

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

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 the Order, the following definitions shall apply:

A.

1. the date the Respondent and Palm close on the Acquisition pursuant to the Acquisition Agreement; or
 2. the date on which Respondent, directly or indirectly, acquires a controlling interest in Palm.
- I. “Cemetery Services” means all activities relating to the

together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. All Tangible Personal Property used in the Divestiture Business, including without limitation, Tangible Personal Property removed (and not replaced) from the Divestiture Business at any time after August 5, 2009, if such Property is necessary to operate the Davis Divestiture Business as a going concern, unless such Property was removed in the ordinary course of business and has a cost of less than \$1,000;
3. The trade name "Davis Funeral Home and Memorial Park" and all commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the term "Davis," "Davis Funeral Home," "Davis Memorial Park," or "Davis Funeral Home and Memorial Park";
4. All inventories;
5. All accounts receivable;
6. All agreements, contracts, and leases and all rights thereunder and related thereto, including without limitation, all Davis Pre-Need Contracts;
7. All consents, licenses, certifi(d/rg,TJT;9C /Pm0mop uonsnud.l(anrr11 Bl(crs 5,su," Davis Mem-n

11. All insurance benefits, rights, and proceeds, including those arising from any Davis Pre-need Contracts; and
12. All rights relating to pre-need deposits (including bank, trust, or other accounts relating to or arising from any Davis Pre-need Contracts and endowment or perpetual care funds), claims for refunds, and rights to offset in respect thereof.

provided, however, that the Divestiture Assets need not include:

- i) assets located at facilities or offices not included in the Divestiture Business and whose use is not exclusively or primarily related to the operation of the Divestiture Businesses;
- ii) motor vehicles used by the relevant Divestiture Businesses if the Acquirer does not need them and the Commission approves the divestiture without such vehicles;
- iii) rights in any lease of Tangible Personal Property that pertains to generally available property relating to office furniture, office equipment, or computers;
- iv) rights in, and records and documents (or portions thereof) exclusively concerning, any national license, national supply or service agreement, national proprietary or licensed advertising program, or national proprietary product associated with SCI's Dignity Memorial program;
- v) rights to records and documents (or portions thereof) exclusively concerning, commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Alderwoods," "Service Corporation International," "SCI," "Dignity" (including "Dignidad," "Dignite," and other translations of Dignity into languages other than English), or "Dignity Memorial"; or
- vi) any other assets, rights, or agreements not needed by the Acquirer if the Commission approves a Divestiture Agreement that does not divest, grant or transfer such assets, rights, or agreements.

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financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salaries and benefits information, and, subject to legal requirements, copies of all personnel files.

- T. “Divestiture Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets to an Acquirer pursuant to this Order.
- U. “Funeral Services” means all activities relating to the promotion, marketing, sale and provision of funeral services and funeral goods, including, but not limited to, goods and services used to care for and prepare bodies for burial, cremation, or other final disposition; and goods and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.
- V. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondent, in which Respondent has a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications, inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; and (v) all rights in websites and internet domain names presently used by Respondent.
- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- X. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondent, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Divestiture Assets and convey the Divestiture Business License at no minimum price, absolutely and in good faith, as on-going businesses, no later than ninety (90) days from the Acquisition Date, to an Acquirer and in a manner that receives the prior approval of the Commission.
- B. Any Divestiture Agreement between Respondent and the Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Prior to the Divestiture Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary to allow Respondent to divest the Divestiture Assets, convey the Divestiture Business License, and allow the Acquirer to operate the Divestiture Business;

provided, however, Respondent may satisfy this requirement as to a particular Third Party by certifying that the Acquirer has executed the necessary agreements directly with such Third Party.
- D. Prior to the Divestiture Closing Date, Respondent shall take all actions necessary to ensure that Divestiture Assets meet federal, state, local and municipal requirements necessary to allow the transfer of the Divestiture Assets to the Acquirer.
- E. Respondent shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire or use the Divestiture Assets and/or operate the Divestiture Business.
- F. 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:

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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.
- I. 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 eliminate any contractual impedime

to the Divestiture Date. Respondent shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction.

- M. The purpose of this Order is to ensure that the Divestiture Business remains a competitive and viable provider of Funeral Services

IV.

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.
- 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 proposed Interim Monitor.

4. the Interim Monitor shall evaluate the reports submitted by Respondent pursuant to this Order, 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 its 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 six (6) months after Respondent has fully and finally transferred to the Acquirer all Divestiture Assets and all Divestiture Business Records,
provided, however, that the Interim Monitor's service shall not exceed two (2) years from the date the Order becomes final;
provided, further, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.
- 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 this Order.
- J. The Interim Monitor appointed pursuant to this Order may be the same person appointed as an Interim Monitor under the Order to Maintain Assets or the Divestiture Trustee(s) pursuant to this Order.

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accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order and the Order to Maintain Assets in this matter.
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional

orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends

may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VII.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: