

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EVELYN POQUEZ,)	Case No. 11-328 SC
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS'
)	<u>MOTION TO DISMISS</u>
v.)	
)	
SUNCOR HOLDINGS - COPII, LLC; GSM)	
PARTNERS, LLC; and TOWER ENERGY)	
GROUP,)	
)	
Defendants.)	
)	

Plaintiff Evelyn Poquez ("Plaintiff") commenced this action against Defendants Suncor Holdings - COPII, LLC ("Suncor"), GSM Partners, LLC ("GSM"), and Tower Energy Group ("Tower"), bringing a claim of violation of the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801-06 ("PMPA"), as well as state law claims for specific performance and declaratory relief. ECF No. 1 ("Compl."). Suncor and GSM (collectively, "Defendants") filed a Motion to Dismiss, which is fully briefed. ECF Nos. 8 ("Mot."), 16 ("Opp'n"), 17 ("Reply"), 24 ("Surreply").

In her Complaint, Plaintiff alleges that she has owned and operated a Union 76-branded motor fuel service station in San Francisco, California since 1985. Compl. ¶¶ 1, 13. Plaintiff alleges that around November 24, 2010, Defendants sent Plaintiff a Notice of Nonrenewal of Plaintiff's franchise agreement; Plaintiff

1 contends that this action violates the PMPA because Plaintiff never
2 received written notice of the duration of the underlying lease
3 before the beginning of the term of her franchise agreement. Id.
4 ¶¶ 17-18.

5 In seeking dismissal of the action, Defendants contend inter
6 alia that this action is moot given Plaintiff's subsequent assent
7 to a new three-year franchisor/franchisee agreement. Reply at 3.
8 The Court invited Plaintiff to file a surreply to address this
9 argument. ECF No. 22.

10 In her Surreply, Plaintiff admits that Defendants withdrew the
11 Notice of Nonrenewal on February 7, 2011 and that Plaintiff
12 subsequently signed a new lease agreement. Surreply at 3-4. The
13 Court finds that these actions moot the claims pleaded in
14 Plaintiff's Complaint.

15 Plaintiff argues that other subsequent actions by Defendants
16 support a PMPA claim. Specifically, Plaintiff alleges that
17 Defendants violated the PMPA in February 2011 by giving Plaintiff
18 only four days to match a third party's offer to purchase the
19 property. Surreply at 4. Plaintiff alleges that Defendants
20 conveyed title to the property to Forest City West, LLC in April
21 2011 in violation of her "PMPA rights." Id. at 5. These actions
22 allegedly occurred after Plaintiff filed her Complaint, and as
23 such, they are not pleaded in the Complaint.

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1 In light of the above, the Court GRANTS Defendants' Motion to
2 Dismiss and DISMISSES Plaintiff's Complaint WITHOUT PREJUDICE.
3 Plaintiff is granted leave to amend her Complaint to remove now-
4 moot claims and add claims premised on the above allegations.
5 Plaintiff must file her amended complaint within thirty (30) days
6 of this Order or the Court will dismiss the action in its entirety.
7 Should Plaintiff amend her Complaint to include baseless and/or
8 frivolous claims, she will face appropriate sanctions under Federal
9 Rule of Civil Procedure 11, 28 U.S.C. § 1927, and/or the Court's
10 inherent authority.

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IT IS SO ORDERED.

Dated: June 15, 2011


UNITED STATES DISTRICT JUDGE