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16 Attorneys for Defendant  
 CITY AND COUNTY OF SAN FRANCISCO

17  
 18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

20 METRO FUEL LLC, a Delaware limited  
 liability company,

21 Plaintiff,

22 vs.

23 CITY OF SAN FRANCISCO, a municipal  
 24 corporation, COUNTY OF SAN  
 25 FRANCISCO, a subdivision of the State  
 of California, CITY AND COUNTY OF  
 26 SAN FRANCISCO, a chartered California  
 city and county and DOE 1 through DOE  
 10,

27 Defendants.

Case No. C07-6067 PJH

The Honorable Phyllis J. Hamilton

**JOINT CASE MANAGEMENT  
 STATEMENT AND [PROPOSED]  
 ORDER**

Hearing Date: February 11, 2010  
 Time: 2:30 P.M.

1 The parties in this action hereby submit this Joint Case Management Statement and advise the  
2 Court as follows:

3 1. On April 17, 2008, Metro Fuel filed its First Amended Complaint.

4 2. In its First Amended Complaint, Metro Fuel alleged one cause of action under 42  
5 U.S.C. § 1983. Metro Fuel's one cause of action, however, was premised on three distinct legal  
6 theories. First, in paragraphs 23-80, Metro Fuel alleged that Article 6 of the San Francisco Planning  
7 Code violated the First Amendment of the U.S. Constitution (the "*Metro Lights* claim"). Second, in  
8 paragraphs 81-89, Metro Fuel alleged that the practical effect of San Francisco's ban on new general  
9 advertising signs (San Francisco Planning Code section 611) is the reservation "for itself a monopoly  
10 over outdoor advertising signs in San Francisco" in violation of the First Amendment of the U.S.  
11 Constitution (the "Government Monopoly claim"). Third, in paragraphs 90-101, Metro Fuel alleged  
12 that various provisions of Article 6 of the San Francisco Planning Code discriminate against non-  
13 commercial speech in violation of the First Amendment of the U.S. Constitution (the "Non-  
14 Commercial Speech claim").  
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16

17 3. On August 29, 2008, the City filed a motion for judgment on the pleadings under  
18 Fed.R.Civ.P. 12(c) attacking Metro Fuel's *Metro Lights* claim on several grounds. On September 12,  
19 2008, Metro Fuel filed its opposition to the City's motion.

20 4. On January 6, 2009, the United States Court of Appeals for the Ninth Circuit (the  
21 "Ninth Circuit") issued its decision in *Metro Lights, L.L.C. v. City of Los Angeles*, 551 F.3d 898 (9<sup>th</sup>  
22 Cir. 2009) (the "*Metro Lights* decision"). The Ninth Circuit held that Los Angeles's regulatory  
23 scheme prohibiting new off-site general advertising signs did not violate the First Amendment, even  
24 though Los Angeles allowed off-site advertising on city-owned transit stops and other street furniture.  
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1           5.       Metro Fuel conceded that the *Metro Lights* decision, to the extent it is not reversed in  
2 an *en banc* proceeding or by the United States Supreme Court, disposed of its *Metro Lights* claim in  
3 this action against San Francisco.

4           6.       On January 20, 2009, the parties filed a stipulation stating that the parties agreed that  
5 this Court should grant San Francisco's motion for judgment on the pleadings with respect to the  
6 *Metro Lights* claim alleged in paragraphs 23-80 of the First Amended Complaint.

7           7.       On January 22, 2009, this Court entered an order granting the City's motion for  
8 judgment on the pleadings in part and dismissing Metro Fuel's *Metro Lights* claim.

9           8.       On or about April 16, 2009, the United States Court of Appeals for the Ninth Circuit  
10 denied the petition for rehearing *en banc* in the *Metro Lights* case.

11           9.       Metro Fuel (which is the successor in interest to Metro Lights) filed its petition for  
12 certiorari to the United States Supreme Court in the *Metro Lights* case on August 31, 2009.

13           10.      On December 14, 2009, the United States Supreme Court denied Metro Fuel's petition  
14 for certiorari in the *Metro Lights* case.

15           11.      Metro Fuel has indicated to the City that it intends to move forward with its  
16 Government Monopoly and Non-Commercial Speech claims. The City believes that these claims are  
17 susceptible to a Fed.R.Civ.Proc. 12(c) motion. Metro Fuel believes that these claims are not  
18 susceptible to a Fed.R.Civ.Proc. 12(c) motion, and that any such motion would not be timely.

19           12.      The parties have met and conferred and propose the following briefing schedule for  
20 the City's Fed.R.Civ.Proc. 12(c) motion:

21           Motion/Opening Brief	4/02/10
22           Opposition Brief	4/16/10
23           Reply Brief	4/23/10
24           Hearing	5/26/10 at 9:00 a.m.

1           13.    The parties request that the Case Management Conference set for February 11, 2010,  
2 be continued, if necessary, until after the Court rules on the City's' Fed.R.Civ.Proc. 12(c) motion.  
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5  
6 Dated: January 28, 2010

EMERY CELLI BRINCKERHOFF & ABADY LLP

7  
8 By: \_\_\_\_\_  
          /S/  
          ERIC HECKER

9  
10 Dated: January 28, 2010

REUBEN & JUNIUS, LLP

11  
12 By: \_\_\_\_\_  
          /S/  
          SHANNON S. LINDSAY

13  
14 Attorneys for Plaintiff METRO FUEL LLC.

15  
16 Dated: January 28, 2010

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City Attorney  
KRISTEN A. JENSEN  
THOMAS S. LAKRITZ  
VICTORIA WONG  
Deputy City Attorneys

17  
18  
19  
20 By: \_\_\_\_\_  
          /S/  
          THOMAS S. LAKRITZ

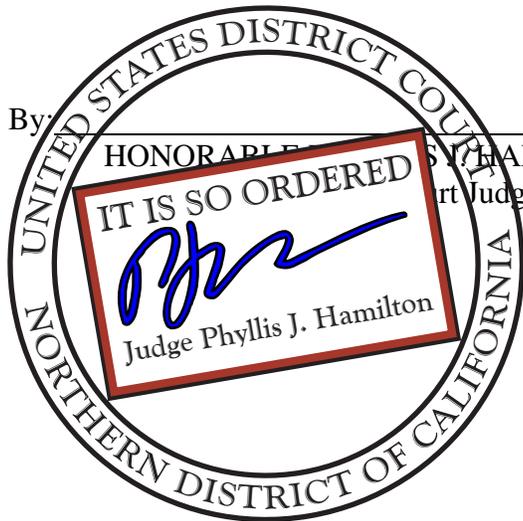
21  
22 Attorneys for Defendant CITY AND COUNTY  
23 OF SAN FRANCISCO  
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1 **[PROPOSED] CASE MANAGEMENT ORDER**

2 The Case Management Conference Statement of the parties is hereby adopted by the Court as  
3 the Case Management Order for the case and the parties are ordered to comply with this Order.  
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5 IT IS SO ORDERED:

6  
7 Dated: 2/1/10

8 By: \_\_\_\_\_  
9 HONORABLE PHYLLIS J. HAMILTON  
10 Court Judge  
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