

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELD ENTERTAINMENT, INC.,

Plaintiff,

V.

Civ. No. 07-1532 (EGS)

**AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, *et al.*,**

Defendants.

DEFENDANT THE HUMANE SOCIETY OF THE UNITED STATES’S
SUPPLEMENTAL MOTION TO DISMISS PLAINTIFF’S AMENDED
COMPLAINT AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT

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I. INTRODUCTION

The Amended Complaint's RICO and accompanying state law claims against Defendant The Humane Society of the United States ("HSUS") must be dismissed for the simple and unremarkable reason that HSUS and the Fund for Animals ("FFA") are two distinct organizations and, as a matter of law, the alleged actions of FFA cannot be imputed to HSUS. HSUS was never a plaintiff in the ESA Action. Nor did HSUS make a single payment to Tom Rider. Therefore, for the reasons set forth below, the Amended Complaint's factual allegations, which are based exclusively on actions allegedly taken by plaintiffs in the ESA Action, do not and cannot support a claim against HSUS.¹

II. FACTUAL BACKGROUND

A. The ESA Litigation

HSUS was never a plaintiff in the ESA Action, despite FEI's erroneous allegations to the contrary. (*See* Am. Compl. ¶¶ 50, 55.)² The original complaint in the ESA Action, Civil Action No. 00-1641, was filed in the United States District Court for the District of Columbia on July 11, 2000. The plaintiffs in the original action were Performing Animal Welfare Society, American Society for the Prevention of Cruelty to Animals ("ASPCA"), Animal Welfare

¹ The Amended Complaint must be dismissed for the reasons stated in Defendants' Omnibus motion to dismiss. Given HSUS's unique position in this suit, however, HSUS is entitled to dismissal for the additional reasons addressed in this supplemental brief.

² "Exhibit[s] . . . may be considered in deciding the motion to dismiss because 'matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case . . . may be considered by the district court without converting the motion into one for summary judgment.'" *Baird v. Snowbarger*, ___ F. Supp. 2d ___, Civil Action No. 09-1091, 2010 WL 3999000, at *13 n.2 (D.D.C. Oct. 13, 2010) (quoting 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357, at 376 (3d ed. 2004)); *see Western Associates Limited Partnership v. Market Square Associates*, 235 F.3d 629, 634 (D.C. Cir. 2001) (relying on facts outside the four corners of amended complaint to dismiss RICO claim; "it is appropriate for the court to look beyond the amended complaint to the record").

Institute (“AWI”), FFA, Patricia Derby, Edward Stewart, Thomas Rider, and Glenn Ewell.

HSUS was not a party to Civil Action No. 00-1641.

Another complaint was filed in the ESA Action in the United States District Court for the District of Columbia on September 26, 2003, which was numbered Civil Action No. 03-2006. (Am. Compl. ¶ 55.) Plaintiffs in the subsequent ESA Action were ASPCA, AWI, FFA, Rider, and Animal Protection Institute (“API”). HSUS was not a plaintiff in Civil Action No. 03-2006.

B. There is no cognizable legal entity called FFA/HSUS

On January 1, 2005, HSUS and FFA agreed to join forces in a corporate combination to advance their common mission. Although this corporate combination has been referred to colloquially as a “merger,” it was not. (*See, e.g.*, Am. Compl. ¶¶ 36, 160.) The two groups have continued to operate as separate and distinct organizations.

In particular, on November 22, 2004, HSUS and FFA executed an Asset Acquisition Agreement (“the Agreement”). (*See* Ex. A.) The Agreement was designed to create an affiliation between the two organizations but did not effect a merger. Although HSUS purchased, acquired, and accepted assets from FFA, the Agreement nonetheless excluded specific assets and operational programs that remained with FFA, including (1) cash in the amount of \$250,000.00, (2) books and records relating to incorporation and minutes of proceedings of its members and directors, (3) records relating to preparation and certification of financial statements, (4) the right to receive mail and other communications addressed to FFA, (5) undeveloped real property in Colebrook, Connecticut, and (6) FFA’s real property and facilities at Murchison, Texas (the Black Beauty Ranch), and at Ramona, California (the Wildlife Rehabilitation Center). (*See* Ex. A at § 1.2; *see also* Ex. B, Michael Markarian Trial Tr. at 25:12-26:13 (March 10, 2009).)

On June 22, 2005, Michael Markarian, in his role as President of FFA, testified as a

Rule 30(b)(6) witness on behalf of FFA regarding this distinction:

Q: The Fund for Animals and the Humane Society of the United States merged at the beginning of [2005], is that right?

A: It was not a formal merger, it was a corporate combination of the two organizations.

Q: What do you mean by “a corporate combination”?

A: The organizations remain . . . distinct entities, but our management structures are coordinated and we take advantage of some efficiencies of administration, including accounting and . . . payroll. But the two organizations . . . are still . . . both in existence.

(Ex. C, Michael Markarian Rule 30(b)(6) Dep. Tr. at 25:9-21.)

FFA and HSUS continued to maintain not only separate corporate identities but also separate operational identities. FFA continued to conduct its own programs as a separate entity, distinct from HSUS, including running animal care centers. (*Id.* at 29:13-17). The Black Beauty Ranch in east Texas, for example, is a 1,300 acre animal sanctuary that is home to numerous animals that have been rescued from abusive situations or have been abandoned. (Ex. B, Markarian Trial Tr. at 71:4-8.) FFA also maintained its own fundraising identity and its own income stream, filing its own Form 990 annually with the Internal Revenue Service. (*See* Ex. D, excerpts of FFA’s Form 990 for 2005, 2006 and 2007.)

Moreover, FFA continued to proceed with its own litigation, such as the ESA Action. (Ex. C, 29:13-17.) FFA did not need to receive approval from HSUS to remain involved in the ESA Action. (*Id.* at 32:6-9.) Nor was the HSUS bound in any way to provide support for the litigation previously undertaken by FFA. (*Id.* at 32:10-14.) As a result of the corporate combination, FFA did discontinue its direct payroll. Instead, time spent by HSUS employees working on FFA programs is billed back to FFA by HSUS. (*Id.* at 60:24-61:10.) Finally, FFA

and HSUS continued to maintain separate boards of directors after the corporate combination. (*Id.* at 27:16-18.) In response to a **non-party** subpoena in the ESA Action, HSUS produced documents to FEI demonstrating that FFA conducts separate meetings, separate legal proceedings, and still exists as a corporate entity distinct from HSUS with distinct operational programs. HSUS also produced FFA's corporate registration statements and certificate of good standing from the State of New York.

C. FFA's Payments

The Amended Complaint also alleges erroneously that "FFA/HSUS" made payments to Rider. (*See* Am. Compl. ¶¶ 156-168.) HSUS, as an independent organization, never made a single payment, either directly or indirectly, to Rider.

1. FFA payments to Rider and MGC before the corporate combination.

Before the corporate combination in January 2005, FFA made a \$1,000.00 payment to Rider in 2004 directly. (*Compare* Am. Compl. ¶156 with Ex. E, M. Markarian's March 6, 2008 Evidentiary Hearing Testimony Tr. at 65:25-66:2.) HSUS did not make this payment. Likewise, before the corporate combination, FFA paid Meyer, Glitzenstein and Crystal ("MGC") approximately \$4,500 that was given to Mr. Rider between 2001 and 2003. (*Compare* Am. Compl. ¶ 158 with Ex. E at 66:3-6 & Ex. B at 44:10-20.) Again, HSUS did not make any of these payments.

2. FFA payments to WAP after the corporate combination.

After the corporate combination, FFA also made six payments to the Wildlife Advocacy Project ("WAP"). These payments were made from FFA monies. These were not HSUS payments. HSUS's accounting department merely *processed* FFA's payments because FFA relies on the administrative functions of HSUS "for processing the Fund For Animals' checks." (*See* Ex. E at 66:20-69:13; *see also* Ex. B at 47:21-48:15.)

On March 6, 2008, Markarian testified before U.S. Magistrate Judge John Facciola at an evidentiary hearing regarding FFA's payments to (1) Rider, (2) Meyer, Glitzenstein and Crystal, and (3) WAP, making clear that none of FFA's payments in question were HSUS payments:

Q: So the **Fund for Animals has paid Tom Rider** a thousand dollars. The **Fund for Animals has paid Meyer, Glitzenstein and Crystal** almost \$4,500, and the Humane Society has paid the Wildlife Advocacy Project \$11,500; is that correct?

A: **The Humane Society has not paid the Wildlife Advocacy Project that money. That was the Fund for Animals' payment** to the Wildlife Advocacy Project which was processed by the accounting department of the Humane Society.

Q: Why wasn't that processed by the Fund for Animals?

A: The Fund for Animals relies on the administrative functions of the Humane Society of the United States when processing checks, making payments, etcetera.

(Ex. E at 66:20-67:6 (emphasis added); *see also id.* at 67:7-69:9.)

III. ARGUMENT

A complaint must be dismissed when, as here, the plaintiff failed to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must set forth a “claim for relief that is *plausible on its face.*” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (emphasis added) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must be dismissed under Rule 12(b)(6) if it consists only of “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557)). The Court must reject unsupported legal conclusions

and unwarranted factual inferences. *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994).

Here, FEI's claims against HSUS, an organization independent and distinguishable from FFA, rely on such unwarranted factual inferences and erroneous legal conclusions and therefore must be dismissed as a matter of law.

A. FEI's RICO Claims Against HSUS Must Be Dismissed Because the Factual Allegations Against FFA, A Separate and Distinct Organization from HSUS, Cannot Be Imputed to HSUS.

To survive a motion to dismiss a civil RICO claim under 18 U.S.C. § 1962(c), a plaintiff must set forth adequate factual allegations establishing that *each* defendant engaged in “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985); *Western Associates Limited Partnership v. Market Square Associates*, 235 F.3d 629, 633 (D.C. Cir. 2001). Here, FEI has failed to do so with respect to HSUS, a separate and distinct defendant. FEI cannot satisfy the necessary RICO elements against HSUS because the Amended Complaint fails to allege how HSUS was involved in – much less operated or managed – the affairs of the alleged enterprise.

1. HSUS did not conduct or participate in the conduct of the alleged enterprise's affairs.

To be liable under Section 1962(c), a defendant must “conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). The Supreme Court has held in no uncertain terms that “one is not liable under [§ 1962(c)] unless one has participated in the operation or management of the enterprise itself.” *Reves v. Ernst & Young*, 507 U.S. 170, 184 (1993) (noting “it is clear that Congress did not intend to extend RICO liability under § 1962(c) beyond those who participated in the operation or management of an enterprise”). The “conduct or participate” element requires a

defendant to “have some part in directing those affairs.” *Id.* at 179. Thus, to establish liability, FEI is required to show that HSUS had “some part in directing the enterprise’s affairs.” *Id.*; *see also Univ. of Md. at Baltimore v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539-40 (3d Cir. 1993); *Harpole Architects, P.C. v. Barlow*, 668 F. Supp. 2d 68, 75-76 (D.D.C. 2009) (dismissing RICO claim under Section 1962(c); “it cannot be said that [defendant] participated in ‘operating’ or ‘managing’ the enterprise, because plaintiffs have not provided ‘further factual enhancement’ to support their ‘naked allegation,’ that she played a part in ‘directing [its] affairs’”) (citations omitted); *Danielsen v. Burnside-Ott Aviation Training Center, Inc.*, 941 F.2d 1220, 1231 (D.C. Cir. 1991) (dismissing RICO claim because “[a]ppellants never alleged that appellees, either through a pattern of racketeering activity or otherwise, participated in the operation or management of the [enterprise’s affairs], nor is it likely that they could make such an allegation in good faith”).

Here, the Amended Complaint fails to demonstrate how HSUS, as an organization distinct from FFA, participated *at all* in the alleged enterprise – let alone how HSUS *directed* or *managed* the alleged enterprise. The thrust of FEI’s suit is that defendants “paid Rider to say that he was in fact ‘aesthetically injured’” despite the fact that Rider had no such injury. (*See, e.g., Am. Compl.* ¶ 4.) The record developed in the ESA Action makes clear, however, that HSUS did not pay Rider, either directly or indirectly. (*See supra* at 4-5.)

FEI’s RICO claim against HSUS therefore hinges entirely on the legally erroneous assumption that every action taken by FFA can be imputed to HSUS because the two distinct entities “merged” in 2005. That is, FFA and HSUS are referred to jointly throughout the Amended Complaint as “FFA/HSUS.” As a matter of black-letter law, however, FFA and HSUS did not “merge” as alleged in the Amended Complaint. “A corporate *merger* consists of a

combination whereby one of the constituent corporations remains in being, absorbing in itself all the other constituent corporations, which cease to exist.” *See, e.g.*, 20 Am. Jur. Proof of Facts 2d 609.

Here, the two organizations remain distinct corporate entities, both legally and operationally. FFA and HSUS merely entered into a corporate combination that streamlined each entity’s administrative functions while maintaining their corporate identities. Under the terms of the Agreement, significant real property in three states, including land, buildings, and other facilities, is retained by FFA, as is FFA’s board of directors. Moreover, following the corporate combination, FFA’s board remained active and held meetings. HSUS produced minutes of such FFA meetings to FEI as a non-party subpoena respondent in the ESA Action. This Court need not and indeed cannot “accept legal conclusions cast in the form of factual allegations.” *Western Associates*, 235 F.3d at 634 (citation omitted). Accordingly, because FEI does not adequately allege that HSUS conducted or participated in the conduct of the alleged enterprise’s affairs – let alone directed or managed such affairs – FEI’s Section 1962(c) claim against HSUS must be dismissed.³

³ In addition, “[c]ourts have consistently held that an unwitting participant in a RICO enterprise is not within the ambit of the statute.” *First City Nat’l Bank & Trust Co. v. FDIC*, 730 F. Supp. 501, 509 (E.D.N.Y. 1990) (dismissing Section 1962(c) claim in part because “[t]he Amended Complaint does not allege that any of the bank directors had actual knowledge of fraud or bribery, much less the specific intent necessary to commit these crimes” and “the Court *cannot impute knowledge* to the defendant directors”) (emphasis added) (citation omitted). “Recklessness is not sufficient to prove the required criminal intent.” *Id.* at 508-09.

Here, the Amended Complaint does not indicate that HSUS, as a distinct and separate entity from FFA, intended to participate in, or for that matter knew about, any of the allegedly fraudulent conduct. *See Reed Construction Data, Inc. v. McGraw-Hill Companies, Inc.*, ___ F. Supp. 2d ___, No. 09-Civ. 8578, 2010 WL 3835196, at *5 (S.D.N.Y. Sept. 14, 2010) (dismissing Section 1962(c) claim in part because “a party cannot be considered a part of a RICO enterprise unless it intended to participate”). In the most favorable light, the Amended Complaint shows

2. The Amended Complaint fails to adequately plead at least two predicate acts of racketeering against HSUS.

To be subject to RICO liability, *each* defendant must have knowingly committed at least two predicate acts of racketeering as part of the alleged pattern. *United States v. Philip Morris, USA, Inc.*, 396 F.3d 1190 (D.C. Cir. 2005). FEI's Section 1962(c) claim against HSUS, however, suffers from numerous defects in its predicate act allegations. FEI fails to establish the predicate acts of bribery, illegal witness payments, wire fraud, and/or mail fraud against HSUS. That is, FEI cannot demonstrate that HSUS, as an independent organization, paid Rider, much less that HSUS had the requisite criminal knowledge or intent to make a bribe, make an illegal witness payment or engage in a scheme to defraud anyone or anything through the mail or wire. (*See supra* at 4-5.)

Likewise, the Amended Complaint fails to demonstrate the predicate act of obstruction of justice against HSUS. FEI did not and cannot allege that HSUS, as an independent organization, covered up any payments. (*See* Am. Compl. ¶¶ 192.) HSUS did not reimburse MGC for a single payment to Rider. (*See supra* at 4.) In addition, HSUS was not a plaintiff to the ESA Action, *see supra* at 1-2, and thus could not and did not (1) submit false or misleading discovery responses to FEI or (2) procure Rider's absence from any evidentiary hearings. (*See* Am. Compl. ¶ 231.) Finally, HSUS could not have testified falsely regarding payments to Rider in Markarian's June 22, 2005 deposition, *see* Am. Compl. ¶ 217, because Markarian's June 22, 2005 deposition was as a Rule 30(b)(6) witness for FFA only. (*See* Am. Compl. ¶ 217.)

that, in processing a series of payments for FFA, HSUS was an unwitting participant in the alleged RICO enterprise. Such allegation is insufficient to satisfy RICO's intent requirement.

Accordingly, because the Amended Complaint fails to adequately allege at least two predicate acts against HSUS, FEI's Section 1962(c) claim against HSUS must be dismissed for this alternative reason.

B. The Amended Complaint Fails to Adequately Allege HSUS was part of a RICO Conspiracy.

Dismissal of FEI's substantive RICO claims "leaves [FEI's] conspiracy cause of action without a leg to stand on." *Reed Const.*, 2010 WL 3835196, at *6 (citation omitted). Therefore, because FEI's RICO conspiracy claim is derivative of its substantive RICO claim, FEI's Section 1962(d) claim must be dismissed as a matter of law.

Also, RICO conspiracy law requires the same scienter as traditional conspiracy law, *i.e.*, the plaintiff must show more than mere knowledge or mere presence. *Salinas v. United States*, 522 U.S. 52 (1997). FEI has failed to allege adequately any knowledge regarding FFA's requests for disbursement of FFA monies held administratively by HSUS. In the absence of specific allegations of actual knowledge and agreement to conspire in the affairs of the enterprise through a pattern of racketeering activity, FEI's RICO conspiracy count must also be dismissed. *See* 18 U.S.C. § 1962(d).

IV. CONCLUSION

For the foregoing reasons, this Court should grant Defendant The Humane Society of the United States's supplemental motion to dismiss.⁴

⁴ Because FEI's RICO claims fail as a matter of law, the Court should not assert supplemental jurisdiction over the state law claims against HSUS. If the Court does so, they should be dismissed on other grounds. (*See* Defs.' Omni Br.) In addition, FEI's abuse of process and malicious prosecution claims against HSUS must be dismissed because HSUS was never a plaintiff in the ESA Action. *See, e.g., Iram Enterprises v. Veditz*, 126 Cal. App. 3d 603 (1981) ("[I]t is clear that the complaint cannot be amended to state causes of action for malicious prosecution and abuse of process against the individual defendants, who did not commence that action and were not parties thereto").

December 3, 2010

Respectfully submitted,

/s/ W. Brad Nes
BARBARA VAN GELDER
(DC Bar No. 265603)
W. BRAD NES
(DC Bar No. 975502)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 739-5779 (telephone)
(202) 739-3001 (fax)
bnes@morganlewis.com

Counsel for Defendant
The Humane Society of the United States

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via electronic filing
this 3rd day of December, 2010, to all counsel of record.

/s/ W. Brad Nes

W. Brad Nes

EXHIBIT A

COPY

ASSET ACQUISITION AGREEMENT

Agreement executed on the 22nd day of November, 2004 by and between The Humane Society of the United States ("HSUS") a nonstock corporation organized and existing pursuant to the laws of Delaware, with principal offices at 2100 L Street, N.W., Washington, D.C. 20037, and The Fund for Animals, Inc. a New York Not-for-Profit Corporation with principal offices at 200 West 57th Street, New York, NY 10019 (the "Fund").

Background

The parties are charitable corporations dedicated to the protection of animals, who have a common mission and whose operations complement each other.

The parties believe that by combining their resources, their common charitable mission will be enhanced.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

ARTICLE 1

ACQUISITION AND SALE OF ASSETS

1.1 Acquisition of Assets. In consideration of the assumption of Fund's liabilities as provided in Section 1.3 hereof, the undertakings set forth in Section 1.5 hereof, and on the terms and subject to the conditions of this Agreement, on the Closing Date (as defined herein), HSUS shall purchase, acquire directly or indirectly, and accept from Fund, and Fund shall sell, convey, assign, transfer, and deliver to HSUS, or its designees, which are charitable organizations exempt from taxation pursuant to the Internal Revenue Code, all of its assets, including but not limited to all of its real and personal property, tangible and intangible, of any type or kind and wherever situated (the "Assets") but excluding all Excluded Assets as defined in Section 1.2 below:

Except for Excluded Assets, the Assets include but are not limited to:

- (a) all land, buildings, and other improvements thereon; all other interest in real property; all interests in equipment, fixtures, fittings, furniture, and other tangible personal property, whether owned, leased, or otherwise (including, without limitation, items which have been fully depreciated or expensed):

(b) all intangible assets and intellectual property (including, without limitation, unregistered trademarks, service marks and trade names, logos, trade dress and other names, marks and slogans, and all variations and permutations thereof), all publishing and distribution rights, and all associated goodwill; all statutory, common law and registered copyrights; together with all rights to use all of the foregoing forever and all other rights in, to, and under the foregoing in all jurisdictions;

(c) all cash and cash equivalent items, bank and securities accounts, deposits, prepaid items, stocks, bonds and securities of other kinds, if any.

(d) all rights, to income or otherwise, existing under licenses, permits, or agreements, contracts and orders, warranties, consents, orders, registrations, privileges, franchises, memberships, certificates, approvals, or other similar rights, and all other agreements, arrangements and understandings, including agreements or arrangements for grants or other income from foundations, trusts, or other third-party granting entities; provided, however, that if the grant or remainder interest is not assignable, it will not be transferred, assigned or conveyed to HSUS;

(e) the right to receive mail and other communications addressed to Fund (including, without limitation, mail and communications from donors, members, contributors, suppliers, consultants, agents, and other);

(f) all lists and records, no matter how maintained, pertaining to donors, contributors, members, suppliers, consultants; and agents, and all other books, ledgers, files, documents, correspondence, computer programs, and business records of every kind and nature;

(g) all creative materials (including, without limitation, photographs, films, art work, color separations and the like), advertising and promotional materials, and all other printed, written, or electronically stored or formatted materials;

(h) all claims, refunds, causes of action, choses in action, insurable interests, rights of coverage, defense, and recovery under insurance policies or otherwise, and rights of set-off of every kind and nature related to the Assets;

(i) all rights to receive legacies, bequests, income from trusts of any kind, remainder interests from estates and trusts, or otherwise, and all other future interests; unless a particular legacy, bequest, amount of trust income, or remainder is not legally transferable;

(j) all goodwill as a going concern and all other intangible property; and

(k) all interest in and to telephone numbers, e-mail addresses, web sites, web site links, and all listings pertaining to Fund in all telephone books and other directories.

(l) all rights to use, control, exploit, and alienate the Assets described in ¶¶ (a) through (k), above.

1.2 Excluded Assets. Notwithstanding the foregoing, the following Fund assets (the "Excluded Assets") are expressly excluded from the acquisition and sale contemplated hereby and, as such, are not included in the Assets:

- (a) cash in the amount of \$250,000.;
- (b) books and records relating to its incorporation and qualification to do business as a foreign corporation in those jurisdictions where it is qualified, and minutes of proceedings of its members and directors, provided that copies of such books and records are provided to HSUS by Closing;
- (c) records, whether in its possession or in the possession of its auditors, relating to preparation and certification of financial statements;
- (d) all rights of the Fund under this Agreement and agreements related hereto;
- (e) the personal property of officers, directors, and employees of Fund, whether in their individual or a fiduciary capacity, which may on the Closing Date be stored or located at an office or other facility of Fund;
- (f) the right to receive mail and other communications addressed to Fund relating to any of the Excluded Assets; and
- (g) title to and other real property interests in the Fund's unimproved property in Colebrook, Connecticut and in the Fund's facilities at Murchison, Texas (the Black Beauty Ranch), and at Ramona, California (the Wildlife Rehabilitation Center).

1.3 Assumption of Liabilities. Subject to the conditions specified in this Agreement, HSUS shall assume, defend, discharge, and perform as and when due, all lawful liabilities and obligations of Fund (the "Assumed Liabilities") of whatever type or kind, including without limitation contingent liabilities whether known or unknown and whether asserted or unasserted, including, but not limited to all:

- (a) trade payables incurred in the ordinary course of business;
- (b) liabilities and obligations under agreements, contracts, orders, leases, and commitments and further including, but not limited to:
- (c) liabilities under promissory notes and security agreements;

- (d) liabilities under leases;
- (e) liabilities under Annuity contracts; and

(f) after giving effect to the releases and waivers referenced in Section 1.5(b)(1)(iii), below, liabilities to employees, past and present, whether arising under any employee benefit program or practice, or under any state, municipal or federal law or regulation affording or requiring employee rights or benefits or otherwise, and whether or not contested by Fund or any one or more of its present or past employees.

1.4 Excluded Liabilities. Notwithstanding the foregoing, the following liabilities are expressly excluded from the effect of Section 1.3 and shall not be assumed by HSUS: all liabilities and obligations of whatever type or kind — including without limitation contingent liabilities whether known or unknown, whether asserted or unasserted, and whenever arose or accrued — arising from or related to the ownership, operation, and use of Fund's real property and real property interests at,

1. Murchison, Texas, known as Black Beauty Ranch (sometimes referred to as the "Ranch");
2. Ramona, California, known as the Wildlife Rehabilitation Center; and
3. Colebrook, Connecticut.

1.5 Undertakings of HSUS.

(a) For a period of not less than five (5) years after Closing, HSUS shall continue to operate Fund's property in Murchison, Texas, known as Black Beauty Ranch, primarily as a home for rescued hooved animals. As the material measure of HSUS's compliance with this undertaking, HSUS agrees to provide funding for its operation of the Black Beauty Ranch at a minimum annual level of \$900,000. per year during the five-year period referenced above, which amount shall not include that portion of HSUS's general or administrative overhead chargeable to Ranch operations. This minimum annual funding level may be drawn, in HSUS's discretion, from any one or more of the following sources: HSUS's unrestricted principal or current income, restricted income or principal for which such use is appropriate, current income raised expressly for the benefit of the Ranch, or from the income and principal of the Black Beauty Ranch Board-Designated and Board-Restricted Account in accordance with ¶1.5(d) below. This operating and funding commitment by The HSUS is subject to the following conditions: (1) the HSUS shall have complete discretion to manage the Ranch, within the charitable mission and purpose of the Ranch as a sanctuary primarily for hooved animals, for the benefit and welfare of present and future resident animals, which discretionary management may include, but not be limited to, reordering funding priorities among the Ranch-budget's line items and augmenting capital

improvements, relocating or rehousing non-hooved exotic animals, and controlling reproduction among resident animals; (2) HSUS's aggregate funding commitment under this ¶1.5(a) for and during the five-year period shall not exceed \$5.0 million; (3) the holders of the various real property interests within the Black Beauty Ranch, must continue to provide reasonable and appropriate cooperation, throughout the five (5) year period; and (4) the Board of Directors of The HSUS may, by formal finding and written resolution — after taking into account all relevant information reasonably available and after undertaking reasonable deliberation — determine that major changes in circumstances call for commensurate changes in the way the Ranch is funded or operated, including without limitation discontinuance in whole or in part of such funding and operation. Such "major changes in circumstances" shall be limited to,

- Changes in climate, weather, water supply, ecology, general environment, or in carrying capacity or other land conditions that would affect the feasibility of operating the sanctuary or the health or welfare of the resident animals;
- Changes in the insurability of the Ranch operations to the extent that liability insurance cannot be obtained or that the HSUS is forced to effectively self-insure the Ranch operations; and
- Changes in zoning law or other land use regulation that would render the operation of the Ranch as an animal sanctuary unfeasible.

(b) (1) The HSUS agrees to offer employment to all persons who are Fund employees as of the effective date of this Agreement and who wish to be employed by the HSUS. Each such offer of employment shall be conditioned upon, as conditions precedent, (i) each Fund employee submitting a completed HSUS-standard pre-employment application for employment and executing HSUS-standard authorizations to enable HSUS to perform its usual and permissible background and reference checks, (ii) such background and reference checks disclosing nothing about the Fund employee which would disqualify an applicant for employment under current HSUS guidelines, including, but not limited to:

- Any material omission, misrepresentation, or falsification on the candidate's application, resume, or any other materials submitted for consideration.
- Any felony conviction relevant to the prospective employment.
- A history of one or more,
 - incidents of workplace violence
 - complaints that the candidate engaged in discriminatory or harassing behavior unless such allegations were thoroughly investigated and found to be

without merit,

- citations and/or convictions for moving violations and/or reckless driving, when driving is a job requirement of the prospective employment
- incidents of disclosure or unauthorized use of confidential information, including but not limited to constituent/membership lists
- incidents of damage or destruction of employer's property due to careless or willful acts
- incidents of insubordination or refusal to comply with instructions or failure to perform reasonable duties assigned

- A history of,
 - inability or unwillingness to work in harmony with other employees
 - excessive or unexcused absenteeism or tardiness,

and (iii) (as a third condition precedent) each such Fund employee executing a full release and waiver of any and all claims, demands, liabilities, actions, causes of action, and suits at law or in equity of whatever kind or nature — including attorneys fees and costs — fixed or contingent, whether known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which such employee had, now has, or may have against The Fund, or against the HSUS derivatively, relating to or arising out of the employee's employment with (including termination by) The Fund up to and including the date the employee signs the Release or through the final day of the employee's employment with the Fund, whichever is later.

(2) HSUS shall endeavor to complete its pre-employment evaluation and clerical processes so that employment with the HSUS may commence on the day after the Closing Date, or as soon thereafter as is feasible.

(3) Each Fund employee hired by the HSUS shall be paid a base salary that is at least equal to the base salary provided by the Fund. Each Fund employee hired by the HSUS shall be included, at the employee's request, in all HSUS benefit plans to the extent, and as soon as, he or she is eligible, as a new HSUS hire, for inclusion under the terms of each plan, with only the following variations: (i) with respect to the HSUS's plan for paid annual leave (vacation), each Fund employee hired by the HSUS shall be given credit for continuous fulltime employment with the Fund immediately prior to, and including, the day of Closing for purposes of determining each employee's starting rate for earning annual leave per pay period; and (ii) with respect to The HSUS's group health plan, each Fund employee hired by The HSUS shall be given time-credit for the employee's continuous participation in the Fund's group health plan immediately prior to, and including, the day of Closing for purposes of determining the five-year period upon the completion of which The HSUS

will waive all employee costs and pay the entire costs of health insurance premiums for employees otherwise eligible to participate in the group health plan.

(4) Notwithstanding any other provision of this ¶1.5(b) or of this Agreement, each Fund employee hired by the HSUS shall be hired and employed by the HSUS on an "at-will" basis, which means that the employment shall be for no definite period of time, that the employee is free to resign at any time, and that the HSUS can terminate the employment at any time, with or without cause, with or without a stated reason, and with or without advance notice.

(5) Except as qualified by the terms of this ¶1.5(b), all HSUS-standard employment practices and policies, as expressed in The HSUS Employee Handbook (as may be amended from time to time) will be applicable to Fund employees hired by the HSUS.

(6) Nothing in this Agreement is intended to create or confer an enforceable benefit on anyone not a party to this Agreement.

(c) HSUS will continue to lease and operate, directly or indirectly, the Fund's office at 200 West 57th Street, New York, NY until the expiration of the term of the present lease therefore on December 31, 2007, provided, if necessary, that the lease can be made assignable.

