

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 Receiver: 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>	
<p>RECEIVER'S MOTION TO (I) APPROVE PROCEDURES FOR THE SALE OF CERTAIN ASSETS OF COLORADO HUMANE SOCIETY & S.P.C.A., INC., THROUGH A JUDICIAL SALE, (II) APPROVE PROTECTIONS FOR PROSPECTIVE PURCHASERS, (III) SCHEDULE AN AUCTION AND (IV) CONFIRM THE SALE FOLLOWING THE AUCTION</p>	

Waverton Group, LLC, as receiver (the "Receiver") for the Colorado Humane Society & S.P.C.A., Inc. ("CHS"), by and through its attorneys, Fairfield and Woods, P.C., respectfully files this motion (the "Sale Motion") for entry of this Court's Order (1) approving sale and bidding procedures for the sale of certain assets of CHS through a judicial sale (the "Judicial Sale" or the "Sale"), (2) approving protections for prospective purchasers, (3) scheduling an auction, and (4) confirming the Judicial Sale following the auction, if any. As grounds for the Sale Motion, the Receiver states as follows:

1. As reported in the Receiver's Ninth Report filed with the Court on January 8, 2010, out of the aggregate of all of CHS's property interests that constitutes the "CHS Estate" in this case, substantially all of the tangible assets of CHS have been sold. Thus only CHS's intangible assets, and especially CHS's intellectual property rights and interests (the "Assets"), remain as property of the CHS Estate that the Receiver may sell to generate value for the payment of CHS's pre- and post-receivership creditors.

2. As authorized by this Court's Order dated December 1, 2009 (the "Sale Authorization Order"), the Receiver is prepared to sell the intellectual property Assets of the Receivership Estate in accordance with the Asset Purchase Agreement (the "APA") between the Receiver and Colorado Anti-Cruelty Society, a Colorado nonprofit corporation ("Buyer"), attached as Exhibit 1 hereto and incorporated by reference. As used herein, the term "Assets" shall have the same meaning as the term "Purchased Assets" in the APA. The APA includes an Intellectual Property Assignment, attached hereto as Exhibit 1-A; an Escrow Agreement, attached hereto as Exhibit 1-B; a proposed Sale Procedures Order, including proposed Bidding Procedures, attached hereto as Exhibit 1-C; a form of Confirmation Order for the proposed sale, attached hereto as Exhibit 1-D; and an Affidavit of Richard A. Block, Managing Member, Waverton Group, LLC, as Receiver, attached hereto as Exhibit 1-E. All of Exhibits 1-A through 1-E are incorporated by this reference.

3. At the inception of this case, the Court entered its Stipulated Order Appointing Custodian [now Receiver] and Issuing Preliminary Injunctive Relief, dated December 16, 2008 (the "Initial Order"). Through the Initial Order, the Court appointed the Receiver to take exclusive control of the CHS Estate for the Court *in custodia legis*, and to exercise all of the powers of CHS, through or in place of CHS's Board of Directors, or as the only acting officer, director or member of CHS. (Initial Order, p. 3.) During this case, the Receiver has attempted, unsuccessfully, to constitute a new board of directors for CHS to assist with the management or potential rehabilitation of CHS. Similarly, the Receiver has attempted to maximize the value of the CHS Estate and operate the CHS Estate's assets on a profitable basis. However, the municipalities that had been the "bread and butter" of CHS's shelter and clinic operations declined to extend their contracts and thus put the CHS Estate into a negative cash flow situation that the Receiver has not been able to remedy.

4. As detailed in the Receiver's previous reports, the CHS Estate has incurred continuing losses, thereby necessitating an expedited sale of the CHS Estate's assets, including the Assets subject to the APA, and a winding-up of the CHS Estate. A Judicial Sale, as contemplated at the outset of the case in the Initial Order (p. 6), became the only option. Thus, the Court entered the Sale Authorization Order to effectuate one or more sales of the property of the CHS Estate, and the Court converted the administrator of the CHS Estate from a custodian to the Receiver for the purpose of effectuating such a sale.

5. The Receiver devoted significant time and energy marketing the assets of the CHS Estate during calendar 2009. Through the Request for Proposal that was developed by the Receiver, filed with the Court and distributed to numerous potentially interested parties over a period of approximately four months, the Receiver sought to solicit offers for the purchase of some or all of the CHS Estate's assets. As a result of the Receiver's marketing efforts, multiple parties expressed varying degrees of interest in CHS's intangible assets, including the tradename, "The Colorado Humane Society & S.P.C.A., Inc.," though little interest was expressed in purchasing CHS's tangible

property or taking over CHS's operations. Ultimately, only one potential buyer emerged with a serious offer to purchase the Assets, as reflected in the APA attached as Exhibit 1.

6. After the Receiver's lengthy marketing efforts, Buyer has offered the highest price for the remaining intellectual property Assets of the CHS Estate. Under the APA, Buyer has agreed to pay a total of \$245,000 (the "Purchase Price") for the Assets, with \$225,000 (the "Cash Purchase Price") of the Purchase Price being paid in cash, and the remainder through a "Credit Bid" of \$20,000. The Credit Bid is based on Buyer's agreement to perform spay/neuter services of that value for dogs and cats adopted from CHS after the commencement of this case, for which services the Receiver would otherwise be required to pay on a first-priority administrative claim basis, as described in Section 7.1 of the APA. As required by the APA, the proposed Sale Procedures Order and Confirmation Order contain provisions whereby the Court validates the Credit Bid as a valid component of the Purchase Price. To provide further protection to the Receiver and the CHS Estate, simultaneously with the filing of this Sale Motion, Buyer has deposited the full amount of the Cash Purchase Price with the Escrow Agent under the Escrow Agreement attached as Exhibit 1-B hereto. Buyer has also agreed to a competitive bidding process, culminating in a Judicial Sale of the Assets, as contemplated in the Initial Order, the APA, and the proposed Sale Procedures Order attached as Exhibit 1-C hereto.

7. As indicated by the Court in the Sale Authorization Order (p. 7) and required by the APA and reflected in the proposed Sale Procedures Order (Exh. 1-C) and the proposed Confirmation Order (Exh. 1-D), the proposed Sale of the Assets to Buyer shall be free and clear of claims, liens, and encumbrances (such claims, liens, and encumbrances would, of course, attach to the sale proceeds once those proceeds are received by the CHS Estate). To effectuate the proposed Judicial Sale on the terms required by the APA, it is necessary to resolve a potential internal conflict in the language of the Sale Authorization Order. In that Order, the Court stated correctly on page 7 that the Sale "should be conducted free and clear of all liens, encumbrances, or claims. However, the Court will still require payment of any liens of record out of the sale proceeds." In contrast, at both page 6 and page 8, the Sale Authorization Order provides that the Sale shall be conducted free and clear of all liens, encumbrances and claims, "excepting all liens of record." Of course, no judicial sale would or could go forward if the buyer were required to buy assets subject to all liens of the seller's creditors continuing to attach to the assets in the hands of the buyer. Instead, the Court's statement at page 7 of the Sale Authorization was a correct pronouncement of law—namely, that the judicial sale shall be free and clear of all claims, liens and encumbrances, but that all liens will attach to the sale proceeds paid to the Receiver and shall be paid out of the sale proceeds under the applicable amount, validity and priority of all liens as determined by the Court. See *Bloodworth v. Sandersville Production Credit Ass'n*, 245 Ga. 40, 262 S.E.2d 804 (Ga., 1980); Ralph Ewing Clark, 2 *Clark on Receivers*, §500(c) [3rd Ed. 1959]. Thus, the APA, proposed Sale Procedures Order, and proposed Confirmation seek to resolve the conflicting language in the Sale Authorization Order by providing that the

judicial sale will be “free and clear,” but that all liens shall attach to the Sale proceeds and shall be paid out of those funds.

8. As provided in the Sale Procedures Order, in the interest of full disclosure and broad notice consistent with due process, this Sale Motion with all Exhibits is being sent to all entities who have appeared in this matter. Additionally, this Sale Motion is being sent with exhibits to all entities that have filed a claim in this matter and to all entities that, to the Receiver’s knowledge, have expressed interest in the Assets following the inception of this case. The exception to the foregoing is where the only contact information the Receiver has is a fax number. In that case, this Sale Motion is being sent without exhibits but with a note that, if any entity that does not receive the Exhibits desires them, that entity can contact either undersigned counsel or the Receiver at 303.388.1300 or rblock@xpn.com. The Receiver is unaware of any other party who might be affected materially by the Sale. Additionally, the Sale Procedures Order reflects that, within three business days following entry of the Sale Procedures Order, the Receiver shall publish an abbreviated notice of the proposed sale in the Denver Business Journal and shall thereafter file an affidavit of publication of that notice with this Court.

9. The proposed Bidding Procedures (included in the proposed Sale Procedures Order attached hereto as Exhibit 1-C) set out the proposed bidding procedure with regard to the Assets and the proposed judicial sale. The Bidding Procedures invite competitive bids within 21 days of entry of the Sale Procedures Order, subject to reasonable qualification standards for competing bidders, necessary to protect the CHS Estate. The CHS Estate is further protected by the requirement, in the Bidding Procedures, that all potential competing bidders deposit the Qualifying Overbid Amount (as defined in the Bidding Procedures) of \$250,000 in cash (relative to the Purchase Price of \$245,000) into escrow with the Escrow Agent in accordance with the Escrow Agreement attached hereto as Exhibit 1-B. The Receiver believes that, corresponding with the protection to the CHS Estate provided by the above escrow provisions, competitive bidding is facilitated by the facts that (a) no break-up fee is being paid to Buyer in the event of any competing or higher bids than Buyer’s for the Assets, and (b) the Qualifying Overbid Amount provides for an initial overbid increment of only \$5,000 over the Purchase Price. If a Qualifying Overbid Amount is submitted to the Receiver and another Qualified Bidder (defined in the Bidding Procedures) appears, then the Sale Procedures Order provides for the Court to conduct an auction for the Assets. If no Qualified Bidder other than Buyer appears, then the scheduled auction will be converted into a hearing to confirm the Sale of the Assets to Buyer under the APA and to enter the Confirmation Order attached hereto as Exhibit 1-D. The Receiver believes that the procedure set forth in the proposed Sale Procedures Order and Bidding Procedures is the best way to maximize the net return to the CHS Estate for the benefit of all creditors.

10. The Receiver would point out that the APA does not provide for any representations or warranties by the Receiver, as customarily appears in commercial purchase and sale agreements. Instead, the seller’s standard representations and warranties, necessary to induce Buyer to enter into the APA, are set forth in the Affidavit

of Richard A. Block, Managing Member, Waverton Group, LLC, as Receiver (Exh. 1-E hereto) and replicated in the proposed Confirmation Order. The Affidavit and Confirmation Order provide that Buyer is relying on the facts set forth in the Affidavit and found by the Court in the Confirmation Order, and that any change or inaccuracy in those facts shall entitle Buyer to pursue, among other things, all remedies available under applicable law or equity, including a potential rescission of the APA.

11. To protect the Receiver and the CHS Estate and to facilitate competitive bidding for the Assets, the proposed Sale Procedures Order contains provisions (a) effectuating the Sale Authorization Order by precluding any potential challenges to the Receiver's ability and authority to sell the Assets and (b) protecting the Receiver, Buyer, and any Potential Bidders from interference with their efforts to bid for or acquire the Assets through claims asserted in litigation.

12. The descriptions and summaries in this Sale Motion of the documents attached as Exhibits hereto are intended merely to assist the Court and any reader in obtaining information regarding the terms of the APA attached as Exhibit 1, and the IP Assignment (Exh. 1-A); Escrow Agreement (Exh. 1-B); proposed Sale Procedures Order (Exh. 1-C); proposed Confirmation Order (Exh. 1-D); and Affidavit of Richard A. Block, Managing Member, Waverton Group, LLC, as Receiver (Exh. 1-E) (Exhibit 1 and Exhibits 1-A through 1-E, collectively the "Sale Documents"), and are not intended to, and do not, amend, replace, conflict with or modify in any way the terms of any of the Sale Documents. For the precise and binding terms of each of the Sale Documents, the Court and any reader are directed to the actual Sale Documents that are attached as Exhibit 1 and Exhibits 1-A through 1-E of this Sale Motion and incorporated by reference. To avoid any confusion, in the event of any conflict between any statement in this Sale Motion and any terms of any of the Sale Documents, the terms of the Sale Documents shall control.

13. Once the Judicial Sale is completed, the Receiver requests that the Court issue the Confirmation Order attached hereto as Exhibit 1-D, which is designed to confirm the Sale and essentially end the Judicial Sale procedure.

14. In terms of scheduling, the APA requires (and the proposed Sale Procedures Order and Confirmation Order provide) that the Court shall: (i) enter the Sale Procedures Order not more than 30 days after the filing of this Sale Motion; (ii) set a Bid Deadline 21 days after the date of the Sale Procedures Order; (iii) set the Auction or Confirmation Hearing approximately 30 days after the date of date of the Sale Procedures Order; and (iv) enter the Confirmation Order not more than 60 days after the filing of this Sale Motion. Failure of any of these requirements shall constitute a failure of a condition precedent to the APA that would entitle Buyer to terminate the APA at its sole discretion, withdraw its bid and obtain a refund of the Escrow Amount from the Escrow Agent.

15. The APA requires that the Court enter the proposed Sale Procedures Order and the Confirmation Order in substantially the forms submitted in the attached Exhibits

1-C and 1-D, respectively. This Court's entry of the proposed Sale Procedures Order and the Confirmation Order in substantially the forms submitted in the attached Exhibits 1-C and 1-D, respectively, are conditions precedent to Buyer's obligation to close its purchase under the APA and transfer the Purchase Price to the Receiver through the Escrow Agreement.

