

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE STATE OF NEVADA BY ITS ATTORNEY
GENERAL CATHERINE CORTEZ MASTO

Plaintiff,

v.

SERVICE CORPORATION INTERNATIONAL

Defendant.

Case No.: 2:09-cv-02248

ORDER TO MAINTAIN ASSETS

Plaintiff State of Nevada, through its Attorney General, initiated an investigation of Defendant Service Corporation International's ("SCI") proposed acquisition of all issued and outstanding stock of Palm Mortuary, Inc. ("Palm"), in coordination with a Federal Trade Commission ("Commission") investigation. Plaintiff and Defendant ("Parties") thereafter agreed to a proposed Stipulated Judgment ("Judgment") which contains relief substantially similar to the relief contemplated in the Commission's Related Action.

Entry of this Order to Maintain Assets ("Order") is contemplated by the Parties as part of the resolution in this matter. The Parties have consented to entry of this Order for settlement

purposes only, without trial or adjudication of any issue of fact or law, and without this Order constituting any evidence against or admission by Defendant regarding any issue of fact or law.

The Court hereby issues this Order:

I. JURISDICTION

- A. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action.
- B. Defendant 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.

II. DEFINITIONS

The following definitions and the definitions used in the Judgment, which are incorporated herein by reference and made a part hereof, shall apply to this Order:

- A. “SCI” means Service Corporation International, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Defendant (including, Alderwoods (Nevada) Inc., and, after the Acquisition Date, Palm) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Palm” means Palm Mortuary, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 1325 N. Main Street, Las Vegas, Nevada 89101, and the subsidiaries, divisions, groups, and affiliates controlled by Palm Mortuary, Inc.
- C. “Commission” means the Federal Trade Commission.

- D. “Confidential Business Information” means information not in the public domain related to the Divestiture Business, except for any information that was or becomes generally available to the public other than as a result of a disclosure by Defendant, or was available, or becomes available, to Defendant on a non-confidential basis, but only if, to the knowledge of Defendant, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- E. “Confidential Palm Business Information” means information not in the public domain that is used in the Palm Business.
- F. “Defendant” means SCI.
- G. “Divestiture Business” means all activities of Defendant related to:
1. Providing Funeral Services and Cemetery Services at the Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada 89119; and
 2. Marketing, promoting, selling and maintaining Pre-Need Contracts for Funeral Services and/or Cemetery Services at the Davis Funeral Home and Memorial Park, 6200 South Eastern Avenue, Las Vegas, Nevada 89119 or the Davis Funeral Home, 2127 W. Charleston Boulevard, Las Vegas, Nevada 89102.
- H. “Divestiture Employee” means any and all full-time, part-time, or contract employees of Defendant whose duties relate primarily to the Divestiture Business and such other Defendant employees as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Business and operate such business in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance of the assets of such Divestiture Business).
- I. “Interim Monitor” means any monitor appointed pursuant to this Order or the Judgment.

- J. “Judgment” means the proposed Stipulated Judgment that has been submitted to this Court in this action.
- K. “Order” means this Order to Maintain Assets.
- L. “Palm Business” means the assets and business of Palm that are acquired by Defendant pursuant to the Acquisition Agreement.
- M. “Plaintiff” means the State of Nevada through its Attorney General.
- N. “Related Action” means the administrative proceeding undertaken by the Commission involving the same proposed acquisition described in Plaintiff’s Complaint.

III. MAINTENANCE OF DIVESTITURE ASSETS

- A. From the date this Order is entered and until this Order terminates, Defendant shall take all actions necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Business and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Business (except for ordinary wear and tear). Further, Defendant shall not sell, transfer, encumber, or otherwise impair the Divestiture Business other than in the manner prescribed in the Judgment and this Order.
- B. From the date this Order is filed for entry and until this Order terminates, Defendant shall maintain the operations of the Divestiture Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business). In operating and maintaining the Divestiture Business, Defendant shall:
 - 1. Provide the Divestiture Business with sufficient working capital to operate at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities;

2. Continue, at least at their scheduled pace, any additional expenditures for the Divestiture Business that were authorized prior to the filing for entry of this Order 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 this Order was filed for entry; 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 this Order is filed for entry until this Order terminates, Defendant 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;
 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 such employees to continue in their positions and to operate and maintain the Divestiture Business in a manner consistent with past practice and this Order;
 4. Replace any Divestiture Employee who leaves the employ of Defendant with an employee of similar skill, training and expertise, and treat such employee as a Divestiture Employee under the terms of this Order;

5. Require, as a condition of continued employment, that Defendant's employees and representatives having access to Confidential Palm Information (a) agree to not disclose any Confidential Palm Business Information to any Divestiture Employee, and (b) to receive and acknowledge a confidentiality agreement that has received prior approval of Plaintiff; and
 6. Require, as a condition of continued employment, that each Divestiture Employee (a) receive and acknowledge a confidentiality agreement that has received prior approval of Plaintiff, and (b) agree to not disclose any Confidential Business Information to anyone other than a fellow Divestiture Employee, except that Confidential Business Information may be provided to employees or representatives of Defendant as needed for tax, legal, regulatory or financial reporting purposes provided such Confidential Business Information is not disclosed to anyone with operational responsibility for the Palm Business.
- D. Within ten (10) days of a request by Plaintiff or an Acquirer or Acquirer Candidate (as applicable), Defendant shall provide Acquirer or Acquirer Candidate (as applicable) with the following information for each Divestiture Business Employee, 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 Defendant'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 an Acquirer or Acquirer Candidate (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- E. Defendant shall provide to Plaintiff, within three (3) days of entry of this Order, a list of the names and titles of the persons charged with conducting the business of the Divestiture Business and making the business decisions relating to the Divestiture Business until the Divestiture Business is sold.
- F. Defendant 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 Defendant; 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.
- G. For a period of two (2) years after the Divestiture Date, Defendant shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Divestiture Business Employee(s) 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) Defendant advertises for

employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Defendant hires employees who apply for employment with Defendant, so long as such employees were not solicited by Defendant in violation of this Paragraph.

H. Defendant 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. Defendant may disclose Confidential Business Information to the Acquirer or Acquirer Candidate (as the case may be) or other Persons specifically authorized by such Acquirer or Acquirer Candidate to receive such information; and
2. So long as Defendant does not disclose Confidential Business Information to any Persons who have operational responsibility for the Palm Business, Defendant may use Confidential Business Information as needed:
 - a. To comply with the requirements of the Judgment or this Order;
 - b. To comply with Defendant'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;
3. Provided, however, that Confidential Business Information may be disclosed to Third Parties only as necessary for the purposes authorized by this Section pursuant to an appropriate confidentiality order, agreement or arrangement with the Acquirer (but Defendant shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (b) Defendant shall

use its best efforts to obtain a protective order to protect the confidentiality of such Confidential Business Information during any adjudication;

4. Provided, further, Defendant may continue to use Confidential Business Information included in the Divestiture Business License(s) to the extent such information was previously used by Defendant in connection with assets other than those being transferred to Acquirer pursuant to this Order and/or the Divestiture Agreement.
- I. On or before the Acquisition Effective Date, Defendant shall provide written notification of the restrictions on the use of Confidential Business Information and Confidential Palm Business Information contained in this Order to all employees who are involved in the Divestiture Business or have access to Confidential Palm Business Information. As soon as practicable, Defendant shall provide written notification of the restrictions on the use of Confidential Palm Business Information contained in this Order to all employees who have access to Confidential Palm Business Information and who become employees of Defendant after the Acquisition Effective Date. Defendant shall ensure that all such employees have received and acknowledged a confidentiality agreement as described in Paragraphs III(C)(5) and (6). At Plaintiff's request, Defendant shall provide the names of each of the employees that have received and acknowledged a copy of the confidentiality agreements contemplated by this Section.
 - J. Failure to abide by the terms of this Order relating to the use and dissemination of Confidential Business Information, whether such failure is by Defendant or any of its Divestiture Employees, shall be a violation of this Order.

IV. INTERIM MONITOR

- A. Plaintiff may appoint a monitor (“Interim Monitor”) to assure that Defendant expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order and the Judgment.
- B. Plaintiff may select one Interim Monitor subject to the consent of Defendant, which consent shall not be unreasonably withheld. If Defendant has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by Plaintiff to Defendant of the identity of the proposed Interim Monitor, Defendant 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, Defendant shall execute an agreement that, subject to the prior approval of Plaintiff, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Defendant’s compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.
- D. Defendant shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, 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 and Defendant.
- 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 Plaintiff;
 - 2. The Interim Monitor shall have the power and authority to monitor Defendant’s compliance with this Order 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 and in consultation with Plaintiff;

