

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

DISTRICT OF COLUMBIA, <i>Plaintiff,</i> v. CAPITOL PETROLEUM GROUP, LLC, <i>et al.</i> , <i>Defendants.</i>	Case No. 2020 CA 004671 B Judge Danya Dayson Next Event: Opp. to Dispositive Motions April 28, 2022
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**THE DISTRICT OF COLUMBIA’S MOTION FOR SUMMARY JUDGMENT
AND SUPPORTING MEMORANDUM**

Plaintiff the District of Columbia (“District”), through its Attorney General, and pursuant to SRC-Civil 56, respectfully moves this Court for an order granting summary judgment against Defendants Capitol Petroleum Group, LLC (“CPG”), DAG Petroleum Suppliers, LLC (“DAG”), and Anacostia Realty, LLC (“Anacostia”) (collectively “Defendants”) for violating the District of Columbia’s Natural Disaster Consumer Protection Act (“NDCPA”), D.C. Code §§ 28-4101, *et seq.*, and the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.* See Super. Ct. Civ. R. 56(a); 12-I(k). This Motion is accompanied by a Statement of Undisputed Material Facts and a proposed order.

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INTRODUCTION

The District of Columbia's Natural Disaster Consumer Protection Act ("NDCPA"), D.C. Code §§ 28-4101, *et seq.*, protects consumers from price gouging by prohibiting merchants from raising their profit margins during an emergency. Under this law, merchants can pass along the cost of goods, which might rise or fall in times of emergency, along with the average percentage profit margin they charged in the 90 days preceding the emergency. But the law specifically prohibits companies from taking advantage of a crisis to increase their profit margin percentages. If they do, they are in violation of not only the NDCPA, but also the District's Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3904, as trade practices that violate other District laws constitute standalone violations of the CPPA.

Defendants Capitol Petroleum Group LLC ("CPG"), DAG Petroleum Suppliers LLC ("DAG"), and Anacostia Realty LLC ("Anacostia") (collectively "Defendants") are part of a web of entities that sell or control the sale of gasoline at over 60% of the retail gas stations in the District. There is no dispute that, in the wake of the public health emergency announced at the beginning of the Coronavirus pandemic, Defendants' profit margins on retail gasoline sales rose significantly, often doubling or more, compared to their profit margins in the three months prior to the pandemic. Defendants' own data confirm this increase, which led to millions of dollars of overcharges to District consumers during the height of the pandemic. Defendants cannot reasonably contest the arithmetic realities of their own data, nor the admissions of their own representatives. The District is accordingly entitled to summary judgment that Defendants are liable for selling gasoline in violation of the NDCPA and the CPPA.

