

ORIGINAL

PUBLIC VERSION

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



_____	)	
In the Matter of	)	
	)	
<b>Service Corporation International,</b>	)	Docket No. C-4423
a corporation, and	)	File No. 131 0163
	)	
<b>Stewart Enterprises, Inc.,</b>	)	
a corporation	)	
_____	)	

**PETITION FOR APPROVAL OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraphs II.A of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to Parkwood Memorial Association, Inc. (the “Acquirer”) of the Divestiture Business that includes Parkwood Cemetery, 3310 Taylor Avenue, Baltimore, Maryland 21234. As explained in detail below, the Acquirer is owned in equal part by Guy N. Saxton and John L. Yeatman.

Subject to the Commission’s approval of this Petition, the Divestiture Business associated with this facility (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to the Acquirer pursuant to the Asset Sale Agreement dated June 6, 2014, by and among the Acquirer and S.E. Mid-Atlantic, Inc. (the “ASA”).

### Background

On December 23, 2013, SCI and Respondent Stewart Enterprises, Inc. (“Stewart”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Stewart would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On December 23, 2013, the Commission accepted the Consent Agreement for public comment, and on December 23, 2013, SCI consummated its acquisition of Stewart. Stewart is now a wholly owned subsidiary of SCI. The Commission issued the Consent Agreement as final on April 29, 2014.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Divestiture Assets—the disclosure of which may prejudice the Respondents and Acquirer, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair Respondents’ ability to comply with their obligations under the Consent Agreement—Respondents have redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2012), Respondents request that the non-public, confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2012). The

confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

Respondent SCI desires to complete the proposed divestiture of the Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval and those customarily satisfied at closing have already been satisfied, such that SCI and Acquirer are in a position to close the divestitures within a few days of such approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, the Acquirer, and the Respondents, because it will allow the Acquirer to move forward with their business plans for the competitive operation of the Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2012), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Divestiture Assets to the Acquirer pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

#### **I. The ASA Is Final and Consistent with the Decision and Order's Terms**

Paragraph II.A of the Decision and Order requires the Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 180 days of the date on which the Order is issued.<sup>1</sup> Pursuant to this requirement, SCI diligently has sought buyers that would be acceptable to the Commission, through an extensive auction process that produced

<sup>1</sup> The Commission issued the Order as final on April 29, 2014.

great interest in the properties. As noted above, on June 6, 2014, SCI entered into the ASA with the Acquirer, which requires SCI to sell the Divestiture Assets to the Acquirer. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with the Acquirer complies with the requirements of Paragraph II of the Decision and Order.

Paragraph II.A requires that Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the ASA, the Acquirer will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.A.2 of the Decision and Order requires Respondents to grant a License to all Retained Intellectual Property that will permit the Acquirer to operate the relevant Divestiture Business in substantially the same manner as Respondents. Along with the Acquirer's current assets, Acquirer will have all the intellectual property it needs to operate the Divestiture Assets in substantially the same manner as Respondents.

Acquirer has acknowledged that the Divestiture Assets, together with the Acquirer's existing resources, enable the Acquirer to operate the Divestiture Assets as ongoing entities and that no other assets are needed from SCI to do so. See ASA § 4.4.

\* \* \*

As demonstrated above and in the accompanying ASA, SCI has entered into an agreement relating to the divestiture of the Divestiture Assets that fully complies with the Commission's Decision and Order with respect to the divestiture of these assets. Accordingly, Respondents hereby seek Commission approval of the proposed divestiture pursuant to Paragraph II.A of the Decision and Order.

## **II. The Prospective Acquirer Will Be a Strong and Effective Competitor**

### **A. Background**

The Commission is familiar with the owners of the Acquirer, having approved companies owned solely by them as divestiture buyers on a prior occasion. Guy N. Saxton (“Saxton”) and John L. Yeatman (“Yeatman”), being the sole shareholders, formed the Acquirer for the purpose of purchasing the assets subject to the ASA. Saxton and Yeatman own equal shares of the Acquirer, which is similar in corporate structure to other entities they created in order to purchase divestiture assets of SCI—notably the assets of O’Hair & Riggs Funeral Services, Inc. and Ivers & Alcorn Merced Funeral Services, Inc.—and which the Commission approved as divestiture buyers in relation to SCI’s acquisition of Alderwoods in 2007.<sup>2</sup>

Yeatman & Associates, Inc., a Saxton/Yeatman company, purchased its first property in June 2001 with the acquisition of a cemetery in California from The Loewen Group (the predecessor of Alderwoods). Over the last 13 years, Saxton and Yeatman have continued to grow their operations through several acquisitions. Companies controlled by Saxton and/or Yeatman currently own and/or operate 21 cemeteries, 10 funeral homes, and four crematories, with locations in California, Illinois, Louisiana, Maryland, New York, Oregon, and Texas. In addition, Messrs. Saxton and Yeatman each individually own a cemetery in Pennsylvania. Together, these facilities provided approximately 7,100 calls or interments each year. Saxton and Yeatman also seek to acquire additional assets from SCI, which are not the subject of this petition. The present acquisition by the Acquirer is consistent with Saxton and Yeatman’s focus on facilities that they believe can be operated profitably.

