

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,
a municipal corporation,
441 Fourth Street, N.W.
Washington, DC 20001,

Plaintiff,

v.

EXXONMOBIL OIL CORPORATION,
a New York corporation,
5959 Las Colinas Boulevard
Irving, TX 75039,

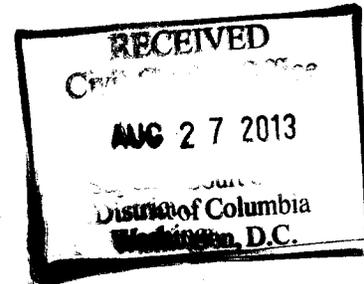
CAPITOL PETROLEUM GROUP, LLC,
a Virginia limited liability company,
6820-B Commercial Drive
Springfield, VA 22151,

ANACOSTIA REALTY, LLC,
a Delaware limited liability company,
6820-B Commercial Drive
Springfield, VA 22151,

SPRINGFIELD PETROLEUM REALTY, LLC,
a Delaware limited liability company,
6820-B Commercial Drive
Springfield, VA 22151,

Defendants.

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Civil Action No.: _____



COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the District of Columbia (the "District"), in its *parens patriae* capacity and through its Attorney General, files this Complaint against Defendant ExxonMobil Oil Corporation ("Exxon"), and Defendants Capitol Petroleum Group, LLC ("CPG"), Anacostia

Realty, LLC (“Anacostia”), and Springfield Petroleum Realty, LLC (“Springfield”) (CPG, Anacostia, and Springfield are referred to collectively as the “CPG Defendants”): (i) to secure declaratory and injunctive relief against Defendants’ enforcement of dealer-franchise and gasoline-distribution agreements that violate the District’s Retail Service Station Act, D.C. Code §§ 36-303.01(a)(6) and (a)(11); and (ii) to secure additional equitable relief.

I. OVERVIEW

1. Currently, the CPG Defendants and companies jointly owned and controlled with them (collectively the “CPG companies”) are the exclusive gasoline suppliers for about 60% of the approximately 107 retail gasoline service stations (“gasoline stations”) in the District of Columbia (“D.C.”), and for substantially higher percentages of the gasoline stations in parts of D.C. The CPG companies supply about 65 gasoline stations in D.C., including about 31 of 31 Exxon-branded stations, 19 of 20 Shell-branded stations, 12 of 12 Valero-branded stations, and 3 unbranded stations.

2. Until 2009, Defendant Exxon was the sole owner and exclusive supplier of all the Exxon-branded gasoline stations in D.C. Exxon had franchise agreements with the independent retail dealers that operated each of these stations. Each dealer-franchise agreement gave Exxon the exclusive right to supply Exxon-branded gasoline to the station. In addition, Exxon’s standard distribution agreement with its wholesale gasoline distributors in the D.C. area prohibited them from supplying Exxon-branded gasoline to these stations.

3. The CPG companies are owners and suppliers of gasoline stations in and around D.C. Beginning in 2009, pursuant to a purchase and sale agreement, Exxon transferred ownership of each of its 30 Exxon-branded gasoline stations in D.C. to either Anacostia or Springfield.

4. As part of the purchase and sale transaction, Exxon assigned to Anacostia and Springfield all of Exxon's rights under its dealer-franchise agreements with the 30 transferred gasoline stations. The dealer-franchise agreements, and later versions of these agreements, compel the independent retail dealers operating these stations to buy their Exxon-branded gasoline exclusively from – and at prices set by – the CPG Defendants.

5. Exxon also entered into its distribution agreements with Anacostia and Springfield, as well as with the other wholesale suppliers of Exxon-branded gasoline in and around D.C. These distribution agreements allow only one supplier to supply gasoline to each Exxon-branded gasoline station in D.C. The effect of these distribution agreements is to reinforce the exclusive-supply terms of the dealer-franchise agreements that Exxon assigned to Anacostia and Springfield; both sets of agreements compel each independent retail dealer operating an Exxon-branded gasoline station in D.C. to obtain Exxon-branded gasoline from a CPG company. Approximately 27 of the 31 Exxon-branded gasoline stations in D.C. are currently operated by independent retail dealers and owned by the CPG companies; each of these stations was acquired by the CPG companies pursuant to the 2009 purchase and sale agreement with Exxon. These 27 stations represent about 25% of the gasoline stations in D.C. The remaining four Exxon-branded gasoline stations in D.C. are currently operated by the CPG companies themselves.

6. These dealer-franchise and gasoline-distribution agreements, individually and in combination, are marketing agreements that, in violation of the District's Retail Service Station Act, D.C. Code §§ 36-303.01(a)(6) and (a)(11), prevent the approximately 27 independent retail dealers that operate Exxon-branded gasoline stations in D.C. from buying Exxon-branded gasoline from suppliers other than those affiliated with the CPG Defendants. As a result of these

agreements, the CPG companies set the wholesale prices paid for Exxon-branded gasoline in D.C., depriving D.C. residents and others who purchase Exxon-branded gasoline in D.C., including retail customers of the Exxon-branded gasoline stations in D.C., of the benefits of competition in the wholesale supply of Exxon-branded gasoline.

II. PARTIES

7. The District, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District, through its Attorney General, brings this action as *parens patriae* on behalf of the residents, general welfare, and economy of D.C., to enjoin widespread violations of the District's Retail Service Station Act affecting about one-quarter of the gasoline stations in D.C.

8. Defendant Exxon is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, 75039.

9. Defendant CPG is a limited liability company organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business at 6820-B Commercial Drive, Springfield, Virginia, 22151.

10. Defendant Anacostia is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 6820-B Commercial Drive, Springfield, Virginia, 22151.

11. Defendant Springfield is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 6820-B Commercial Drive, Springfield, Virginia, 22151.

12. The CPG Defendants are affiliated companies that have been engaged in the

business of transporting, distributing, selling, and marketing refined petroleum products, including gasoline, in and around D.C., and owning gasoline stations in and around D.C. Defendant CPG controls Defendants Anacostia and Springfield through a management contract.

III. JURISDICTION

13. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code § 11-921 (2001).

14. This Court has personal jurisdiction over Defendants pursuant to D.C. Code §§ 13-423(a)(1), (a)(3), (a)(4), and (a)(5) (2001).

IV. DEFENDANTS' UNLAWFUL MARKETING AGREEMENTS

Exxon's marketing agreements

15. Exxon is engaged in the business of selling, supplying, and distributing gasoline and petroleum products to or through gasoline stations in D.C. Up until 2009, Exxon was the owner and exclusive supplier of all the Exxon-branded gasoline stations in D.C. As part of its franchise agreements with the independent retail dealers operating these Exxon-branded gasoline stations in D.C., Exxon (i) granted each dealer the right to use Exxon's proprietary trademarks to sell Exxon-branded gasoline at the dealer's station, and (ii) prohibited each dealer from purchasing Exxon-branded gasoline from a supplier other than Exxon.

16. In addition, Exxon's standard gasoline-distribution agreements have prohibited its distributors, without Exxon's written consent, from supplying Exxon-branded gasoline to a gasoline station already supplied by Exxon or another Exxon-branded distributor. Exxon has entered into such agreements with all of its gasoline distributors in and around D.C.

17. Pursuant to an Agreement of Purchase and Sale ("Purchase Agreement") executed with Exxon on or about December 19, 2008, one of the CPG companies, DAG Enterprises, Inc.,

acquired from Exxon the right to purchase a total of 86 gasoline stations – including the associated land, equipment, and franchisor rights – located in D.C., Maryland, and Virginia, and to assume leases controlling another 10 gasoline stations in the D.C. area. The transaction included all the Exxon-branded gasoline stations operating in D.C., as well as the rights to have Exxon's proprietary trademarks used to sell Exxon-branded gasoline at those stations.

18. With respect to 29 of these Exxon-branded gasoline stations in D.C., Exxon and DAG Enterprises closed their transaction in or about June 2009. Exxon assigned the real estate, equipment, and dealer-franchise agreements for these 29 stations to Anacostia on or about June 16, 2009. In addition, as a condition precedent to the assignment, Exxon and Anacostia entered into a distribution agreement, in the form of Exxon's standard distribution agreement, on or about June 16, 2009. Through this distribution agreement, in combination with Exxon's other distribution agreements, Exxon granted Anacostia the exclusive right to distribute Exxon-branded gasoline to these 29 stations. This exclusive right can be enforced by Anacostia, through its dealer-franchise agreements, or by Exxon, through its standard distribution agreements with distributors.

19. With respect to the one other Exxon-branded gasoline station in D.C., Exxon and DAG Enterprises closed their transaction in or about February 2010. Exxon assigned to Springfield the real estate, equipment, and dealer-franchise agreement for this Exxon-branded gasoline station on or about February 3, 2010. In addition, as a condition precedent to the assignment, Exxon and Springfield entered into a distribution agreement, in the form of Exxon's standard gasoline-distribution agreement, on February 1, 2010. Through this distribution agreement, in combination with Exxon's other gasoline-distribution agreements, Exxon granted Springfield the exclusive right to supply Exxon-branded gasoline to this station. This exclusive

right can be enforced by Springfield, through its dealer-franchise agreement, or by Exxon, through its standard gasoline-distribution agreements with distributors in and around D.C.

20. Immediately prior to transferring its D.C. gasoline stations to Anacostia or Springfield pursuant to the Purchase Agreement, Exxon distributed gasoline directly to independent retail dealers operating gasoline stations that Exxon owned in D.C. Exxon was, therefore, a “distributor” within the meaning of D.C. Code § 36-301.01(2).

21. Each of Exxon’s dealer-franchise agreements with independent retail dealers operating Exxon-branded gasoline stations in D.C. was a “marketing agreement” within the meaning of D.C. Code § 36-301.01(7).