FACTUAL BACKGROUND

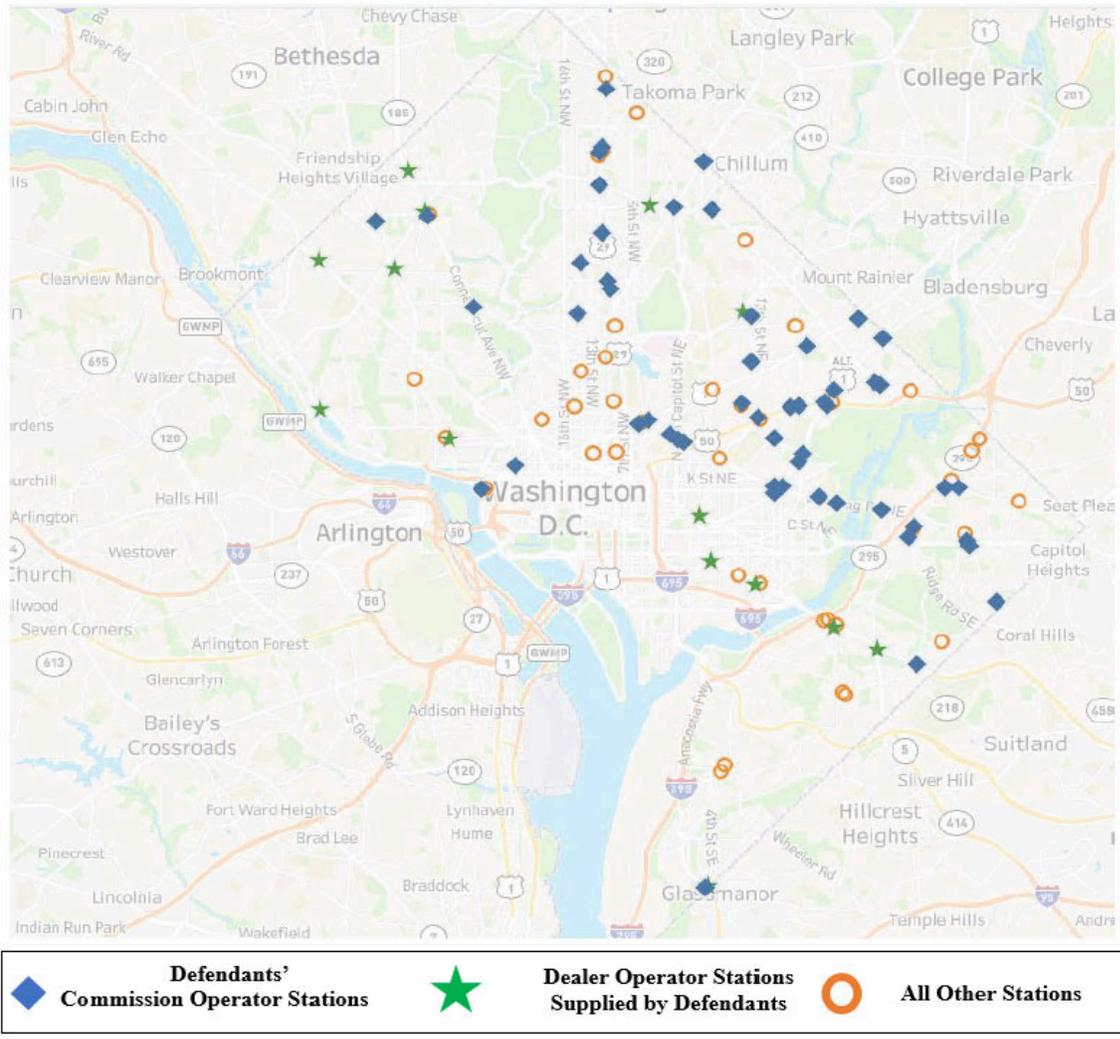
I. CPG and Its Affiliates Are the Exclusive Sellers of Gasoline at Over 60% of District Retail Gas Stations.

Defendant CPG is the brain and nerve-center of a web of entities, including Defendants Anacostia and DAG, owned primarily by Eyob Mamo, that are in the gasoline services, sale, and distribution and real estate business (the web of entities that Defendant CPG manages and controls is collectively referred to as “CPG Affiliates” or “Affiliates”). Statement of Undisputed Material Facts (“Facts”) ¶ 1. Out of the approximately 110 retail gasoline stations in the District, CPG and its Affiliates are the exclusive retail seller of gasoline at 54 stations and the exclusive wholesale supplier of gasoline at an additional 15 stations, making them the exclusive source of gasoline at more than 60% of retail gas stations in the District. Facts ¶ 5. The 54 stations where CPG Affiliates sell gasoline directly to retail consumers are known as commission operator stations, while the stations where CPG Affiliates sell gasoline at wholesale are referred to as dealer operator stations.¹ Facts ¶ 31. And at those 54 commission operator stations, CPG employees have sole and binding authority to set the retail price for the gasoline that consumers purchase. Facts ¶¶ 39-44.