<sup>2</sup> See Press Release, Commission Approves Petition to Reopen and Modify Order in Matter of Duke Energy, et al.; FTC Approves Petitions for Proposed Divestitures in Matter of SCI/Alderwoods (Sept. 28, 2007), <http://www.ftc.gov/news-events/press-releases/2007/09/commission-approves-petition-reopen-and-modify-order-matter-duke>.

As the Commission has previously recognized in approving companies operated by Saxton and Yeatman as divestiture buyers, Saxton and Yeatman have extensive experience in acquiring and operating funeral homes and cemeteries, have the financial wherewithal to make this acquisition, and the acquisition of the Divestiture Assets by the Acquirer will ensure that this business remains a strong and effective competitor in Baltimore, Maryland.

**B. Financial Capability**

Saxton and Yeatman are experienced in obtaining funding for transactions, as evidenced by the fact that they have acquired all of their death care facilities through acquisitions. The Acquirer will fund the purchase of the Divestiture Assets [REDACTED]

[REDACTED]

[REDACTED]

**C. Operations Experience**

Mr. Yeatman will serve as President of the Acquirer. He currently serves as Vice President of the Maryland Cemetery, Funeral, and Cremation Association and Treasurer of the Pennsylvania Cemetery, Cremation, and Funeral Association.

Mr. Saxton will serve as Vice-President of the Acquirer. Mr. Saxton has also served as President of the Pennsylvania Cemetery, Cremation, and Funeral Association for a two year term over 2007-2008.

Saxton and Yeatman have a proven record of successful acquisition of funeral homes and cemeteries. Since their acquisition, each facility acquired by a Saxton/Yeatman company has experienced improved performance, and each has been profitable under the leadership of Saxton and Yeatman. Saxton and Yeatman have formed corporations to acquire the majority of their various business locations over the past 15 years. In substantially every case they have used the



balance of the calendar year in which each location was acquired to hire and/or train a sufficient and appropriate management, sales and maintenance staff and to put their business model into effect. Historically, in the first full calendar year following the year of acquisition each location has generally experienced an increase in both gross receipts as well as net profitability. Saxton and Yeatman attribute this success to the development of location-specific incentives to motivate managers and focusing them on providing enhanced services to families, growing the businesses, and operating within budgets.

[REDACTED]

The Acquirer plans to grow the Divestiture Assets, not just maintain the status quo. The Acquirer expects to continue to implement strategies to attract families to the Divestiture Assets, including by marketing and improving public awareness of the facilities and by providing personalized services to ensure positive recommendations from the families they serve. The Acquirer believes these initial measures along with Saxton and Yeatman's operating expertise will not only ensure the continued competitiveness of the Divestiture Assets, but will enhance it. As noted above, the Commission recognized the wherewithal of Saxton and Yeatman in the death care industry in its approval of certain divestitures in relation to SCI's acquisition of Alderwoods in 2007.

**III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition**

The proposed divestiture of the Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. Saxton and Yeatman are experienced operators of

funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that their companies have acquired in the past. The Acquirer enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Divestiture Assets, and enhance their competitiveness in the death care industry. Combining the Divestiture Assets with Saxton and Yeatman's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed acquisition of the Divestiture Assets does not present competitive concerns because the Divestiture Assets do not directly compete with Saxton and/or Yeatman companies' current locations. Saxton/Yeatman companies' only property in the greater Baltimore, Maryland, area is Woodlawn Cemetery, 2130 Woodlawn Drive, Baltimore, Maryland 21207. Woodlawn serves a predominantly African-American clientele and is located on the opposite side of Baltimore from the to-be-acquired Parkwood Cemetery. Thus, Saxton/Yeatman companies do not currently compete with the Divestiture Assets for cemetery services, as defined in the Commission's Complaint, in Baltimore, Maryland. Consequently, the proposed divestiture does not raise any competitive issue.

In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result from the Acquisition. The ASA will achieve the Commission's stated purposes of ensuring the continued use of the Divestiture Assets in the same business in which they were engaged at the time of the announcement of the Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.



Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to the Acquirer, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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Counsel for Respondents

Dated: June 10, 2014

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

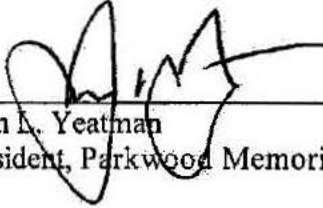
Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
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John Faulk  
Vice President, Business Development  
Service Corporation International

CERTIFICATION OF THE ACQUIRER

The facts and information related in the foregoing Petition, insofar as they pertain to the Acquirer, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



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John L. Yeatman  
President, Parkwood Memorial Association, Inc.

# **Confidential**

# **Exhibit A**