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12 Attorneys for Plaintiff  
 PHILIP MORRIS USA INC.

13 UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 15 OAKLAND DIVISION

17 PHILIP MORRIS USA INC.,  
 18 Plaintiff,  
 19 vs.

20 CITY AND COUNTY OF SAN  
 FRANCISCO; BOARD OF  
 21 SUPERVISORS OF THE CITY AND  
 COUNTY OF SAN FRANCISCO; and  
 22 GAVIN NEWSOM, in his official capacity  
 as MAYOR of the City and County of San  
 23 Francisco,  
 24 Defendants.

CASE NO. C-08-4482-CW

**STIPULATED APPLICATION FOR  
 ORDER STAYING CASE PENDING  
 APPEAL FROM ORDERS DENYING  
 PRELIMINARY INJUNCTION; ORDER  
 GRANTING AS MODIFIED**

1 **STIPULATION**

2 WHEREAS the request for preliminary injunction made by plaintiff Philip Morris USA  
3 Inc. (“PM USA”) was initially denied by the Court by a “Minute Order” dated November 6,  
4 2008;

5 WHEREAS, on December 5, 2008, the Court entered a further “Order Denying  
6 Preliminary Injunction”;

7 WHEREAS, on December 5, 2008, PM USA filed a Notice of Appeal from the orders  
8 denying its request for a preliminary injunction; and

9 WHEREAS PM USA and Defendants (“the Parties”) wish to avoid the expense and  
10 burdens of further litigation pending the disposition of PM USA’s appeal, which raises threshold  
11 issues whose resolution would materially affect the course of the litigation;

12 The Parties therefore stipulate that the existing schedule for this case should be vacated  
13 and all proceedings in the case be stayed pending the disposition of PM USA’s appeal, and the  
14 Parties hereby jointly apply to the Court for an order to that effect.

15 I, Hojoon Hwang, attest that I have obtained concurrence from Vince Chhabria in the  
16 filing of this Stipulated Application For Order Staying Case Pending Appeal From Orders  
17 Denying Preliminary Injunction; [Proposed] Order. *See* N.D. Cal. General Order 45 § 10(B).

18  
19  
20 DATED: December 10, 2008

MUNGER, TOLLES & OLSON LLP

21 By:           /s/ Hojoon Hwang          

22 Hojoon Hwang  
Attorneys for Plaintiff PHILIP MORRIS USA INC.

23 DATED: December 10, 2008

24 By:           /s/ Vince Chhabria          

Vince Chhabria

25 Attorney for Defendants

26 CITY AND COUNTY OF SAN FRANCISCO, et al.

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**ORDER**

Pursuant to the Parties' stipulation and good cause appearing therefor, IT IS HEREBY ORDERED: All proceedings in this case are hereby stayed and all existing dates vacated, pending the disposition of Plaintiff Philip Morris USA Inc.'s appeal from the November 6, 2008 Minute Order denying Plaintiff's request for a preliminary injunction and from the December 5, 2008 Order Denying Preliminary Injunction. **A Case Management Conference is scheduled for June 9, 2009, at 2:00 p.m., which may be continued by stipulation if the appeal is pending.**

Dated: December 12, 2008



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Hon. Claudia Wilken  
United States District Judge