

Ford Elsaesser, ISB #2205
Bruce A. Anderson, ISB #3392
ELSAESSER ANDERSON CHTD.
Attorneys at Law
320 East Neider Avenue, Suite 102
Coeur d’Alene, ID 83815
Tel/Fax: (208) 667-2900
ford@eaidaho.com
brucea@eaidaho.com

Michael P. Richman
RICHMAN & RICHMAN LLC
122 W. Washington Avenue, Suite 850
Madison, WI 53703
Telephone: (608) 630-8990
Fax: (608) 630-8991
mrichman@randr.law

Co-Counsel for People for the Ethical Treatment of Animals, Inc. (PETA)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In re:

SEAQUEST HOLDINGS, LLC,

Debtor.

Case No.: 24-00803-BPH

Chapter 11

MEMORANDUM OF LAW OF PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. IN OPPOSITION TO THE DEBTOR’S MOTION FOR APPROVAL OF SALE OF PROPERTY AND IN SUPPORT OF THE ACTING UNITED STATES TRUSTEE’S MOTION TO APPOINT A CHAPTER 11 TRUSTEE, CONVERT CASE TO CHAPTER 7, OR DISMISS

People for the Ethical Treatment of Animals, Inc. (“PETA”), by its attorneys Richman & Richman LLC and Elsaesser Anderson Chtd., hereby submits this memorandum of law in opposition to the Debtor’s Motion for Approval of Sale of Property (Doc. 37) and in support of the Acting United States Trustee’s Motion to Appoint a Chapter 7 Trustee, Convert Case to Chapter 7, or Dismiss (the “Motion”) (Doc. 49). PETA representatives will attend the January 31, 2025

hearing in-person and will be available to answer questions concerning the matters presented in this memorandum and exhibits.

PRELIMINARY STATEMENT

Animals are the Debtor's main attraction and its most valuable "assets." Unlike the inanimate assets at issue in most bankruptcies, however, animals are sentient beings who will become sick or injured, suffer pain and distress, and die if not properly cared for. Less than two months after filing its petition, the Debtor has invoked these unique and compelling features of animals in order to secure the Court's approval of a private sale of substantially all of its assets to an insider on an expedited basis for \$80,000. As the Acting United States Trustee's Motion correctly put it, the Debtor has "apparently created a situation where, as they allege, if a sale to Mr. Cox by the middle or end of February does not occur, the welfare of several animals will be in jeopardy." (Doc. 49, ¶ 27.)

The Court should reject the Debtor's crass attempt to use the animals' welfare as a bargaining chip to serve its own interests. As scores of government inspections, citations, and investigative reports confirm, a total lack of concern for animal welfare is the cornerstone of the Debtor's business model. (*See* Exhibits 1-3.) The Debtor's proposed sale to a company owned by an insider with no experience, expertise, or particular interest in animal care and husbandry will not protect animals' welfare. The welfare of the Debtor's animals is and will remain in jeopardy for as long as the Debtor remains in business.

If past is prologue, the Debtor's continued operations as an indoor, mall-based, "interactive" aquarium and petting zoo will lead to more sick and dead animals, violations of federal, state, and local laws, injuries to people (including children), and public opposition. These factors have already led to the cessation of the Debtor's operations at five locations since June

2023, and will inevitably lead to the closure of the Debtor's existing locations in the near future. Converting this case to Chapter 7 and requiring an orderly liquidation sale that includes a public auction process will likely result in a substantially higher valuation of the Debtor's assets than the \$80,000 sale to an insider that the Debtor has proposed. Such a process will also provide the impacted animals with a better chance of securing placement in settings more conducive to their welfare than the proposed insider sale seems to offer. Accordingly, the Court should deny the Debtor's Motion for Approval of Sale of Property and grant the Acting United States Trustee's Motion to the extent that it asks the Court to convert this case to Chapter 7.

