

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

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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 Heritage Oaks Memorial Group, Inc. (“HOMG”) of the Divestiture Business that includes the following facility: Lassila Funeral Chapel – Auburn, 551 Grass Valley Highway, Auburn, California 95603.

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 HOMG pursuant to the Asset Sale Agreement dated April 18, 2014, by and among HOMG and 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 Consent Agreement is presently before the Commission for final approval and issuance of the orders contained therein.

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 HOMG, 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 to closing other than Commission approval have already been satisfied so that SCI and HOMG are in a position to close the divestiture 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, HOMG, and the Respondents, because it will allow HOMG 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 HOMG 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 a buyer that

<sup>1</sup> The Commission has not yet issued the Order as final.

would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. As noted above, on April 18, 2014, an affiliate of SCI entered into the ASA with HOMG, which requires SCI to sell the Divestiture Assets to HOMG. The executed ASA is attached hereto as Confidential Exhibit A.

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

Paragraph II.A.2 of the Decision and Order requires Respondent 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 assets it is acquiring through the ASA, HOMG has all the intellectual property it needs to operate the Divestiture Assets in substantially the same manner as Respondents.

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 § 5.23.

HOMG has acknowledged that the Divestiture Assets, together with the HOMG’s existing resources, enable HOMG 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, 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**

HOMG has experience in operating funeral homes, has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by HOMG will ensure that those businesses remain strong and effective competitors in the Auburn, California, area.

Founded in 2008, HOMG is owned by Ron and Chris Harder and James Beeding. HOMG currently owns and operates Heritage Oaks Memorial Chapel in Rocklin, California. The mission statement for Heritage Oaks Memorial Chapel demonstrates HOMG's approach to funeral care: "Serving the Living by Caring for their Loved Ones with Compassion, Dignity, Respect & Integrity."

HOMG actively markets the Heritage Oaks Memorial Chapel facility and intends to extend these marketing efforts to the Divestiture Assets. One hallmark of HOMG's marketing efforts for the Heritage Oaks Memorial Chapel facility is presenting "Preparing Is Caring" and "Good Grief" seminars for people involved in grief care (hospice, chaplains, pastors, support group leaders, medical and education staff) to provide education, encouragement and support, as well as to market the Heritage Oaks Memorial Chapel facility. In addition, Ron Harder, Chris Harder, and James Beeding are active members of many local community organizations in the

Roseville and Rocklin areas, including Chambers of Commerce, Kiwanis Clubs, the Older Adult Collaborative, and several business networking groups. This involvement with community members and service organizations, along with their presence at the Spring and Fall Lincoln Hills Business & Health Fair, allows them to develop one-on-one relationships and build trust and credibility in their community.

Since its inception in 2008, HOMG has seen growth in the Heritage Oaks Memorial Chapel facility. Starting from scratch, Heritage Oaks Memorial Chapel has grown to serve over 1,000 calls since opening, of which 292 were in 2013. In addition, revenues have also grown steadily since 2008. [REDACTED]

More information about HOMG and the Heritage Oaks Memorial Chapel is available at <http://www.heritageoaksmemorialchapel.com>.

**B. Financial Capability**

HOMG has the funds to make this purchase, cover closing costs, and have working capital. HOMG seeks to acquire the Divestiture Assets for a purchase price of [REDACTED]

[REDACTED]

**C. Operations Experience**

HOMG, along with its owners, Ron and Chris Harder and James Beeding, are experienced funeral home operators who are capable of operating the Divestiture Assets successfully.

As noted above, HOMG has owned and operated the Heritage Oaks Memorial Chapel in Rocklin, California, since 2008. Heritage Oaks Memorial Chapel is a full-service funeral and cremation services provider that benefits from a significant number of referrals from families previously served. HOMG 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 Rocklin community. HOMG intends to apply this same strong preneed sales focus to the Divestiture Assets.

HOMG's owners have extensive experience in owning and operating funeral homes in addition to their experience with Heritage Oaks Funeral Chapel. James Beeding is a licensed funeral director with twenty-two years of experience in the profession. Early in his career, he received his training at a prominent family-owned mortuary which provided the inspiration to one day own a funeral home. Immediately prior to joining HOMG in 2008, Mr. Beeding was employed by the Neptune Society of Northern California. Mr. Beeding worked for the Neptune Society from 2000 to 2008 and served as Managing Funeral Director for the last five years of his tenure there. Mr. Beeding 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.

Ron Harder is a licensed funeral director and also maintains an insurance license. In founding and operating HOMG, Mr. Harder provides experience in sales, marketing, finance, and pastoral care, and an entrepreneurial spirit. He obtained his funeral director's license in 2009 while also retaining his insurance license which made it possible to grow HOMG's preneed arrangements. He began his insurance career in 1991. He successfully grew his insurance business into a financial planning practice, [REDACTED] Mr. Harder was able to use his knowledge of financial advising and estate planning in major donor development and began working with Trans World Radio (TWR), a non-profit ministry. In 2008, after eight and a half years with TWR, he felt called to the funeral and grief care business, in part due to the

passing of his son, Zachary, two years earlier. Mr. Harder began his career in the death care industry by opening Heritage Oaks Memorial Chapel with his wife, Chris, and James Beeding.

Prior to founding HOMG, Chris Harder had over 30 years of administrative and accounting experience. She served as the Office Administrator for Nordson Corporation's West Coast Regional Office for 10 years until it closed in 2000 and then spent 11 years as Assistant to the Regional Director with Life Care Services. Both of these positions provided a variety of experience, including accounting, statistical reports, scheduling, presentations, event planning and inventory control. She applies this experience in a variety of capacities to HOMG, including developing marketing materials and managing HOMG's website which provides valuable Internet exposure for Heritage Oaks Memorial Chapel.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thus, HOMG 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. HOMG is an experienced operator of a funeral home with a proven track record of successfully operating and enhancing the competitiveness of that funeral home. HOMG 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 HOMG'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. HOMG 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.

**[REST OF PAGE INTENTIONALLY LEFT BLANK]**

Conclusion

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

Respectfully submitted,



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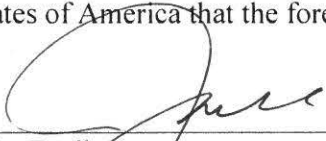
Counsel for Respondents

Dated: April 24, 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 HERITAGE OAKS MEMORIAL GROUP, INC.

The facts and information related in the foregoing Petition, insofar as they pertain to Heritage Oaks Memorial Group, 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.



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Ron Harder  
President  
Heritage Oaks Memorial Group, Inc.

# **Confidential**

# **Exhibit A**