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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

4 LUIS ALFREDO SANTIAGO  
SEPULVEDA, et al.,

6 Plaintiffs

7 v.

8 ESSO STANDARD OIL COMPANY  
9 (PUERTO RICO), INC., et al.,

10 Defendants

CIVIL 08-1950 (CCC) (JA)  
CIVIL 08-1986 (CCC) (JA)  
CIVIL 08-2025 (CCC) (JA)  
CIVIL 08-2032 (CCC) (JA)  
CIVIL 08-2044 (CCC) (JA)

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MEMORDANDUM ORDER

14 This matter is before the court on defendants' joint motion to amend or  
15 alter the judgment with regard to the Pabón-García partnership and the conjugal  
16 partnership of Julio López and Carmen H. Mercado-Reyes, pursuant to Federal  
17 Rule of Procedure 59(e) filed on October 31, 2008. (Docket No. 150). Plaintiffs  
18 filed an opposition to the motion on November 25, 2008. (Docket No. 159). Total  
19 Petroleum then repeated the October 31 motion in an "urgent" motion filed on  
20 December 31, 2008. (Docket No. 193). It appears that the Pabón-García  
21 partnership has not accepted Total's new franchise offer. For the following  
22 reasons the defendants' motion to amend or alter the judgment is GRANTED.  
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I. BACKGROUND

26 Plaintiff Esso franchisees were upset with Esso's decision to leave Puerto  
27 Rico. They sued to prevent Esso from leaving the island. They lost on that front.  
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1 CIVIL 08-1950 (CCC) (JA)  
2 CIVIL 08-1986 (CCC) (JA)  
3 CIVIL 08-2025 (CCC) (JA)  
4 CIVIL 08-2032 (CCC) (JA)  
5 CIVIL 08-2044 (CCC) (JA)

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6 The court found that Esso and Total Petroleum Puerto Rico Corporation ("TPPPC")  
7 had complied with the requirements of the Petroleum Marketing Practices Act  
8 ("PMPA") for market withdrawal with two exceptions. Two franchisees, the  
9 brothers' Pabón-García partnership and the partnership of Julio López and his  
10 spouse Carmen H. Merado-Reyes, had not been offered franchise contracts, as  
11 required by the PMPA. The court announced that it would schedule a hearing on  
12 damages for those two plaintiffs. See Santiago-Sepúlveda v. Esso Standard Oil  
13 Co., 582 F. Supp. 2d 154, 185-86 (D.P.R. 2008). Defendants now ask the court  
14 to vacate the portion of the October 18, 2008 opinion and order requiring the  
15 damages hearing. TPPRC has since revised the franchise contracts offered to  
16 these particular plaintiffs and communicated these new offers to each of the  
17 plaintiffs. Any defects in the original contracts have thus been corrected.  
18 Accordingly, they argue any damages awarded in light of that correction would be  
19 unjust.  
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## 23 II. DISCUSSION

24 The PMPA requires that the outgoing franchisor ensure that all franchisees  
25 receive non-discriminatory franchise offers from the incoming franchisor as a  
26 condition for market withdrawal. 15 U.S.C. § 2802(b)(2)(E)(iii)(II) (2008).  
27 However, "the PMPA does not require that the franchisor's successor make its  
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1 CIVIL 08-1950 (CCC) (JA)  
2 CIVIL 08-1986 (CCC) (JA)  
3 CIVIL 08-2025 (CCC) (JA)  
4 CIVIL 08-2032 (CCC) (JA)  
5 CIVIL 08-2044 (CCC) (JA)

6 [good faith], non-discriminatory offer within any particular time.” Avramidis v.  
7 Arco Petroleum Prod. Co., 798 F.2d 12, 17 (1<sup>st</sup> Cir. 1986) (citing 15 U.S.C. §  
8 2802(b)(2)(E)(iii)(II)); see S. Nev. Shell Dealers Ass’n v. Shell Oil Co., 634 F.  
9 Supp. 65, 71 (D. Nev. 1985). As long as the offer is made prior to the scheduled  
10 termination, compliance with the PMPA is complete.  
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12 Plaintiffs argues that the contracts finally offered by Total in the case of the  
13 Pabón-García brothers and Julio López and his wife Carmen H. Mercado-Reyes  
14 contain illegal and unenforceable terms and conditions. They thus claim Total and  
15 Esso’s have not complied with the PMPA’s provisions and therefore do not merit  
16 a declaration that they are in full compliance with the PMPA. Regardless of this  
17 argument, the defendants have provided the previously left out plaintiffs with the  
18 same or similar offers which are not discriminatory in nature in relation to these  
19 plaintiffs. I discussed at length the legality of the contracts in my opinion of  
20 October 18, 2008. (Docket No. 118.) See Santiago-Sepúlveda v. Esso Standard  
21 Oil Co., 582 F. Supp. 2d at 182-84. I need not repeat that reasoning here.  
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24 Defendants made their revised offers within the revised date of termination,  
25 October 31, 2008. They have cured the deficiency within the time allowed by the  
26 PMPA to make a valid, non-discriminatory offer. Therefore, the motion to amend  
27 judgment is granted, and the decision to hold a damages hearing in relation to  
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1 CIVIL 08-1950 (CCC) (JA)  
2 CIVIL 08-1986 (CCC) (JA)  
3 CIVIL 08-2025 (CCC) (JA)  
4 CIVIL 08-2032 (CCC) (JA)  
5 CIVIL 08-2044 (CCC) (JA)

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6 José Antonio Pabón-García, Sixto Pabón-García and Carmen H. Mercado-Reyes is  
7 hereby VACATED.

8 At San Juan, Puerto Rico this 12<sup>th</sup> day of January, 2009.

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10 S/ JUSTO ARENAS  
11 Chief United States Magistrate Judge  
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