

1 **STEPHEN L. JOSEPH (SBN 189234)**
2 350 Bay Street, Suite 100-328
3 San Francisco, CA 94133
4 Telephone: (415) 577-6660
5 Facsimile: (415) 869-5380
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner
8 **SAVE THE PLASTIC BAG COALITION**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

12 SAVE THE PLASTIC BAG COALITION,) Case No.
13 an unincorporated association,)
14) **VERIFIED PETITION FOR WRIT OF**
15) **MANDATE UNDER THE CALIFORNIA**
16) **ENVIRONMENTAL QUALITY ACT AND**
17) **BASED ON STATE LAW PREEMPTION**
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)
101)
102)
103)
104)
105)
106)
107)
108)
109)
110)
111)
112)
113)
114)
115)
116)
117)
118)
119)
120)
121)
122)
123)
124)
125)
126)
127)
128)
129)
130)
131)
132)
133)
134)
135)
136)
137)
138)
139)
140)
141)
142)
143)
144)
145)
146)
147)
148)
149)
150)
151)
152)
153)
154)
155)
156)
157)
158)
159)
160)
161)
162)
163)
164)
165)
166)
167)
168)
169)
170)
171)
172)
173)
174)
175)
176)
177)
178)
179)
180)
181)
182)
183)
184)
185)
186)
187)
188)
189)
190)
191)
192)
193)
194)
195)
196)
197)
198)
199)
200)
201)
202)
203)
204)
205)
206)
207)
208)
209)
210)
211)
212)
213)
214)
215)
216)
217)
218)
219)
220)
221)
222)
223)
224)
225)
226)
227)
228)
229)
230)
231)
232)
233)
234)
235)
236)
237)
238)
239)
240)
241)
242)
243)
244)
245)
246)
247)
248)
249)
250)
251)
252)
253)
254)
255)
256)
257)
258)
259)
260)
261)
262)
263)
264)
265)
266)
267)
268)
269)
270)
271)
272)
273)
274)
275)
276)
277)
278)
279)
280)
281)
282)
283)
284)
285)
286)
287)
288)
289)
290)
291)
292)
293)
294)
295)
296)
297)
298)
299)
300)
301)
302)
303)
304)
305)
306)
307)
308)
309)
310)
311)
312)
313)
314)
315)
316)
317)
318)
319)
320)
321)
322)
323)
324)
325)
326)
327)
328)
329)
330)
331)
332)
333)
334)
335)
336)
337)
338)
339)
340)
341)
342)
343)
344)
345)
346)
347)
348)
349)
350)
351)
352)
353)
354)
355)
356)
357)
358)
359)
360)
361)
362)
363)
364)
365)
366)
367)
368)
369)
370)
371)
372)
373)
374)
375)
376)
377)
378)
379)
380)
381)
382)
383)
384)
385)
386)
387)
388)
389)
390)
391)
392)
393)
394)
395)
396)
397)
398)
399)
400)
401)
402)
403)
404)
405)
406)
407)
408)
409)
410)
411)
412)
413)
414)
415)
416)
417)
418)
419)
420)
421)
422)
423)
424)
425)
426)
427)
428)
429)
430)
431)
432)
433)
434)
435)
436)
437)
438)
439)
440)
441)
442)
443)
444)
445)
446)
447)
448)
449)
450)
451)
452)
453)
454)
455)
456)
457)
458)
459)
460)
461)
462)
463)
464)
465)
466)
467)
468)
469)
470)
471)
472)
473)
474)
475)
476)
477)
478)
479)
480)
481)
482)
483)
484)
485)
486)
487)
488)
489)
490)
491)