The following map shows the locations of all retail gasoline stations in the District of Columbia as of March 2020, with blue diamonds representing CPG Affiliate commission

¹ At a commission operator station, the CPG Affiliate sells gasoline directly to retail consumers. The commission operator is an individual who runs the station and leases the “back court,” typically a convenience store or car wash from the CPG affiliate who own the gas station. The commission operator is paid a small commission, typically a few cents per gallon of gasoline sold, to operate the gas station. Facts ¶ 31. At dealer-operated stations, the dealer leases the gas station property from a CPG Affiliate and enters into an exclusive supply agreement with a CPG Affiliate for wholesale gasoline. The dealer operator purchases the fuel from the CPG Affiliate at wholesale and then sells it to consumers at retail. Facts ¶ 31, n.8.

operator stations and green stars representing CPG Affiliate dealer operator stations:



Facts ¶¶ 6.

None of the CPG Affiliates have employees; rather, CPG and its approximately 60 employees control, manage, and execute every aspects of the CPG Affiliates' business, operating in essence as one cohesive entity. Facts ¶¶ 12-13. CPG's Pricing Department sets the price daily that consumers pay for gasoline sold at retail by CPG Affiliates. Facts ¶¶ 40-41. CPG's Planning Department collects, analyzes, and reviews the invoices and other data generated by the CPG Affiliates to perform operations analysis and identify trends that might affect CPG's pricing. Facts ¶ 56. Mr. Mamo, along with Chief Operating Officer, William Crowe, make all

management decisions on behalf of CPG and its Affiliates. Facts ¶ 22. The relationships between CPG and its Affiliates are governed by Management Services Agreements, and these are put in place by CPG without negotiation. Facts ¶¶ 14-15, 18-19.

Defendant Anacostia holds both fuel supply contracts and real property on which retail gas stations are located, all aspects of which are controlled and managed by CPG. Facts ¶¶ 8-13. It sells gasoline directly to District consumers at 12 commission operator gas stations in the District. Facts ¶ 8. Defendant DAG holds fuel supply contracts and sells gasoline directly to consumers at 15 commission operator gas stations in the District. Facts ¶ 9. Other CPG Affiliates sell gasoline directly to District consumers at 27 additional commission operator stations in the District. Facts ¶ 10.

II. The Coronavirus Emergency Triggers the Protections of the NDCPA.

On March 11, 2020, Mayor Muriel Bowser declared a public emergency and a public health emergency in the District of Columbia due to the Coronavirus pandemic. Facts ¶ 74. The Mayor's declarations triggered price-gouging protections under the NDCPA, and on March 17, 2020 the D.C. Council passed emergency legislation explicitly providing for application of the NDCPA to the public health emergency. Facts ¶ 77; D.C. Code §§ 28-4101, *et seq.* Specifically, during either a public health emergency or public emergency, it is illegal to “charge more than the normal average retail price for any merchandise or service sold during” the period of emergency. D.C. Code § 28-4102(a) *as amended by* D.C. Act 23-247, Covid-19 Response Emergency Amendment Act of 2020 at § 304(a), *available at* <https://bit.ly/3qhn4NH>.² The “normal average retail price” is defined by the NDCPA as “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

² See Facts ¶ 77 for citation to each emergency Act covering the relevant time period.