16. Once the Sale is confirmed, the proceeds of the Sale will be transferred from the Escrow Agent to the Receiver, under the terms of the Escrow Agreement (Exh. 1-B hereto). The Receiver will then have the duty to administer all claims that have been submitted by creditors and approve, object, or settle all claims as the case may be. The Receiver will hold all proceeds of the Sale of the Assets (whether the Sale is to Buyer or some other Qualified Bidder), pending distribution in accordance with further orders of the Court resolving the amount, validity, and priority of claims and liens against the CHS estate and authorizing disbursements to satisfy all such claims and liens according to their respective priorities. The Receiver anticipates generally that, subject to the potential entry of further and more specific orders of the Court (including any orders pertaining to the payment of liens), the Receiver, its agents and other post-appointment (i.e., post-December 16, 2008) administrative creditors will be paid first, followed by other priority unsecured creditors (if any such creditors or other priorities exist), and followed by general unsecured creditors. Pending any order from this Court, no creditors will be paid from CHS Estate funds, and no class of pre-appointment creditors will be paid until higher-priority classes are paid in full.

17. For the Court's convenience, additional, separate forms of the proposed Sale Procedures Order (Exh. 1-C hereto) and the proposed Confirmation Order (Exh. 1-D hereto) are tendered herewith.

WHEREFORE, the Receiver respectfully requests that this Court enter the Sale Procedures Order, in the form attached as Exhibit 1-C hereto and, after the sale of the Assets, enter the Confirmation Order, in the form attached as Exhibit 1-D hereto, and that the Court grant the Receiver such other and further relief as the Court deems just and proper.

Dated this 5th day of February, 2010.

FAIRFIELD AND WOODS, P.C.

By: 
John M. Tanner

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing, WITH ALL EXHIBITS, was served via Lexis/Nexis, by placing a copy in the United States Mail, postage prepaid, or via email, this 5th day of February, 2010, addressed to the following:

VIA LEXIS/NEXIS TO:

Alissa Hecht Gardenswartz, Ass't.
Attorney General
Leeann Richey, Ass't. Attorney General
Jay Simonson, Ass't Attorney General
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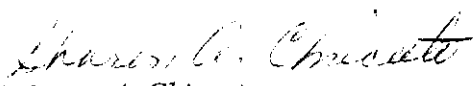
Thy Nguyen
Pinnacol Assurance
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Denver, CO 80230

VIA US MAIL TO:

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Kennedy Childs & Fogg, P.C.
Independence Plaza
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Denver, CO 80265

VIA EMAIL TO:

Richard A. Block
rblock@xpn.com
Waverton Group, LLC, Custodian


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

Additionally, the receiver is sending the motion with exhibits to the entities on the attached list unless the only contact information is a fax number. In that case, the entity is receiving the motion without exhibits but is being notified that if it desires copies of the exhibits then it may receive them by contacting above counsel at the address on the caption or the receiver at 303.388.1300 or rblock@xpn.com.

Freeman
P.O.BOX 650036
Dallas, TX 75265-0036

Central Vet. Emergency Care:
3550 S Jason St Englewood Co 80110

Beacon Printing:
2161 South Platte River Dr.
Denver, CO 80223

Cheyenne Mnt Hospital
Fax:719/475-1049

Canon Business Solutions:
Fax: 847-706-3454

Custom Dental Inc:
6489 W. 5th Place
Lakewood, CO 80226

Davis & Co.:
9457 S. University Blvd. #410
Highlands Ranch, CO 80126

Florial Expressions & Good:
2323 South Downing st
Denver Co 80210
Shelley, John for Billing

Ivins Design Group:
1480 Humboldt St
Denver, CO 80218

MWI Veterinary Supplies:
P.O. Box 39888
Denver, CO 80239
303-371-4437

Public Safety Warehouse:

14300 East35thpl
Aurora, CO 80011

SAFECO:
PO BOX 34685

Safeguard:
PO Box 2045
Tustin, CA 92781-2045

United Screening Services:
3210 Old Faithful Rd.
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Access Receivable Management:
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Anthem: Reference# : 09007821041
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1375 Sherman St Denver Co 80261
Att Business Taxes

CSU:
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Fax:970/491-3936 or 970/491-2452

State of Colorado Division of Finance
and Procurement
(CSU Commercial Accounts) :
Account:3445717
Tonia Mosley
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Denver Water :

4712 w Bowles ave
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Pfizer:
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T-Mobile:
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CCB Credit Services T-Mobile
Collection agency
Fax:217/529-7185

Wells Fargo Merchant Services
Fax:402/916-6259

Collection Agency for Excel
Fax:763/780-9338
Att: Gina

Hampden Family Pet Hospital
Fax: 303-761-0559

Butler Animal Health Supply
1-800-258-2145

VCA Animal Hospital
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Fax (816/474-3960) &
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Nation Wide Retirement
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Colorado Veterinary Diagnostic
Fax (970/297-0320)

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City of Englewood - Utilities
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Englewood Co 80110

Columbine Oxygen
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Littleton CO 80120

US Waste LLC
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Denver CO 80216

Shelby Davis
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Englewood CO 80110

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