

1 The Court has reviewed Magistrate Judge McGiverin’s Report and Recommendation at
2 Docket No. 110 and **ADOPTS** the same in its entirety. As such, the Court **GRANTS** Plaintiff’s
3 motions for preliminary injunctive relief. The Court’s reasoning follows.

4 **I. Standard of Review**

5 The District Court may refer dispositive motions to a United States Magistrate Judge for a
6 Report and Recommendation. 28 U.S.C. § 636(b)(1)(B). Parties may file objections to a
7 Magistrate Judge’s Report and Recommendation. Rule 59(b) of the Federal Rules of Civil
8 Procedure states that “[w]ithin 14 days after being served with a copy of the recommended
9 disposition, or at some other time the court sets, a party may serve and file specific written
10 objections to the proposed findings and recommendations.” Upon a party’s objection, the Court
11 shall make a *de novo* review.

12 In conducting its review, the Court is free to “accept, reject, or modify, in whole or in part,
13 the findings or recommendations made by the Magistrate Judge.” 28 U.S.C. § 636(a)(b)(1).
14 Templeman v. Chris Craft Corp., 770 F.2d 245, 247 (1st Cir. 1985), cert. denied, 474 U.S. 1021
15 (1985). Furthermore, the Court may accept those parts of the report and recommendation to which
16 the parties do not object. See Hernandez–Mejias v. General Elec., 428 F.Supp.2d 4, 6 (D.P.R.
17 2005).

18 Absent objection, ... [a] district court ha[s] a right to assume that [the affected party]
19 agree[s] to the magistrate’s recommendation.” Templeman, 770 F.2d at 247. Additionally,
20 “failure to raise objections to the Report and Recommendation waives that party’s right to review
21 in the district court and those claims not preserved by such objections are precluded upon appeal.”
22 Davet v. Maccarone, 973 F.2d 22, 30–31 (1st Cir. 1992); Ramirez-Burgos v. United States, 990 F.
23 Supp. 2d 108, 114 (D.P.R. 2013).

1 The Court reviews an un-objected report and recommendation for plain error. See
2 Douglass v. United Servs. Auto, Ass'n, 79 F.3d 1415, 1419 (5th Cir. 1996) (extending the
3 deferential “plain error” standard of review to the un-objected to legal conclusions of a magistrate
4 judge); see also Nettles v. Wainwright, 677 F.2d 404, 410 (5th Cir.1982) (appeal from district
5 court’s acceptance of un-objected to findings of magistrate judge reviewed for “plain error”.)

6 **II. Discussion**

7
8 The heart of the controversy between the parties rests upon the validity of Plaintiff’s
9 termination of the franchise agreement, pursuant to the PMPA.

10 On one hand, Plaintiff argues that the franchise agreement was validly terminated in
11 compliance with the PMPA and, thus, contends preliminary injunctive relief is warranted to
12 prevent Defendants from displaying Total’s trademarks at the gas station and to allow Plaintiff to
13 regain possession of the gas station, property and the equipment maintained at the property.
14 (Docket No. 110 at 5-6.) Defendants concede that Plaintiff should be allowed “to remove any
15 trademarks from the” property, however resist as to Plaintiff’s request for injunctive relief arguing
16 that said franchise agreements are void. Id. Defendants also concede that injunctive relief is
17 warranted as to Plaintiff’s Lanham Act claims. Id.

18 The Magistrate Judge’s Report and Recommendation discusses the factors that must be
19 weighed by the Court when ruling upon a motion for preliminary injunction. First, Judge
20 McGiverin analyzes the likelihood of success of the merits of Plaintiff’s termination of the
21 franchise agreement under the PMPA, addressing the different grounds in which a franchisor may
22 terminate a franchise relationship as per 15 U.S.C. §§ 2802(b)(2)(c). (Docket No. 110.) Magistrate
23 Judge McGiverin found the likelihood of success in Plaintiffs favor, concluding that Plaintiff’s
24

1 proffered grounds for the termination of the franchise agreement “provide ample basis to terminate
2 a franchise relationship governed by the PMPA, Total had adequate cause to terminate the Total-
3 Claudio franchise relationship.” (Docket No. 110.) By the same token, Judge McGiverin reasoned
4 that Defendants proffered insufficient evidence of *dolo* or evidence of Plaintiff’s intentional fault.
5 (Docket No. 110 at 9.) Then, the magistrate judge turned to the remaining factors; irreparable
6 harm, balance of hardships and public interest and found these too weighed in Plaintiff’s favor.

7 Defendants’ objection to the Magistrate Judge’s Report and Recommendation fails to
8 comply with the procedural requirements of FED.R.CIV.P. 72(b) and Local Rule 72(d).
9 Defendants’ lengthy objection merely rehashes its legal conclusions yet fails to address the specific
10 portions of the Report and Recommendation that they “object”. Consequently, Defendants failed
11 to identify any issue for this Court to consider and has further waived their right to appellate
12 review. See Velez–Padro v. Thermo King De Puerto Rico, Inc., 465 F.3d 31, 32 (1st Cir. 2006)
13 (“Conclusory objections that do not direct the reviewing court to the issues in controversy do not
14 comply with Rule 72(b).”) (internal citations omitted).

15 The Court’s review of the record finds no clear error in Magistrate Judge McGiverin’s
16 factual findings and legal conclusions. Accordingly, Magistrate Judge McGiverin’s Report and
17 Recommendation is **ADOPTED** *in toto*.

18 **III. Injunctive Relief**

19
20 The Court **ORDERS** Plaintiffs Armando Claudio Quintana, Betty Hernandez Cruz, and
21 their conjugal partnership, to:
22
23
24

1 (1) Surrender the property located at 113 Font Martelo Avenue, Humacao, the gas
2 station at that property, and the equipment—including the two underground storage
3 tanks—at the property;

4 (2) Comply with all other post-termination covenants of the Franchise Agreement;
5 and,

6 (3) Cease the use or display of the “TOTAL” trademark.

7 **SO ORDERED.**

8
9 In San Juan, Puerto Rico this 27th day of July, 2017.

10 *s/ Gustavo A. Gelpí*
11 GUSTAVO A. GELPI
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24