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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Lina M. Khan, Chair** **Noah Joshua Phillips** **Rebecca Kelly Slaughter** **Christine S. Wilson** **Alvaro M. Bedoya**

In the Matter of)
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I. RESPONDENTS

1. Respondent ARKO Corp. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

2. Respondent GPM Investments, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

3. Respondent GPM Southeast, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

4. Respondent GPM Petroleum, LLC, is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 8565 Magellan Parkway, Suite 400, Richmond, Virginia 23227.

5. Each Respondent is, and at all times relevant herein has been, engaged in, among other things, the retail sale of gasoline and diesel fuel in the United States.

II. JURISDICTION

6. Respondents, either directly or through corporate entities under their control, are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce," as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

III. THE ACQUISITION

7. Pursuant to an Asset Purchase Agreement with Corrigan dated March 8, 2021 ("APA,") Respondents acquired substantially all of Corrigan's retail assets ("the Acquisition") on May 18, 2021, in a transaction valued at approximately $94 million.

8. Pursuant to the APA, Respondents restricted Corrigan's ability to compete in the sale, marketing, and supply of gasoline and diesel fuel not only around the 60 locations that Respondents acquired from Corrigan, but also at more than 190 GPM locations (the "noncompete agreement"). Few of the approximately 190 GPM locations subject to the noncompete agreement were anywhere near an acquired Corrigan retail fuel station.

9. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IV. THE RELEVANT MARKET

10. Relevant product markets in which to analyze the effects of the Acquisition are the retail sale of gasoline and the retail sale of diesel fuel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Consumers require diesel fuel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. No economic or practical alternative to the retail sale of gasoline or diesel fuel at retail fuel outlets exists.

11. The relevant geographic markets for retail gasoline and retail diesel fuel are highly localized, ranging from a few blocks to a few miles, depending on local circumstances. Each relevant market is distinct and reflects the commuting patterns, traffic flows, and outlet characteristics unique to each market. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes.

12. Relevant geographic markets in which to analyze the effects of the Acquisition on the retail sale of gasoline include five local markets within the following cities: Saginaw, Chesaning, Mt. Morris, and Mason, Michigan. Relevant geographic markets in which to analyze the effects of the Acquisition on the retail sale of diesel fuel include one local market in and around one of the Saginaw, Michigan retail gasoline markets.

13. Relevant geographic markets in which to analyze the effects of the noncompete agreement are local markets for the retail sale of gasoline and retail sale of diesel fuel contained within the restrictive territories in Michigan and Ohio subject to the noncompete agreement.

V. MARKET STRUCTURE

14. The Acquisition reduced the number of independent market participants from two to one in one local market in Chesaning, Michigan, and from three to two in four local markets in Saginaw, Mt. Morris, and Mason, Michigan, for the retail sale of gasoline. The Acquisition reduced the number of independent market participants from three to two in one local market in Saginaw, Michigan for the retail sale of diesel fuel. The Acquisition resulted in a highly concentrated market in each local market.

15. The noncompete agreement eliminated potential competition in a substantial number of territories where Corrigan, but for the noncompete agreement, could have otherwise competed with retail fuel stations owned, leased, or operated by Respondent and other competitors in each of those areas

VI. BARRIERS TO ENTRY

16. Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals

VII. EFFECTS OF THE ACQUISITION

17. By acquiring the Corrigan assets in Saginaw, Chesaning, Mt. Morris, and Mason, Michigan, Respondents harmed consumers who would otherwise benefit from local competition in the retail sale of gasoline and retail sale of diesel fuel from retail fuel outlets.

18. The noncompete agreement is not reasonably limited in scope to protect a legitimate business interest. A mere general desire to be free from competition is not a legitimate business interest.

19. The noncompete agreement, as applied to the approximately 190 pre-existing GPM locations, is unreasonable because it bears no relation to GPM's Acquisition of 60 retail fuel locations from Corrigan. There is no reasonable procompetitive justification for why the noncompete agreement was necessary for the approximately 190 locations that had no relation to the Acquisition. By unreasonably prohibiting Corrigan from competing in the sale, marketing, or supply of gasoline and diesel fuel near GPM retail outlets that had nothing to do with the Acquisition, the noncompete agreement would harm customers who would otherwise benefit from potential competition from Corrigan.

20. Based on the unique facts of and conditions in the relevant markets for the retail sale of gasoline and retail sale of diesel fuel from retail fuel outlets, Respondent's existing noncompete agreements are unreasonable. Respondent's existing noncompete agreements are unreasonable because (1) their geographic scope is too broad; (2) they are too long in duration; and (3) they apply to retail locations not implicated in any acquisition.

21. The effects of the Acquisition, the Purchase and Sale Agreement, and the noncompete agreement may be substantially to lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the Acquisition and the noncompete agreement:

a. increased the likelihood that Respondents would unilaterally exercise market power in the five local relevant markets;

b. increased the likelihood of collusive or coordinated interaction between any remaining competitors in four local relevant markets; and