

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. HELEN MART, LLC. Defendant.	Case No.: Emergency Telephonic Hearing Requested
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**DISTRICT OF COLUMBIA’S MOTION FOR *EX PARTE* TEMPORARY
RESTRAINING ORDER AND POINTS AND AUTHORITIES IN SUPPORT**

1. The District of Columbia (“District”), through its Attorney General, has filed a Complaint to enforce the District’s Natural Disaster Consumer Protection Act, D.C. Code § 28-4101, *et seq.* (the “NDCPA”) which prohibits overcharging for goods and services during a public emergency.

2. Defendant Helen Mart, LLC (“Helen Mart”), also known as “Pan Am Fresh Market” is a convenience store that operates a location in the District of Columbia. On April 23, 2020, the District delivered to Helen Mart a cease and desist letter ordering the business to cease overcharging customers for 121-oz bottles of Clorox Bleach. (*See* Compl. ¶¶ 5-13; Exhibit 1, Declaration of Investigator Willie Haynes). Helen Mart ignored that letter. As of the date of this filing, it continues to overcharge for Clorox Bleach in violation of the NDCPA. (*Id.*)

3. Accordingly, pursuant to SCR-Civil 65, the District now moves this Court for entry of an *ex parte* Temporary Restraining Order (TRO) to enjoin Helen Mart from overcharging District consumers during this public health emergency.

4. The District is authorized to seek a “temporary or permanent injunction” through its authority in the Consumer Protection Procedures Act. D.C. Code § 28-3909(a).

5. The Court considers four factors in granting a TRO: (1) whether the District is substantially likely to succeed on the merits; (2) whether the District and its consumers are in danger of being irreparably harmed during the pendency of the action absent injunctive relief; (3) whether the balance of hardships tips in the District’s favor; and (4) whether the public interest favors granting the injunctive relief. *See In re Antioch Univ.*, 418 A.2d 105, 109 (D.C. 1980).

6. **FACTOR 1: LIKELIHOOD OF SUCCESS.** The District’s claim is exceedingly likely to succeed. The NDCPA makes it illegal to “charge more than the normal average retail price for any merchandise or service sold during a public health emergency...” D.C. Code § 28-4102(a). The “normal average retail price” is “the price equal to the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency.” D.C. Code § 28-4101(2). In short, a merchant may increase prices to cover increased wholesale costs during an emergency, but they may not increase their price to increase profits.

7. Helen Mart has been overcharging customers for Clorox Bleach. From at least April 22, 2020 through the date of this filing, they have been selling 121-oz bottles of Clorox Bleach for \$12.99. Helen Mart’s price is 200% greater than other retailers. (*See* Compl. ¶ 13). Helen Mart has declined to present to the District evidence that it has greater wholesale costs than these other retailers, or other costs which may explain its elevated pricing. Instead, Helen Mart has ignored the District’s cease and desist letter and continues to overcharge District

consumers for Clorox Bleach. (*See* Exhibit 1.) The District is very likely to show Helen Mart is violating the NDCPA.

8. **FACTOR 2: IRREPARABLE HARM.** Where, as here, a statute authorizes injunctive relief brought by a governmental actor to safeguard the public interest, a showing of irreparable harm is not required so long as the statutory conditions for injunctive relief are met. *See SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975). The CPPA expressly authorizes the Attorney General to seek injunctive relief prohibiting violations of the NDCPA. D.C. Code § 28-3909. This factor is therefore satisfied because the statutory conditions for injunctive relief are met—the Attorney General has pleaded facts that show Defendants’ violations NDCPA. In any event, Defendant’s actions plainly impose a significant and irreparable harm to the public by overcharging for essential goods during a public health emergency.

9. **FACTOR 3: BALANCE OF EQUITIES.** The balance of equities also clearly favors the District. The District has a significant interest in protecting the health, both physical and financial, of its residents during an emergency through enforcing compliance with the NDCPA. Consumers are particularly vulnerable during a public health emergency and need affordable access to life saving cleaning supplies to protect their homes and families for COVID-19. Defendant, on the other hand cannot claim hardship as they are required to follow the law by virtue of operating a business in the District. Instead of choosing compliance, Helen Mart has chosen to ignore the District’s cease and desist letter and continue to overcharge vulnerable consumers.

10. **FACTOR 4: PUBLIC INTEREST.** As noted above under Factor 3, the District has a strong interest in ensuring that its residents have equal and affordable access to necessary

supplies to keep themselves and their families safe during this public health emergency. A TRO would serve the public interest by protecting consumers from Defendant's price gouging.

For the foregoing reasons, the District requests that this Court enter the attached proposed Temporary Restraining Order on an *ex parte* basis.

Respectfully submitted,

Dated: May 1, 2020

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

JIMMY R. ROCK
Assistant Deputy Attorney General
Public Advocacy Division

/s/

BENJAMIN WISEMAN [1005442]
Director, Office of Consumer Protection

/s/

MATTHEW W. MEYER [1045084]
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Attorneys for the District of Columbia

RULE 12 – I STATEMENT

Due to the emergency nature of this motion, the District has not sought consent from Defendants before filing. However, on April 23, 2020, Defendants were provided with a cease and desist letter which ordered them to discontinue the conduct which is the subject of this filing.

