

**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	)	

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**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 Claney Oatmeyer Semenyuk Inc. (“Claney”) 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 Wagemann Holdings, 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 Claney pursuant to an

Asset Sale Agreement by and among Claney and S.E. Funeral Homes of California, Inc., an affiliate of SCI (the “ASA”).<sup>1</sup>

### 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 Claney, 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

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<sup>1</sup> In order to expedite the review of this petition, Respondents are filing this petition after entering into a Letter of Intent (“LOI”) with Claney. The parties expect to have a fully executed Asset Sale Agreement in the next few

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. SCI believes that conditions to closing in the ASA, other than Commission approval, will be satisfied prior to Commission approval, so that SCI and Claney will be able 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, Claney, and the Respondents because it will allow Claney 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 Claney pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

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weeks and will provide a copy of that ASA upon execution to Commission staff.

**I. The ASA Will Be 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>2</sup> Pursuant to this requirement, SCI diligently has sought a buyer that would be acceptable to the Commission, through an extensive auction process that produced great interest in the properties. On October 21, 2014, an affiliate of SCI entered into a LOI with Claney, which requires SCI to sell the Divestiture Assets to Claney subject to a to-be-executed Asset Sale Agreement ("ASA"). The LOI is attached hereto as Confidential Exhibit A.

The ASA will comply 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 and LOI, Claney will acquire the Divestiture Assets. See LOI.

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 will provide 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.

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As demonstrated above and in the accompanying LOI, SCI will enter 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, the Respondents

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<sup>2</sup> The Commission issued the final Order on April 29, 2014. The 180-day period ends on October 27, 2014. [REDACTED]

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**

Claney has extensive experience in acquiring and operating funeral homes cemeteries, and crematories, has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by Claney will assure that those businesses remain strong and effective competitors in Auburn, California.

Claney is 40%-owned and operated by Lorin Claney. Claney owns the combination facility consisting of Miller Funeral Home and Lakeside Memorial Lawn, located at 1201 Forrest Street, Folsom, California, 95630. Miller Funeral Home started in 1869, and the Claney family purchased it in 1962 from the third generation of Millers. Mr. Claney has owned and operated Miller Funeral Home since 1988. He graduated from Westmont College in Santa Barbara, California, with a degree in Business and Economics. He also graduated from Cypress College of Mortuary Science and currently has his Funeral Directors License, State and National Embalmer's License, Funeral Home Manager's License, Cemetery Manager's License, and an Insurance License to sell pre-need funeral insurance. Further, he has completed graduate work with Dallas Theological Seminary. Miller Funeral Home has a strong case volume and has increased over the past number of years to well over [REDACTED] per year. Lakeside Memorial Lawn was bought along with Miller Funeral Home in 1962 and has historic graves dating to 1850. Lakeside has maintained consistent revenue over the past several years and is currently developing an additional mausoleum, pre-buried ground property, private estates, niche columns, ossuaries, and cremation gardens.

In 2010, Mr. Claney formed Claney and included some valuable employees as owners and acquired Lakeside Colonial Chapel in 2010 and Chapel of the Twin Cities in 2011. Both funeral home buildings have been completely renovated and have installed crematoriums in both locations to better serve those local areas. [REDACTED]

[REDACTED]

Claney currently has 14 employees operating among the three facilities. Between these business, Claney performs approximately [REDACTED] and has a combined revenue of approximately [REDACTED] annually. Claney currently does not compete with the Divestiture Assets due to lack of proximity and physical separation by towns and communities. Claney is confident that it can grow the Divestiture Assets, which are conveniently located between Claney's existing businesses.

**B. Financial Capability**

Claney currently intends to pay for the Divestiture Assets [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. Operations Experience**

Mr. Claney's partners in Claney are Derrick Oatmeyer, Andrey Semenyuk, and Igor Semenyuk. Messrs. Oatmeyer and Semenyuk collectively have over 30 years of experience in

the death care industry, two hold funeral director licenses in California, and one is a licensed embalmer and crematory manager.

Claney currently shares personnel, vehicles, and equipment among its present locations. Such operational interdependence has been effective and has allowed Claney to grow each location. Given that the Lassila Funeral Chapel is located between two of Claney's existing facilities, on a route frequently driven by Claney employees for business purposes, Claney expects to expand the operational interdependence to the new facility.

For many years, Claney has had an active pre-need presence at Miller Funeral Home and Lakeside Memorial Lawn, and it has had an active pre-need program at its other locations since their acquisitions in 2010 and 2011. Claney intends to grow the pre-need business upon its acquisition of the Divestiture Assets.

### **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 to Claney will achieve the purposes of the Decision and Order. Claney is an experienced operator of funeral homes, cemeteries, and crematories with a proven track record of successfully operating and enhancing the funeral homes and crematories that it has acquired in the past. Claney enjoys a strong financial position with the additional backing of Miller Funeral Home Inc. and Lakeside Memorial Lawn Inc. that will enable it to complete this acquisition, continue the operation of the Divestiture Assets, and enhance their competitiveness in the market for funeral and cemetery services. Combining the Divestiture Assets with Claney'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. Claney does not currently compete in any market, as defined in the Commission's Complaint, in which the Divestiture

Assets operate. Consequently, there is no overlap between the operations of Claney and the Divestiture Assets, and 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 divestiture to Claney 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 Claney as soon as practicable after expiration of the public comment period.

Respectfully submitted,



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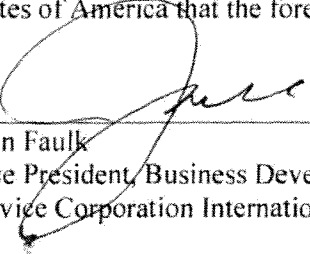
Dated: October 23, 2014



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 CLANEY OATMEYER SEMENYUK INC.

The facts and information related in the foregoing Petition, insofar as they pertain to Clane Oatmeyer Semenyuk 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.



Lorin Clane

*Treasurer*

Clane Oatmeyer Semenyuk Inc.

# **Confidential**

# **Exhibit A**