

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

**COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch**

In the Matter of

SERVICE CORPORATION INTERNATIONAL

a corporation.

Docket No. C-4275

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Service Corporation International (“SCI”) of Palm Mortuary, Inc. (“Palm”), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed a Consent Agreement, containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Service Corporation International (“SCI”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its corporate head office and principal place of business located at 1929 Allen Parkway, Houston, Texas 77109.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors and assigns; and its subsidiaries, divisions, groups, and affiliates controlled by Service Corporation International (including, after the Acquisition Date, Palm) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Palm” means Palm Mortuary, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 1325 North Main Street, Las Vegas, Nevada 89101, and the subsidiaries, divisions, groups, and affiliates controlled by Palm Mortuary, Inc.
- C. “Respondent” means SCI.
- D. “Commission” means the Federal Trade Commission.
- E. “Consent Agreement” means the Agreement Containing Consent Orders in this matter.
- F. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission in this matter.
- G. “Confidential Business Information” means information not in the public domain related to the Divestiture Business, except for any information that was or becomes generally available to the public other than as a result of a disclosure by Respondent, or was available, or becomes available, to Respondent on a non-confidential basis, but only if, to the knowledge of Respondent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

- H. “Confidential Palm Business Information” means information not in the public domain that is used in the Palm Business.
- I. “Divestiture Business” means all activities of Respondent related to
 - 1. providing Funeral Services and Cemetery Services at the Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada 89119; and
 - 2. marketing, promoting, selling and maintaining Pre-Need Contracts for Funeral Services and/or Cemetery Services at the Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada, 89119, or the Davis Funeral Home, 2127 West Charleston Boulevard, Las Vegas, Nevada, 89102.
- J. “Divestiture Employee” means any and all full-time, part-time, or contract employees of Respondent whose duties relate primarily to the Divestiture Business and such other SCI employees as are necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business and operate such Business in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance of the assets of such Business).
- K. “Interim Monitor” means any monitor appointed pursuant to this Order to Maintain Assets or the Decision and Order.
- L. “Orders” means the Decision and Order and this Order to Maintain Assets.
- M. “Palm Business” means the assets and business of Palm that are acquired by Respondent pursuant to the Acquisition Agreement.

II.

IT IS FURTHER ORDERED that:

- A. From the date Respondent executes the Consent Agreement until the date this Order to Maintain Assets terminates, Respondent shall take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business and to prevent the destruction, removal, wasting, deterioration, or impairment of such Business (except for ordinary wear and tear). Further, Respondent shall not sell, transfer, encumber, or otherwise impair the Divestiture Business other than in the manner prescribed in the Decision and Order.
- B. From the date Respondent executes the Consent Agreement until this Order to Maintain Assets terminates, Respondent shall maintain the operations of the Divestiture Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business). In operating and maintaining the Divestiture Business, Respondent shall:
 - 1. provide the Divestiture Business with sufficient working capital to operate at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities;

2. continue, at least at their scheduled pace, any additional expenditures for the Divestiture Business that were authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, promotional, marketing and sales expenditures;
 3. use best efforts to maintain and increase sales of the Divestiture Business and provide such resources as may be necessary to respond to competition against the Divestiture Business;
 4. provide such support services to the Divestiture Business as were being provided as of the date the Consent Agreement was signed by Respondent; and
 5. use best efforts to preserve and maintain existing relationships with the customers, suppliers, vendors, private and governmental entities and others having business relations with the Divestiture Business.
- C. From the date Respondent executes the Consent Agreement until this Order to Maintain Assets terminates, Respondent shall
1. provide the Divestiture Employees with the authority and resources necessary to maintain and operate the Divestiture Business in a manner consistent with past practice and this Order to Maintain Assets;
 2. ensure that no Divestiture Employee has responsibilities or duties related to the operation or management of the Palm Business;
 3. continue all financial and other benefits of the Divestiture Employees and provide financial incentives to such employees to continue in their positions and to operate and maintain the Divestiture Business in a manner consistent with past practice and this Order to Maintain Assets;
 4. replace any Divestiture Employee who leaves the employ of Respondent with an employee of similar skill, training and expertise, and treat such employee as a Divestiture Employee under the terms of this Order to Maintain Assets;
 5. require, as a condition of continued employment, that Respondent employees and representatives with access to Confidential Palm Business Information agree not to disclose such Information to any Divestiture Employee; and
 6. require, as a condition of continued employment, that each Divestiture Employee agree not to disclose any Confidential Business Information to anyone other than a fellow Divestiture Employee, except that Confidential Business Information may be provided to employees or representatives of Respondent as needed for tax, legal, regulatory or financial reporting purposes provided such Confidential Business Information is not disclosed to anyone with operational responsibility for the Palm Business.
- D. Within ten (10) days of a request by the Commission or by an Acquirer or proposed Acquirer (as applicable), Respondent shall provide the Acquirer or proposed Acquirer (as

applicable) with the following information for each Divestiture Business Employee, as and to the extent permitted by Law:

