

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 DIVESTITURE BUYER**

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 Guerra & Gutierrez, LLC, and Guerra & Gutierrez Enterprises, Inc. (collectively with affiliated companies “Guerra & Gutierrez”) of the Divestiture Business associated with the following facilities: JT Oswald Mortuary, 1001 N. Maclay Ave., San Fernando, CA 91340; Custer Christiansen Mortuary, 124 S. Citrus Ave., Covina, CA 91723; and Luyben Family Dilday-Mottell Mortuary, 5161 E. Arbor Road, Long Beach, CA.

The Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to Guerra & Gutierrez pursuant to the Asset Sale Agreement dated July 28,

2014, by and among Guerra & Gutierrez and SCI California Funeral Services, Inc. and Alderwoods Group (California), 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 final order in this matter 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 Guerra & Gutierrez, 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 have already been satisfied so that SCI and Guerra & Gutierrez 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, Guerra & Gutierrez, and the Respondents, because it will allow Guerra & Gutierrez 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 Guerra & Gutierrez 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**

The ASA with Guerra & Gutierrez complies with the requirements of Paragraph II of the Decision and Order:

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 has diligently 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 July 28, 2014, affiliates of SCI entered into the ASA with Guerra & Gutierrez, which requires SCI to sell the Divestiture Assets to Guerra & Gutierrez. The executed ASA is attached hereto as Confidential Exhibit A.

Paragraph II.A.1 requires that the Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the ASA, Guerra & Gutierrez will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.B requires that Respondents divest the funeral homes in Los Angeles, California, to no more than one Acquirer. These facilities are: (i) Lubyen Family Dilday-Motell Mortuary, 5161 Arbor Road, Long Beach, California 90808; (ii) Funeraria Del Angel JT Oswald, 1001 North Maclay, San Fernando, California 91340; and (iii) Custer Christiansen Mortuary – Covina, 124 S. Citrus Avenue, Covina, California 91723. The ASA contemplates that Guerra & Gutierrez will acquire all of these facilities, satisfying this requirement. See ASA § 1.1.

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

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

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**

Guerra & Gutierrez has many years of experience in acquiring and operating funeral homes, has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by Guerra & Gutierrez will assure that those businesses remain strong and effective competitors.

Guerra & Gutierrez Enterprises, Inc. is a privately-held business owned by Mr. Guerra and Mr. Gutierrez as the sole shareholders. Mr. Guerra and Mr. Gutierrez are the sole members of Guerra & Gutierrez, LLC. Mr. Guerra acquired his first mortuary in the Florence area of Southeast Los Angeles in 1962. Mr. Gutierrez had experience at the family owned mortuary started by his parents in 1945 in the Chinatown district of Los Angeles. Mr. Guerra and Mr. Gutierrez founded Guerra & Gutierrez Mortuary in 1969, when they merged their mortuaries and purchased their first mortuary together in East Los Angeles.

Over the past 45 years, Guerra & Gutierrez has grown both organically and through acquisition. Guerra & Gutierrez currently owns and operates three funeral homes located at the following addresses: 6338 Greenleaf Ave., Whittier, CA 90601; 5800 East Beverly Blvd., Los Angeles, CA 90022; and 5245 East Pomona Blvd., Los Angeles, CA 9022. In 2013, these three facilities performed 1,038 calls. The three existing Guerra & Gutierrez funeral homes

currently employ 28 full time and 10 part time employees and expect to serve over 1,050 calls in 2014.

The Guerra & Gutierrez corporate structure is designed so that each business can operate both independently and with strong inter-dependence that allows for flexibility with its operational resources, branding, and economics of scale relative to cost of goods sold, preparation, storage, and other expenses.

Guerra & Gutierrez enjoys a strong reputation in the community and the death care industry. Mr. Guerra is a past board member of the National Funeral Directors Association (NFDA) and the Los Angeles County Funeral Directors Association (“LACFDA”). Mr. Gutierrez is Commissioner and past president and board member of the California Funeral Directors Association (“CFDA”).

**B. Financial Capability**

Guerra & Gutierrez has a strong documented history of successfully operating businesses of similar sizes. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Operations Experience**

Guerra & Gutierrez has sufficient operating expertise to not only ensure the continued competitiveness of the Divestiture Assets being acquired, but also to enhance them. Co-founder, Carlos Guerra, was first employed in the funeral service industry while still in high school. By 1961, he had purchased his first mortuary and has been in the funeral industry as an owner/operator for the past 53 years. As a teenager, Carlos Guerra's partner, Richard Gutierrez, started working in his parents' funeral home. He has been a co-owner and operator of funeral establishments continuously since partnering with Carlos Guerra in 1969. In addition to being a licensed funeral director, Richard Gutierrez is also an attorney. Carlos Guerra's son, Anthony Guerra, is a licensed funeral director with over 30 years of experience in the industry. He started working at Guerra & Gutierrez while still in high school and joined full time upon completion of college. He currently serves as vice president of Guerra & Gutierrez.

[REDACTED]

[REDACTED]

Guerra & Gutierrez has sufficient operating expertise to not only ensure the continued competitiveness of the Divestiture Assets, but to enhance it. Guerra & Gutierrez plans to implement its highly successful preneed program at all three Divestiture Asset locations, which will significantly enhance their business and provide for future income. Additionally, Guerra & Gutierrez has a strategic partnership "preferred provider" relationship with Forest Lawn Memorial Park. This relationship enables Guerra & Gutierrez to operate as a "virtual combo" facility. Guerra & Gutierrez is currently in the process of obtaining a cemetery broker license, which will allow Guerra & Gutierrez to provide its customers the added convenience of

obtaining cemetery and columbarium plots at Forest Lawn concurrently with their funeral services purchases.

**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. Guerra & Gutierrez is an experienced operator of funeral homes, with a proven track record of successfully operating and enhancing the funeral homes that it has acquired in the past.

Guerra & Gutierrez 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 Guerra & Gutierrez'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.<sup>2</sup> Guerra & Gutierrez does not currently compete in either Long Beach or San Fernando Valley, as defined in the Commission's Complaint, where two of the Divestiture Assets operate. Although Guerra & Gutierrez operates in the third area defined by the Complaint, East Los Angeles County, the closest Guerra & Gutierrez funeral home is located in a different part of town (Whittier) than the Custer Christensen facility (Covina). Moreover, the Guerra & Gutierrez facility in Whittier is an over 16-mile drive from the closest Divestiture Asset and does not compete directly with it given the plethora of competing funeral homes in the densely-

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<sup>2</sup> The Commission's Complaint defined the relevant market as Catholic funeral services in East Los Angeles County, Los Angeles (Long Beach), and Los Angeles (San Fernando Valley). See Complaint ¶ 14 (3-5).

populated East Los Angeles County area.<sup>3</sup> 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, Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to Guerra & Gutierrez, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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Amanda L. Wait  
Hunton & Williams LLP  
2200 Pennsylvania Ave, NW  
Washington, D.C. 20037  
Counsel for Respondents

Dated: July 31, 2014

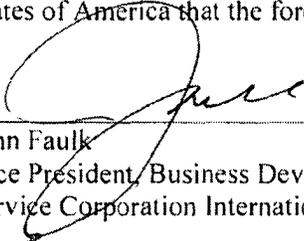
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<sup>3</sup> According to MapPoint 2011, Guerra & Gutierrez, 6338 Greenleaf Ave., Whittier, CA 90601 is a 16.2 mile drive from Custer Christensen. Guerra & Gutierrez is located in Whittier; Custer Christensen is located in Covina.

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 GUERRA & GUTIERREZ, LLC,  
AND GUERRA & GUTIERREZ ENTERPRISES, INC.

The facts and information related in the foregoing Petition, insofar as they pertain to Guerra & Gutierrez, LLC, and Guerra & Gutierrez Enterprises, Inc., their subsidiaries, and their 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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Carlos Guerra  
President and Manager, Guerra & Gutierrez, LLC  
President, Guerra & Gutierrez Enterprises, Inc.

# **Confidential Exhibit A**