

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman  
Noah Joshua Phillips  
Rohit Chopra  
Rebecca Kelly Slaughter

The Commission considered the matter and determined that it had reason

- B. "GPM Southeast" means GPM Southeast, LLC, its directors, ~~office~~ employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Southeast, LLC, and the respective directors, officers, employees, agents, representatives, successors ~~and~~ assigns of each.
- C. "GPM Petroleum" means GPM Petroleum, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by GPM Petroleum, ~~LLC~~, and the respective

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the Acquirer's acquisition of the Retail Fuel Assets and related Retail Fuel Assets and consistent with the purposes of the Orders.

### III. Transitional Services

IT IS FURTHER ORDERED that

- A. Until Respondents have transferred all Business Information included in the Retail Fuel Assets to the relevant Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the relevant Acquirer with access to that Business Information (wherever located and however stored) and to employees who possess the Business Information.
- B. At the option of an Acquirer, Respondents shall provide the Acquirer Transitional Services sufficient to (i) efficiently transfer the Retail Fuel Business to the Acquirer and (ii) allow the Acquirer to operate the acquired Retail Fuel Business and related Retail Fuel Assets in a manner that is equivalent in all material respects to the manner

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Transitional Services for Acquirer  
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IV.

1. Hire any such Person whose employment has been terminated by the Acquirer;
2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or
3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Paragraph

#### V. Confidential Information

IT IS FURTHER ORDERED that:

- A. Respondents shall not (i) disclose (including as to Respondents' employees) or (ii) use for any reason or purpose, any Confidential Information received or maintained by Respondents *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
  1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
  2. Complying with financial, regulatory, or other reporting or legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Retail Assets or any Retail Fuel Business or as required by law regulation, including any applicable securities exchange rules or regulations
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph A of this Order to Maintain Assets, Respondents shall limit such disclosure or use (i) only to the extent such information is

complete transfer and divestiture of the Retail Fuel Assets to each Acquirer and for each Acquirer to operate any aspect of the relevant Retail Fuel Business

- C. No later than 5 days after the Commission appoints the Monitor, Respondents shall:
1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Order set forth in Paragraph VII.D;
  2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in Paragraph VII.D; and
  3. Enter into an agreement with the Monitor that is approved by the Commission. If Respondents and the Monitor fail to sign an agreement within the allotted time, the Commission will approve, and Respondents shall agree to, an agreement with terms and provisions typical of Commission monitor agreements and require that the Monitor's fees will be his or her standard and customary fees plus expenses reasonably incurred performing duties as the Monitor
- D. The Monitor:
1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in the Order;
  2. Shall act in consultation with the Commission or its staff;
  3. Shall serve as an independent third party and not as an employee or fiduciary of Respondents or of the Commission;
  4. Shall serve at the expense of Respondents, without bond or other security;
  5. May employ, at the cost and expense of Respondents, consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
  6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement;
  7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 10 days should they arise;
  8. Shall report in writing to the Commission concerning Respondents' compliance with this Order: (i) 30 days after appointment and every 30 days thereafter until Respondents have completed all obligations required by Paragraph IV of this Order; (ii) when Respondents have completed the obligations required by

Paragraphs II and IV of this Order and (iii) at any other time requested by the staff of the Commission and

9. Shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of the Decision and Order, or until such other time as may be determined by the Commission or its staff.
- E. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the Monitor to monitor Respondents' compliance with its obligations under the Order and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to the Orders
- F. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, and expenses (including attorneys' fees and out of pocket costs) that arise out of, or are connected with any claim concerning the Monitor's performance of the Monitor's duties under the Orders whether or not such claim results in liability, *except*, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct.

For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VII.D of the Order to Maintain Assets
- G. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into customary confidentiality agreements, *provided, however*, that such agreement does not restrict the Monitor from providing any information to the Commission.
- H. Respondent shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission including written reports submitted pursuant to Paragraph VII.D.8, or any Person with whom the Monitor communicates in the performance of his/her duties.
- I. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and subject to all obligations of this Paragraph VII
  1. The Commission shall select the substitute Monitor, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor, Respondents have not opposed, in writing, including the reasons for opposing the selection of the substitute Monitor within 10 days after such notice and

2. No later than 5 days after the Commission appoints a substitute Monitor, Respondents shall

4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

*Provided, however,* that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as the reports required to be submitted by Respondent pursuant to the Decision and Order

*Provided further, however,* that Respondent Empire's reporting obligations under this Paragraph VIII shall cease once it has completed its obligations under Paragraphs II and IV of the Decision and Order

#### IX. Change in Respondents

IT IS FURTHER ORDERED that Respondents Arko, GPM Southeast, and GPM Petroleum shall each notify the Commission at least 30 days prior to:

- A. Its proposed dissolution (i.e. the dissolution of Arko Holdings Ltd., GPM Southeast, LLC, or GPM Petroleum, LLC);
- B. Its proposed acquisition,

of, the Respondents related to compliance with this Order to Maintain Assets, which copying services shall be provided by the Respondents at their expense; and

- B. To interview officers, directors, or employees of Respondents who may have counsel present, regarding such matters.

#### XI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (1) maintain and preserve the Retail Fuel Business locations as viable, marketable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (2) ensure that Respondents obtain no Confidential Information relating to the Retail Fuel Business except in accordance with the provisions of the Order; (3) prevent interim harm to competition pending the divestitures and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

#### XII. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate later of

- A. Three business days after the Commission with its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. With respect to each Retail Fuel Business required to be divested pursuant to Paragraph II of the Decision and Order, the day after the Divestiture Date of the respective Retail Fuel Assets;

*Provided, however,* that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate 3 business days after the Decision and Order becomes final;

*Provided further, however,* that if the Commission, pursuant to Paragraph I of the Decision and Order, requires Respondents to rescind any divestitures in that Paragraph, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect until the day after Respondent(s) or a Divestiture Trustee(s) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioners Slaughter and Wilson not participating

April J. Tabor  
Acting Secretary

ISSUED: August 25, 2020  
SEAL: