ 3713. Priority of Government claims

(a) (1) A claim of the United States Government shall be paid first when--

- (A) a person indebted to the Government is insolvent and--
  - (i) the debtor without enough property to pay all debts makes a voluntary assignment of property;
  - (ii) property of the debtor, if absent, is attached; or
  - (iii) an act of bankruptcy is committed; or
- (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

The dilemma lies in the fact that it is the receiver's responsibility to reject Claims not supported by a properly filed Claim form, and it is this Court's responsibility to disallow the unfiled Claim. Because the receiver should not be compelled to take any action that would result in a breach of the judicial immunity allowed the receiver, the receiver can neither reject nor accept the government's unfiled Claim. The receiver's refusal to reject or accept the unfiled Claim of the Internal Revenue Service is not, in any way, binding on whether this Court allows or disallows the unfiled Claim. The receiver will, of course, strictly comply with the Orders of this Court either way. The receiver will continue its efforts to resolve this issue with the

Internal Revenue Service and report the results to this Court as material events occur.

6. Approved Priority Claims. The following pre-appointment Priority Wage Claims were submitted prior to the Bar Date and have been approved by the receiver:

- a. *Capitol Marketing, Inc.* – The receiver has approved the Capitol Marketing, Inc. Priority Wage Claim for check cashing services in connection with a payroll check issued by the Colorado Humane Society in the amount of \$624.42. The receiver has rejected the penalties portion of the Capital Marketing, Inc. Claim in the amount of \$30.00.
- b. *Walker, Eric* – The receiver has approved Mr. Walker's Priority Wage Claim in the amount of \$119.25.
- c. *Wandersee, Aaron* – The receiver has approved Mr. Wandersee's Priority Wage Claim in the amount of \$115.50.

7. Approved General Unsecured Claims. The following pre-appointment General Unsecured Claims were submitted prior to the Bar Date and have been approved by the receiver:

- a. *Colorado Animal & Pet Cremation Services, Inc.* – The receiver has approved the Colorado Animal & Pet Cremation Services, Inc. Claim in the amount of \$350.00.
- b. *Columbine Oxygen* - The receiver has approved the Columbine Oxygen Claim in the amount of \$521.34.
- c. *Front Range Veterinary Clinic* – The receiver has approved the Front Range Veterinary Clinic Claim in the amount of \$242.37.

d. *Integra Telecom Service* – The receiver has approved the Integra Telecom Service Claim in the amount of \$974.93.

e. *Lindsey, Anna* - The receiver has approved the Anna Lindsey Claim in the amount of \$1,140.00.

f. *Monument Pharmacy* – The receiver has approved the Monument Pharmacy Claim in the amount of \$1,465.00.

g. *Philadelphia Insurance Companies* – Insurer, Philadelphia Insurance Companies, issued liability policies (the “Policies”) numbered PHSD257099 (policy period 8/15/2007 through 8/15/2008) and PHSD352583 (policy period 8/15/2008 through 8/15/2009) to the Colorado Humane Society as the named insured. The receiver has approved the Claim of Philadelphia Insurance for the deductible under the Policies in the amount of \$2,500.00. The receiver notes that the Claim of Philadelphia Insurance Companies is subject to offset by the claims of the receiver on behalf of the Colorado Humane Society against Philadelphia Insurance Companies for coverage under the same policy. The offset claims are the subject of the receiver's declaratory judgment action, and based upon Philadelphia Insurance Company's claim for the deductible (which could only exist if there is coverage), the receiver expects to promptly file a motion for partial summary judgment as to Philadelphia Insurance Company's liability.

h. *Pushkin Public Relations* – The receiver has approved the Pushkin Public Relations Claim in the amount of 1,067.00. The Claim is supported by a Judgment in Small Claims Court that must be honored.

i. *Shannon, Meghan Dr.* – The receiver has approved the Monument Pharmacy Claim in the amount of \$3,443.12.

j. *Xcel Energy* – The receiver has approved the Xcel Claim in the amount of \$2,573.03.

8. Conditionally Approved General Unsecured Claims. The following Claim appears to the receiver to be valid but not fully supported.

a. *Hwang Corporation* – The receiver has approved the Claim of Hwang Corporation in the amount of \$9,172.82 conditioned upon submission of documentation supporting the Claim. A copy of the lease and statements of amounts due would satisfy the condition.

9. Partially Approved Claims. The receiver has partially approved the Claims set forth below. Claims for interest have been rejected in all instances:<sup>2</sup>

a. *Bayer Health Care LLC*. – The receiver has approved the Bayer Health Care Claim for goods in the amount of \$1,415.77. The receiver has rejected the interest portion of the Bayer Health Care Claim in the amount of \$169.89.

b. *Campbell Pet Company* – The receiver has approved the Campbell Pet Company Claim for goods in the amount of \$560.19. The receiver has rejected the interest and penalties portion of the Bayer Health Care Claim in the amount of \$42.00. The receiver rejected penalty Claims for the same reason it rejected interest Claims, and because there is no valid reason to penalize a Receivership Estate.

c. *Central Veterinary Emergency* – The receiver has approved the Central Veterinary Emergency Claim for services in the amount of \$1,049.12. The receiver has rejected the interest portion of the Central Veterinary Emergency Claim in the amount of \$47.97.

d. *US Waste* – The receiver has approved the US Waste Claim for services in the amount of \$32.03. The receiver has rejected the

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<sup>2</sup> “As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in insolvency, interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate.” *Thomas v. Western Car Co.*, 149 U.S. 95, 116-117 (U.S. 1893). If the proceeds realized from the sale of Assets exceed the principal amount of Claims allowed by the Court, the receiver will reconsider claims for interest on a *pro rata* basis, however, as that appears unlikely, the receiver has disapproved all interest Claims.

penalties (NSF) portion of the US Waste Claim in the amount of \$25.00.

10. Rejected Claims. The receiver has rejected the following Claims for the reasons stated. Claimants with rejected Claims must file an objection to the receiver's rejection of a Claim within twenty days of notice of the rejection.

a. *Buffington, Jeffery* – The receiver has rejected the Claim of Mr. Jeffery Buffington in the amount of \$2,248.12 because the time to exchange or return an adopted pet pursuant to the adoption contract expired almost five years earlier.

b. *Pinnacol Assurance* – The receiver has rejected the Claim of Pinnacol Assurance in the amount of \$4,942.00. In addition, the receiver has filed a claim against Pinnacol Assurance for the return of overpaid premiums.

11. Unresolved Claims. The receiver has been unable to resolve certain Claims for the reasons stated, or is in the process of negotiating a resolution to Claims. Those Claims are as follows:

a. *City of Englewood* – The City of Englewood has a pre-appointment Claim in the amount of \$2,719.43 for municipal water and an administrative, post-appointment invoice in the amount of \$\*. The City of Englewood and the receiver are negotiating a resolution to both. Given the good working relationship the receiver experienced with the City of Englewood during the past year, the receiver expects to have a negotiated resolution to both within thirty days of this Report.

b. *Individual Defendants* – The Individual Defendants have filed Claims pursuant to the Claims Order as set forth below. In addition, the Individual Defendants have cross-claimed against the Receivership Estate in the State Action. There are duplicative Claims in the cross-

claim and the Claims process. The receiver has filed a motion to dismiss the cross-claim in the State Action. The receiver cannot effectively counterclaim and setoff unless and until the Court decides (a) whether the Individual Defendants will have a plenary trial of their Claims or (b) the Individual Defendants will use the abbreviated procedures of the Claim process and dismisses the cross-claims. The Claims of the Individual Defendants are as follows:

- i. Warren, Robert Claim #1 – \$176,548.00
- ii. Warren, Robert Claim #2 – \$76,954.00
- iii. Warren, Robert Claim #3 – \$6,854.30
- iv. Warren, Robert Claim #4 – \$19,995.90
- v. Warren, Robert Claim #5 – \$2,307.60
- vi. Warren, Robert Claim #6 – \$4,434.00
- vii. Warren, Robert Claim #7 – No amount Claimed
- viii. Warren, Mary Claim #1 – \$25,800.00
- ix. Warren, Mary Claim #2 – \$3,296.33
- x. Warren, Mary Claim #3 – No amount Claimed
- xi. Warren, Mary Claim #4 – \$4,398.09
- xii. Gardner, Stephanie – \$1,458.27

Wherefore, the receiver requests this Court enter an Order allowing the Claims and portions of Claims as approved by the receiver, disallow the Claims and portions of Claims as rejected by the receiver, and grant it such other and further relief as the court deems just and proper.

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January 8, 2010  
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Dated this 8<sup>th</sup> day of January, 2010

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'R.A. Block', is written above a horizontal line.

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Waverton Group, LLC, receiver,  
Richard A. Block Managing Member