492)
493)
494)
495)
496)
497)
498)
499)
500)
501)
502)
503)
504)
505)
506)
507)
508)
509)
510)
511)
512)
513)
514)
515)
516)
517)
518)
519)
520)
521)
522)
523)
524)
525)
526)
527)
528)
529)
530)
531)
532)
533)
534)
535)
536)
537)
538)
539)
540)
541)
542)
543)
544)
545)
546)
547)
548)
549)
550)
551)
552)
553)
554)
555)
556)
557)
558)
559)
560)
561)
562)
563)
564)
565)
566)
567)
568)
569)
570)
571)
572)
573)
574)
575)
576)
577)
578)
579)
580)
581)
582)
583)
584)
585)
586)
587)
588)
589)
590)
591)
592)
593)
594)
595)
596)
597)
598)
599)
600)
601)
602)
603)
604)
605)
606)
607)
608)
609)
610)
611)
612)
613)
614)
615)
616)
617)
618)
619)
620)
621)
622)
623)
624)
625)
626)
627)
628)
629)
630)
631)
632)
633)
634)
635)
636)
637)
638)
639)
640)
641)
642)
643)
644)
645)
646)
647)
648)
649)
650)
651)
652)
653)
654)
655)
656)
657)
658)
659)
660)
661)
662)
663)
664)
665)
666)
667)
668)
669)
670)
671)
672)
673)
674)
675)
676)
677)
678)
679)
680)
681)
682)
683)
684)
685)
686)
687)
688)
689)
690)
691)
692)
693)
694)
695)
696)
697)
698)
699)
700)
701)
702)
703)
704)
705)
706)
707)
708)
709)
710)
711)
712)
713)
714)
715)
716)
717)
718)
719)
720)
721)
722)
723)
724)
725)
726)
727)
728)
729)
730)
731)
732)
733)
734)
735)
736)
737)
738)
739)
740)
741)
742)
743)
744)
745)
746)
747)
748)
749)
750)
751)
752)
753)
754)
755)
756)
757)
758)
759)
760)
761)
762)
763)
764)
765)
766)
767)
768)
769)
770)
771)
772)
773)
774)
775)
776)
777)
778)
779)
780)
781)
782)
783)
784)
785)
786)
787)
788)
789)
790)
791)
792)
793)
794)
795)
796)
797)
798)
799)
800)
801)
802)
803)
804)
805)
806)
807)
808)
809)
810)
811)
812)
813)
814)
815)
816)
817)
818)
819)
820)
821)
822)
823)
824)
825)
826)
827)
828)
829)
830)
831)
832)
833)
834)
835)
836)
837)
838)
839)
840)
841)
842)
843)
844)
845)
846)
847)
848)
849)
850)
851)
852)
853)
854)
855)
856)
857)
858)
859)
860)
861)
862)
863)
864)
865)
866)
867)
868)
869)
870)
871)
872)
873)
874)
875)
876)
877)
878)
879)
880)
881)
882)
883)
884)
885)
886)
887)
888)
889)
890)
891)
892)
893)
894)
895)
896)
897)
898)
899)
900)
901)
902)
903)
904)
905)
906)
907)
908)
909)
910)
911)
912)
913)
914)
915)
916)
917)
918)
919)
920)
921)
922)
923)
924)
925)
926)
927)
928)
929)
930)
931)
932)
933)
934)
935)
936)
937)
938)
939)
940)
941)
942)
943)
944)
945)
946)
947)
948)
949)
950)
951)
952)
953)
954)
955)
956)
957)
958)
959)
960)
961)
962)
963)
964)
965)
966)
967)
968)
969)
970)
971)
972)
973)
974)
975)
976)
977)
978)
979)
980)
981)
982)
983)
984)
985)
986)
987)
988)
989)
990)
991)
992)
993)
994)
995)
996)
997)
998)
999)
1000)