ARGUMENT

I. *The Debtor's Deplorable Record of Animal Welfare Violations*

The Debtor's filings in this case present the Debtor as an organization concerned with conservation and animal welfare. (*See, e.g.*, Doc. 12, p. 3 ("Several of the species are on the endangered, threatened or vulnerable species lists and SeaQuest provides a culture for those animals to breed and multiply – thus helping to preserve the species."); Doc. 39 (expressing concern that "[i]f the sale does not occur before the middle to end of February, the welfare of the animals . . . will be in jeopardy").) Nothing could be further from the truth. Unlike zoos and aquariums accredited by the Association of Zoos and Aquariums (such as Zoo Boise, to provide a local example), the Debtor does not subject itself to meaningful, expert-developed standards for animal care, veterinary programs, conservation, education, or safety. The vast majority of the animals in the Debtor's possession are cold-blooded species, who are not covered by the federal Animal Welfare Act. *See, e.g.*, 7 U.S.C. § 2131; 9 C.F.R. § 3.125-142 (defining "Specifications for the Humane Handling, Care, Treatment, and Transportation of **Warmblooded** Animals Other than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, Marine Mammals, and

Birds.”) (Emphasis added). The Debtor’s care and handling of these aquatic animals is subject only to whatever local laws, if any, may apply. To the limited extent federal or local laws even cover the Debtor’s operations, they set only the bare minimum requirements—not ideals or best practices—for animal handling and care.

Records of the United States Department of Agriculture’s regular inspections of the Debtor’s locations confirm that the Debtor fails to meet even such minimal standards, and its ongoing failure to do so regularly leads to gruesome and excruciating outcomes for the animals in its possession. From 2018 to the present, USDA inspectors have cited the Debtor’s various locations for at least 131 violations of the Animal Welfare Act, including filthy, infested, or dilapidated enclosures, failure to properly and safely handle animals, and failure to provide basic care or veterinary treatment to animals. These squalid conditions have caused several instances of severe injury and premature death. (*See e.g.*, Exhibit 1, at pp. 016, 035, 047, 058, 062, 073, 084.) For example, a flying squirrel was fatally crushed by an enclosure door when she attempted to run away from a guest interaction. (Exhibit 1, at 073.) Five sugar gliders died when they fell into a PVC pipe and could not escape. (Exhibit 1, at 058.) A wallaby named Ben drowned when he fell into an aquarium with no way of climbing out of the water. (Exhibit 1, at 084.) Another two wallabies suffered injuries after their overgrown, neglected claws were torn. (Exhibit 1, at 010.) As Figure 1 illustrates, failing to maintain wallaby claws appears to be the Debtor’s standard practice.

Figure 1: Wallaby, SeaQuest Roseville, Minnesota (Jan. 12, 2025) (screenshot of visitor video)



This photograph shows a wallaby at the Debtor's Roseville, Minnesota location with hind nails that have not been properly maintained. As a result, they are long enough to impede normal conformation of the foot and normal movement.

At the time this photograph was taken, the USDA had previously issued SeaQuest Roseville a direct citation and official warning for failing to follow appropriate methods to prevent and treat similar injuries for two wallabies. (See Exhibit 1, at 003, 010.)

A summary of the Debtor's citations for violations of the Animal Welfare Act, and associated inspection reports, are attached as Exhibit 1.

State enforcement agencies have also cited the Debtor for its pervasive neglect and mistreatment of animals. For example, on June 25, 2024, the New Jersey Department of Environmental Protection (NJDEP) issued the Debtor's New Jersey location a Notice of Violation and a \$2,500 fine. (Exhibit 2, at 022.) The NJDEP investigation revealed that, among other violations, the Debtor's poor husbandry resulted in two Asian water monitors frequently attacking each other over a period of nearly three years while the Debtor did "little to nothing . . . to prevent further attacks". (See Exhibit 2, at 006–007.) A panther chameleon become emaciated and died due to the Debtor's failure to provide it with adequate food. (Exhibit 2, at 016.) Based on these and other findings, the NJDEP ordered the Debtor to immediately provide all regulated wildlife adequate veterinary care (which it was failing to do) and cease all public interactions with unauthorized animals. (See Exhibit 2, at 006.) Similarly, Clark County Animal Control has cited