/s/ _____
MATTHEW W. MEYER
Assistant Attorney General

CERTIFICATE OF SERVICE

Due to the emergency nature of this motion, the District has been unable to deliver to the Defendants a copy of this filing. The District will deliver its Ex Parte Motion for a Temporary Restraining Order by hand-delivery to the following and will file an updated certificate after service has been completed:

Helen Mart, LLC, Defendant
4907 Nannie Helen Burroughs Avenue, NE
Washington D.C. 20019

Said Hassan, Registered Agent
1500 Massachusetts Avenue NW
Suite 619
Washington D.C. 20005

/s/ _____
MATTHEW W. MEYER
Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

<p style="text-align: center;">DISTRICT OF COLUMBIA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">HELEN MART, LLC.</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.:</p>
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ORDER

Upon consideration of the District of Columbia’s Motion for a Temporary Restraining Order, any opposition, and the entire record therein, it is by this Court on _____, of _____, 2020,

ORDERED that the District of Columbia’s Motion for a Temporary Restraining Order is hereby **GRANTED**; and

FURTHER ORDERED that Defendant cease selling any merchandise for prices greater than the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency so long as the Mayor’s Order No. 2020-045 (the “Order”) remains in effect or is extended.

Date: _____

JUDGE

EXHIBIT 1

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>HELEN MART, LLC</p> <p style="text-align:center">Defendant.</p>	<p>Case No.:</p>
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DECLARATION OF WILLIE HAYNES

1. I, Willie Haynes, Investigator, Public Integrity Section, Office of the Attorney General for the District of Columbia, declare as follows:

2. I am over the age of eighteen years, competent to testify to the matters contained herein, and testify based on my personal knowledge and information.

3. On April 21, 2020, an anonymous caller reported to the Office of the Attorney (OAG) that Pan Am Fresh Market, 4907 Nannie Helen Burroughs Avenue, NE, Washington, DC was engaged in price gouging of certain cleaning items in general and of Clorox Bleach in particular. The anonymous caller reported Pan Am Fresh Market was selling Clorox Bleach for \$12.99.

4. Although the complainant identified the store as “Pan Am Fresh Market,” a review of the Department of Consumer and Regulatory Affairs website indicates the store at 4907 Nannie Helen Burroughs Avenue also does business under the name “Helen Mart.” Outside signage of the store bears both the name “Helen Mart” and “Pan Am Fresh”.

5. On April 22, 2020 at approximately 12:30 pm, I visited Pan Am Fresh Market to investigate the matter. Upon arrival, I saw a 121 oz. bottle of Clorox Bleach without a price tag. I asked the clerk for a price check on the item and she told me it was offered for sale for \$12.99.

6. On April 23, 2020 at approximately 4:30 pm, I served the clerk with a cease and desist letter from the OAG concerning the price gouging allegation of the Clorox Bleach. *See* Ex. A. (April 23, 2020 Cease and Desist Letter). The clerk informed me that she would give the letter to the owner of Pan Am Fresh Market. OAG did not receive a response to this letter.

7. On April 29, 2020 at approximately 1:30 pm, I revisited Pan Am Fresh Market to ascertain whether they had adjusted the price on the Clorox Bleach. Once again, I asked the clerk for a price check and she informed me that the price of the 121 oz. bottle of Clorox Bleach was \$12.99.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2020, in Washington D.C.

/s/ Willie Haynes
Willie Haynes
Investigator

EXHIBIT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



Office of Consumer Protection

April 23, 2020

VIA HAND DELIVERY

Pan Am Fresh Market
4907 Nannie Helen Burroughs Avenue, NE
Washington D.C. 20019

RE: Price Gouging

To Whom It May Concern:

The District of Columbia Office of the Attorney General has received one or more complaints that since Mayor Bowser declared a Public Health Emergency, you have raised your prices for certain goods sold at your store at 4907 Nannie Helen Burroughs Avenue, NE in violation of District laws protecting consumers during natural disasters. Specifically, you are currently selling Clorox bleach for \$12.99 which is far in excess of the normal average retail price for that product. On March 11, 2020, Mayor Bowser first declared a Public Health Emergency based upon the threatened spread of the Coronavirus. The Mayor has extended that Declaration through May 15th. These Declarations have triggered certain protections in the District’s Natural Disaster Consumer Protection Act, D.C. Code § 28-4101, *et seq.*

This law prohibits merchants from taking advantage of emergencies by increasing the prices for services and merchandise. Concerning merchandise, the law states that merchants may not charge more than “. . . the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency . . .” D.C. Code § 28-4101(2)(B).

The Attorney General for the District of Columbia (“OAG”), is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 28-3909, OAG is empowered with broad authority to restrain illegal acts. Pursuant to this Office’s authority you are hereby directed to

immediately bring your prices for hand sanitizer and basic facemasks in conformity with District law.

Please contact the undersigned within the next twenty-four hours to confirm that you have modified your pricing. If you have information about changes in the wholesale cost of hand sanitizer or basic facemasks that you would like us to consider, please provide it within the next twenty-four hours as well. Your failure to comply with this directive may result in further action by this office.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By: /s/ Wendy Weinberg
Wendy J. Weinberg
Senior Assistant Attorney General
Office of Consumer Protection
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Wendy.Weinberg@dc.gov