Petitioner, SAVE THE PLASTIC BAG COALITION, alleges as follows:

PARTIES AND JURISDICTION

1. Petitioner SAVE THE PLASTIC BAG COALITION is an unincorporated association.
2. Respondent CITY OF LONG BEACH (the "City") is a municipal corporation in the County of Los Angeles.
3. Respondent LONG BEACH DEVELOPMENT SERVICES ("LBDS") is an agency of the City.
4. This is an action seeking a writ of mandate to set aside, void, annul, repeal, and terminate implementation and enforcement of City of Long Beach Ordinance No. ORD-11-

1 0009 regulating the use of plastic and paper carryout bags and reusable bags (the “Ordinance”).
2 The Ordinance was adopted by the City Council on May 24, 2011. A true and correct copy of
3 the Ordinance is attached hereto as Exhibit A.

4 5. The Ordinance provides that on and after August 1, 2011, “stores” (as defined in
5 the Ordinance) may not provide plastic carryout bags (“plastic bags”) to consumers and must
6 charge at least 10 cents for paper carryout bags (“paper bags”).

7 6. The Ordinance is a “project” subject to CEQA. (CEQA Guidelines
8 §15378(a)(1).)

9 7. The City violated the California Environmental Quality Act (“CEQA”).

10 8. The City is the lead agency for the project under CEQA.

11 9. In the alternative, LBDS is the lead agency for the project under CEQA.

12 10. LBDS administered the CEQA process on behalf of the City, prior to adoption of
13 the Ordinance.

14 11. LBDS is responsible for implementation and enforcement of the Ordinance on
15 behalf of the City.

16 12. Petitioner is ignorant of true names and capacities of DOES named herein as
17 DOES 1-100, inclusive, and therefore sues said Respondents by such fictitious names.
18 Petitioner will amend this Petition to allege their true names and capacities when ascertained.
19 Petitioner is informed and believes and thereon alleges that each of these fictitiously named
20 Respondents were, and continue to be, responsible in some manner for the acts or omissions
21 herein alleged.

22 13. Petitioner is informed and believes that at all times relevant to the allegations
23 herein, each Respondent, including the DOE Respondents, were the employees, agents, or
24 partners of each of the other Respondents, and were at all times acting within the purpose and
25 scope of their, agency or partnership, or at the direction of the other Respondents.

26 14. This Court has jurisdiction over the matters alleged in this Petition pursuant to
27 Code Civ. Proc. §1085, and/or §1094.5, and Pub. Res. Code §21167.

28 15. Venue is proper in this Court under Code Civ. Proc. §394(a).

1 **STANDING**

2 16. Petitioner is a non-profit environmental campaign organization that was formed
3 on June 3, 2008.

4 17. Petitioner was formed and exists for the purpose of responding to environmental
5 misinformation about plastic bags and ensuring that the environmental impacts of banning
6 plastic bags are made known to decision-makers and the public, in the public interest.

7 18. Environmental misinformation about plastic bags is a serious problem that
8 impacts the decision-making process about whether to ban plastic bags.

9 19. As a result of such misinformation, plastic bags have become a matter of
10 significant public concern.

11 20. Petitioner performs a crucial and indispensable role in ensuring that
12 environmental truth is not compromised or lost when environmental initiatives are being
13 considered by public agencies.

14 21. Petitioner's members include U.S. citizens and California companies involved in
15 plastic bag manufacturing and distribution. Three such companies are Grand Packaging, Inc.
16 doing business as "Command Packaging", Crown Poly, Inc., and Elkay Plastics Co., Inc. They
17 were incorporated in California are in good standing. They have been members of Petitioner
18 since 2008.

19 22. Chandler Hadraba is a U.S. citizen and resident of the State of California. He has
20 been a member of Heal the Bay since August 2008. Heal the Bay is one of the leading
21 organizations campaigning for the banning of plastic bags. He has been a member of Petitioner
22 since September 2008. He became a member of Petitioner because he was concerned about the
23 environmental misinformation being disseminated by anti-plastic bag activists, including Heal
24 the Bay. He has no financial stake in the outcome of this litigation.

25 23. Petitioner and all of Petitioner's members are "persons" entitled to file an action
26 under CEQA. "Person" includes any person, firm, association, organization, partnership,
27 business, trust, corporation, limited liability company, company. (CEQA Guidelines §15376.)

28 24. Petitioner has demanded that California cities and counties complete and certify

1 EIRs before banning plastic bags.

2 25. Petitioner maintains a website at www.savetheplasticbag.com to respond to
3 environmental misinformation about plastic bags and to address the environmental impacts of
4 plastic, paper, and reusable bags, for the benefit of decision-makers and the public.

5 26. According to CEQA Guidelines §15002, the “basic purposes of CEQA” include
6 the following:

7 A. Inform governmental decision-makers and the public about the potential,
8 significant environmental effects of proposed activities.

9 B. Identify the ways that environmental damage can be avoided or significantly
10 reduced.

11 C. Prevent significant, avoidable damage to the environment by requiring changes
12 in projects through the use of alternatives or mitigation measures when the
13 governmental agency finds the changes to be feasible.

14 D. Disclose to the public the reasons why a governmental agency approved the
15 project in the manner the agency chose if significant environmental effects are
16 involved.

17 27. Petitioner seeks to promote and enforce the aforementioned informational
18 purposes of CEQA in this action. Ascertaining the true facts about the significant environmental
19 impacts of projects and informing and disclosing those true facts to decision-makers and the
20 public are purposes that are within the zone of interests CEQA was intended to preserve and
21 protect.

