

United States District Court  
For the Northern District of California

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E-FILED on 6/2/10

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re: ConocoPhillips Co. Service Station Rent  
Contract Litigation

No. M:09-cv-2040 RMW  
ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS WITH LEAVE TO  
AMEND  
[Re Docket No. 69 ]

Defendant's motion to dismiss the Amended Complaint came on for hearing before the court on May 28, 2010. Plaintiffs oppose the motion. Having considered the papers submitted by the parties and the arguments of counsel at hearing on this matter, and for good cause appearing for the reasons set forth below, defendant's motion to dismiss is granted. Plaintiffs shall have twenty days leave to file an amended complaint.

**BACKGROUND**

This multi-district litigation is brought against defendant ConocoPhillips Company by many of its gasoline service station lessee-dealers. Each of the plaintiffs owns or operates a Union 76 brand service station under a franchise agreement with ConocoPhillips, a sample of which is attached as Exhibit A to the Amended Complaint.



1 Defendant's argument on the disclosure requirement of the FIL is convincing. First, the FIL  
2 does not require the franchisor to make the disclosures specified in Section 31101(c) when an  
3 existing franchise agreement is renewed. Section 31101(c) applies to the offer and sale of a  
4 franchise, but renewals of existing franchises are excluded from the statutory definitions of "offer"  
5 and "sale." Cal. Corp. §31018. The reason is that the FIL was enacted to ensure that prospective  
6 franchisees are adequately informed of their duties and obligations under franchise relationships  
7 before entering into them. *See* Cal. Corp. § 31001 ("It is the intent of this law to provide each  
8 prospective franchisee with the information necessary to make an intelligent decision regarding  
9 franchises being offered."). Case law interpreting the statute has also held that the disclosure  
10 obligation applies only to new franchise agreements and not to renewals. *Davis v. Gulf Oil Corp.*,  
11 572 F. Supp. 1393, 1396-98 (C.D. Cal. 1983).

12 In opposition, plaintiffs cite to dicta from an unpublished decision, *Mahroom v. Best Western*  
13 *International, Inc.*, 2007 WL 2123565, \*5 (N.D. Cal. 2007) (J. Fogel), to support their argument that  
14 disclosure obligations apply whenever a franchise agreement is renewed. As defendant correctly  
15 notes, however, not only is the statement in *Mahroom* dicta and the decision an unpublished one, but  
16 a subsequent decision in that same case confirmed that the FIL does not apply to renewals of  
17 existing franchise, expressly citing *Davis v. Gulf Oil Corp.* for the proposition. Reply at 3, citing  
18 *Mahroom v. Best Western International, Inc.*, 2009 WL 2216578 (N.D. Cal. 2009) (J. Fogel).  
19 Accordingly, plaintiffs' argument is not persuasive.

20 Plaintiffs also contend, however, that the rental increase was a material modification to the  
21 franchise agreement and that under Section 31108, a material modification of an existing franchise  
22 relationship is a "sale" within the meaning of the statute, thus triggering the disclosure requirements.  
23 Defendant correctly notes, however, that the Amended Complaint does not allege that defendant  
24 "materially modified" the franchise agreements, nor is any claim asserted based upon a material  
25 modification of the agreements as opposed to a failure to make Section 31101(c) disclosures at the  
26 time of franchise renewal. Moreover, even if there was a material modification, that does not save  
27 plaintiffs' claim. Section 31101(c) sets forth two alternative disclosure requirements. Section  
28 31101(c)(1) applies upon the offering of an initial franchise to a prospective franchisee, in which

1 case the franchisor must make the comprehensive disclosures required in Section 31101(c)(1). In  
2 the case of a material modification of an existing franchise agreement, however, Section 31101(c)(2)  
3 provides that the franchisor must disclose in writing to each franchisee information concerning the  
4 specific sections of the agreement proposed to be modified.

5 Under Section 31101(c)(2), upon receipt of notification of a material modification, the  
6 franchisee has ten days in which to object and rescind the agreement. Thus, assuming the rent  
7 increase was a material modification, the franchisor would have to give notice to the franchisee, and  
8 then the franchisee would have ten days to object and rescind, or alternatively, acquiesce in the  
9 change. It would not give rise to a suit for damages for failure to provide the disclosures required by  
10 Section 31101(c)(1).

11 Accordingly, the first claim for relief is dismissed. Plaintiffs are granted twenty days leave  
12 to amend. The court does not reach the statute of limitations issue.


13 **II. Second and Third Claims for Relief**

14 Plaintiffs' second claim for relief under California's Unfair Competition Law (Business and  
15 Professions Code Section 17200) and third claim for relief (declaratory relief) are both premised on  
16 defendant's violation of the FIL by failing to make disclosures at the time of the franchise agreement  
17 renewals. Defendant had no obligation to make the Section 31101(c)(1) disclosures at the time of  
18 renewal, however, and thus defendant's failure to do so cannot support a claim for unfair  
19 competition or for declaratory relief. Accordingly, the claims are dismissed, with leave to amend.

20 **CONCLUSION**

21 For the foregoing reasons, defendant's motion to dismiss is granted. Plaintiffs shall have  
22 twenty days leave in which to file and serve an amended complaint.

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24  
25 DATED: 6/2/10

  
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RONALD M. WHYTE  
United States District Judge

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14 Counsel are responsible for distributing copies of this document to co-counsel that have not  
15 registered for e-filing under the court's CM/ECF program.

16  
17 **Dated:** 6/2/10

18 TER  
**Chambers of Judge Whyte**

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