(d) For a period of not less than five (5) years after Closing, the Fund's Black Beauty Ranch Board-Designated and Board-Restricted Account (currently in the custody of or managed by Smith Affiliated Capital as Account No. 137-003697) will continue to be held by The HSUS as a Board-Designated account for the exclusive benefit of Black Beauty Ranch. After Closing, The HSUS may, in its discretion, invest and reinvest the assets in the Account; commingle the Account's assets with other HSUS assets for purposes of investment; discharge and hire investment managers or advisors; alter the mix of securities or other assets in the Account; and apply and expend the income and principal in any form and by any distribution formula, which may take into account unrealized capital gain, for the exclusive benefit of the Black Beauty Ranch.

(e) Any one who has contributed \$10 or more to the Fund at any time within twelve months of Closing (and who is not already an HSUS member) will be a member of HSUS through the twelve-month anniversary date of the contribution.

(f) By its ratification or approval of this Agreement, the HSUS's Board of Directors shall be simultaneously appointing, effective on the day after Closing, the following persons as members of the HSUS's Board of Directors, with each person's term to be determined by the HSUS's Board: Marian Probst, Judith Ney, Adele Donati, Edgar Smith, and Neil Fang. Also by its ratification or approval of this Agreement, The HSUS's Board of Directors shall be agreeing, also effective on the day after Closing, to place before The HSUS's voting membership the name of Mary Max, in a special election by referendum to be held in 2005, to fill the currently vacant directorship in the class of directors whose term expires in 2007.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF FUND

As an inducement to HSUS to enter into this Agreement, Fund hereby represents and warrants to HSUS as of the date hereof and as of the Closing Date that:

2.1 Organization and Power. Fund is a corporation duly organized, validly existing and in good standing under the laws of New York, and Fund is qualified to do business as a foreign corporation and is in good standing in the jurisdictions in which the ownership of properties or the conduct of its operations requires it to be so qualified. Fund has all requisite power and authority and all material licenses, permits, and other authorizations necessary to own and operate its properties and to carry on its operations as now conducted (including, to the best of its knowledge, valid registrations under the charitable solicitation laws of any states in which Fund solicits contributions by mail or otherwise). The copies of the certificate of incorporation and by-laws of Fund which have not been previously furnished to HSUS reflect all amendments made thereto at any time prior to the date of this Agreement and are correct and complete in all material respects.

2.2 Affiliates. Fund does not control any other corporation, organization, or entity.

2.3 Authorization; No Breach. Except as set forth on the Schedule hereto, the execution, delivery, and performance of this Agreement and the other agreements contemplated hereby and the transactions contemplated hereby and thereby have been duly and validly authorized by Fund. No other corporate act or proceeding on the part of Fund, or its Board of Directors, or members, other than as contemplated by Section 7.3(a)(iv) is necessary to authorize the execution, delivery, or performance of this Agreement, any other agreement contemplated hereby or the consummation of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by Fund, and this Agreement constitutes, and the other agreements contemplated hereby upon execution and delivery by Fund shall each constitute, a valid and binding obligation of Fund, enforceable in accordance with its and their terms. Except as set forth on the "Schedule" hereto, the execution, delivery and performance of this Agreement shall not (a) conflict with or result in any breach of any of the provisions of, (b) constitute a default under, result in a violation of, or cause the acceleration of any obligation under, (c) result in the creation of any lien, security interest, charge or encumbrance upon any of the Assets, or (d) require any authorization, consent, approval, exemption or other action by or notice to any court or other governmental body under the provisions of Fund's certificate of incorporation or by-laws or any indenture, mortgage, lease, loan agreement, or other agreement or instrument to which Fund is bound or affected, or any law, statute, rule, regulation, judgment, order or decree to which Fund is subject or by which any of the Assets is bound.

2.4 Financial Statements. Fund has furnished HSUS with copies of its "Statement of Financial Position at December 31, 2003" (its "Latest Balance Sheet") and "Statement of Activities and Changes in Net Assets," "Statement of Functional Expenses" and "Statement of Cash Flows" all for the year ended December 31, 2003 (the "Financial Statements"). Each of the foregoing financial statements has been based upon the information contained in Fund's books and records (which are

accurate and complete in all material respects) and fairly presents the financial condition and result of operations of Fund as of the times and for the periods referred to therein, and such financial statements contain proper accruals and adequate reserves and have been prepared in accordance with generally accepted accounting principles, consistently applied throughout the periods indicated, except as otherwise noted therein.

2.5 Absence of Undisclosed Liabilities. As of the Closing, Fund shall have no material liabilities or obligations arising out of transactions entered into at, or prior to, the Closing, except (a) liabilities and obligations under agreements, contracts, leases, or commitments described on the Schedule or under agreements, leases, contracts, and commitments which are not required pursuant to this Agreement to be disclosed thereon (but not liabilities for breaches thereof), (b) liabilities and obligations reflected on Fund's Financial Statements, (c) liabilities and obligations which have arisen after the date of Fund's Financial Statements in the ordinary course of Fund's operations, and (d) liabilities and obligations otherwise expressly disclosed in the Agreement or the Schedule heretofore delivered to HSUS.

2.6 No Material Adverse Changes. Since the date of the Latest Balance Sheet, there has been no material adverse change in the financial condition, operations, or employee relations of Fund. A change or changes shall be deemed to be materially adverse to the Fund's financial condition if alone or in the aggregate it or they reduce or may reduce the Fund's total net assets, as stated in the Latest Balance Sheet, by more than \$1.0 million.

(The anticipated costs of capital improvements to the Fund's Wildlife Rehabilitation Center at Ramona, California (c. \$600,000.) and the anticipated costs of the Fund's media advertising related to its anti-fur campaign in late 2004 (c. \$600,000.) shall not be charged against the aforementioned \$1.0 million threshold.)

2.7 Absence of Certain Developments. Except as set forth in the Schedule heretofore delivered to HSUS, since the date of the Financial Statements, Fund has not, without the written consent of HSUS:

(a) borrowed any amount or incurred or become subject to any material liabilities, except current liabilities incurred in the ordinary course of operations and liabilities under contracts entered into in the ordinary course of operations;

(b) discharged or satisfied any material lien or encumbrance or paid any material liability, other than current liabilities paid in the ordinary course of operations;

(c) mortgaged, pledged, or subjected to any lien, charge, or any other encumbrance, any portion of the Assets, except liens, if any, for current property taxes not yet due and payable;

(d) sold, assigned, or transferred any of the Assets, except in the ordinary course of operations, or cancelled without fair consideration any material debts or claims owing to

or held by it;

(e) sold, assigned, or transferred, any trademarks, trade names, copyrights;

(f) suffered any extraordinary losses or waived any rights of material value, whether or not in the ordinary course of business or consistent with past practice;

(g) entered into any other material transaction other than in the ordinary course of operations; or

(h) suffered any material damage, destruction, or casualty loss to the Assets, whether or not covered by insurance.

A liability, loss, lien, mortgage, encumbrance on an asset or group of like assets will be deemed material if alone or in the aggregate they are more than \$500,000.

2.8 Tax Matters.

(a) Fund has duly filed all federal, state and local tax information and tax returns (the "Returns") required to be filed by it (all such returns being accurate and complete in all material respects) and has duly paid or made provision for the payment of all taxes and other governmental charges which have been incurred or are shown to be due on said Returns.

(b) All monies required to be withheld from employees of Fund for income taxes, social security and unemployment insurance taxes have been withheld or collected and paid, when due, to the appropriate governmental authority, or if such payment is not yet due, an adequate reserve has been established.

2.9 Contracts and Commitments.

(a) Except as set forth on the Schedule or reflected in the Financial Statements heretofore delivered to HSUS, Fund is not a party to any;

(i) agreement or indenture relating to the borrowing of money or to mortgaging, pledging or otherwise placing a lien on any of the Assets;

(ii) guarantee of any obligation for borrowed money or otherwise, other than endorsements made for collection in the ordinary course of business;

(iii) agreement or commitment with respect to the lending or investing of funds to or in other persons or entities;

(iv) lease or agreement under which it is lessee of or holds or operates any personal property owned by any other party for which the aggregate annual rental payments

to any one person and its affiliates exceeds \$50,000;

(v) lease or agreement under which it is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it;

(vi) contract or group of related contracts with the same party for the purchase or sale of products or services under which the undelivered balance of such products and services has a selling price in excess of \$50,000;

(vii) other contract or group or related contracts with the same party continuing over a period of more than six months from the date or dates thereof, not terminable by it on 30 days' notice or less;

(viii) contract which prohibits it from freely operating anywhere in the world; or

(ix) other agreement material to it whether or not entered into in the ordinary course of business.

(b) Except as specifically disclosed in the Schedule, (i) to the best of Fund's knowledge, no contract or commitment material to Fund has been breached in any material respect or cancelled by the other party, (ii) Fund has in all material respects performed all the obligations required to be performed by it to the date of this Agreement and is not in receipt of any claim of default under any material lease, contract, commitment or other agreement to which it is a party; (iii) no event has occurred which with the passage of time or the giving of notice or both would result in a breach or default under any material lease, contract, instrument, or other agreement to which Fund is a party; and (iv) Fund is a party to no contract which is materially adverse to its operations or financial condition.

(c) HSUS has been supplied with a true and correct copy of all written contracts which are referred to on the Schedule, together with all amendments or other changes thereto.

2.10 Litigation; Proceedings. Except as set forth in the Schedule heretofore delivered to HSUS, there are no actions, suits, counterclaims, cross-claims, proceedings, orders, or investigations ("Actions") pending or, to the best of Fund's knowledge, threatened against or naming Fund (or any of its present and former officers, directors, employees, and agents in their capacities as such) as a defendant or respondent, or otherwise affecting Fund, at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign. Except as set forth in the Schedule, so far as is known to the Fund, no state of facts exists or has existed that would constitute grounds for the institution of any Action against the Fund, or against its present and former officers, directors, employees, or agents. No officer, director, employee, or agent of Fund has been or is authorized to make or receive, and Fund knows of no such person making or receiving, any bribe, kickback, or other illegal payment at any time. Within the three years preceding the date hereof, Fund has received no opinion or legal advice in writing to the effect that Fund is materially exposed from a legal standpoint to any liability

or disadvantage which may be material to the operation as previously or presently conducted using the standard of materiality set forth in Section 2.6.

2.11 Governmental Consent, etc. Except as set forth on the Schedule no permit, consent, approval, or authorization of, or declaration to or filing with, any governmental or regulatory authority is required in connection with the execution, delivery, or performance of this Agreement by Fund, or the consummation by Fund of any of the transactions contemplated hereby and thereby.

2.12 Employees. To the best of Fund's knowledge, no key employee nor group of Fund's employees has any plans to terminate employment with Fund. Except as set forth on the Schedule, Fund has complied in all material respects with all applicable laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining, and the payment of social security and other taxes. Fund has no material labor relations problems, and there has been no union organization efforts by the employees of Fund. Except as set forth on a schedule hereto, the Fund does not have any employment contracts. All its employees serve at the will of Employer. There are no known pending or threatened complaints, formal or informal, filed or presented to Fund management at any level by any present or former Fund employee citing or founded upon (a) alleged or possible violations by the Fund of any federal, state, or local law or policy against discrimination (including sexual or other kinds of harassment); (b) alleged violations by the Fund of any federal, state, or local laws governing employment wages and hours; (c) alleged violations or noncompliance by the Fund with any other federal, state, or local law or policy; (d) alleged violations by Fund management of any internal Fund policy or procedure; or (e) an allegation of retaliation against any employee by the Fund for the employee's making complaints described in (a) through (d). Fund has no deferred compensation plan or arrangement, formal or informal, with any present or former Fund employee or Fund board member.

2.13 Employee Benefit Plans.

(a) The Employee Benefits information heretofore delivered to HSUS contains a list and a true and correct copy, including all amendments thereto, of any employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which Fund maintains, to which Fund contributes, or under which any employee or former employee, officer or former officer, director or former director of Fund is covered or has benefit rights and pursuant to which any liability of Fund exists or is reasonably likely to occur, and each other arrangement, program, or plan pursuant to which any benefit is or shall be provided to an employee, former employee, or retired employee whether formal or informal, including, without limitation, those providing any form of medical, health, and dental insurance, severance pay and benefits continuation, relocation assistance, vacation pay, tuition aid, and matching gifts for charitable contributions to educational or cultural institutions (collectively, the "Benefit Plans"). Except as set forth on the "Employee Benefits Schedules," Fund neither maintains nor has entered into any Benefit Plan or other document, plan, or agreement which contains any change in control provisions which would cause an increase or acceleration of benefits or benefit entitlements to employees or former employees of Fund or their respective beneficiaries, or other provisions, which would cause an increase in liability of Fund or to HSUS as a result of the

transactions contemplated by this Agreement or any related action thereafter. To the extent such laws or regulations are applicable thereto, of such plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA that is intended to be a qualified plan under Section 401(a) of the Code has been amended to comply in all material respects with current law as required and each such plan either has obtained a favorable determination letter with respect to such amendment or the remedial amendment period for such amendment under Section 401(b) of the Code has not expired.

(b) Except as set forth in the Fund's Schedule, all accrued contributions and other payments to be made by Fund or any ERISA Affiliate (as defined in Section 2.18(e)) to any Benefit Plan through the date of the Financial Statements have been set aside therefore and reflected on the Financial Statements. Fund is not in material default in performing any of its contractual obligations under any of the Benefit Plans of any related trust agreement or insurance contract, and there are no material outstanding liabilities of any Benefit Plan other than liabilities for benefits to be paid to participants in such Benefit Plan.

(c) There is no pending litigation or, to the best knowledge of Fund, overtly threatened litigation or pending claim (other than benefit claims made in the ordinary course) by or on behalf of or against any of the Benefit Plans (or with respect to the administration of any of the Benefit Plans) now or heretofore maintained by Fund which allege violations of applicable state or federal law.

(d) To the best of Fund's knowledge, each Benefit is and has been in compliance in all material respects with, and each such Plan is and has been operated in accordance with the applicable laws, rules, and regulations governing such Plan, including, without limitation, the rules and regulations promulgated by the Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC") and the IRS under ERISA, the Code or any other applicable law. Fund is current in transferring to the appropriate custodian(s) of §403(b) plans any amounts withheld from employees' pay or amounts contributed by the Fund itself.

(e) Neither Fund nor any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with Fund would be deemed a "single employer" with the meaning of Section 4001 of ERISA, has incurred, nor to the best knowledge of Fund is reasonably likely to incur, any liability under Title IV of ERISA in connection with any plan subject to the provisions of Title IV of ERISA now or heretofore maintained or contributed to by Fund or any ERISA Affiliate. No condition exists that presents a material risk to Fund or any ERISA Affiliate of incurring a liability for premiums due to the PBGC. The PBGC has not instituted proceedings to terminate any of the ERISA Plans and no condition known to Fund exists that presents a material risk that such proceedings shall be instituted. All reporting and disclosure requirements of ERISA and the Code have been satisfied in all material respects with respect to each of the Benefit Plans. Neither Fund nor any ERISA Affiliate is required to contribute to an employee benefit plan that is a "multiemployer plan" within the meaning of Section 3(37) of ERISA nor has been so required during the five-year period ending on the Closing Date.

(f) Neither Fund nor any member of a "controlled group," as defined in Section 4971(c)(2)(B) of the Code, of which Fund is a member has any liability on account of any accumulated funding deficiency (as defined in Section 412 of the Code) or on account of any failure to make contributions to or pay benefits under any such plan, nor is Fund aware of any claim pending or threatened to be brought by any party regarding such matters. No prohibited transaction has occurred with respect to any Benefit Plan that would result, directly or indirectly, in the imposition of any excise tax under Section 4975 of the Code; nor has any reportable event under Section 4043 of ERISA occurred with respect to any Benefit Plan.

2.14 Insurance. The insurance information heretofore delivered to HSUS lists and briefly describes each material insurance policy maintained by Fund with respect to the Assets or Fund's operations. All of such insurance policies are in full force and effect, and Fund is not in material default with respect to its obligations under any of such insurance policies. Such insurance coverage is customary for entities engaged in similar operations. Without limiting the effect of the previous sentences, Fund has not defaulted on the payment of premiums or the fulfillment of any other obligation under any insurance policy, nor has Fund been notified in writing by any insurance carrier that any policy has expired, will expire before and including the Closing Date, or that carrier does not intend to renew the applicable insurance for the succeeding twelve-month term, except with respect to coverage that has since been extended or renewed.

2.15 Compliance with Laws; Permits; Certain Operations. Fund and its officers and directors have complied in all material respects with all applicable laws and regulations of foreign, federal, state, and local governments and all agencies thereof which affect their operations or the Assets or to which Fund may otherwise be subject, and no claims have been filed against Fund alleging a violation of any such law or regulation, except as set forth on the Schedule. So far as it knows, Fund holds all of the permits, licenses, certificates, and other authorizations of federal, state, and local governmental agencies required for the conduct of its operations. Fund is current in its payment of premiums or contributions under state workers' compensation laws, subject, however, to retrospective adjustments in accord with the auditing practices of the insurer.

2.16 Environmental Matters.

(a) Except as set forth on the Schedule, Fund has not received any written notice alleging in any manner that Fund is, or might be potentially, responsible for any release of hazardous materials, or any costs arising under or in violation of environmental laws with respect to the Assets or its operations.

(b) None of the real estate owned, leased, or operated by Fund is or has been listed on the United States Environmental Protection Agency National Priorities List of Hazardous Waste Sites, or any other list, schedule, law, inventory, or record of hazardous or solid waste sites maintained by any federal, state or local agency.

(c) Except with respect to the real property at 519 C Street, N.E., Washington, D.C., Fund has no environmental reports with respect to the Assets or its operations. With respect to

519 C Street, N.E., the Fund has provided HSUS with a report entitled, Phase I Environmental Site Assessment Update (the "Environmental Site Assessment") prepared by Bregman & Company, Inc. under date of September 8, 2003. Fund is not aware of the existence of any fact or circumstance that has or would change any material finding or conclusion in the Environmental Site Assessment.

(d) No lien has been attached or filed against Fund with respect to the Assets in favor of any governmental or private entity for (i) any liability or imposition of costs under or in violation of any applicable environmental law; or (ii) any release of hazardous materials.

2.17 Disclosure. Neither this Agreement nor any of the schedules, attachments, or exhibits hereto contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they were made, not misleading. There is no material fact which has not been disclosed in writing to HSUS of which any officer, director, or key employee of Fund is aware and which materially adversely affects or could reasonably be anticipated to materially and adversely affect the Assets.

2.18 Closing Date. All of the representations and warranties of Fund in this Article 2 and elsewhere in this Agreement and all information delivered in any schedule, attachment, or exhibit hereto or in any certificate delivered to HSUS are true and correct in all respects on the effective date of this Agreement and shall be true and correct in all respects on the Closing Date.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF HSUS

As an inducement to Fund to enter into this Agreement, HSUS hereby represents and warrants to Fund as of the date hereof and as of the Closing Date that:

3.1 Organization and Power. HSUS is a corporation duly organized, validly existing, and in good standing under the laws of Delaware, and is qualified to do business as a foreign corporation and is in good standing in the jurisdictions listed on the Schedule hereto. So far as it knows, HSUS has all requisite power and authority and all material licenses, permits, and other authorizations necessary to own and operate its properties and to carry on its operations as now conducted, or, not being so licensed or qualified would not materially adversely affect its operations or assets. The copies of the certificate of incorporation and by-laws of HSUS which have been previously furnished to Fund reflect all currently effective amendments made thereto and are correct and complete in all material respects.

3.2 Affiliates. Except for those identified on the HSUS's Schedule hereto HSUS does not control or have any partnership or joint venture interest in any other corporation, organization or entity.

3.3 Authorization: No Breach. Except as set forth on HSUS's Schedule hereto the

execution, delivery, and performance of this Agreement and the other agreements contemplated hereby and the transactions contemplated hereby and thereby have been duly and validly authorized by HSUS. No other corporate act or proceeding on the part of HSUS, or its Board of Directors or members, other than as contemplated by Section 7.3(b)(ii) is necessary to authorize the execution, delivery, or performance of this Agreement, any other agreement contemplated hereby, or the consummation of the transactions contemplated hereby or thereby. This Agreement has been duly executed and delivered by HSUS, and, provided that this Agreement, as executed, has been approved by the HSUS's Board of Directors, this Agreement constitutes and the other agreements contemplated hereby upon execution and delivery by HSUS shall each constitute, a valid and binding obligation of HSUS, enforceable in accordance with its and their terms. Except as set forth on the HSUS's Schedule hereto, the execution, delivery, and performance of this Agreement by HSUS and the consummation of the transactions contemplated hereby and thereby do not and shall not (a) conflict with or result in any breach of any of the provisions of, (b) constitute a default under, result in a violation of, or cause the acceleration of any obligation under, (c) result in the creation of any lien, security interest, charge, or encumbrance upon any of the Assets, or (d) require any authorization, consent, approval, exemption, or other action by or notice to any court or other governmental body under the provisions of HSUS's certificate of incorporation or by-laws or any indenture, mortgage, lease, loan agreement, or other agreement or instrument to which HSUS is bound or affected, or any law, statute, rule, regulation, judgment, order, or decree to which HSUS is subject or by which any of the Assets is bound.

3.4 Financial Statements. HSUS has furnished Fund with copies of its Consolidated Statements of Financial Position at December 31, 2003; and Consolidated Statements of Activities and Changes in Net Assets, Consolidated Statement of Functional Expenses and Consolidated Statement of Cash Flows, each for the year ended December 31, 2003 (the "Financial Statements"). Each of the foregoing Financial Statements has been based upon the information contained in HSUS's books and records (which are accurate and complete in all material respects) and fairly presents the financial condition and results of operations of HSUS as of the times and for the periods referred to therein, and such financial statements contain proper accruals and adequate reserves and have been prepared in accordance with generally accepted accounting principles, consistently applied throughout the periods indicated, except as otherwise noted therein.

3.5 Absence of Undisclosed Liabilities. As of the Closing, HSUS shall have no material liabilities or obligations arising out of transactions entered into at or prior to the Closing, except (a) liabilities and obligations under agreements, contracts, leases, or commitments described on the HSUS's Schedule or under agreements, leases, contracts, and commitments which are not required pursuant to this Agreement to be disclosed thereon (but not liabilities for breaches thereof), (b) liabilities and obligations reflected on HSUS's Financial Statements, (c) liabilities and obligations which have arisen after the date of HSUS's Financial Statements in the ordinary course of HSUS's operations, and (d) liabilities and obligations otherwise expressly disclosed in this Agreement or the HSUS's Schedule.

3.6 No Material Adverse Changes. Since the date of the Financial Statements, there has been no material adverse change in the financial condition, operations, or employee relations of

HSUS.

3.7 Absence of Certain Developments. Except as set forth in the Schedule heretofore delivered to Fund, since the date of the Financial Statements, HSUS has not:

(a) borrowed any amount or incurred or become subject to any material liabilities, except current liabilities incurred in the ordinary course of operations and liabilities under contracts entered into in the ordinary course of operations;

(b) discharged or satisfied any material lien or encumbrance or paid any material liability, other than current liabilities paid in the ordinary course of operations;

(c) mortgaged, pledged, or subjected to any lien, charge, or any other encumbrance, any of its Assets, except liens, if any, for current property taxes not yet due and payable;

(d) suffered any extraordinary losses or waived any rights of material value, whether or not in the ordinary course of business or consistent with past practice;

(e) entered into any other material transaction other than in the ordinary course of operations; or

(f) suffered any material damage, destruction, or casualty loss to its Assets, whether or not covered by insurance.

3.8 Tax Matters.

(a) HSUS has duly filed all federal, state, and local tax information and tax returns (the "Returns") required to be filed by it (all such returns being accurate and complete in all material respects) and has duly paid or made provision for the payment of all taxes and other governmental charges which have been incurred or are shown to be due on said Returns.

(b) All monies required to be withheld from employees of HSUS for income taxes, social security, and unemployment insurance taxes have been withheld or collected and paid, when due, to the appropriate governmental authority, or if such payment is not yet due, an adequate reserve has been established.

3.9 Contracts and Commitments.

(a) Except as set forth on HSUS's Schedule or reflected in the financial statements, HSUS is not a party to any:

(i) agreement or indenture relating to the borrowing of money or to mortgaging, pledging, or otherwise placing a lien on any of its assets;

(ii) guarantee of any obligation for borrowed money or otherwise, other than endorsements made for collection in the ordinary course of business;

(iii) agreement or commitment with respect to the lending or investing of funds to or in other persons or entities;

(iv) lease or agreement under which it is lessee of or holds or operates any personal property owned by any other party for which the aggregate annual rental payments to any one person and its affiliates exceeds \$500,000;

(v) lease or agreement under which it is lessor of or permits any third party to hold or operate any property, real or personal, owned or controlled by it;

(vi) contract or group of related contracts with the same party for the purchase or sale of products or services under which the undelivered balance of such products and services has a selling price in excess of \$500,000;

(vii) contract which prohibits it from freely operating anywhere in the world;

(ix) other agreement material to it whether or not entered into in the ordinary course of business.

(b) Except as specifically disclosed in HSUS's Schedule, (i) to the best of HSUS's knowledge, no contract or commitment material to HSUS has been breached in any material respect or cancelled by the other party, (ii) HSUS has in all material respects performed all the obligations required to be performed by it to the date of this Agreement and is not in receipt of any claim of default under any material lease, contract, commitment, or other agreement to which it is a party; (iii) no event has occurred which with the passage of time or the giving of notice or both would result in a breach or default under any material lease, contract, instrument, or other agreement to which HSUS is a party; and (iv) HSUS is a party to no contract which materially adverse to its operations or financial condition.

(c) Fund has been supplied with a true and correct copy of all written contracts which are referred to on the HSUS's Schedule, together with all amendments, or other changes thereto.

3.10 Litigation; Proceedings. Except as set forth in HSUS's Schedule there are no actions, suits, proceedings, orders, or investigations pending or, to the best of HSUS's knowledge, threatened against HSUS at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign. No officer, director, employee, or agent of HSUS has been or is authorized to make or receive, and HSUS knows of no such person making or receiving, any bribe, kickback, or other illegal payment at any time.

Within the three years preceding the date hereof, HSUS has received an opinion or legal advice in writing to the effect that HSUS is materially exposed from a legal standpoint to any liability or disadvantage which may be material to its operations as previously or presently conducted.

3.11 Governmental Consent, etc. Except as set forth on HSUS's Schedule no permit, consent, approval or authorization of, or declaration to or filing with, any governmental or regulatory authority is required in connection with the execution delivery or performance of this Agreement by HSUS, or the consummation by HSUS of any of the transactions contemplated hereby and thereby.

3.12 Employees. Except as set forth in HSUS's Schedule, to the best of HSUS's knowledge, no key employee nor group of HSUS's employees has any plans to terminate employment with HSUS. Except as set forth in its Schedule, HSUS has complied in all material respects with all applicable laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining, and the payment of social security and other taxes. HSUS has no material labor relations problems, and there have been no union organization efforts by employees of HSUS.

3.13 Employee Benefit Plans.

(a) The Employee Benefits information heretofore delivered to Fund, contains a list and a true and correct copy, including all amendments thereto, of any employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which HSUS maintains, to which HSUS contributes, or under which any employee or former employee, officer or former officer, director or former director of HSUS is covered or has benefit rights and pursuant to which any liability of HSUS exists or is reasonably likely to occur, and each other arrangement, program, or plan pursuant to which any benefit is or shall be provided to an employee, former employee, or retired employee, whether formal or informal, including, without limitation, those providing any form of medical, health, and dental insurance, severance pay and benefits continuation, relocation assistance, vacation pay, tuition aid, and matching gifts for charitable contributions to educational or cultural institutions (collectively, the "Benefit Plans"). Except as set forth on the "Employee Benefits Schedules," HSUS neither maintains nor has entered into any Benefit Plan or other document, plan, or agreement which contains any change in control provisions which would cause an increase or acceleration of benefits or benefit entitlements to employees or former employees of HSUS or their respective beneficiaries, or other provisions, which would cause an increase in liability of HSUS or to Fund as a result of the transactions contemplated by this Agreement or an related action thereafter. To the extent such laws or regulations are applicable thereto, of such plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA that is intended to be a qualified plan under Section 401(a) of the Code has been amended to comply in all material respects with current law as required and each such plan either has obtained a favorable determination letter with respect to such amendment or the remedial amendment period for such amendment under Section 401(b) of the Code has not expired.

(b) Except as set forth on HSUS's Schedule, all accrued contributions and other payments to be made by HSUS or any ERISA Affiliate (as defined in Section 3.18(e)) to any Benefit

Plan through the date of the Financial Statements have been made or reserves adequate for such purposes as of the date of the Financial Statements have been set aside therefore and reflected on the Financial Statements. HSUS is not in material default in performing any of its contractual obligations under any of the Benefit Plans of any related trust agreement or insurance contract, and there are not material outstanding liabilities of any Benefit Plan other than liabilities for benefits to be paid to participants in such Benefit Plan.

(c) There is no pending litigation or, to the best knowledge of HSUS, overtly threatened litigation or pending claim (other than benefit claims made in the ordinary course) by or on behalf of or against any of the Benefit Plans (or with respect to the administration of any of the Benefit Plans) now or heretofore maintained by HSUS which allege violations of applicable state or federal law.

(d) To the best of HSUS's knowledge, each Benefit Plan is and has been in compliance in all material respects with, and each such Plan is and has been operated in accordance with the applicable laws, rules and regulations governing such Plan, including, without limitation, the rules and regulations promulgated by the Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC") and the IRS under ERISA, the Code or any other applicable law.

(e) Neither HSUS nor any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with HSUS would be deemed a "single employer" within the meaning of Section 4001 of ERISA, has incurred, nor to the best knowledge of HSUS is reasonably likely to incur, any liability under Title IV of ERISA in connection with any plan subject to the provisions of Title IV of ERISA now or heretofore maintained or contributed to by HSUS or any ERISA Affiliate. No condition exists that presents a material risk to HSUS or any ERISA Affiliate of incurring a liability under Title IV of ERISA with respect to Benefit Plans, other than liability for premiums due to the PBGC. The PBGC has not instituted proceedings to terminate any of the ERISA Plans and no condition known to HSUS exists that presents a material risk that such proceedings shall be instituted. All reporting and disclosure requirements of ERISA and the Code have been satisfied in all material respects with respect to each of the Benefit Plans. Neither HSUS nor any ERISA Affiliate is required to contribute to an employee benefit plan that is a "multiemployer plan" within the meaning of Section 3(37) of ERISA nor has been so required during the five-year period ending on the Closing Date.

(f) Neither HSUS nor any member of a "controlled group," as defined in Section 4971(e)(2)(B) of the Code, of which HSUS is a member has any liability on account of any accumulated funding deficiency (as defined in Section 412 of the Code) or on account of any failure to make contributions to or pay benefits under any such plan, nor is HSUS aware of any claim pending or threatened to be brought by any party regarding such matters. No prohibited transaction has occurred with respect to any Benefit Plan that would result, directly or indirectly, in the imposition of any excise tax under Section 4975 of the Code; nor has any reportable event under Section 4043 of ERISA occurred with respect to any Benefit Plan.

3.14 Insurance. The insurance information heretofore delivered to Fund lists and briefly

describes each material insurance policy maintained by HSUS with respect to its assets or operations. All of such insurance policies are in full force and effect, and HSUS is not and has never been in material default with respect to its obligations under any of such insurance policies. Such insurance coverage is customary for well insured entities engaged in similar operations.

3.15 Compliance with Laws; Permits; Certain Operations. HSUS and its officers, directors, agents, and employees have complied in all material respects with all applicable laws and regulations of foreign, federal, state, and local governments and all agencies thereof which affect their operations or to which HSUS may otherwise be subject, and no claims have been filed against HSUS alleging a violation of any such law or regulation, except as set forth on the HSUS's Schedule. HSUS holds all of the permits, licenses, certificates, and other authorizations of federal, state, and local governmental agencies required for the conduct of its operations.

3.16 Environmental Matters.

(a) Except as set forth on the HSUS's Schedule, HSUS has not received notice alleging in any manner that HSUS is, or might be potentially, responsible for any release of hazardous materials, or any costs arising under or in violation of environmental laws with respect to the Purchased Assets or its operations.

(b) None of the real estate owned, leased, or operated by HSUS is or has been listed on the United States environmental Protection Agency National Priorities List of Hazardous Waste Sites, or any other list, schedule, law, inventory, or record of hazardous or solid waste sites maintained by any federal, state, or local agency.

(c) No lien has been attached or filed against HSUS with respect to the Assets in favor of any governmental or private entity for (i) any liability or imposition of costs under or in violation of any applicable environmental law; or (ii) any release of hazardous materials.

3.17 Disclosure. Neither this Agreement nor any of the schedules, attachments, or exhibits hereto contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they were made, not misleading. There is no material fact which has not been disclosed in writing to Fund of which any officer, director, or key employee of HSUS is aware and which materially adversely affects or could reasonably be anticipated to materially and adversely affect the Business or the Purchased Assets.

3.18 Closing Date. All of the representations and warranties of HSUS in this Article 3 and elsewhere in this Agreement and all information delivered in any schedule, attachment, or exhibit hereto or in any certificate delivered to Fund are true and correct in all respects on the date of this Agreement and shall be true and correct in all respects on the Closing Date.

ARTICLE 4

COVENANTS AT OR PRIOR TO CLOSING

4.1 Affirmative Covenants. At or prior to the Closing, as the paragraphs below may call for, Fund shall:

(a) conduct its operations only in the usual and ordinary course of business in accordance with past custom and practice

(b) keep in full force and effect its corporate existence and all material rights, franchises, and intellectual property relating to or pertaining to its operations;

(c) use best efforts to retain its employees and preserve its present relationships, and continue to compensate its employees in accordance with past custom and practice;

(d) maintain Assets in customary repair, order and condition and in the event of any casualty, loss or damage to any of the Assets prior to Closing, transfer or assign HSUS at Closing the proceeds of any insurance recovery with respect thereto;

(e) maintain its books, accounts and records in accordance with past custom and practice as used in the preparation of the financial statements described in Section 2.4;

(f) use best efforts to obtain all consents and approvals necessary or desirable to consummate the transactions contemplated hereby and to cause the other conditions to HSUS's obligation to close to be satisfied;

(g) promptly inform HSUS in writing of any variances from the representations and warranties contained in Article 2 hereof;

(h) not terminate or otherwise interfere with Fund insurance policies and coverages whose expiration dates occur after Closing, and take such steps as are possible to obtain the longest extended reporting period, discovery period, or similar benefit available under that policy.

(i) take all appropriate corporate action to: (A) elect, effective as of 12:01 A.M. Eastern Standard Time on the day after Closing, as voting members of the Fund, HSUS designees – who shall be identified, by their official positions within the HSUS, in writing to the Fund at least twenty (20) days prior to Closing; (B) elect, effective as of 12:01 A.M. Eastern Standard Time on the day after Closing, as members of the Fund's board of directors, HSUS designees whose names shall be delivered in writing to the Fund at least twenty (20) days prior to Closing; and (C) if not prohibited by New York State law, amend §2.01 of the Fund's By-Laws to provide, effective as of the 2005 annual meeting of the Fund, that the

voting members of the Fund shall consist of the persons designated by a vote of the HSUS's board of directors;

(j) prepare and have executed letters of resignation for all current voting members of the Fund and all current members of the Fund's board of directors, which resignations shall take effect at midnight of the day of Closing;

(k) have delivered to HSUS via facsimile (to the attention of the Chief Financial Officer, G. Thomas Waite, III at fax number 301-548-7726) not less than fifteen (15) days prior to Closing, the following documents:

(A) Smith Affiliated Capital Corporation's month-end (i.e., November 30, 2004) "Portfolio Valuations" for Account Nos. 137-003697 (Black Beauty), 153-003788 (General Endowment), and 158 (Gift Annuity Fund) with a copy faxed to "Chuck" Violand of Grant Thornton at (703) 848-9583;

(B) Interim financial statements for 2004 current to October 31, 2004, or later, consisting of a balance sheet, an income and expense statement, and a budget-to-expense statement; and

(C) A list current to fifteen (15) days prior to Closing, itemizing any debt, bill accrued, or account payable in excess of \$10,000, that is not reflected in the interim financial statements referenced in subparagraph (k)(B) above;

(l) repay any indebtedness for borrowed money to Deutsche Bank or others, and have released any pledge or other security interest that Deutsche Bank may have with respect to any Fund assets.

(m) upon the HSUS's request, file notice(s) of claim(s) with the appropriate insurance carrier(s) of the Fund in the matter of *Weinhart v. Traisi*, Case No. RIC410746 (Cal. Super. Ct., Riverside County) and with respect to any other possible liability or claim that may arise prior to Closing with respect to which the Fund or the HSUS determines that notice(s) of claim(s) should be filed.

4.2 Negative Covenants. Prior to Closing, without the prior written consent of HSUS, Fund shall not:

(a) take any written action that would require disclosure under Section 4.1 of this Agreement; and

(b) take or omit to take any action which would reasonably be anticipated to have a material and adverse effect upon the Assets.

ARTICLE 5

CONDITIONS TO HSUS'S OBLIGATION TO CLOSE

5.1 Conditions to HSUS's Obligation. The obligation of HSUS to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions on or before the Closing Date:

(a) the representations and warranties set forth in Article 2 hereof shall be true and correct at and as of the Closing as though then made and as though the Closing Date was substituted for the date of the Agreement, without taking into account any disclosures made by Fund to HSUS pursuant to Section 2.17 hereof;

(b) Fund shall have performed all of the covenants and agreements required to be performed by it under this Agreement prior to the Closing;

(c) There shall have been no material adverse change in the operations, financial condition, or assets of Fund taken as a whole, and there shall have been no material casualty loss or damage to the Assets, whether or not covered by insurance (for purposes of this Section 5.1(c): "material adverse change" to financial condition shall mean a diminution of \$1.0 million or more relative to the Fund's total net assets stated in its Latest Balance Sheet, without charging against the \$1.0 million the anticipated costs of capital improvements to the Fund's Wildlife Rehabilitation Center at Ramona, California (c. \$600,000.) and the anticipated costs of the Fund's media advertising related to its anti-fur campaign in late 2004 (c. \$600,000.); and "material casualty loss or damage" shall mean loss or damage of \$500,000. or more);

(d) All governmental filings, authorizations, and approvals that are required for the consummation of the transactions contemplated hereby shall have been duly made and obtained on terms and conditions satisfactory to HSUS;

(e) All consents by third parties that are required for the transfer of the Assets to HSUS as contemplated hereby, that are required for the consummation of the transactions contemplated hereby, that are required to prevent a breach of, or a default under or a termination or modification, of any instrument, contract license, lease or other agreement to which Fund is a party or to which any of the Assets is subject, and releases of all liens, security interests, and claims of others on the Assets shall have been obtained on terms and conditions satisfactory to HSUS;

(f) No action or proceeding before any court or governmental body shall be pending or threatened which, in the judgment of HSUS, made in good faith and upon the advice of counsel, makes it inadvisable or undesirable to consummate the transactions

contemplated hereby, declare unlawful the transactions contemplated by this Agreement, or cause such transactions to be rescinded;

(g) All proceedings to be taken by Fund in connection with the consummation of the Closing and the other transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby reasonably requested by HSUS shall be satisfactory in form and substance to HSUS and its counsel.

ARTICLE 6

CONDITIONS TO FUND'S OBLIGATION TO CLOSE

6.1 The obligation of Fund to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions on or before the Closing Date:

(a) the representatives and warranties set forth in Article 3 hereof shall be true and correct in all material respects at and as of the Closing as though then made and as though the Closing Date was substituted for the date of this Agreement throughout such representations and warranties;

(b) HSUS shall have performed in all material respects all the covenants and agreements required to be performed by it under this Agreement prior to the Closing;

(c) all proceedings to be taken by HSUS in connection with the consummation of the Closing and the other transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby reasonably requested by Fund shall be reasonably satisfactory in form and substance to Fund and its counsel;

(d) HSUS shall have offered employment to qualified employees of Fund subject to the terms and conditions and in accordance with the processes and procedures described in Section 1.5 (b), above;

(e) Fund shall have obtained the approval of the Supreme Court of the State of New York under New York's Not-for-Profit Corporation Law §§ 510-511.

Any condition specified in this Section 6.1 may be waived by Fund; provided that no such waiver shall be effective against Fund unless it is set forth in a writing executed by Fund that otherwise conforms to Section 11.1.

ARTICLE 7

CLOSING TRANSACTIONS

7.1 The Closing. Subject to the conditions contained in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Vedder Price, Edward J. Walsh, Jr., Esq. at 805 Third Avenue in New York, New York at noon local time on December 31, 2004, or at such other place or on such other date as may be mutually agreeable to the parties, — and confirmed in writing — but in no event later than December 31, 2004. The date and time of the Closing are referred to herein as the "Closing Date."

7.2 Action to Be Taken at the Closing. The sale, conveyance, assignment, and delivery of the Assets pursuant to the terms of this Agreement shall take place at the Closing along with the transfer of control and governance of the Fund to the HSUS, and the delivery of all documents in accordance with Section 7.3, below.

7.3 Closing Documents.

(a) Fund shall deliver to HSUS prior to or at the Closing, as may be appropriate, the following documents and items, duly executed by Fund where necessary to made them effective:

(i) copies of all necessary third party and governmental consents, approvals, releases, and filings required in order to effect the transactions contemplated by this Agreement, including court approval under New York's Not-for-Profit Corporation Law, §§510-511;

(ii) such recordable deeds, bills of sale, and instruments of transfer, assignment, conveyance and delivery, as are required in order to transfer to HSUS title to and control of the Assets;

(iii) Any and all signature cards, assignments, board resolutions, and other instruments effective to transfer ownership and control, as of the Closing Date, to The HSUS of the Fund's liquid assets, including but not limited to those assets described in,

1. Smith Affiliated Capital Account No. 153-003788 (the Fund's "General Endowment" account);

2. Smith Affiliated Capital Account No. 137-003697 (the Board-Designated and-Restricted Account for the benefit of the Black Beauty Ranch); and

3. Smith Affiliated Capital Account No. 158 (the Fund's Gift

Annuity Fund).

(iv) certified copy of the resolution(s) of the Fund's Board of Directors and of the voting members of Fund (as may be necessary) approving or ratifying this Agreement; and certified copies of the minutes recording the actions described in Section 4.1(i), above;

(v) the lists referenced in Section 1.1(f), which the Fund shall deliver in the electronic and paper formats whose technical specifications HSUS shall provide to the Fund at least twenty (20) days prior to Closing;

(vi) the letters of resignation called for in Section 4.1(j), above;

(vii) one or more check(s) or wire transfers payable to "The Humane Society of the United States" effective to transfer to the HSUS all cash except for the \$250,000. to be retained by the Fund under Section 1.2(a), above; and

(viii) such other documents or instruments as HSUS may reasonably request to effect the transactions contemplated hereby.

All of the foregoing documents in this Section 7.3(a) shall be satisfactory in form and substance to HSUS and shall be dated or made effective as of the Closing Date.

(b) HSUS shall deliver to Fund at the Closing the following items, duly executed by HSUS where necessary to make them effective:

(i) an assumption agreement, and such other instruments of assumption as are necessary, providing for the assumption by HSUS of Fund's liabilities, which agreements and instruments of assumption shall be consistent with this Agreement;

(ii) certified copies of the resolutions duly adopted by HSUS's board of directors authorizing the execution, delivery and performance of this Agreement and each of the other agreements contemplated hereby, and the consummation of all other transactions contemplated by this Agreement;

(iii) copies of all necessary third party and governmental consents, approvals, releases and filings required in order for HSUS to effect the transactions contemplated by this Agreement; and

(iv) such instruments of assumption and other documents or instruments as Fund reasonably may request to effect the transactions contemplated hereby.

All of the foregoing documents in this Section 7.3(b) shall be reasonably satisfactory in form and substance to Fund and shall be dated or made effective as of the Closing Date.

7.4 Nonassignable Contracts. To the extent that the assignment hereunder by Fund to HSUS of any contract, commitment, license, lease or other agreement of Fund (the "Contracts") is not permitted or is not permitted without the consent of any other party to the Contract, this Agreement shall not be deemed to constitute an assignment of any such Contract if such consent is not given or if such assignment otherwise would constitute a breach of, or cause a loss of contractual benefits under, any such Contract, and HSUS shall assume no obligations or liabilities thereunder. Fund shall use its best efforts to advise HSUS promptly in writing with respect to any Contract which it knows or has reason to believe shall not receive any required consent. If any such consent is not obtained or if such assignment is not permitted irrespective of consent and the Closing hereunder is consummated, Fund shall cooperate with HSUS in any reasonable arrangement designed to provide HSUS with the rights and benefits, subject to the obligations, under the Contract, including enforcement for the benefit of HSUS of any and all rights of Fund against any other person arising out breach or cancellation by such other person and if requested by HSUS, acting as an agent on behalf of HSUS or as HSUS shall otherwise reasonably require, in each case at HSUS's cost.

ARTICLE 8

INDEMNIFICATION

8.1 Indemnification by HSUS. HSUS agrees to indemnify to the fullest extent possible all present and former officers, directors, employees, and agents of Fund (individually an "Indemnified Party", collectively, "Indemnified Parties") and hold them harmless against any loss, liability, damage, expense or cost, including reasonable attorneys fees ("Losses") which any Indemnified Party may suffer, sustain or become subject to as a result of (i) any misrepresentation in any of the representations or breaches of any of the warranties of HSUS contained in this Agreement or (ii) any breach of, or failure to perform any agreement of the HSUS contained in this Agreement, and (iii) any claim or liability of any kind whatsoever against the Fund or any Indemnified Party to which the Indemnified Party would not have been subject, but for the fact that the Indemnified Party was employed by or was an officer, agent, or director of Fund, provided that the claim or liability does not arise from, or is not a result of, fraud, dishonesty, or knowingly wrongful acts by the Indemnified Party and, provided further that, the claim or liability does not arise from, or is not a result of, any fraudulent, dishonest, or knowingly wrongful misrepresentation or breaches of any of the Fund's representations and warranties in this Agreement by the Indemnified Party.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to the Closing,

(a) by mutual consent of HSUS and Fund;

(b) by either HSUS or Fund if there has been a material misrepresentation or breach of warranty or breach of covenant on the part of the other party in the representations and warranties or covenants set forth in this Agreement and any such misrepresentation or breach, if capable of cure, is not cured within 15 days after written notice thereof to such other party, or if events have occurred which have made it impossible to satisfy a condition precedent to the terminating party's obligations to consummate the transactions contemplated hereby (other than as a result of any willful act or omission by the terminating party); or

(c) by either HSUS or Fund if the transactions contemplated hereby have not been consummated by December 31, 2004, or by such later date as the parties may agree; provided that neither HSUS nor Fund shall be entitled to terminate this Agreement pursuant to this subsection (c) if HSUS's or Fund's willful breach of this Agreement, respectively, has prevented the consummation of the transactions contemplated hereby.

(d) by either HSUS or Fund if, at any time prior to Closing, Wayne Pacelle is for any reason, not ready, willing, and able, to continue as President & CEO of The HSUS.

(e) by The HSUS if, for any reason, prior to Closing, the Fund's total net assets as stated in its Latest Balance Sheet are diminished by \$1.0 million or more, without charging against the \$1.0 million the anticipated costs of capital improvements to the Fund's Wildlife Rehabilitation Center at Ramona, California (c. \$600,000.) and the anticipated costs of the Fund's media advertising related to its anti-fur campaign in late 2004 (c. \$600,000).

