

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

_____)	
In the Matter of)	
)	
Service Corporation International,)	Docket No. C-4423
a corporation, and)	File No. 131 0163
)	
Stewart Enterprises, Inc.,)	
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 Wagemann Holdings, Inc. (“WHI”) of the Divestiture Business that includes the following facility: Lassila Funeral Chapel – Auburn, 551 Grass Valley Highway, Auburn, California 95603. This petition replaces a prior petition submitted by SCI to divest this facility to Heritage Oaks Memorial Group, Inc., and SCI hereby withdraws that petition.

Subject to the Commission’s approval of this Petition, the Divestiture Businesses associated with this facility (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to WHI

pursuant to the Asset Sale Agreement dated August 22, 2014, by and among WHI and S.E. Funeral Homes of California, Inc., an affiliate of SCI (the “ASA”).

Background

On December 23, 2013, SCI and 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 Respondents and WHI, 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. Other than securing landlord consent to transfer the lease to WHI, which is expected before closing, and Commission approval, there are no unsatisfied conditions precedent in the ASA other than those customarily satisfied at closing, so that SCI and WHI are in a position to close the divestiture within a few days of Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, WHI, and the Respondents, because it will allow WHI to move forward with its 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 WHI 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.¹ Pursuant to this requirement, SCI diligently has sought buyers that would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. As noted above, on August 22, 2014, an affiliate of SCI entered into the ASA with WHI, which requires SCI to sell the Divestiture Assets to WHI. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with WHI 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, WHI will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.C.1 of the Decision and Order provides that Respondents may use the “Lassila” trade name for the funeral home located at 406 H Street, Lincoln, California 95648, if applicable, for a period of up to twelve (12) months after the Divestiture Date. The ASA provides that SCI may use the “Lassila” trade name in the operation of the business located at 406 H Street, Lincoln, California 95648, for a period of up to twelve (12) months from the Closing Date. See ASA § 5.24.

WHI has acknowledged that the Divestiture Assets, together with the WHI’s existing resources, enable WHI to operate the Divestiture Businesses 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,

¹ The Commission issued the final Order on April 29, 2014.

Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph II.A of the Decision and Order.

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

A. Background

Douglas Wagemann, the Owner, President and CEO of WHI, has extensive experience in operating funeral homes, has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by WHI will ensure that the acquired business remains a strong and effective competitor in the Auburn, California, area.

WHI was incorporated in 2013 by Douglas Wagemann to purchase Cochrane's Chapel of the Roses funeral home in Roseville, California, from Carriage Services. Mr. Wagemann, a former employee of Carriage Services, purchased this then-underperforming business and improved its operations and returned it to its former status as "Family Owned - Community Focused." The name of the business is now "Cochrane & Wagemann, Funeral Directors." WHI also owns and operates the Cremation Society of Placer County in Rocklin, California, which it opened in 2014.

Mr. Wagemann began his career in the funeral service profession in 1973. He has worked as an Area Manager for SCI, as a CFO and Compliance Officer for Hospice of the Valley, and most recently had held the position of Director of Support/Operation (Western Region) for Carriage Services, Inc. He graduated from the Mortuary Science Program at Cypress College in 1979, then went on to complete his B.S. Degree in Operations Management from Cal Poly, Pomona and M.B.A. from Cal State, San Bernardino. Mr. Wagemann has also earned the coveted Certified Cemetery, Funeral Executive (CCFE) and Certified Funeral Service Practitioner (CFSP) designations.

Over the years, Mr. Wagemann has dedicated his time and resources assisting on several international hospice strategic planning projects in Russia, Italy, India, and Canada as well as the United States. A lecturer and author, he is an adjunct professor in the Funeral Service Program at American River College (one of two Funeral Service Programs in California) where he can help influence the next generation of funeral service professionals.

WHI actively markets the Cochrane & Wagemann facility and intends to extend these marketing efforts to the Divestiture Assets. One hallmark of WHI's marketing efforts for the Wagemann & Cochrane facility is Mr. Wagemann's featured monthly column "Consider the Journey" in the online editions of the Roseville Press-Tribune, Lincoln Messenger News, and the Placer Herald. Mr. Wagemann addresses questions from the community regarding end-of-life, funeral service, and other related topics. In addition, Mr. Wagemann believes deeply in giving back to the community. He is on the Board of Directors of Sutter Care at Home (A Sutter Health Affiliate) and the Eskaton Foundation, as well as the National Hospice Foundation, the Foundation for Hospices of Sub-Saharan Africa, and the Sacramento Choral Society & Orchestra. He is also an active member of the Roseville Rotary Club, the Downtown Roseville Merchants, Roseville Masonic Lodge #222 F&AM, the Lincoln, Rocklin, and Roseville Chambers of Commerce, and several business networking groups. This involvement with community members and service organizations allows him to develop one-on-one relationships and build trust and credibility in the community.