3. The Interim Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under this Order or under any agreement between the Interim Monitor and Defendant; and
 4. The Interim Monitor shall evaluate the reports submitted by Defendant pursuant to this Order, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to Plaintiff concerning performance by Defendant of its obligations under the Order.
- F. Plaintiff 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 Plaintiff's materials and information received in connection with the performance of the Interim Monitor's duties.
- G. The Interim Monitor shall serve until termination of this Order.
- H. If Plaintiff determines that an Interim Monitor has ceased to act or failed to act diligently, Plaintiff may appoint a substitute Interim Monitor pursuant to the procedures contained in this Section.
- I. Plaintiff may on its own initiative, or at the request of the Interim Monitor, seek additional Court relief or directions as may be necessary or appropriate to assure compliance with the requirements of this Judgment and the Order to Maintain Assets.
- J. The Interim Monitor appointed pursuant to this Order may be the same person appointed as Divestiture Trustee(s) pursuant to the relevant provisions of the Judgment.
- K. Plaintiff shall take all reasonable steps to ensure that there will not be two Interim Monitors appointed at the same time pursuant to this case and the Related Case.

V. COMPLIANCE

- A. Within thirty (30) days after the date this Order is entered, and every thirty (30) days thereafter until Defendant has fully complied with its obligations to assign, grant, license,

divest, transfer, deliver or otherwise convey the relevant assets as required by the Judgment and this Order, Defendant shall submit to Plaintiff a verified written report (“Compliance Report”) setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Defendant shall also, if requested by Plaintiff, provide the name(s) of Defendant employee(s) who provided information and/or are responsible for providing information used and reviewed in support of the statements contained in the Compliance Report. After the Judgment is entered, the Compliance Reports due under this Order may be consolidated with, and submitted to Plaintiff at the same time, as the written reports of compliance required to be submitted by Defendant pursuant to the Judgment.

- B. For purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Defendant made to its principal United States or Nevada offices, registered office of its United States subsidiary, or its headquarters address, Defendant shall, without restraint or interference, permit any duly authorized representative of Plaintiff:
1. Access, during business office hours of Defendant and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Defendant related to compliance with this Judgment, which copying services shall be provided by Defendant at the request of the authorized representative(s) of Plaintiff and at the expense of Defendant; and
 2. To interview, either informally or under oath, officers, directors, or employees of Defendant, who may have counsel present, regarding such matters.

C. If Plaintiff, after consultation with Defendant, opens a formal investigation into an alleged violation of this Order, Defendant shall pay for the reasonable costs of reviews, audits or examinations conducted by Plaintiff regarding matters contained in and compliance with this Order. This provision includes the reasonable costs of retained accountants, actuaries, attorneys and other experts reasonably necessary to assist in the conduct of any review, audit or examination once an investigation is opened, but shall not include costs of reviewing compliance reports and information submitted by Defendant prior to a formal investigation.

VI. NOTIFICATION

Defendant shall notify Plaintiff at least thirty (30) days prior to any proposed dissolution of Defendant; or if the following may affect compliance obligations arising out of this Order, any proposed acquisition, merger or consolidation of Defendant; or any other change in Defendant, including without limitation, assignment and the creation or dissolution of subsidiaries.

VII. CHANGES TO COMMISSION'S ORDER TO MAINTAIN ASSETS

If the Commission makes any changes to its Order to Maintain Assets, or issues further directives pursuant to its Order to Maintain Assets, and unless stipulated by the Parties to this Order, Plaintiff shall have sole discretion to seek relief from this Court to incorporate into this Order the terms of the Commission's amended Order to Maintain Assets and/or any subsequent directives or orders issued by the Commission. Plaintiff shall notify Defendant through its counsel in writing if Plaintiff acts in accordance with this Section.

VIII. VIOLATION AND PENALTIES

A violation of this Order shall also be a violation of the Judgment. All penalty provisions and remedies available to Plaintiff set forth in the Judgment shall apply to any conduct in

violation of this Order, as if such penalties and remedies are fully set forth herein, except that Plaintiff is not bound by Paragraphs IX(F) and (G) of the Judgment if it seeks equitable and injunctive relief from this Court in response to violations of this Order.

IX. TERMINATION

This Order shall terminate on the day after all Divestiture Assets have been divested and all Divestiture Licenses have been conveyed, as required by and described in the Judgment.

BASED UPON THE RECORD BEFORE THIS COURT, the Court finds that entry of this Order is fair, equitable, and in the public interest.

IT IS SO ORDERED:



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

DATED: December 15, 2009