the Debtor’s Las Vegas location for possessing unpermitted animals, including illegally bred otters, (Exhibit 2, at 082, 092), and has indicated that—given the Debtor’s record—it “cannot foresee granting SeaQuest permission for another sloth should they apply to have one.”¹ State citations and inspection reports are provided with Exhibit 2.

The problems reflected in government inspection reports are not isolated or unusual occurrences. As illustrated in Figures 2-5 below, it is obvious even to an untrained eye that the Debtor is not properly caring for the animals in its possession.

Figure 2: Koka, Cockatoo at SeaQuest Layton, Utah (Sept. 18, 2024) (Davis County Animal Care Investigation)



During a September 2024 investigation by Clark County Animal Care, the inspecting officer noted that, “The cockatoo has very poor feather quality and has been over grooming itself.” When asked to provide evidence of enrichment, SeaQuest was unable to provide immediate documentation to show whether Koka had been receiving necessary enrichment. (Exhibit 2, at 003.)

Providing cognitively complex birds like Koka with adequate environmental enrichment is essential to their well-being, but the Debtor has allowed (and continues to allow) these birds to suffer under stressful conditions for years.

¹ Darcy Spears, “No more sloths allowed at SeaQuest after second animal death in less than a year”, ABC13 KTNV Las Vegas (Posted Oct. 20, 2021 and updated September 9, 2024), <https://www.ktnv.com/13-investigates/no-more-sloths-allowed-at-seaquest-after-second-animal-death-in-less-than-a-year>

Figure 3: Batray, SeaQuest Folsom, California (Feb. 26, 2024)(visitor photo)



This photo shows a batray at the Debtor's Folsom, California location with a deep and painful laceration on his face.

The Debtor's exhibition of animals with painful wounds demonstrates its inability or unwillingness to provide a safe environment for animals.

Figure 4: Hedgehog, SeaQuest Folsom, California (employee photo, ABC10)