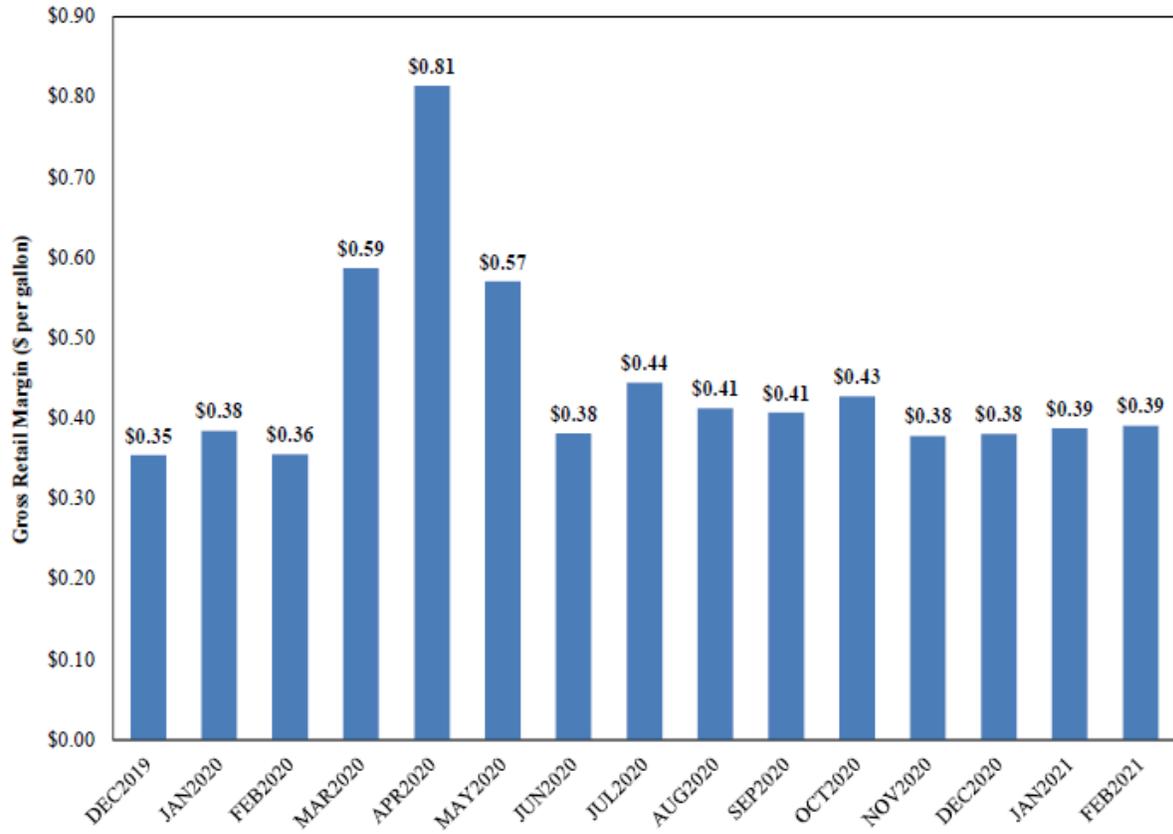
similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency.” D.C. Code § 28-4101(2)(B). In short, the NDCPA prohibits merchants from increasing their percentage profit margins on merchandise during an emergency above that merchant’s average percentage profit margins in the 90 days before the emergency.

III. Defendants Substantially Increased Their Profit Margins On Gasoline Sold In the District During the Coronavirus Public Health Emergency.

As a result of the Coronavirus emergency and the stay-at-home orders entered by jurisdictions across the United States and around the world, consumer demand for gasoline fell, which lead wholesale gasoline prices to fall. Facts ¶¶ 81-82. At this same time, Defendants increased their profit margins, and percentage profit margins, on Regular and Premium gasoline significantly to “maintain” their “cash flow.” Facts ¶¶ 82-83, 87. Only seven days after the declaration of emergency, on March 18, 2020, CPG’s pricing department received a complaint from one of its wholesale dealer operators stating that “CPG’s margin is way above normal,” despite dropping refiner prices. Facts ¶ 104. This email was forwarded to Mr. Silver, manager of CPG’s Pricing Department that same day. Facts ¶¶ 105-106.

CPG’s own data also shows that the retail gasoline margins on sales by CPG Affiliates increased significantly, often doubling, in April 2020 as compared to December 2019, January 2020, or February 2020. Facts ¶¶ 88-99. The significant increases in margins are illustrated by the following chart, reflecting the average Gross Fuel Margins for Regular gasoline at the 54

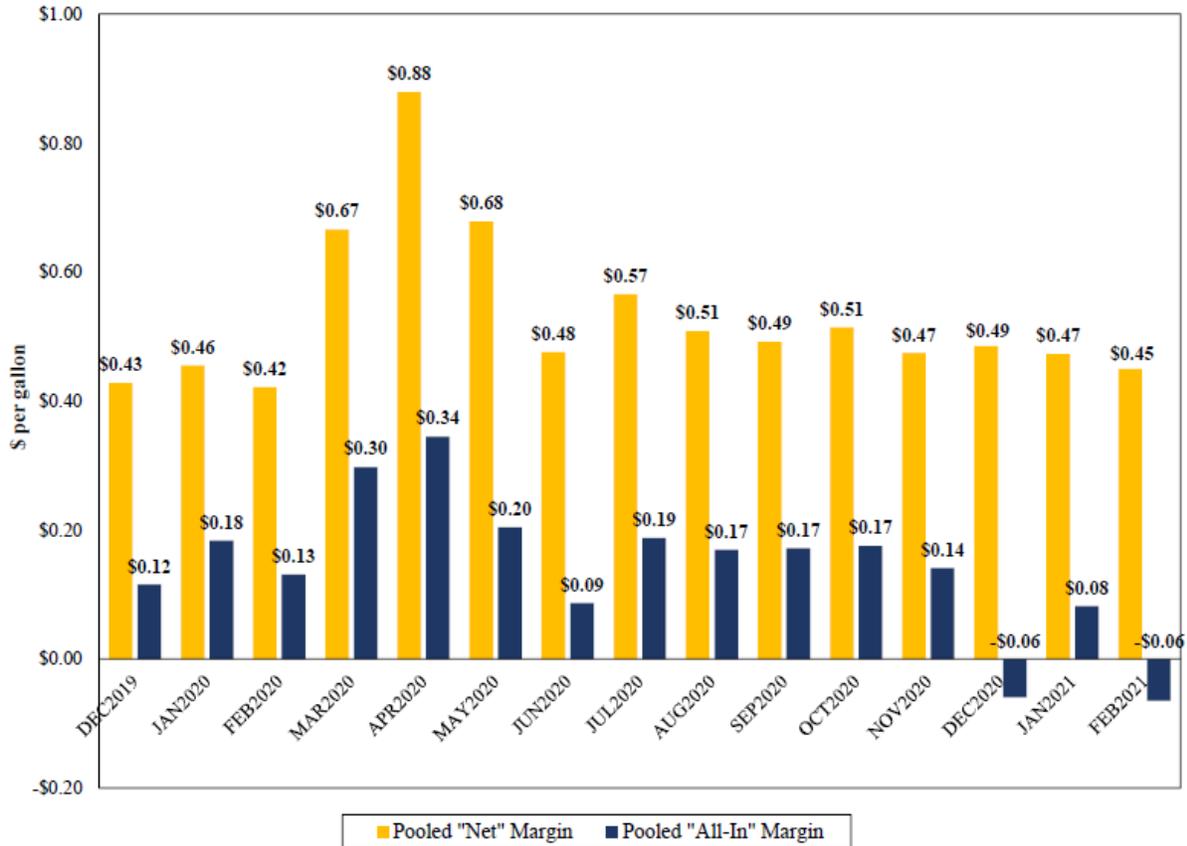
D.C. stations where CPG Affiliates sell gasoline at retail:



Facts ¶ 98.

A similar pattern is evident with respect to the Net Fuel and All-In Margins³ for

Defendants DAG and Anacostia:



Facts ¶ 99.⁴

Defendants all knew in real-time about these vastly increased margins following declaration of the public health emergency. CPG’s sophisticated in-house data analytics and

³ A Net Fuel Margin refers to the profit after subtracting all costs associated with running the fuel business. This includes the cost of procuring and transporting the product, as well as commissions, rebates, credit card fees, insurance, advertising, repair and maintenance, and environmental expenses. The All-in Margin refers to the profit after accounting for all costs associated with running the fuel business (the costs included in Net Fuel Margin) as well as all costs associated with running the real estate business, including property taxes, the mortgage, and the management fee that CPG Affiliates pay to CPG. Facts ¶¶ 67-69.

⁴ Significantly increasing the margins on retail gasoline was not the only way that CPG sought to “maintain” their “cash flow.” Facts ¶¶ 82-83, 87. In April of 2020, CPG applied for and received over \$1 million in federal support through the Paycheck Protection Program. Facts ¶ 108. CPG’s April 2020 round of PPP loan funding was fully forgiven in January 2021, and later that month, it received another PPP funding infusion of over \$1 million. Id.

pricing departments provide CPG executives with real-time data on projected margins and monthly data on actual margins. Pricing Manager Robert Silver generates daily all-sites reports, which provide information on each station, including forecasting the station’s potential for the month and estimated daily margins. Facts ¶¶ 51-54. VP of Planning Janet Golla heads a team that provides financial analysis to CPG so that it can “respond to changes in the marketplace, or other situations within [their] industry.” Facts ¶ 56. The Planning Department performs different margin analyses, including monthly calculations of Gross Profit Margin, which takes into account CPG’s fully reconciled inventories to get a precise measure of product cost for the month. Facts ¶¶ 65-70. While inventory reconciliation is not done daily, Ms. Golla can use “theoretical” costs to estimate daily profit margins, and CPG uses these theoretical costs to “directionally understand where [their] margins are.” Facts ¶¶ 71-72. Through their pricing department and data analytics operation, Mr. Mamo and Mr. Crowe have ready access to information on CPG Affiliates’ margins. Facts ¶¶ 52, 117.

Mr. Mamo, Mr. Crowe, and other CPG executives were notified of the NDCPA and its applicability by their attorneys no later than April 27, 2020. Facts ¶¶ 109-112. Both Mr. Mamo and Mr. Crowe testified that they decided on their own that they could not comply with the NDPCA, and so, in Mr. Mamo’s words they “just disregarded it.” Facts ¶¶ 114-116.

All told, despite the Coronavirus pandemic, 2020 was a good year for CPG, its Affiliates, and its majority owner, Mr. Mamo. As the approximately 85% owner of CPG and its Affiliates, Mr. Mamo’s portion of the CPG ownership distribution in 2020 totaled around \$10 million. Facts ¶ 119.

LEGAL STANDARDS

Under SCR-Civil 56(c), a court must grant summary judgment where a movant “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

matter of law.” “The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, after which the burden shifts to the non-moving party to designate specific facts showing that there is a genuine issue for trial.” *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005) (citations omitted). “Summary judgment may not be ‘avoided merely by demonstrating a disputed factual issue.’ ‘Rather, the opposing party must show that the fact is material’ and ‘that there is sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties’ differing versions of the truth at trial.’” *William J. Davis, Inc. v. Tuxedo LLC*, 124 A.3d 612, 624 (D.C. 2015) (citations omitted). “‘While [the Court] examine[s] the evidence in the light most favorable to the party opposing the motion, ‘conclusory allegations by the nonmoving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment.’” *Franco v. District of Columbia*, 39 A.3d 890, 894 (D.C. 2012) (citation omitted).

DISCUSSION

This is not a complicated case. The NDCPA provides a straight-forward legal test that the D.C. Council enacted to protect consumers by limiting merchants’ ability to increase their profit margins during times of emergency. D.C. Code § 28-4102(a). In Defendants’ case, it was immediately apparent to anyone with access to their data that their profit margins were skyrocketing in the wake of the Coronavirus emergency. And, where product costs are decreasing, as they were here, increased margins means that percentage profit margins were also going up. Here, Defendants’ percentage profit margins increased substantially, and an analysis of Defendants’ own data shows that they engaged in millions of dollars of illegal price gouging.

I. Defendants Violated the NDCPA by Increasing Their Percentage Profit Margins During the Coronavirus Public Health Emergency, Overcharging Consumers Millions.

There is no dispute that the gasoline stations in the District where Defendants sell or control the sale of gasoline increased their profit margins significantly in the months following the Mayor’s declaration of an emergency due to the Coronavirus pandemic, as compared to their profits margins in the three months prior to the pandemic. Facts ¶¶ 82-87.⁵ The NDCPA provides a straight-forward cap designed to protect District consumers during times of emergency from excessive price gouging by limiting increases in percentage profit margins. Defendants violated that cap, as their own data clearly demonstrates, resulting in over \$4 million in overcharges on regular gasoline and nearly \$2 million in overcharges on premium gasoline.⁶

A. The NDCPA Provides a Straight-Forward Cap to Protect Consumers.

The NDCPA makes it unlawful for “any person to charge more than the normal average retail price for any merchandise or service sold during an emergency,” including a public health emergency. D.C. Code §28-4102(a) *as amended by* D.C. Act 23-247, Covid-19 Response Emergency Amendment Act of 2020 at § 304(a); *see* Facts ¶ 77. And it defines “normal average retail price” for merchandise as:

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 that resulted from a natural disaster, if an emergency has been declared pursuant to § 28-4102(b).

⁵ The NDCPA speaks to percentage profit margins. However, it is a mathematical truth that, where costs were decreasing and actual dollar profit margins were increasing, percentage profit margins were necessarily increasing. *See* Section I.B. for discussion of the District’s analysis of the Defendants’ data.

⁶ The District has confined its Motion for Summary Judgment to the question of liability under the NDCPA and the CPPA for Defendants’ sales of gasoline at retail. It leaves for a subsequent hearing the determination of appropriate remedies where live testimony will assist in the Court’s determining the extent to which Defendants acted in bad faith.

D.C. Code § 28-4101(2)(B). This means simply that, where, as is the case here, CPG and its Affiliates' profit margins during the 90 days prior to the emergency averaged 18% for Regular gasoline and 35% for Premium, their profit margins cannot exceed those same percentages during the emergency. *See* Facts ¶ 100. Where Defendants sold gasoline to consumers at prices higher than an 18% profit margin for Regular and 35% for Premium, they overcharged consumers in violation of the NDCPA.

B. Defendants Violated the Law, Overcharging District Consumers by Millions of Dollars During the Emergency.

In the wake of the Coronavirus emergency, Defendants' profit margins jumped "way above normal." Facts ¶ 104. Defendants were put on notice of their increased margins no later than March 18, 2020, seven days after the Mayor declared a public health emergency due to the Coronavirus. Facts ¶¶ 104-106 (email from Anacostia dealer-operator Dennis Alloy, forwarded to pricing manager Robert Silver stating: "CPG's margin is way above normal."). Defendants readily acknowledge that their per gallon margins increased "by a significant percentage." Facts ¶¶ 82, 87. Indeed, Defendants' own data show that their profits margins soared, often doubling, in the months after the Coronavirus public health emergency began compared to the three months prior to the emergency, resulting in percentage profit margins well above 18% for Regular and 35% for Premium. Facts ¶¶ 88-101. For example, at the Anacostia gas station located at 7401 Georgia Avenue NW, the percentage profit margin from March 12, 2020 to May 31, 2020 ranged from 39% to 91%, more than double to *more than quintuple* the 18% pre-emergency average. Facts ¶ 103.

Using Defendants own cost and sales data to calculate the normal average retail price for the 54 stations in the District where Defendants sell or control the sale of gasoline at retail, Economist Sophia Meadows found that Defendants overcharged District consumers \$4,308,386

for Regular gasoline and \$1,977,665 for Premium gasoline from March 12, 2020 to February 28, 2021. Ex. 12 at 14 (Report Exhibit 5).⁷

II. Under the NDCPA, All Defendants, Including CPG, are Liable for “Charging” Prices in Excess of Normal Average Retail Price.

The NDCPA renders it unlawful for “any person⁸ to charge more than the normal average retail price for any merchandise or service sold during an emergency that resulted from a natural disaster.” D.C. Code §28-4102. Defendants DAG and Anacostia are plainly liable, for the prices charged in excess of normal average retail price when they sold gasoline directly to retail consumers in DC. Facts ¶¶ 8-9. Defendant CPG also is liable because it alone controls the retail gasoline prices at which DAG, Anacostia, and other CPG Affiliates sell gasoline in the District, and it is in charge of all aspects of procuring, transporting, and offering the gasoline for retail sale.

CPG’s Retail Pricing Analyst establishes the retail gasoline price that consumers pay for each fuel grade at each of the 54 stations where CPG Affiliates sell gasoline at retail in the District, and the Analyst electronically transmits that retail price to the commission operator at the relevant station. Facts ¶¶ 31, 33-34, 40. Then, someone from CPG’s pricing department typically follows-up with the commission operator to make sure that the prices are “moved promptly” to the price that CPG has set for that day. Facts ¶ 40. While commission operators run the stations, they have no authority to set the price. Rather, the price that CPG’s Pricing Department sets is binding on the commission operators. Facts ¶ 33. CPG is the sole entity that

⁷ As this motion is confined to liability under the NDCPA and the CPPA, at a subsequent remedies hearing, the District plans to seek restitution in the amount of the consumer overcharges, in addition to other remedies available under D.C. Code § 28-3909.

⁸ The NDCPA’s definition of “person” includes “a corporation, firm, agency, company, association, organization, partnership, society, joint stock company, or an individual.” D.C. Code §28-4101. As a Limited Liability Company, CPG is a “person” under the NDCPA. Facts ¶ 1.

sets the retail price that consumers will be charged at all of its Affiliates, as its Affiliates have no employees, and under the Management Services Agreements, CPG carries out all tasks associated with running the business of its Affiliates. Facts ¶¶ 12-16. Accordingly, as the entity with authority to fix the price that consumers pay for gasoline at the relevant stations, CPG “charges” consumer for gasoline. Thus, CPG, along with DAG and Anacostia, should be held liable to the extent they charged (or caused to be charged) prices in violation of the NDCPA.⁹

III. Violations of the NDCPA Also Constitute Violations of the CPPA.

It is settled law in the District that a defendant who violates another District law in conjunction with a consumer transaction also commits an “unlawful trade practice” under the CPPA. Section 28-3904 of the CPPA has long been construed by the Court of Appeals to prohibit unlawful trade practices that, though not violative of the provisions expressly enumerated in § 28 3904(a)-(II), nonetheless violate some other District of Columbia law. *See Atwater v. D.C. Dep’t of Consumer & Regulatory Affairs*, 566 A.2d 462, 466 (D.C. 1989); *Osbourne v. Capital City Mortg. Corp.*, 727 A.2d 322, 325–26 (D.C. 1999); *Dist. Cablevision Ltd. P’ship v. Bassin*, 828 A.2d 714 (D.C. 2003); *Logan v. LaSalle Bank Nat. Ass’n*, 80 A.3d 1014, 1027 (D.C. 2013); *see also generally* D.C. Code § 28 3904. Accordingly, because Defendants’ pandemic pricing practices at its 54 commission operator station violated the NDCPA, they also constitute unlawful trade practices in violation of the CPPA.

CONCLUSION

The undisputed material facts show that Defendants CPG, DAG, and Anacostia charged prices to District consumers at their commission operator stations that significantly exceeded

⁹ Even if CPG was not expressly covered by the NDCPA, it would be liable for participating in and controlling the NDCPA and CPPA violations committed by DAG and Anacostia, as well as other CPG Affiliates. *See Childs v. Purill*, 882 A.2d 227, 239 (D.C. 2005) (holding parties liable for a company’s torts which they committed, participated in, or inspired).

normal average retail price resulting in District consumers paying millions of dollars more for gasoline during a time of public health emergency than they would have if Defendants had complied with the law. This violated the NDCPA and the CPPA. Accordingly, the District respectfully requests that the Court find Defendants liable for violating the NDCPA and the CPPA.

Dated: March 31, 2022

Respectfully submitted,

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Superior Court Civil Rules 12-I Certification

Undersigned counsel contacted counsel for Defendants on March 29, 2022 regarding the motion. Defendants do not consent to the relief sought.

/s/ Laura C. Beckerman
LAURA C. BECKERMAN

Certificate of Service

I certify that on March 31, 2022, a copy of the District of Columbia' Motion for Summary Judgment and supporting documents were served on counsel for the Defendants via the Court's CaseFileXpress system.

/s/ Laura C. Beckerman
LAURA C. BECKERMAN