22 28. The question in this action is one of public right and the object of the action is to
23 enforce a public duty in the public interest.

24 29. Petitioner is interested as a citizen in having the public laws including CEQA
25 executed and the public duties and purposes in CEQA enforced.

26 30. Petitioner has a genuine and continuing interest in and concern for
27 environmental matters including environmental truth and for compliance with the CEQA
28 process.

1 31. Petitioner has a commitment to the subject matter of the public right being
2 asserted.

3 32. Petitioner coalition consists of or represents individuals beneficially interested in
4 this action who would find it difficult or impossible to seek vindication of their own rights. No
5 citizen who did not have the financial support of business interests could reasonably be
6 expected to incur the substantial cost of litigating against the City to enforce CEQA. This is due
7 to the fact that the environmental damage caused by increased distribution of paper bags and
8 reusable bags is general, widespread and universal rather than particularized to particular
9 persons or locations. Further, much of the environmental damage is caused outside the City.

10 33. Broad and long-term environmental effects are involved when plastic bags are
11 banned. The environmental impacts include, but are not limited to, increased greenhouse gas
12 emissions and increased air and water pollution.

13 34. Prosecution of this action as a citizen’s suit by Petitioner does not conflict with
14 other competing legislative or public policies.

15 35. Standing serves the important public policy in CEQA of disclosure of
16 environmental impacts to decision makers and the public.

17 36. There is an overriding public policy in this state “guaranteeing citizens the
18 opportunity to ensure that no governmental body impairs or defeats the purpose of legislation
19 establishing a public right.” (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.)

20 37. Petitioner has standing as an association to bring this action, because (i)
21 Petitioner’s members would otherwise have standing to sue on their own behalf; (ii) the
22 interests Petitioner seeks to protect in this lawsuit are germane to the organization’s purpose;
23 and (iii) neither the claims asserted herein, nor the relief requested, require the separate
24 participation of Petitioner’s members in this lawsuit.

25 38. Grand Packaging, Inc. doing business as “Command Packaging” and Crown
26 Poly, Inc. manufacture plastic carryout bags and plastic reusable bags. They market, sell, and
27 distribute those bags in the City of Long Beach. Their businesses are impacted by the
28 Ordinance. However, loss of sales, damage to competitive interests, and other commercial or

1 economic harm are not part of Petitioner’s claims in this action. This action is being prosecuted
2 solely and exclusively for the protection of the environment in the public interest, including the
3 disclosure of environmental truth to decision-makers and the public.

4 39. Petitioner complied with Pub. Res. Code § 21177(a) and (b) by filing the
5 Objections attached hereto as Exhibit A.

6 40. Based on the foregoing, Petitioner has standing.

7 **STATEMENT OF FACTS**

8 **The County EIR**

9 41. On or about November 16, 2010, the Los Angeles County (the “County”) Board
10 of Supervisors adopted an ordinance banning plastic bags, imposing a 10-cent fee on paper bags
11 (the “County Ordinance”).

12 42. The County Ordinance only applies to unincorporated parts of the County. It is
13 intended to serve as a model ordinance for incorporated cities in the County.

14 43. Prior to or at the time of adopting the County Ordinance, the County Board of
15 Supervisors certified an Environmental Impact Report (the “EIR”) and adopted Findings of Fact
16 and a Statement of Overriding Considerations based on the EIR.

17 44. The EIR, the Findings of Fact, and the Statement of Overriding Considerations
18 are designed to support the County Ordinance and any ordinances adopted by incorporated
19 cities in the County that are modeled on County Ordinance.

20 45. In the Findings of Fact, the County made a finding that a 10-cent fee on paper
21 bags and promoting and distributing reusable bags would not be sufficient to prevent significant
22 negative environmental impacts caused by greenhouse gas emissions (“GHG”) resulting from a
23 shift from plastic carryout bags to paper carryout bags. The Findings of Fact states:

24 Significant Impact. Indirect impacts resulting from the decomposition of
25 paper carryout bags in landfills will be potentially cumulatively significant
26 under the County's conservative worst-case analysis. (Emphasis added.)