Since acquiring Cochrane's Chapel of the Roses, now Cochrane & Wagemann, Funeral Directors, WHI has grown the business from [REDACTED] calls in 2013 to [REDACTED] calls in 2014. Using annualized figures, the company has increased overall revenue from [REDACTED] in 2013 to [REDACTED] in 2014.

More information about WHI, Douglas Wagemann, and Cochrane & Wagemann, Funeral Directors is available at <http://www.cochranewagemann.com>.

B. Financial Capability

WHI seeks to acquire the Divestiture Assets for a purchase price of [REDACTED] and intends to finance the purchase price with a loan from Live Oak Bank, the lender on WHI's existing loan for the Cochrane & Wagemann, Funeral Directors business. Live Oak Bank is a specialty lender and is one of the largest SBA lenders in the United States.

Live Oak has provided a loan proposal acceptable to Mr. Wagemann and the loan package has already moved into underwriting. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Operations Experience

WHI, and its owner, Doug Wagemann, are experienced funeral home operators who are capable of operating the Divestiture Assets successfully.

As noted above, WHI has owned and operated Cochrane & Wagemann, Funeral Directors in Roseville, California, since 2013, and also owns and operates the Cremation Society of Placer County in Rocklin, California. Cochrane & Wagemann, Funeral Directors is a full-service funeral and cremation services provider that benefits from a significant number of referrals from families previously served. WHI has engaged in a focused effort to grow preneed sales. These preneed sales efforts have resulted in a growing number of at-need calls and increased visibility in the Roseville community. WHI intends to apply this same strong preneed sales focus to the Divestiture Assets.

WHI's owner has extensive experience in operating funeral homes in addition to his experience with Cochrane & Wagemann, Funeral Directors. Mr. Wagemann is a licensed funeral director with forty-one years of experience in the profession. He will apply his wealth of knowledge and experience in this industry and in the greater Sacramento area to the successful integration and operation of the Divestiture Assets.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, WHI has sufficient operating expertise to not only ensure the continued

competitiveness of the Divestiture Assets, but to enhance it.

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. Mr. Wagemann is an experienced funeral

home operator with a proven track record of successfully operating and enhancing the competitiveness of his existing business. WHI 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 market for funeral services. Combining the Divestiture Assets with WHI's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed divestiture will result in no harm to competition. WHI currently does not own or operate any funeral homes in same geographic market (as alleged in the Commission's complaint) as the Divestiture Assets. 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.

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Conclusion

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

Respectfully submitted,



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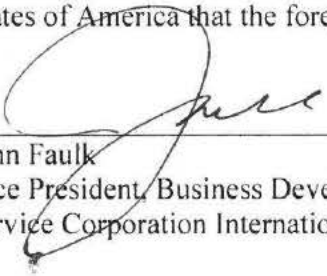
Counsel for Respondents

Dated: August 25, 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.

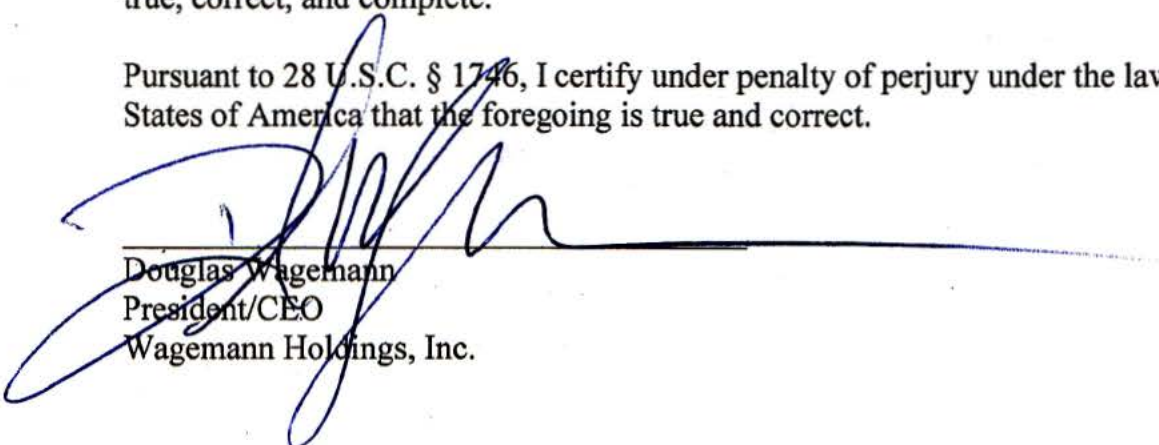


John Faulk
Vice President, Business Development
Service Corporation International

CERTIFICATION OF WAGEMANN HOLDINGS, INC.

The facts and information related in the foregoing Petition, insofar as they pertain to Wagemann Holdings, Inc., 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.



Douglas Wagemann
President/CEO
Wagemann Holdings, Inc.

Confidential

Exhibit A