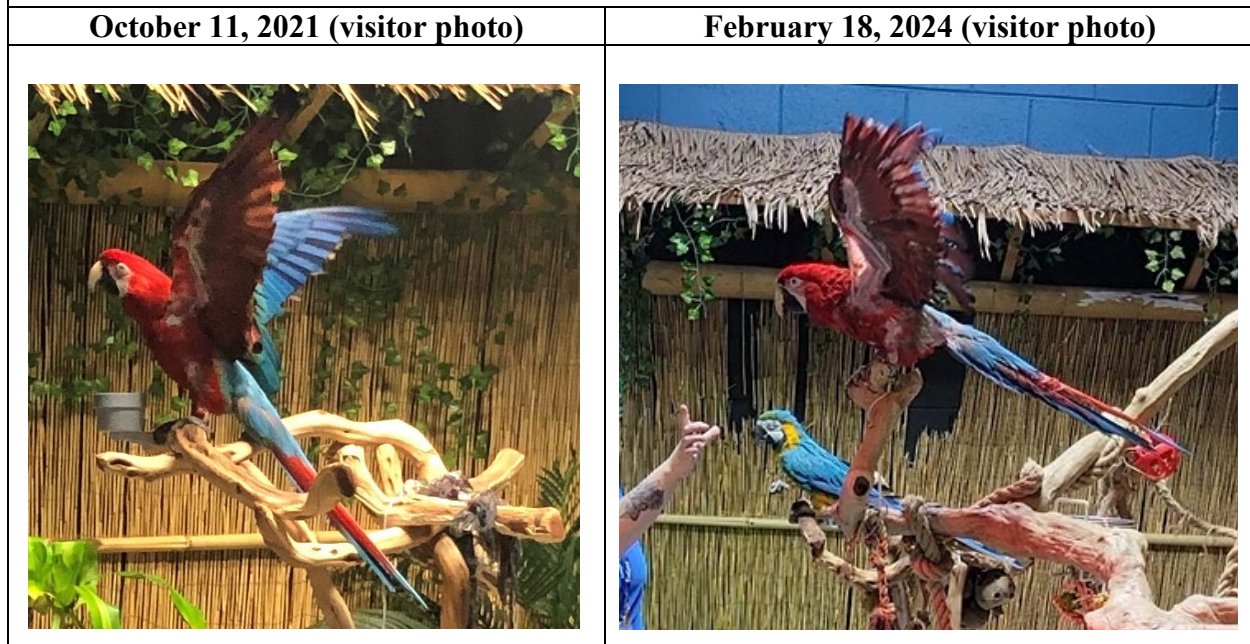


This hedgehog reportedly physically injured himself when he became so stressed that he ran his face along the sides of his enclosure, resulting in wounds on his nose. This and other photos provided to ABC10 were published in a July 2024 news report.²

² See Andie Judson, "It's directly animal exploitation!: Over a dozen former SeaQuest Folsom employees come forward after ABC10 investigation," ABC 10, July 25, 2024 (Updated August 2, 2024), <https://www.abc10.com/article/news/local/former-seaquest-folsom-employees-come-forward-after-investigation/103-982cd81c-bf84-4cdc-a9a2-226a04a7a504ed>

Figure 5: Peggy, Red-and-green macaw, SeaQuest Woodbridge, New Jersey

Peggy is a red-and-green macaw confined to the Debtor’s New Jersey location. Since October 11, 2021, the condition of Peggy’s feathers has visibly deteriorated. In its July 25, 2024 Notice of Violation to the Debtor, the New Jersey Department of Environmental Protection noted that the demonstrably worsening feather plucking over the years “proves that the bird was not receiving the appropriate care and attention in order to lessen the stress on the bird.” (Exhibit 2, at 013.)



In addition to neglecting animals to the point that they become sick or injured, the Debtor routinely deprives animals of necessary veterinary care. (See, e.g., Exhibit 1, at 021 (attending veterinarian resignation), 017 (failure to secure regular attending veterinarian visits), 011 (no program of veterinary care approved by current attending veterinarian), 010 (failure to secure timely attending veterinary care).) Multiple animals at the Debtor’s facilities have died following a pattern of delayed or inadequate veterinary care. (See e.g., Exhibit 2, at 007–009; see e.g., Exhibit 3, at 057, 065.) For example, two young sloths died within a one-year period at the Debtor’s Las Vegas, Nevada facility after becoming emaciated, weak, and twitching. (Exhibit 3,

at 068–72.) Yet another two young sloths at the Debtor’s New Jersey location, Suzy and Flash, apparently died from malnutrition and lack of veterinary care, respectively. (See Exhibit 3, at 057, 065, 102.)

“Animal welfare” is not merely an abstract concept with no objective measure. The Court should carefully consider the animals’ interests in resolving the motions presently before the Court. See *In re Ahlswede*, 516 F.2d 784, 787 (9th Cir. 1975) (recognizing the principle that “a bankruptcy court is a court of equity, charged to apply equitable principles to each equitable results when administering the Bankruptcy Act.”). Concern for animal welfare weighs strongly against granting the Debtor’s Motion for Approval of Sale of Property, which will facilitate the continuation of the Debtor’s operations (and concomitant animal suffering). The premise of the Debtor’s motion—that its history of animal abuse and accumulated claims can be cleansed away by a private sale to an insider for a mere \$80,000, and that such a sale is somehow in the best interests of its estate—is ridiculous and unsustainable. The only resolution of this case with a hope of advancing the impacted animals’ interests is to convert this case to Chapter 7, require an orderly liquidation of the Debtor’s assets in a public auction, and end the Debtor’s operations for good.

