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PHILIP MORRIS USA INC.

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 PHILIP MORRIS USA INC.,

18 Plaintiff,

19 vs.

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

24 Defendants.
25

CASE NO. C-08-4482-CW

**SUPPLEMENTAL DECLARATION OF
PETER P. PAOLI IN SUPPORT OF
PLAINTIFF PHILIP MORRIS USA INC.'S
REPLY ON ORDER TO SHOW CAUSE**

Supplemental Declaration of Peter Paoli

1
2 1. I am Senior Vice President, Sales for Philip Morris USA Inc. ("PM USA"). I make this
3 declaration based on personal knowledge and am competent to testify to the truth of the matters
4 set forth herein.

5 2. I provided a declaration dated September 24, 2008 in support of PM USA's ex parte
6 motion for temporary restraining order and order to show cause. My experience in sales and
7 marketing and my responsibilities and employment history at PM USA are set forth in that
8 declaration.

9 3. There are 60 stores in San Francisco that previously sold PM USA products and became
10 subject to the prohibition on cigarette sales under San Francisco Ordinance 194-08 (the
11 "Ordinance"). PM USA worked with the affected stores to ensure compliance with the Ordinance
12 by its effective date. As a result of the Ordinance, all cigarette products, advertising and
13 promotional materials have now been removed from these stores. The practical impact of the
14 Ordinance's ban on cigarette sales thus has been to prevent PM USA from communicating with
15 adult smokers about its cigarettes in the affected stores.

16 4. PM USA's advertising and promotion in these 60 stores were conducted pursuant to PM
17 USA's Retail Leaders program, described in my September 24, 2008 declaration. Although
18 stores that do not participate in the Retail Leaders program also place advertising for PM USA
19 cigarettes, Retail Leaders constitutes the predominant means by which PM USA places point-of-
20 sale advertising. The purpose of the Retail Leaders program is to provide a platform for
21 communicating with adult smokers about PM USA's cigarettes. Thus, the program contemplates
22 that advertising will take place at a location where PM USA cigarettes are available for sale.
23 Because the Ordinance now prohibits the sale of cigarettes at the affected stores, PM USA had no
24 choice but to terminate the Retail Leaders agreements with the affected stores. These stores had
25 participated in the Retail Leaders Program for several years before the Ordinance was enacted.

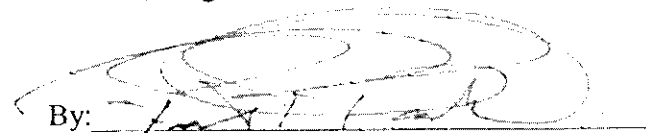
26 5. Based on my twenty-plus years of experience in marketing and sales, including point-of-
27 sale advertising of cigarettes and other tobacco products at retail, advertising a product at a retail
28 store that the store cannot offer for sale would make no sense for the advertiser or, in my opinion,

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for the retailer. Consumers viewing an advertisement at a store naturally expect to be able to purchase the product at that store and would be confused or frustrated if told that they cannot do so. Stores would have no interest in advertising a product they cannot sell because, regardless of the possible advertising revenue, the resulting customer confusion would generate ill-will among the retailer's customers and possibly drive them to other retailers that actually sell the product being advertised. These points are especially true for cigarettes given that, since the execution of the Master Settlement Agreement nearly 10 years ago (which imposed significant limitations on cigarette advertising), it has been much less common for adult smokers to encounter any public displays of tobacco advertising *except* in or outside stores that sell such products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of October, at Richmond, Virginia.

By: 
PETER P. PAOLI