

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

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In the Matter of)	
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SERVICE CORPORATION INTERNATIONAL)	Docket No. C-4275
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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

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 waPi to the ithson or m 2.MC /P /MCID 8 BDC 5ent

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 auth

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 th

- 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 th