II. *The Debtor’s Practices Jeopardize Public Safety and will Inevitably Result in Criminal or Civil Liability Far Exceeding the Value of the Debtor’s Assets.*

In addition to the harms the Debtor’s interactive business model and animal care failures inflict on the animals, the Debtor’s operations also seriously jeopardize public safety. Despite its knowledge of the risks involved, the Debtor encourages the public—including children—to interact with animals with known dangerous tendencies (*e.g.* otters and coatimundis), with predictable results.

The USDA inspection reports provided with this brief reflect several instances in which an animal injured a person at one of the Debtor’s facilities. (See Exhibit 1, at 013 (sloth bite), 038–40

(wallaby scratch and sugar glider bite), 048–49 (savannah cat bite, two otter bites, three coati/coatimundi bites, and a kinkajou bite), 055 (wallaby bite), 067 (kinkajou scratch), 071 (kinkajou bite), 087 (otter bite), 095–096 (coati/coatimundi bites), 101 (otter injuries), 104 (otter injuries), 105 (capybara bites and scratches.) An ABC investigative report issued in February 2024 noted that “at least 76 times people reported being injured by the animals at various SeaQuest locations since the first one in Utah opened in 2016.”³ The actual frequency of such incidents is not publicly available because not every state requires the Debtor to report all incidents involving exhibited wildlife. However, there is no serious question that injuries resulting from forced interactions with animals are a regular occurrence throughout the Debtor’s locations. (*See* Exhibit 3 at 032-42, 046-47, 067, 075 (otter bites); *id.* at 044, 108 (sloth bites); *id.* at 049-56, 060-64, 094 (coati/coatimundi bites and injuries); *id.* at 074, 076-079 (kinkajou bite and injury); *id.* 095, 114 (cat bite and injury); *id.* at 104-106 (squirrel bites); *id.* at 031, 079-83 (pig bites); *id.* at 088 (eel bite), 094 (wallaby injury), 097 (iguana injury) 099 (Asian water monitor bite).)

Based on injuries reported in Colorado—a state that did require these records while the Debtor’s now-closed Littleton location was licensed by the Colorado Department of Parks and Wildlife—there may be hundreds of injuries from animal bites, scratches, and other incidents at the Debtor’s facilities annually. During a ten-month period (June 26, 2018, to April 25, 2019), incident reports from the Debtor’s Littleton, Colorado location document twenty-two customer injuries at that location alone. (Exhibit 3, at 001-30.) Except for one incident (involving an iguana’s claw piercing the skin on the inside of a child’s mouth), all of the incidents involved an animal (*e.g.*, lizard, iguana, porcupine puffer, bamboo shark, lorikeet, horn shark, pacu, tortoise, pig)

³ Darcy Spears, “*SeaQuest accused by former employees, guests, animal advocates of exploiting animals for profit.*” ABC13 KTNV Las Vegas (Posted Feb. 27, 2024 and updated September 9, 2024); <https://www.ktnv.com/13-investigates/seaquest-accused-by-former-employees-guests-animal-advocates-of-exploiting-animals-for-profit>

biting either a child or an adult. (Exhibit 3, at 001, 003, 010-011, 018-19, 023, 025, 027 029-30.)

The severity of injuries has ranged from invasive bites to breathing difficulty and potential exposure to rabies. (Exhibit 3, at 001-30.)

Figure 6: Iguana Bite (Fort Worth, Texas)



On or about June 5, 2022, an iguana attacked a customer's three-year-old son at the Debtor's (now closed) Fort Worth, Texas location. The child was taken to the hospital for emergency treatment and received six sutures. Litigation following this incident was resolved in a confidential settlement. (*Sierra v. SeaQuest Holdings, LLC*, No. 236-346953-23 (TX Dist. Ct. Oct. 10, 2024).)

The forced interactions with wildlife also provide dangerous opportunities for zoonotic disease transmission. For example, as illustrated further in Figure 7 below, a large system of freshwater tanks at the Debtor's New Jersey location was, and may still be, infected with mycobacteria. (See Exhibit 2, at 011-012, 038.) The NJDEP's June 25, 2024 Notice of Violation to the Debtor concerning this and other issues noted that the mycobacteria present at the Debtor's New Jersey location "is highly contagious" among various species of "reptiles, birds, and mammals." (*Id.* at 011.) In humans, mycobacteria "infections cause chronic (long-term) health problems such as persistent cough and breathing problems."⁴

⁴ Cleveland Clinic, *Nontuberculosis Mycobacteria Infections*, (last reviewed Feb. 19, 2024), <https://my.clevelandclinic.org/health/diseases/21200-nontuberculous-mycobacteria-infections>

Figure 7: Turtle, SeaQuest Woodbridge, NJ (N.J. Dep't of Env'tl. Protec., Notice of Violation) (Jan. 17, 2022)



This photograph depicts a turtle with severe shell rot at the Debtor's New Jersey location, due to the Debtor's poor husbandry and failure to take appropriate actions to prevent the spread of disease and infection. (Exhibit 2, at 011-012, 032.)

The Debtor's Minnesota location reportedly exhibited and encouraged public interactions with otters who were not even up to date on their rabies vaccinations.⁵

Whether from an animal bite, scratch, attack, or zoonotic disease, it is only a matter of time before a child or other visitor to the Debtor's facilities is seriously hurt or killed. In addition to the equitable implications of the Debtor's ongoing failure to protect children from known dangers, the Debtor's reckless forced wildlife interactions are a recipe for criminal or civil liability far in excess of the value of the Debtor's enterprise. Converting this case to Chapter 7 and ordering the liquidation of the Debtor's assets will avoid these known risks and future liabilities.

⁵ See Erin Rasmussen, *Internal records raise questions about safety of animals, guests at SeaQuest*, KSTP (February 27, 2024), <https://kstp.com/5-investigates/internal-records-raise-questions-about-safety-of-animals-guests-at-seaquest/>

III. *The Debtor's Business Model is Inherently Unviable for Animals and Creditors*

A Chapter 11 reorganization is not proper where, as here, “there is not a potentially viable business in place worthy of protection and rehabilitation[.]” *In re Roland*, 77 B.R. 265, 267 (Bankr. D. Mont. 1987) (quoting *In re Matter of Winshall Settlor's Trust*, 758 F.2d 1136 (6th Cir.1985), *overruled on other grounds by Toibb v. Radloff*, 501 U.S. 157, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991)) (internal citations omitted)). The Debtor’s incompetence, gross mismanagement, neglect, and exploitation of animals has been the subject of widespread local, regional, and national media coverage⁶, and has already led the Debtor to cease operations at five locations. 11 U.S.C. § 1112(b)(4)(A) (identifying “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation” as “cause” for conversion from Chapter 11 to Chapter 7).

There is no reason to believe that the proposed insider sale would protect or improve the well-being of the animals. The available evidence supports the opposite inference. The condition of the Debtor’s dwindling number of locations has stagnated or worsened under Jeff Cox’s watch as an owner and director of the Debtor. There is no indication, in the Debtor’s motion or otherwise, that Mr. Cox has any animal-related experience or expertise, or that he has any interest in properly