22. Exxon’s assignments of these dealer-franchise agreements to Anacostia or Springfield, in combination with Exxon’s standard gasoline-distribution agreements with its distributors in and around D.C., have been and are “marketing agreements” within the meaning of D.C. Code § 36-301.01(7).

23. Each of these marketing agreements, in violation of D.C. Code §§ 36-303.01(a)(6) and (a)(11), prohibits an independent retail dealer operating a gasoline station in D.C. from purchasing Exxon-branded gasoline from any supplier that is not a party to the marketing agreement.

Anacostia’s and Springfield’s marketing agreements

24. By assigning these dealer-franchise agreements to Anacostia and Springfield, Exxon transferred its exclusive rights to supply Exxon-branded gasoline to gasoline stations in D.C. Each of these agreements was in writing, and the relevant provision of each agreement stated: “DEALER agrees to buy and receive directly from EXXONMOBIL all of the EXXON-branded gasoline diesel sold by DEALER.” As a result of Exxon’s assignments of these

agreements, Anacostia obtained exclusive-supply rights for the gasoline stations in D.C. that it owned, and Springfield obtained exclusive-supply rights for the gasoline station in D.C. that it owned.

25. Pursuant to the assigned dealer-franchise agreements and later versions of these agreements, Anacostia and Springfield have supplied all of the gasoline offered for retail sale at the gasoline stations they own in D.C. Anacostia and Springfield have supplied this gasoline to independent retail dealers, which operate the stations as franchisees. These independent retail dealers have the right, under their dealer-franchise agreements with Anacostia or Springfield, to use Exxon's proprietary trademarks when selling Exxon-branded gasoline at the gasoline stations they operate in D.C.

26. Anacostia's dealer-franchise agreements prohibit independent retail dealers from purchasing Exxon-branded gasoline from any supplier other than Anacostia, and Springfield's dealer-franchise agreement prohibits an independent retail dealer from purchasing Exxon-branded gasoline from any supplier other than Springfield. These independent retail dealers are "retail dealers" within the meaning of D.C. Code § 36-301.01(13); Anacostia and Springfield are "distributors" within the meaning of D.C. Code § 36-301.01(2); and the dealer-franchise agreements assigned to Anacostia and Springfield are "marketing agreements" within the meaning of D.C. Code § 36-301.01(7).

27. Each of these dealer-franchise agreements is a "marketing agreement" that, in violation of D.C. Code § 36-303.01(6), prohibits an independent retail dealer operating a gasoline station in D.C. from purchasing Exxon-branded gasoline from any supplier that is not a party to the agreement.

Effects of Defendants' marketing agreements

28. As a result of Defendants' unlawful marketing agreements, none of the 27 independent retail dealers operating gasoline stations in D.C. can purchase Exxon-branded gasoline from a supplier other than a CPG company, and, therefore, none of these dealers can purchase Exxon-branded gasoline at prices below the prices charged by the CPG companies.

29. These unlawful marketing agreements govern the wholesale supply of Exxon-branded gasoline at a total of 27 gasoline stations in D.C., which comprise (i) about 25% of all the gasoline stations in D.C. and (ii) about 41% of the gasoline stations in D.C. that are exclusively supplied by the CPG companies.

30. Through these unlawful marketing agreements, Defendants (i) exclude suppliers, other than the CPG Defendants, from supplying Exxon-branded gasoline to D.C., (ii) allow the CPG companies to supply all of the Exxon-branded gasoline sold in D.C., and (iii) allow the CPG companies to set the wholesale gasoline prices paid for Exxon-branded gasoline in D.C.

COUNT I – VIOLATION OF THE RETAIL SERVICE STATION ACT

31. The District realleges Paragraphs 1 through 30 as if fully set forth herein.

32. Defendants' marketing agreements and the terms thereof, separately and in combination, violate D.C. Code §§ 36-303.01(a)(6) and (a)(11).

33. These violations deny independent retail dealers selling Exxon-branded gasoline in D.C., and the many thousands of consumers in D.C. who purchase such gasoline, the benefits of competition in the supply of Exxon-branded gasoline.

PRAYER FOR RELIEF

WHEREFORE, the District respectfully requests that this Court:

- a. Declare that Defendants' marketing agreements and the terms thereof, separately and in combination, violate §§ 36-303.01(a)(6) and (a)(11);
- b. Enjoin Defendants' enforcement of these unlawful marketing agreements, including, but not limited to, (i) enforcement of dealer-franchise agreements that prevent independent retail dealers operating gasoline stations in D.C. from purchasing Exxon-branded gasoline from suppliers that are not parties to the agreements; and (ii) enforcement of gasoline-distribution agreements that prohibit distributors from selling Exxon-branded gasoline to gasoline stations in D.C. that are or have been subject to Defendants' unlawful marketing agreements;
- c. Grant such further equitable relief as the Court deems just and proper.

Respectfully submitted,

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