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 8 CITY AND COUNTY OF SAN FRANCISCO

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11

12 THE AMERICAN BEVERAGE  
 13 ASSOCIATION, CALIFORNIA RETAILERS  
 ASSOCIATION, CALIFORNIA STATE  
 14 OUTDOOR ADVERTISING  
 ASSOCIATION,

15 Plaintiffs,

16 vs.

17 THE CITY AND COUNTY OF SAN  
 18 FRANCISCO,

19 Defendant.

Case No. 3:15-cv-03415 EMC

**JOINT STIPULATION AND [PROPOSED]  
 ORDER SUSPENDING BRIEFING  
 SCHEDULE, TAKING SUMMARY  
 JUDGMENT HEARING OFF CALENDAR,  
 VACATING CASE MANAGEMENT DATES,  
 PROVIDING FOR DISMISSAL OF THIS  
 ACTION, AND CONDITIONALLY  
 EXTENDING THE TIME WITHIN WHICH  
 PLAINTIFFS MAY FILE A MOTION FOR  
 FEES AND COSTS**

Hon. Edward M. Chen

Trial Date: December 6, 2021

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiffs The American Beverage Association,  
2 California Retailers Association, and California State Outdoor Advertising Association (“Plaintiffs”),  
3 and Defendant The City and County of San Francisco (“Defendant”) (collectively, the “Parties”), hereby  
4 stipulate as follows:

5 WHEREAS, on May 4, 2021, San Francisco Supervisor Shamann Walton introduced an  
6 Ordinance, File No. 210496 (“the Repeal Ordinance”), to repeal Article 42 of the San Francisco Health  
7 Code, which codifies the Sugar-Sweetened Beverage Warning Ordinance at issue in this action;

8 WHEREAS, Plaintiffs have agreed not to seek fees or costs if Article 42 is repealed, subject to  
9 their right to file a motion for fees or costs if Defendant enacts a new ordinance requiring advertisers to  
10 include health warnings on advertisements for sugar-sweetened beverages within the next four years;

11 WHEREAS, the City’s agreement to a four-year extension of Plaintiffs’ time to file a motion for  
12 fees or costs is subject to approval by the San Francisco Board of Supervisors by ordinance (“the  
13 Extension Ordinance”);

14 WHEREAS, the Parties anticipate that enactment of the Repeal Ordinance and the Extension  
15 Ordinance may take several months in the ordinary legislative process;

16 NOW, THEREFORE, in the interest of judicial economy and good cause showing, the  
17 undersigned parties, by and through their counsel of record, hereby agree and stipulate, and the Court  
18 hereby orders, as follows:

19 1. The remaining briefing schedule on the Parties’ cross-motions for summary judgment  
20 and *Daubert* motions is suspended and the hearing on those motions, currently scheduled for June 24,  
21 2021, is taken off calendar;

22 2. The dates for the pretrial conference (October 9, 2021) and trial (December 6, 2021) are  
23 vacated;

24 3. The parties may stipulate to, or any party may file an administrative motion requesting,  
25 reinstatement of a briefing schedule and summary judgment hearing, and to the resetting of dates for the  
26 pretrial conference and trial, if both the Repeal Ordinance and the Extension Ordinance are not enacted;

27 4. If the Repeal Ordinance and Extension Ordinance are enacted, the following additional  
28 provisions shall apply.

1 5. Plaintiffs shall dismiss this action within seven days of the effective date of the Repeal  
2 Ordinance or the date of enactment of the Extension Ordinance, whichever date comes latest;

3 6. The time within which Plaintiffs may file a motion seeking an award of fees or costs shall  
4 be extended to four years from the date the action is dismissed pursuant to the preceding paragraph, and  
5 the Court shall retain jurisdiction to adjudicate such a motion, but Plaintiffs shall not file a motion for  
6 fees or costs unless, within that time, Defendant enacts a new ordinance requiring a warning label or  
7 other mandatory disclosure on advertising for sugar-sweetened beverages that concerns or relates to  
8 alleged health risks associated with or attributed to sugar-sweetened beverage consumption;

9 7. Plaintiffs' right to file such a motion as provided herein is without prejudice to  
10 Defendant's right to oppose that motion on grounds other than timeliness; and

11 8. Except as otherwise ordered in a ruling on any such motion, each party shall bear its own  
12 fees and costs.

13 The parties respectfully request that the Court enter an Order approving this Stipulation.

14 IT IS SO STIPULATED.

15  
16 Dated: May 7, 2021

DENNIS J. HERRERA  
City Attorney  
WAYNE SNODGRASS  
JEREMY M. GOLDMAN  
Deputy City Attorneys

17  
18  
19 By: /s/ Jeremy M. Goldman  
20 JEREMY M. GOLDMAN  
21 Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

22 Dated: May 7, 2021

LATHAM & WATKINS LLP

23 By: /s/ Michael E. Bern  
24 Steven M. Bauer  
25 Richard P. Bress (*pro hac vice*)  
26 Michael E. Bern (*pro hac vice*)  
27 George C. Chipev (*pro hac vice*)  
28 Caroline A. Flynn  
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Attorneys for Plaintiffs  
THE AMERICAN BEVERAGE ASSOCIATION AND  
CALIFORNIA RETAILERS ASSOCIATION

1 Dated: May 7, 2021

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2 By: /s/ Joshua D. Dick

3 Theodore B. Olson  
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8 Attorneys for Plaintiff  
9 CALIFORNIA STATE OUTDOOR ADVERTISING  
10 ASSOCIATION

11 **ATTESTATION CLAUSE**

12 Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that I obtained in the filing of this  
13 document the concurrence from all parties whose electronic signatures appear above.

14 Dated: May 7, 2021

15 /s/ Jeremy M. Goldman  
16 JEREMY M. GOLDMAN

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18 DATED: \_\_\_\_\_

19 \_\_\_\_\_  
20 Hon. Edward M. Chen  
21 United States District Judge