1. name, job title or position, date of hire and effective service date;
 2. a specific description of the employee's responsibilities;
 3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year and current target or guaranteed bonus, if any;
 5. employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the option of the proposed Acquirer or Acquirer (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- E. Respondent shall not interfere with the employment by the Acquirer of any Divestiture Business Employee; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with the Respondent; and shall remove any contractual impediments that may deter such employees from accepting employment with the Acquirer including, but not limited to, removing any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer, and paying, or transferring to the account of the employee, all current and accrued bonuses, pensions and other current and accrued benefits.
- F. For a period of two (2) years after the Divestiture Date, Respondent shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee who has accepted an offer of employment with the Acquirer, or who is employed by the Acquirer, to terminate his or her employment relationship with the Acquirer; provided, however, a violation of this provision will not occur if: (1) the person's employment has been terminated by the Acquirer, (2) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.
- G. Respondent shall not, after the Acquisition Effective Date, use, directly or indirectly, any Confidential Business Information or disclose or convey any Confidential Business Information, directly or indirectly, to any Person except as follows:

1. Respondent may disclose Confidential Business Information to the Acquirer or proposed Acquirer (as the case may be) or other Persons specifically authorized by such Acquirer or proposed Acquirer to receive such information; and
2. So long as Respondent does not disclose Confidential Business Information to any Persons who have operational responsibility for the Palm Business, Respondent may use Confidential Business Information as needed:
 - a) to comply with the requirements of this Order or the Decision and Order;
 - b) to comply with Respondent's obligations to the Acquirer under the Divestiture Agreement(s);
 - c) to comply with applicable law; or
 - d) to enforce the terms of any Divestiture Agreement or defend against any dispute or legal proceeding,

provided, that Confidential Business Information may be disclosed to Third Parties only as necessary for the purposes authorized by this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement with the Acquirer (but Respondent shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and Respondent shall use its best efforts to obtain a protective order to protect the confidentiality of such Confidential Business Information during any adjudication;

provided, further, that Respondent may continue to use Confidential Business Information included in the Divestiture Business License(s) to the extent such information was previously used by Respondent in connection with assets other than those being transferred to Acquirer pursuant to this Order and/or the Divestiture Agreement.

- H. On or before the Divestiture Closing Date, Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information contained in the Order to all employees who were involved in the Divestiture Business.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order to Maintain Assets and the Decision and Order.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor

within ten (10) days after notice by the staff of the Commission to Respondent of the identity of the proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the Interim Monitor.

- C. Not later than ten (10) days after the appointment of an Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. Respondent shall facilitate the ability of the Interim Monitor(s) to comply with the duties and obligations set forth in this Order to Maintain Assets, and shall take no action that interferes with or hinders the Interim Monitor's authority, rights, or responsibilities as set forth herein or any agreement between the Interim Monitor(s) and Respondent.
- E. The Interim Monitor's duties and responsibilities shall include the following:
 - 1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 - 2. the Interim Monitor shall have the power and authority to monitor Respondent's compliance with this Order to Maintain Assets and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of this Order to Maintain Assets and in consultation with the Commission;
 - 3. the Interim Monitor may, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Order to Maintain Assets or under any agreement between the Interim Monitor and Respondent; and
 - 4. the Interim Monitor shall evaluate the reports submitted by Respondent pursuant to this Order to Maintain Assets, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondent of his or her obligations under the Order.
- F. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- G. The Interim Monitor shall serve until termination of this Order to Maintain Assets.
- H. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor pursuant to the procedures contained in this Paragraph.
- I. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

- J. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as an Interim Monitor or Divestiture Trustee(s) pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final, and every thirty (30) days thereafter until Respondent has fully complied with its obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets as required by the Decision and Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent, including without limitation, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, made to its principal office, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and

- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. The day after all Divestiture Assets have been divested and all Divestiture Licenses have been conveyed, as required by and described in the Decision and Order, or
 - 2. The day the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: November 24, 2009