

[REDACTED]

April 30, 1999

VIA FACSIMILE (202) 326-2624

Mr. Mike Vorne
Federal Trade Commission
Room 303
600 Pennsylvania Avenue NW
Washington DC 20580

Re: Pre-Merger Notification (Reporting and Waiting Period Requirements in
connection with Transaction No. [REDACTED])
[REDACTED]

Dear Mr. Vorn:

The purpose of this letter is to confirm in writing my understanding of the conclusions we
[REDACTED]

notification requirement in connection with the below described transaction either prior to the
proposed acquisition or prior to or after any distributions from Buyer to its equity holders. If the
following is not consistent with our discussions it is my understanding that you will contact me
at [REDACTED]

FACTS

Buyer is in the process of acquiring \$47,000,000 of assets, (including closing costs), from [REDACTED]
[REDACTED]

Seller has in excess of \$100,000,000 of assets and net sales as determined pursuant to the Hart-
Scott-Rodino Anti-Trust Improvements Act of 1976 (the "Act").

Buyer is a limited liability company organized in Texas on [REDACTED] 1999. The [REDACTED]
[REDACTED]

liquidation. The Operative Documents, in conjunction with certain loan and franchisor
[REDACTED]

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40003
Disputed, pending litigation

documents, prohibit any distributions in respect of equity ownership for at least one year following the closing of the Transaction (the "Closing"). There has not been and will not be any distributions in respect of equity ownership made prior to or within one year of the Closing. After the one year anniversary of the Closing, distributions shall be made on a quarterly basis, provided that there is sufficient distributable cash.

Upon receipt of certain third party approvals, [redacted] will transfer (i) 10% preferred interest to [redacted] (ii) 7% to [redacted], and (iii) 5% to [redacted]. None of [redacted] or [redacted] have individually \$10,000,000 in assets or net sales as determined under the Act. However, [redacted] may have in excess of \$10,000,000 of total assets and net sales.

LAW

[Redacted text block]

distribution to 50% or more of the assets of the entity.

ANALYSIS

the Premier Office

Based on our discussion yesterday, and although there is no legal authority directly on point

absence of such distribution requirements, the determination is made by reviewing each transaction, if any, to see if any person received more than 50% of the profits of the entity. Such test is repeated after each distribution.

50% or

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may be used by the

merger notification requirement in the future, in connection with the Buyer's assets acquired in

determination as to the lack of the necessity to submit a notification as filed, in the event that

requirements.

in any determination of possible

CONCLUSION

Buyer does not satisfy the \$10,000,000 person requirement as defined in the Act, unless the Ultimate Parent Entity is determined to be [REDACTED] and he satisfied the \$10,000,000

assets of the Buyer and there has not been and will not be any distributions prior to Closing.

test. Therefore, there is no pre-merger notification and filing requirement for the above described transaction. Additionally, there is no subsequent filing required regardless of whether any person ultimately receives more than 50% of any regular distribution and this letter can be relied on by the Buyer.

Very truly yours,

[REDACTED SIGNATURE]

[REDACTED]

AGREE THAT THE EAST SPANISH DOES NOT
REQUIRE A FILING. ASKED THE WRITER

PARAGRAPH OF ANALYSIS SECTION.

Michael Vern 5/3/99

PICK SMITH CONCURS.

SCHEDULE 1

PREFERRED MEMBERS

Name, Address	Initial Capital Contribution	Initial Capital Account	Percentage Interest	Membership Units
[REDACTED]	\$3,000,000.00		49.95%	49.95
[REDACTED]	\$ 500,000.00	\$ 500,000.00	10.00%	10.00
Total	\$3,500,000.00	\$3,500,000.00	59.95%	59.95

Preferred Amount
\$3,000,000.00
500,000.00
3,500,000.00

OTHER MEMBERS

Name, Address	Initial Capital Contribution	Initial Capital Account	Percentage Interest
[REDACTED]	\$ 350,000.00	\$ 350,000.00	28.05%
[REDACTED]	\$ 0.00	\$ 0.00	12.00%
Total	\$ 350,000.00	\$ 350,000.00	40.05%

Membership Units
28.05
12.00
40.05

SCHEDULE 2

RESTATED LIMITED LIABILITY COMPANY REGULATIONS

OR

ARTICLE 9

Distributions of Net Cash From Operations Distributions of Net Cash From

Member's Preferred Amount; and

(b) second, to all Members in accordance their respective ownership percentages at the time of such distribution.

9.2. Distributions of Net Cash From [REDACTED] Transactions. Distributions of Net Cash from [REDACTED] transactions shall be made to the Members within fifteen (15) days after such [REDACTED] transaction, as follows:

(a) first, one hundred percent (100%) of the first Two Hundred Ninety-one Thousand Six Hundred Eighty-one and No/100 Dollars (\$291,681.00) to the Preferred Members pro rata until each Preferred Member has received cumulative distributions in an amount equal to such Member's Preferred Amount; and

(b) second, to all Members in accordance their respective ownership percentages at

an event set forth in Section 608.441 of the Act, and provided dissolution is not avoided under Paragraph 11.1 hereof and its business is being liquidated in accordance with Section 608.441 of

terminated as follows: the Chief Executive Manager shall liquidate the assets of the Company as promptly as possible, unless the Board shall determine that an immediate sale of Company assets would prove unduly loss to the Company.

[REDACTED]

Company, including money, remaining after the discharge of the debts, obligations, and liabilities of the Company and after taking into account all [REDACTED] account adjustments in the

Regulations as a result of any sale of the property [REDACTED]

[REDACTED]

allocations of profits as provided in Article 10 in an amount equal to the distributions [REDACTED] payable on the member's allocated share of profits assuming the maximum federal and applicable state individual tax rates ("Tax Distributions").

[REDACTED]

ATTORNEYS AT LAW

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FACSIMILE TRANSMITTAL SHEET

TO: Mike Vem FAX NUMBER: (202) 326-2624

COMPANY: DATE:

RE: Attached REFERENCE NUMBER: 7

URGENT FOR REVIEW PLEASE COMMENT/REPLY

ORIGINAL BEING SENT VIA REGULAR MAIL OVERNIGHT MAIL OTHER

NOTES/COMMENTS:

RECEIVED
JUN 11 1998
10 23 AM

Please call