9.2 Effect of Termination. In the event of termination of this Agreement as provided above, this Agreement shall forthwith become void, and there shall be no liability on the part of Fund or HSUS, except for willful breaches of this Agreement prior to the time of such termination.

9.3 Effect of Closing. Fund and HSUS shall be deemed to have waived their respective rights to terminate this Agreement upon the completion of the Closing. No such waiver shall constitute a waiver of any other rights arising from the non-fulfillment of any of condition precedent set forth in Article 5 or 6 unless such waiver is made in writing.

ARTICLE 10

ADDITIONAL AGREEMENTS

10.1 Survival. Unless otherwise expressly specified, all provisions of this Agreement will survive Closing and consummation of the transactions contemplated herein. In particular the representations, warranties, covenants and agreements of each party set forth in this Agreement or in any writing delivered to each party to the other in connection with this Agreement shall survive until

the third anniversary of the Closing — or until the expiration of the applicable statute of limitations for any underlying cause of action, whichever is later — and the consummation of the transactions contemplated hereby and shall not be affected by any examination made for or on behalf of either party, or the knowledge of any of each party's officers, directors, employees or agents. HSUS agrees not to assert any right or claim based on this Agreement against any present or former officer, director or employee of Fund, unless the right or claim arises from, or is the result of, fraud, dishonesty, or knowingly wrongful acts, or from any fraudulent, dishonest, or knowingly wrongful misrepresentation or breach of any of the Fund's representations and warranties in this Agreement by the officer, director, or employee against whom the claim is asserted.

10.2 Mutual Assistance. Subsequent to the Closing, Fund on the one hand and HSUS on the other, at HSUS's cost, shall assist each other (including making records available) in the preparation of their respective tax or information returns or in connection with any audits or litigation that may ensue as a result of the filing thereof, to the extent that such assistance is reasonably requested.

10.3 Press Release and Announcements. No press release related to this Agreement or the transactions contemplated hereby, or other announcements to the employees, customers or suppliers of Fund shall be issued on or after the date of execution of this Agreement without the joint approval of HSUS and Fund, given through their respective presidents.

10.4 Expenses. Each party shall pay all of its expenses, including legal fees and related expenses, in connection with the negotiation and preparation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement. HSUS shall pay the cost of recording all documents necessary to place record title in the HSUS. HSUS shall pay any transfer fees, taxes, or impositions on the transfer of the Assets to it.

10.5 Further Transfers. At and after Closing, Fund shall execute and deliver such further instruments of conveyance and transfer and take such additional action as HSUS may reasonably request to effect, consummate, confirm, or evidence the transfer to HSUS of the Assets, and to otherwise execute the terms of this Agreement. Fund shall execute such documents as may be necessary to assist HSUS in preserving or perfecting its rights in the Assets. The preparation, filing, or delivery of any such documents will be at HSUS's sole cost and expense. With respect to Fund's real property interests that are to be transferred to HSUS under Section 1.1, above, and which have or may have encumbrances or defects on the title, the Fund agrees, upon the HSUS's written request, to delay — until after Closing if need be — transferring title and ownership so as to maintain Fund's standing as an insured under Fund's title insurance policies; file appropriate notices of claim under applicable title insurance policies; and otherwise cooperate with HSUS, before and after Closing, at no cost or expense to Fund, in clearing encumbrances and defects from real property titles.

10.6 Remittances. All donations, bequests, distributions from trusts, refunds and the like, received by Fund at any time after the Closing Date shall be immediately turned over to HSUS by Fund. Fund shall cooperate with HSUS, and take such actions as HSUS reasonably requests, to cause remittance to be made directly sent to HSUS.

10.7 Best Efforts to Consummate Closing Transactions. On the terms and subject to the conditions contained in this Agreement, Fund and HSUS each agrees to use its best efforts to take, or to cause to be taken, all reasonable actions, and to do, or to cause to be done, all reasonable things, necessary, proper, or advisable under applicable laws and regulations to consummate the Closing, including the satisfaction of all conditions thereto set forth herein, and to cooperate with each other in doing so.

ARTICLE 11

MISCELLANEOUS

11.1 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided that any such amendment or waiver shall be binding on Fund only if such amendment or waiver is set forth in a writing executed by Fund and that any such amendment or waiver shall be binding upon HSUS only if such amendment or waiver is set forth in a writing executed by HSUS. Moreover, any such amendment or waiver must also be expressly identified on the writing(s) as an amendment or waiver pertaining to this Agreement. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend, or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

11.2 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered or mailed by first class mail, return receipt requested, or when delivered by regulated commercial courier such as Federal Express, having provision for proof of receipt. Notices, demands and communications to Fund or HSUS shall, unless another address is specified in writing in accordance herewith, be sent to the address indicated below:

Notices to Fund

Marian Probst, Board Chair
The Fund for Animals
200 West 57th Street
New York, NY 10019

With a copy to:

Edward J. Walsh, Jr., Esq.
Vedder, Price, Kaufman & Kammholz, P.C.
805 Third Avenue
New York, NY 10022

Notices to HSUS

Wayne Pacelle, President & CEO
The HSUS
2100 L Street, N.W.
Washington, D.C. 20037

With copy to:

Roger A. Kindler, General Counsel
The HSUS
Suite 400
2100 L Street, N.W.
Washington, D.C. 20037

11.3 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but neither this Agreement nor any of the rights, interests, or obligations hereunder of either party shall be assignable without the prior written consent of the other party.

11.4 Severability. If any provisions of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

11.5 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any person.

11.6 Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

11.7 Complete Agreement. This document and the Schedules referred to herein contain the complete agreement between the parties and supersede any prior understandings, negotiations, agreements, or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

11.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

11.9 Governing Law. The internal law, not the law of conflicts, of the State of New York

shall govern all questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

11.10 Effective Date. The effective date of this Agreement shall be the date when the last of the following acts of consent and authorization is completed: each party's representative signs the Agreement, and each party's board of directors (or in the case of the Fund, the voting members and the board) approves the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

The Fund for Animals, Inc. (Fund)

By: Michael Markarian
Michael Markarian

Its: President

Date: November 22, 2004

The Humane Society of the United States (HSUS)

By: Wayne Pacelle
Wayne Pacelle

Its: President & Chief Executive Officer

Date: 11/22/04

Schedules to Agreement between the Fund and HSUS

Fund's Schedules

Schedule § 2.3 (Authorizations)

The Fund's Lease for office space at 200 West 57th Street, New York, NY would be breached by an assignment unless Landlord's consent is obtained.

Schedule § 2.5 (Undisclosed Liabilities)

There are incorporated herein by reference liabilities which might arise from litigation and claims described in sections 2.10, and 2.12 of this Schedule.

Schedule § 2.7 (Certain Developments)

There are incorporated herein by reference liabilities which might arise from litigation and claims described in section 2.10 of this Schedule.

Consistent with § 4.1(l) of this Agreement prior to Closing The Fund expects to repay \$2,000,000 to Deutsche Bank which will satisfy the security interest in the bank's favor in the Fund's portfolio of securities in the custody account maintained by the Fund with Deutsche Bank.

The Fund has and may from time to time provide non-exclusive royalty free licenses to use its name, logo and other intellectual property to web site operators like Charities USA, Greater Good.com and I Give.com, which solicit charitable contributions on line and to BB&T Bank and Message!Products in connection with "affinity credit/charge card programs and sale of printed material (e.g. checks, return address stickers, etc.)

Schedule §2.9 (Contracts and Commitments)

The Fund has issued a promissory note to Deutsche Bank Trust Company Americas ("Deutsche Bank") dated October 16, 2003 and borrowed pursuant thereto two million dollars. The borrowing is secured by a Security Agreement and pledge of securities in the Fund's securities under custody of the Bank.

Fund leases property at 200 West 57th Street, New York, NY for which annual rental exceeds \$50,000.

The Fund has a contract dated January 2, 2004 with LW Robbins Associates Inc. for its services in connection with direct mail solicitation of contributions and memberships.

The Fund has agreements with Smith Affiliated Capital Corp. a registered investment advisor pursuant to which Smith Affiliated Capital Corp. manages the Fund's general endowment, Black Beauty Ranch and Planned Giving (annuities) accounts.

The Fund has an agreement with PG CALC, an affiliate of State Street Bank pursuant to which it provides administrative services for the Fund's annuity contracts.

The Fund has a custody agreement with Deutsche Bank pursuant to which it holds securities owned by the Fund in custody.

The Fund writes and there are in effect annuity contracts under its Planned Giving Program.

The Fund leases office space at Woodbridge Ct. and at Fort Mason Center, San Francisco, CA under leases of more than thirty days.

A memorandum of Understanding between National Park Service, BLM and the Fund expiring September 30, 2005, pursuant to which the Fund agrees to accept 100 rescued burros a year.

Agreement with Carol/Trevelynn Strategy Group for web site design and hosting dated 3/27/00.

Agreement with Charities USA dated July 2002 for on line solicitation.

Agreement with BB&T Bank relating to affinity charge/credit cards.

Agreement with Payment Solutions Inc. dated 10/01/00 for electronic transfer of monthly donations.

Schedule §2.10 (Litigation)

There are two actions pending against the Fund (or its employee Charles Traci) both in the Superior Court for the State of California captioned:

Tiger Rescue v. The State of California, et al.

Weinhardt v. Traci, et al.

The Fund has intervened as defendant in a number of lawsuits contesting the validity or enforcement of animal welfare related laws, rules or regulations. These suits do not present exposure for damages, but rather involve declaratory or equitable relief.

Schedule §2.11 (Governmental Consent)

Approval of the Supreme Court of the State of New York with notice to the Attorney General.

Schedule §2.12 (Employees)

In the past the Fund engaged the services of two "contractors" at its Black Beauty Ranch who might by virtue of their work assignments and hours be considered to be employees. The Fund understands that some time ago one of the contractors suggested that he should have received premium pay for overtime. That person, for reasons unrelated to his wage and hour claim no longer does work for the Fund. In any event, the Fund believes that the Agricultural Exemption to FLSA would exempt it from any liability for premium pay to this person even if he were determined to be an employee.

The Fund has engaged the services of "undocumented aliens" from time to time.

HSUS - FFA Acquisition Agreement

HSUS SchedulesSchedule 3.1 (Jurisdictions in which The HSUS is currently registered and authorized to do business as a foreign corporation.)

<u>Jurisdiction</u>	<u>Qualif. Date</u>	<u>ID No.</u>
Arkansas	06/18/99	100172311
California	03/01/02	2379506
Delaware	11/22/54	4481810
District of Columbia	08/12/63	630754-fnp
Florida	11/01/04	F04000006290
Maryland	06/10/92	f03456332
Massachusetts	03/30/92	630225390
Michigan	09/09/82	902238
Montana	08/16/93	f024344
New York	06/22/65	
North Carolina	04/07/98	455641
North Dakota	03/29/96	10851500
Ohio	09/20/79	542106
Oklahoma	07/25/95	4300593498
Pennsylvania	06/27/57	167467
Texas	06/16/97	11575807
Vermont	08/04/93	n-08149-0

Schedule 3.2 (Affiliates).

The Humane Society of the United States - Virginia Branch
The Humane Society of the United States - California Branch
The Humane Society of the United States - Connecticut Branch
The Humane Society of the United States - New Jersey Branch
National Association for Humane and Environmental Education
Center for the Respect of Life and Environment
EarthVoice
Humane Society International
Humane Society International Australian Office, Inc.
The Humane Society of the United States Wildlife Land Trust
Humane Society International for the Protection and Conservation of Animals
HSUS Fund for Animals
Meadowcreek, Inc.
Asociacion Humanitaria de Costa Rica
The Humane Society Hong Kong Limited
Humane Society International - United Kingdom
Humane Society International - France
Humane Society International - Germany
The National Humane Education Center
EarthKind USA
Animal Kind
The Ark Trust, Inc

Schedule 3.3 (Authorization).

As noted below, the text of the Agreement as executed, (or in executable form) must be approved by The HSUS Board of Directors for the Agreement to be a binding corporate obligation. The HSUS officers' authority is expressly so limited with respect to this transaction.

Schedule 3.9(a)(iii) (Loans to Entities).

The HSUS routinely advances funds or otherwise financially supports its controlled affiliated corporations, which is reflected as program or other categories of expenses in The HSUS's Financial Statements. In addition, The HSUS may loan its affiliated § 501(c)(4) organization up to \$250,000. in 2004.

Schedule 3.9(a)(vii) (Long-term Contracts, etc.).

As of late September, 2004, The HSUS was a party to the following such contracts.

First, a personal services contract at \$200,000. per year that has about 2½ years remaining to its term; second, a publications production contract (services and material) the direct costs of which are about \$2.0 million per year and which has about 4 ¾ years before expiration; third, there is a "tech contract" for website management that has twenty-one months left to run. The monthly cost of this third contract to The HSUS ranges from c.\$8,500. to c.\$13,500. depending upon the "service modules" or website features The HSUS chooses to employ.

As a fourth category, the premises of six of The HSUS's Regional Offices are leased for \$2-3,000. per month in rent, each, on a year-to-year or longer basis.

Schedule 3.9(b). [N/A]

Schedule 3.10 (Litigation).

In June 2004, The HSUS received a one-sentence "Writ of Summons - Civil Action" originating in the Court of Common Pleas, Lancaster County, Pennsylvania, notifying the Society that it had been named as co-defendant in Stoltzfus d/b/a Puppy Love Kennels vs. Humane League of Lancaster Cy. et al. (CI-04-05875).

Plaintiffs have not filed any further pleadings or otherwise pursued the litigation. The HSUS has hired local counsel in Philadelphia and has notified its liability insurance carrier.

(In addition, HSUS is routinely involved in litigation involving estates and testamentary proceedings, in its capacity as a named legatee in a will that is being contested, or as some other kind of interested party. HSUS is usually involved as plaintiff, co-plaintiff, or intervenor in animal protection litigation, which hitherto has not resulted in counterclaims or other exposure for damages. The defendant is typically a government agency.)

Schedules 3.11, 3.12, 3.13, and 3.14. [N/A]

Schedule 3.15 Compliance with Laws; Permits, etc.

(See Schedule 3.1.)

Schedule 3.16 Environmental Matters. [N/A]

[end of HSUS's Schedules]

EXHIBIT B

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF COLUMBIA

3 AMERICAN SOCIETY FOR THE
4 PREVENTION OF CRUELTY TO
ANIMALS, ET AL

CIVIL ACTION NO. 03-2006

5 WASHINGTON, D.C.

6 VERSUS

TUESDAY, MARCH 10, 2009

7 2:40 P.M.

8 FELD ENTERTAINMENT, INC.

DAY (18)

9 **TRANSCRIPT OF BENCH TRIAL - AFTERNOON SESSION**

10 **BEFORE THE HONORABLE EMMET SULLIVAN**

11 UNITED STATES DISTRICT COURT JUDGE

12 A P P E A R A N C E S:

13 FOR THE PLAINTIFF,

KATHERINE A. MEYER, ESQ.
TANYA SANERIB, ESQ.
HOWARD CRYSTAL, ESQ.
DELCIANNA WINDERS, ESQ.
Meyer, Glitzenstein &
Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20009
202-364-4092

19 FOR THE DEFENDANT,

LISA JOINER, ESQ.
KARA PETTEWAY, ESQ.
JOHN SIMPSON, ESQ.
MICHELLE PARDO, ESQ.
LANCE SHEA, ESQ.
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue
Washington, DC 20004
202-662-4504

1 A. That's correct.

2 Q. Could we look at Defendant's Exhibit 68, which has
3 already been admitted into evidence. Do you recognize this
4 document, Mr. Markarian?

5 A. Yes, I do.

6 Q. And this is the acquisition agreement that was entered
7 into by FFA and HSUS; is it not?

8 A. Yes.

9 Q. As part of this asset acquisition agreement, HSUS
10 acquired assets from the Fund for Animals; did it not?

11 A. That's correct.

12 Q. And if we look at Section 1.1, which is titled
13 "Acquisition of assets" and I'm paraphrasing, but this
14 paragraph indicates that the Humane Society of the United
15 States purchased, acquired, and accepted from the Fund all
16 assets with the exclusion of assets that were identified in a
17 different section, Section 1.2, correct?

18 A. That's right.

19 Q. And if we could go to Section 1.2. And this section
20 identifies the excluded assets, right?

21 A. Yes. That appears to be right.

22 Q. And the excluded assets are in letters "A" through "G";
23 cash in the amount of \$250,000, correct?

24 A. Yes.

25 Q. Books and records relating to the incorporation, correct?

1 A. Yes.

2 Q. And, then, letter "C", records relating to certification
3 of financial statements, correct?

4 A. Yes.

5 Q. Letter "E" is personal property of officers of the Fund,
6 correct?

7 A. That's right.

8 Q. "F" is the right to receive mail and other
9 communications, correct?

10 A. That's true.

11 Q. And letter "G" is certain real property, including the
12 Black Beauty Ranch?

13 A. That's correct.

14 Q. And pursuant to this agreement, the Humane Society also
15 assumed most of FFA's liabilities; did it not?

16 A. I believe that's true.

17 Q. Let's look at Section 1.3 on Page 3 of this document.
18 It's at the bottom of the page, and this is language regarding
19 the assumption of liabilities; is it not?

20 A. That's correct.

21 Q. Mr. Markarian, who pays your salary?

22 A. The Humane Society of the United States.

23 Q. And on average, how many hours do you spend working on
24 Fund for Animals matters?

25 A. It varies; maybe an hour a week, more this week.

1 Q. And you submit that number would be accurate, correct?

2 A. Yes, I do.

3 Q. Meyer, Glitzenstein & Crystal would actually provide the
4 money to Mr. Rider; isn't that right?

5 A. I believe they reimbursed Mr. Rider for his travel and
6 other expenses related to the media and educational campaign.

7 Q. But the money flowed from Meyer, Glitzenstein & Crystal
8 on Mr. Rider?

9 A. That's right.

10 Q. And then after MGC -- that's an abbreviation for Meyer,
11 Glitzenstein & Crystal -- after MGC provided the money to Mr.
12 Rider, the funds would then be invoiced on legal bills to the
13 Fund For Animals, correct?

14 A. That's correct, yes.

15 Q. And FFA paid those amounts, did it not?

16 A. Yes, it did.

17 Q. And the invoices that the Fund For Animals received were
18 dated between June of 2001 and April of 2003, correct?

19 A. The time frame sounds about right. I'm not sure about
20 the exact months.

21 Q. FFA was aware that ASPCA, American Society for the
22 Prevention of Cruelty to Animals and AWI, the Animal Welfare
23 Institute, were also receiving invoices for MGC for amounts
24 provided to Mr. Rider, correct?

25 A. Yes, that's right.

1 our objection is that discussing whether and when there was
2 communications between the plaintiffs goes to media and
3 legislative --

4 THE COURT: Yeah. I've already ruled on that. Let's
5 move on. I've already ruled on that.

6 MS. PETTEWAY: Could we look at Defendant's Exhibit 64,
7 which is already in evidence. Mr. Markarian, do you
8 recognize this document?

9 A. Yes, I do.

10 Q. And this document memorializes the payments that were
11 provided to Mr. Rider in July of 2004; does it not?

12 A. Yes.

13 Q. And if I read from this document the second check for
14 \$500 to Tom Rider is because we were supposed to send \$500 to
15 ASPCA -- excuse me -- and the ASPCA was supposed to send \$500
16 and turns out the "A" cannot send \$500 until next week, which
17 is too late. Did I read that correctly?

18 A. Yes, you did.

19 Q. And the "A" refers to the ASPCA; does it not?

20 A. That's right.

21 Q. Since 2005, FFA has made payments to the Wildlife
22 Advocacy Project; has it not?

23 A. That's correct.

24 Q. And, in fact, it's made six payments totaling \$11,500.

25 A. I don't remember the exact amounts, but that sounds

1 approximately right to me.

2 Q. And you moved FFA's payments to Wildlife Advocacy
3 Project, correct?

4 A. That's right.

5 Q. And FFA's payments to -- I'll refer to the Wildlife
6 Advocacy Project as "WAP" -- FFA's payments to WAP were drawn
7 on HSUS bank accounts; were they not?

8 A. Those donations were processed by the HSUS accounting
9 department but they were Fund For Animals expenditures.

10 Q. And they were drawn on HSUS bank accounts because the
11 Fund For Animals now relies on the administrative function of
12 HSUS, correct?

13 A. The Fund For Animals as an affiliate of HSUS does rely on
14 the administrative functions of HSUS so that was the mechanism
15 for processing the Fund For Animals' checks.

16 Q. Now, FFA stated under oath in its answer to interrogatory
17 Number 21 -- excuse me -- that its understanding was that WAP
18 could use FFA's grant money, however it chose, in conjunction
19 with its advocacy and public education work concerning
20 elephants in captivity, did it not?

21 A. Yes.

22 Q. And, Mr. Markarian, you testified under oath at an
23 evidentiary hearing in this case that FFA's grants to WAP were
24 not to be used exclusively for Mr. Rider, correct?

25 A. I don't remember my testimony exactly.

1 about the funding that was provided to or for Mr. Tom Rider?

2 A. No, there wasn't.

3 Q. You were asked a few questions about the Black Beauty
4 Ranch. What is the Black Beauty Ranch?

5 A. The Black Beauty Ranch is an animal Sanctuary in east
6 Texas. It's about 1,300 acres in size and is home to many
7 animals who have been rescued from abusive situations or have
8 been abandoned.

9 Q. And why is Babe at -- we talked about Babe earlier today;
10 why is Babe at the Black Beauty Ranch?

11 A. Babe came to Black Beauty Ranch in 1996, I believe, and
12 she had been in a circus for 10 years; two of her legs were
13 badly injured, and the circus apparently did not want her any
14 longer. She was not a very good performer with injured legs,
15 so they were willing to bring her to Black Beauty Ranch and
16 she has been there since that time.

17 Q. Does she have a better life at Black Beauty Ranch than
18 she had in the circus?

19 A. She has a much better life in our view; she has
20 veterinary care. She has exercise. She has a good diet. She
21 has enrichment. She is not forced to perform any tricks or do
22 anything that she doesn't want to do.

23 Q. Does Babe ever spend her days on chains?

24 A. No.

25 Q. And is a bull hook ever used on Babe?

EXHIBIT C

Michael Markarian

Washington, D.C.

June 22, 2005

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 Case No. 03-2006 (EGS)

4

5

6 - - - - - X

7 AMERICAN SOCIETY FOR THE PREVENTION OF)

8 CRUELTY TO ANIMALS, et al.,)

9 Plaintiffs,)

10 v.)

11 RINGLING BROS. AND BARNUM & BAILEY)

12 CIRCUS, et al.,)

13 Defendants.)

14 - - - - - X

15 Washington, D.C.

16 June 22, 2005

ORIGINAL

17

18

19 Deposition of MICHAEL MARKARIAN, a witness

20 herein, called for examination by counsel for

21 defendant, taken at the offices of COVINGTON &

22 BURLING, 1201 Pennsylvania Avenue, Suite 1100, on the

23 22nd day of June, 2005, at 9:41 a.m. before Mary Ann

24 Payonk, RPR, RMR, RDR, Certified Realtime Reporter and

25 Notary Public.

1 A I believe I did, yes.

2 Q Okay. Did you review it in preparation
3 for your deposition?

4 A No, I didn't.

5 Q Okay. Did you talk to anyone from any of
6 the other plaintiffs in this action about this
7 deposition?

8 A No.

9 Q The Fund for Animals and the Humane
10 Society of the United States merged at the beginning
11 of this year, is that right?

12 A It was not a -- a formal merger, it was
13 a -- a corporate combination of the two organizations.

14 Q What do you mean by "a corporate
15 combination"?

16 A The organizations remain distinct,
17 distinct entities, but our management structures are
18 coordinated and we take advantage of some efficiencies
19 of administration, including accounting and -- and
20 payroll. But the two organizations are -- are -- are
21 still in -- both in existence.

22 Q Your current employment's with the Humane
23 Society, is that right?

24 A Yes, I'm -- I'm paid by the Humane Society
25 of the United States.

1 to carry out our mission to promote animal protection,
2 and we believed that, in alignment with the Humane
3 Society of the United States, a group that had a
4 common mission, would help us do more for animals and
5 accomplish more.

6 Q Why did you think it would help you do
7 more or accomplish more?

8 A We believe that there's -- there's
9 strength in numbers and that a -- that two groups can
10 do more together than they can accomplish
11 individually. By joining our two staffs together,
12 we -- we would benefit from several efficiencies in
13 terms of administrative expenses and we would
14 collectively be able to put more emphasis on our
15 programs.

16 Q Do the two entities maintain separate
17 boards of directors?

18 A Yes.

19 Q Have -- prior to your merger with the
20 Humane Society or your corporate combination with the
21 Humane Society did the Fund for Animals discuss a
22 merger or a combination with any other animal group?

23 A Not to my knowledge.

24 Q Have you discussed such a combination
25 since the merger with any other group?

1 A Yes.

2 Q Does the combined entity have a single
3 external affairs department?

4 A The Humane Society of the United States
5 has an external affairs department, which -- which I
6 oversee.

7 Q And does that external affairs department
8 provide any -- any support or aid to the Fund for
9 Animals?

10 A The -- the -- the Fund for Animals
11 conducts its own programs and some of those programs
12 are supported by the HSUS.

13 Q What programs does the Fund for Animals
14 continue to conduct in it -- as its separate entity?

15 A It -- it -- it runs our animal care
16 centers and it is proceeding with -- with litigation
17 such as this -- this current matter before us.

18 Q Are there other litigations to which it's
19 a party with which it's proceeding?

20 A Yes.

21 Q Are the legal departments of the Fund for
22 Animals and the Humane Society merged?

23 A The Humane Society of the United States
24 has one litigation section.

25 Q And does that litigation section work on

1 elephants in circuses?

2 A Yes, I think that that would be another
3 example of -- of an issue that the Fund for Animals
4 historically has been involved in and -- and would
5 like to continue to be involved in.

6 Q Does the Fund for Animals need to get
7 approval from the Humane Society of the United States
8 to remain involved in an issue?

9 A No.

10 Q Is the Humane Society of the United States
11 bound in any way to provide support for campaigns that
12 are undertaken, or litigation that's undertaken by the
13 Fund for Animals?

14 A No, it's not bound in any way.

15 Q So it's only if the Humane Society of the
16 United States agrees with the position that the Fund
17 for Animals is taking that it would provide that
18 support, or at least if it does not disagree?

19 A It -- it could choose or choose not to
20 provide support.

21 Q Putting aside attorneys, has anyone from
22 the Humane Society of the United States worked on this
23 litigation since the combination?

24 A Can you clarify what you mean by "work on
25 this litigation"?

Michael Markarian

Washington, D.C.

June 22, 2005

Page 60

1 A At the time that -- that this was
2 produced, the fund had several offices. I don't
3 recall exactly how many.

4 Q Does it still have several offices?

5 A The fund has its headquarters in New York
6 City and does not -- does not have any other offices
7 at the time that are specifically Fund for Animals
8 offices.

9 Q Did it have offices that were Fund for
10 Animals offices prior to the combination with the
11 Humane Society?

12 A Yes.

13 Q How many?

14 A I would estimate about a half dozen.

15 Q Incidentally, how many of -- in the
16 combination with the Humane Society, how many of the
17 fund's employees became employees of the Humane
18 Society?

19 A Just about 50.

20 Q 50?

21 A Give or take a few.

22 Q And so how many employees remain employees
23 of the fund?

24 A The -- the fund does not have any payroll
25 currently. The -- the -- the employees are paid by

1 the Humane Society of the United States and then for
2 the time that the employees are working on Fund for
3 Animals programs, the Fund for Animals is billed back
4 for that -- that staff time.

5 Q So -- so all the people who are working on
6 Fund for Animals matters on a paid basis are -- are
7 being paid by the Humane Society?

8 A Yes, their payroll comes from the Humane
9 Society but their -- their time is -- is billed back
10 to the Fund for Animals.

11 Q Are there any who work full time for the
12 Fund for Animals? I mean, I know they're paid by the
13 Humane Society, but who devote all their time to the
14 Fund for Animals.

15 A There are employees, for example, who work
16 at animal care facilities of the Fund for Animals who
17 are -- who are paid by the HSUS, and -- and their time
18 is -- is fully reimbursed by the Fund for Animals.

19 Q Are there any employees who aren't at
20 animal care facilities who fit that description?

21 A Not to my knowledge.

22 MR. WOLSON: Five minutes left on the tape
23 so before I delve into this document, why don't we
24 take a short break and come back.

25 MS. MEYER: Okay.

EXHIBIT D

Form **990****Return of Organization Exempt From Income Tax**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

The organization may have to use a copy of this return to satisfy state reporting requirements.

OMB No. 1545-0047

2005**Open to Public Inspection**Department of the Treasury
Internal Revenue Service**A For the 2005 calendar year, or tax year beginning 2005, and ending**B Check if applicable:
☐ Address change
☐ Name change
☐ Initial return
☐ Final return
☐ Amended return
☐ Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization

THE FUND FOR ANIMALS, INC.

Number and street (or P.O. box if mail is not delivered to street address)

Room/suite

200 WEST 57TH STREET

705

City or town, state or country, and ZIP + 4

NEW YORK, NY 10019

D Employer identification number

13-6218740

E Telephone number

(212) 246-2096

F Accounting method:☐ Cash☒ Accrual

Other (specify) ▶

- Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? ☐ Yes ☒ No

H(b) If "Yes," enter number of affiliates ▶

H(c) Are all affiliates included? ☐ Yes ☐ No
(If "No," attach a list. See instructions.)H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No**I Group Exemption Number** ▶M Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF).**G Website:** WWW.FUNDFORANIMALS.ORG**J Organization type** (check only one) ☒ 501(c)(3) (insert no.) 4947(a)(1) or 527**K Check here** ☐ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS; but if the organization chooses to file a return, be sure to file a complete return. Some states require a complete return.**L Gross receipts:** Add lines 6b, 8b, 9b, and 10b to line 12 ▶

6,709,259.

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See the instructions.)**1 Contributions, gifts, grants, and similar amounts received:****a Direct public support**

1a

6,360,608.

b Indirect public support

1b

c Government contributions (grants)

1c

d Total (add lines 1a through 1c) (cash \$ 6,360,608. noncash \$)

1d

6,360,608.

2 Program service revenue including government fees and contracts (from Part VII, line 93)

2

82,859.

3 Membership dues and assessments

3

4 Interest on savings and temporary cash investments

4

5 Dividends and interest from securities

5

340.

6a Gross rents

6a

b Less: rental expenses

6b

c Net rental income or (loss) (subtract line 6b from line 6a)

6c

7 Other investment income (describe ▶)

7

8a Gross amount from sales of assets other than inventory

(A) Securities

8a

(B) Other

b Less: cost or other basis and sales expenses

8b

c Gain or (loss) (attach schedule)

8c

d Net gain or (loss) (combine line 8c, columns (A) and (B))

8d

9 Special events and activities (attach schedule). If any amount is from gaming, check here ☐**a Gross revenue** (not including \$ of contributions reported on line 1a)

9a

b Less: direct expenses other than fundraising expenses

9b

c Net income or (loss) from special events (subtract line 9b from line 9a)

9c

10a Gross sales of inventory, less returns and allowances

10a

b Less: cost of goods sold

10b

c Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)

10c

11 Other revenue (from Part VII, line 103)

11

265,452.