⁶ See, e.g., Darcy Spears, *SeaQuest accused by former employees, guests, animal advocates of exploiting animals for profit*. ABC (KNTV) February 27, 2024, <https://www.kntv.com/13-investigates/seaquest-accused-by-former-employees-guests-animal-advocates-of-exploiting-animals-for-profit>; Andie Judson, “*It’s directly animal exploitation’: Over a dozen former SeaQuest Folsom employees come forward after ABC 10 investigation.*” ABC 10, July 25, 2024, <https://www.abc10.com/article/news/local/former-seaquest-folsom-employees-come-forward-after-investigation/103-982cd81c-bf84-4cdc-a9a2-226a04a7a504>; Julia Jacobo, “*SeaQuest, aquarium chain facing allegations of animal abuse, closes Fort Worth location.*” ABC News, October 31, 2024, <https://abcnews.go.com/US/seaquest-aquarium-chain-facing-allegations-animal-abuse-closes/story?id=115259305>; Natalie Neyesa Alund, “*SeaQuest under investigation, closes Fort Worth location over animal neglect allegations.*” USATODAY.com, 30 October 2024, <https://www.usatoday.com/story/news/nation/2024/10/30/seaquest-fort-worth-aquarium-closed-animal-neglect-peta/75942155007/>

caring for the animals upon whom the Debtor's business model relies.⁷ In fact, Mr. Cox's apparent intention to continue the Debtor's operations conclusively demonstrates his inability to ensure the welfare of thousands of animals who cannot thrive at an indoor, mall-based, "interactive" aquarium and petting zoo. The Court should not only reject the Debtor's proposed sale to Mr. Cox; it should also disqualify Mr. Cox from credit bidding or otherwise participating in any auction of the Debtor's assets. 11 U.S.C. § 363(k); *see, e.g., Securities and Exchange Commission v. Capital Cove Bancorp LLC*, Case No. SACV 15-980-JLS (JCx), 2015 WL 9701154, at *9 (C.D. Cal. Oct. 13, 2015) (equitable considerations may justify the denial of a secured creditor's request to credit bid).

There are many concerned individuals and organizations—including PETA—who are determined to shut the Debtor down. As the Acting United States Trustee recognized in his Motion, concerned individuals and entities may be willing to purchase some or all of the Debtor's assets in order to achieve that result. (*See* Doc. 49, ¶ 29.) Indeed, there may be individuals and entities interested in purchasing animals the Debtor has not even bothered to list on its inventory, which the Debtor acknowledged at the January 23, 2025 Section 341 meeting does not include all of the animals in its possession. Given these unique circumstances, there is good reason to believe that the whole of the Debtor's assets is worth considerably *less* than the sum of its parts. Converting this case to Chapter 7 and ordering an auction process is the best way to access these constituencies, secure the highest possible value for the Debtor's assets, and give the animals confined to the Debtor's facilities a better chance at survival and improved welfare.

⁷ At the January 24, 2025 continued Section 341 meeting, the Debtor's representative confirmed that, to his knowledge, Mr. Cox has no specialized education, training, or experience concerning the care of any of the animals confined at the Debtor's existing locations.

CONCLUSION

As the Debtor's record of violations of animal welfare laws, injuries to visitors, and facility closures consistently demonstrates, merely changing the Debtor's ownership or management will not help the animals, creditors, or members of the public that the Debtor has harmed and will continue to harm for as long as it continues operating. Both animals' and creditors' interests will be best served by converting this case to Chapter 7 and requiring the orderly liquidation of the Debtor's assets. Accordingly, for the reasons explained in the Acting United States Trustee's Motion and as explained above, the Court should deny the Debtor's Motion to Approve Sale of Property and grant the Acting United States Trustee's Motion to the extent that it asks the Court to convert this case to Chapter 7.

DATED this 29th day of January, 2025.

RICHMAN & RICHMAN LLC

/s/ Michael P. Richman
Michael P. Richman, Esq.
122 W. Washington Avenue, Suite 850
Madison, WI 53703
(608) 630-8990
mrichman@randr.law

- and -

ELSAESSER ANDERSON CHTD.

Ford Elsaesser, ISB #2205
Bruce A. Anderson, ISB #3392
320 East Neider Avenue, Suite 102
Coeur d'Alene, ID 83815
Tel/Fax: (208) 667-2900
ford@eaidaho.com
brucea@eaidaho.com

Co-Counsel for People for the Ethical Treatment
of Animals, Inc. (PETA)