12 Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)

12

6,709,259.

13 Program services (from line 44, column (B))

13

3,869,747.

14 Management and general (from line 44, column (C))

14

221,440.

15 Fundraising (from line 44, column (D))

15

209,212.

16 Payments to affiliates (attach schedule)

STMT 1

16

2,838,794.

17 Total expenses (add lines 16 and 44, column (A))

17

7,139,193.

18 Excess or (deficit) for the year (subtract line 17 from line 12)

18

-429,934.

19 Net assets or fund balances at beginning of year (from line 73, column (A))

19

20,425,827.

20 Other changes in net assets or fund balances (attach explanation)

STMT 2

20

-18,418,663.

21 Net assets or fund balances at end of year (combine lines 18, 19, and 20)

21

1,577,230.

Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2005)

PUBLIC INSPECTION COPY

Form **990****Return of Organization Exempt From Income Tax**

OMB No. 1545-0047

2006**Open to Public Inspection**Department of the Treasury
Internal Revenue Service

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 2006 calendar year, or tax year beginning , 2006, and ending**B** Check if applicable:

- ☐ Address change
☐ Name change
☐ Initial return
☐ Final return
☐ Amended return
☐ Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization

THE FUND FOR ANIMALS, INC.

Number and street (or P.O. box if mail is not delivered to street address)

200 WEST 57TH STREET

Room/suite

705

City or town, state or country, and ZIP + 4

NEW YORK, NY 10019

D Employer identification number

13-6218740

E Telephone number

(212) 246-2096

F Accounting method:☐ Cash☒ Accrual

Other (specify) _____

Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? ☐ Yes ☒ No

H(b) If "Yes," enter number of affiliates _____

H(c) Are all affiliates included? ☐ Yes ☒ No
(If "No," attach a list. See instructions.)H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No**I** Group Exemption Number _____**M** Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF).**G** Website: WWW.FUNDFORANIMALS.ORG**J** Organization type (check only one) ☒ 501(c)(3) (insert no.) _____ 4947(a)(1) or _____ 527**K** Check here ☐ if the organization is not a 509(a)(3) supporting organization and its gross receipts are normally not more than \$25,000. A return is not required, but if the organization chooses to file a return, be sure to file a complete return.**L** Gross receipts: Add lines 6b, 8b, 9b, and 10b to line 12 **6,873,747.****Part I** Revenue, Expenses, and Changes in Net Assets or Fund Balances (See the instructions.)**1** Contributions, gifts, grants, and similar amounts received:**a** Contributions to donor advised funds

1a

b Direct public support (not included on line 1a)

1b

6,461,224.

c Indirect public support (not included on line 1a)

1c

47,911.

d Government contributions (grants) (not included on line 1a)

1d

e Total (add lines 1a through 1d) (cash \$ 6,388,608. noncash \$ 120,527.)

1e

6,509,135.

2 Program service revenue including government fees and contracts (from Part VII, line 93)

2

31,458.

3 Membership dues and assessments

3

4 Interest on savings and temporary cash investments

4

5 Dividends and interest from securities

5

36,968.

6 a Gross rents

6a

b Less: rental expenses

6b

c Net rental income or (loss). Subtract line 6b from line 6a

6c

7 Other investment income (describe _____)

7

8 a Gross amount from sales of assets other than inventory

(A) Securities

(B) Other

8a

b Less: cost or other basis and sales expenses

8b

c Gain or (loss) (attach schedule)

8c

d Net gain or (loss). Combine line 8c, columns (A) and (B)

8d

9 Special events and activities (attach schedule). If any amount is from gaming, check here ☐**a** Gross revenue (not including \$ _____ of contributions reported on line 1b)

9a

23,108.

b Less: direct expenses other than fundraising expenses

9b

c Net income or (loss) from special events. Subtract line 9b from line 9a

9c

23,108.

10 a Gross sales of inventory, less returns and allowances

10a

b Less: cost of goods sold

10b

c Gross profit or (loss) from sales of inventory (attach schedule). Subtract line 10b from line 10a

10c

11 Other revenue (from Part VII, line 103)

11

273,078.

12 Total revenue. Add lines 1e, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11

12

6,873,747.

13 Program services (from line 44, column (B))

13

4,306,347.

14 Management and general (from line 44, column (C))

14

334,903.

15 Fundraising (from line 44, column (D))

15

223,964.

16 Payments to affiliates (attach schedule)

16

17 Total expenses. Add lines 16 and 44, column (A)

17

4,865,214.

18 Excess or (deficit) for the year. Subtract line 17 from line 12

18

2,008,533.

19 Net assets or fund balances at beginning of year (from line 73, column (A))

19

1,577,230.

20 Other changes in net assets or fund balances (attach explanation)

20

21 Net assets or fund balances at end of year. Combine lines 18, 19, and 20

21

3,585,763.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2006)

PUBLIC INSPECTION COPY

Revenue

Expenses

Net Assets

Form **990****Return of Organization Exempt From Income Tax**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

2007

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 2007 calendar year, or tax year beginning

and ending

B Check if applicable:

- ☐ Address change
☐ Name change
☐ Initial return
☐ Termination
☐ Amended return
☐ Application pending

Please use IRS label or print of type. See Specific Instructions.

C Name of organization

THE FUND FOR ANIMALS, INC

Number and street (or P.O. box if mail is not delivered to street address)

200 WEST 57TH STREET

City or town, state or country, and ZIP + 4

NEW YORK, NY 10019

D Employer identification number

13-6218740

E Telephone number

212-246-2096

F Accounting method☐ Cash ☒ Accrual☐ Other (specify) ▶

Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.

H(a) Is this a group return for affiliates? ☐ Yes ☒ No

H(b) If "Yes," enter number of affiliates ▶ N/A

H(c) Are all affiliates included? N/A ☐ Yes ☐ No (If "No," attach a list.)H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No**I** Group Exemption Number ▶ N/A**G** Website: WWW.FUNDFORANIMALS.ORG**J** Organization type (check only one) ☒ 501(c) (3) (insert no.) ☐ 4947(a)(1) or ☐ 527**K** Check here ☐ if the organization is not a 509(a)(3) supporting organization and its gross receipts are normally not more than \$25,000. A return is not required, but if the organization chooses to file a return, be sure to file a complete return.**M** Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF).**L** Gross receipts: Add lines 6b, 8b, 9b, and 10b to line 12 ▶

8,667,733.

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances

Revenue	1	Contributions, gifts, grants, and similar amounts received:				
	a	Contributions to donor advised funds	1a			
	b	Direct public support (not included on line 1a)	1b	8,054,399.		
	c	Indirect public support (not included on line 1a)	1c	20,495.		
	d	Government contributions (grants) (not included on line 1a)	1d			
	e	Total (add lines 1a through 1d) (cash \$ 8,074,894. noncash \$)	1e		8,074,894.	
	2	Program service revenue including government fees and contracts (from Part VII, line 93)	2		12,057.	
	3	Membership dues and assessments	3			
	4	Interest on savings and temporary cash investments	4		120,413.	
	5	Dividends and interest from securities	5			
	6a	Gross rents	6a			
	6b	Less: rental expenses	6b			
c	Net rental income or (loss). Subtract line 6b from line 6a	6c				
7	Other investment income (describe ▶)	7				
Expenses	8a	Gross amount from sales of assets other than inventory	(A) Securities	8a		
	b	Less: cost or other basis and sales expenses	8b			
	c	Gain or (loss) (attach schedule)	8c			
	d	Net gain or (loss). Combine line 8c, columns (A) and (B)	8d			
	9	Special events and activities (attach schedule). If any amount is from gaming, check here <input type="checkbox"/>				
	a	Gross revenue (not including \$ of contributions reported on line 1b)	9a			
	b	Less: direct expenses other than fundraising expenses	9b			
	c	Net income or (loss) from special events. Subtract line 9b from line 9a	9c			
	10a	Gross sales of inventory, less returns and allowances	10a			
	b	Less: cost of goods sold	10b			
	c	Gross profit or (loss) from sales of inventory (attach schedule). Subtract line 10b from line 10a	10c			
	11	Other revenue (from Part VII, line 103)	11		460,369.	
12	Total revenue. Add lines 1e, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11	12		8,667,733.		
Net Assets	13	Program services (from line 44, column (B))	13		4,893,524.	
	14	Management and general (from line 44, column (C))	14		317,139.	
	15	Fundraising (from line 44, column (D))	15		219,071.	
	16	Payments to affiliates (attach schedule)	16			
	17	Total expenses. Add lines 16 and 44, column (A)	17		5,429,734.	
	18	Excess or (deficit) for the year. Subtract line 17 from line 12	18		3,237,999.	
	19	Net assets or fund balances at beginning of year (from line 73, column (A))	19		3,585,763.	
	20	Other changes in net assets or fund balances (attach explanation)	20		0.	
	21	Net assets or fund balances at end of year. Combine lines 18, 19, and 20	21		6,823,762.	

EXHIBIT E

EVIDENTIARY Hearing

March 6, 2008

1 Q. And looking over it, Interrogatory Number 21, which
2 defense counsel asked you about, if you could just take a
3 moment to not read again, but just glance through again to
4 make sure you're familiar with the interrogatory answer that
5 I'm asking about.

6 Do you believe that is a complete and accurate response
7 to the interrogatory?

8 A. Yes, I do.

9 Q. And is it your understanding that in response to Judge
10 Sullivan's September 27th -- excuse me -- August 23rd, 2007
11 order, AWI did in fact undertake an effort to uncover all
12 information that would be included in this interrogatory?

13 A. Yes.

14 MR. GLITZENSTEIN: I have nothing further, Your
15 Honor.

16 THE COURT: Thank you. Ms. Silverman, you may step
17 down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You may call your next witness, please.

20 MR. GASPER: Michael Markarian.

21 * * * *

22 **MICHAEL MARKARIAN**, called as a witness herein, after
23 having been duly sworn by the deputy clerk, testified as
24 follows:

25 * * * *

Hearing 3.6.08

1 that refer, reflect, or relate to Tom Rider?

2 A. Yes.

3 Q. Has HSUS produced all of the documents in its or its
4 employees files that pertain to WAP, the Wildlife Advocacy
5 Project, and pertain to payments to Tom Rider?

6 A. Yes.

7 Q. And, sir, has the Humane Society produced all of the
8 documents in its or its employees' files that discuss this
9 litigation?

10 A. Yes.

11 Q. All of the documents that discuss this litigation; is
12 that correct?

13 A. Yes, I believe so.

14 MR. GLITZENSTEIN: Your Honor, just for clarity's
15 sake, we haven't gotten anything from Mr. Markarian as to
16 what his understanding of those terms are. Obviously,
17 pertaining to most litigation, it involves attorney/client
18 communications and other things that the parties agreed did
19 not have to be produced. So I just want to make sure Mr.
20 Markarian knows what he's being asked and is not being led
21 down a path that is not going to serve anybody's purposes.

22 THE COURT: Okay. So be it. Go ahead, proceed.

23 MR. GASPER: Thank you, Your Honor.

24 BY MR. GASPER:

25 Q. Mr. Markarian, the Fund for Animals paid Tom Rider a

1 thousand dollars in 2004; isn't that right?

2 A. That's correct.

3 Q. And the Fund for Animals paid Meyer, Glitzenstein and
4 Crystal approximately \$4,500 that was given to Mr. Rider over
5 the course of three years; isn't that right?

6 A. That's correct.

7 Q. And the Humane Society has paid the Wildlife Advocacy
8 Project \$11,500 over the course of three years that was given
9 to Mr. Rider; isn't that right?

10 A. The amount that was paid to the Wildlife Advocacy Project
11 was to be used for a media campaign regarding circus issues.
12 We do understand that some of the money was used to support
13 Mr. Rider's travel expenses and his activities to discuss
14 circus issues with the public and with the media, but we don't
15 have the expectation that that's the only thing the money was
16 used for.

17 Q. But the amount of the payments total \$11,500; isn't that
18 right?

19 A. That's correct.

20 Q. So the Fund for Animals has paid Tom Rider a thousand
21 dollars. The Fund for Animals has paid Meyer, Glitzenstein
22 and Crystal almost \$4,500, and the Humane Society has paid the
23 Wildlife Advocacy Project \$11,500; is that correct?

24 A. The Humane Society has not paid the Wildlife Advocacy
25 Project that money. That was the Fund for Animals' payment to

1 the Wildlife Advocacy Project which was processed by the
2 accounting department of the Humane Society.

3 Q. Why wasn't that processed by the Fund for Animals?

4 A. The Fund for Animals relies on the administrative
5 functions of the Humane Society of the United States when
6 processing checks, making payments, etcetera.

7 Q. Which individuals requested that the payments be made?

8 A. I believe that I approved the payments. The requests
9 would have come either from myself or from John Lovvorn.

10 Q. Any other FFA employees that know about the payments to
11 Tom Rider other than yourself and Mr. Lovvorn?

12 A. Not to my knowledge.

13 Q. Nobody else knows about these payments; is that your
14 testimony?

15 A. Can you rephrase the question again? I'm sorry.

16 Q. Are there any other Fund for Animals' employees that know
17 about these payments other than yourself and Mr. Lovvorn?

18 A. Well, there are no Fund for Animal employees. I'm an
19 officer of the organization. Mr. Lovvorn is counsel for the
20 organization. He and I had direct involvement in donations to
21 the Wildlife Advocacy Project to support media and campaign
22 efforts. I had direct knowledge of the payments to Mr. Rider
23 that were made in 2004 which you referenced, which were used
24 by him to repair his van and be able to travel.

25 Q. Okay. Let's talk about them in two parts, then. Prior

1 to the 2005 -- so these are payments made by the Fund for
2 Animals. Who knew about those other than yourself?

3 A. Marian Probst(Phonetic) who was the chair of our board of
4 the Fund for Animals and worked in the New York City office
5 had also had knowledge of those payments.

6 Q. Did you talk to her about those payments?

7 A. Yes.

8 Q. Did you talk to anyone else on behalf of Fund for Animals
9 about those payments?

10 A. I don't recall at that time.

11 Q. Did anyone else on behalf of Fund for Animals know about
12 the payments other than yourself and Ms. Probst, and this is,
13 again, all prior to January 2005?

14 A. They may have. I don't recall who on staff I would have
15 talked to about that.

16 Q. Okay. Now, after 2005, the payments by the Humane
17 Society, are there any FFA officers or directors that know
18 about those payments other than yourself?

19 MR. GLITZENSTEIN: Objection, Your Honor. Again, I
20 think the witness has already stated these weren't from the
21 Humane Society.

22 THE COURT: Yeah. Well, I'm a little confused.
23 After 2005, you want to know about FFA?

24 MR. GASPER: Yeah. Your Honor, these are payments
25 made allegedly, I guess, perhaps, on behalf of FFA, but they

1 are on Humane Society paperwork, Humane Society checks,
2 etcetera. So when I refer to the Humane Society payments, I'm
3 referring to the payments made out of the HSUS accounts to
4 Wildlife Advocacy Project, as you say, Mr. Markarian, on
5 behalf of Fund for --

6 THE COURT: Are you aware of such a procedure?

7 THE WITNESS: Yes, Your Honor. The nature of the
8 combination between the two organizations is --

9 THE COURT: I understand. Thank you. Counsel.

10 BY MR. GASPER:

11 Q. Who else on behalf of the Humane Society knows about
12 these payments being made?

13 A. Our accounting department which would have processed the
14 payments to the Wildlife Advocacy Project. They would clearly
15 know that those payments exist.

16 Q. Any other HSUS employees other than Mr. Lovvorn,
17 yourself, and the accounting department?

18 A. I'm not aware of others.

19 Q. Were they ever discussed at the Humane Society board
20 meetings?

21 A. Not that I'm aware of.

22 Q. Do you attend those board meetings?

23 A. I do, yes.

24 Q. Were they ever discussed at the Fund for Animals' board
25 meetings?