27 Finding: The County Board of Supervisors finds that changes or alterations
28 have been required in, or incorporated into, the recommended County

1 ordinance that avoid or substantially lessen its significant environmental
2 effect as identified in the EIR. Specifically, incorporation of mitigation
3 measure GHG-1, described below, will monitor, reduce use of, and
4 encourage further recycling of paper carryout bags, and will indirectly
5 offset end-of-life GHG emissions to the maximum extent feasible.
6 However, despite mitigation, impacts from the decomposition of paper
7 carryout bags in landfills will remain cumulatively significant under a
8 conservative worst-case analysis.... (Emphasis added.)

9 46. In the Statement of Overriding Considerations, the County identified certain
10 alleged benefits that “outweigh and override the adverse environmental effect identified in the
11 EIR.”

12 **The GHG Threshold Of Significance Applied By The County**

13 47. In order to determine that environment effects may be significant, the County
14 determined a GHG threshold of significance. The EIR states:

15 The State has not determined significance thresholds for evaluating
16 potential impacts on GHG emissions under CEQA, beyond the
17 general, qualitative questions contained in Appendix G of the State
18 CEQA Guidelines. However, the County has analyzed the potential
19 of the proposed ordinances to result in significant impacts related to
20 GHG emissions based on the review of regulatory and professional
21 publications, the guidance on analyzing GHG emissions under
22 CEQA provided by the California Office of the Attorney General
23 [footnote 41] and OPR [footnote 42], and the CARB [footnote 43].

24
25 Footnote 41: California Department of Justice Office of the Attorney
26 General. 21 May 2008. *The California Environmental Quality Act*
27 *Addressing Global Warming Impacts at the Local Agency Level.*
28 Sacramento, CA.

1 Footnote 42: California Governor’s Office of Planning and
2 Research. 19 June 2008. *CEQA and Climate Change: Addressing*
3 *Climate Change through California Environmental Quality Act*
4 *(CEQA) Review*. Technical Advisory. Sacramento, CA.

5 Footnote 43: California Air Resources Board. 24 October 2008.
6 *Preliminary Draft Staff Proposal: Recommended Approaches for*
7 *Setting Interim Significance Thresholds for Greenhouse Gases*
8 *under the California Environmental Quality Act*. Available at:
9 [http://www.opr.ca.gov/ceqa/pdfs/Prelim_Draft_Staff_Proposal_10-](http://www.opr.ca.gov/ceqa/pdfs/Prelim_Draft_Staff_Proposal_10-24-08.pdf)
10 24-08.pdf

11
12 Significance Criteria

13 There are two significance criteria relevant to the consideration of
14 the proposed ordinances:

- 15 • Inconsistency with laws and regulations in managing GHG
16 emissions
- 17 • Inconsistency with the goal to reduce GHG emissions to 1990 levels
18 (approximately 427 million metric tons or 9.6 metric tons of CO₂e
19 per capita) by 2020 as required by AB 32

20 48. Petitioner did not object to or challenge the GHG threshold of significance
21 applied by the County.

22 Adoption of the County EIR by the City of Calabasas

23 49. On February 1, 2011, the City of Calabasas adopted the model County
24 Ordinance and the County EIR, Findings of Fact and Statement of Overriding Considerations.

25 50. The City of Calabasas did not alter the County’s threshold of significance.

26 51. Petitioner did not object to or challenge the City of Calabasas ordinance as the
27 City of Calabasas adopted the County EIR, Findings of Fact and Statement of Overriding
28 Considerations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

used in this analysis at this time.

Therefore, the City’s proposed Ordinance would have a significant impact related to GHG emissions if the GHG emissions would result in more than 6.6 metric tons of CO₂e per service population (residents and employees) per year....

For greenhouse gas emissions, utilizing a threshold of 6.6 metric tons CO₂e per capita per year, the City’s proposed Ordinance was determined to have a less than significant impact since emissions related to manufacturing, transportation and disposal of carryout bags would result in less than 1 metric ton CO₂e per capita per year. This determination would result in a reduced impact related to GHG emissions compared to the County’s Final EIR, which determined that emissions related to the disposal of paper carryout bags would result in significant and unavoidable impacts. Based on the City’s determination that none of the impacts of the proposed Ordinance, including those related to GHG emissions, would be significant, no new significant environmental effects beyond those already analyzed in the County’s Final EIR would occur.

Petitioner’s Objections to the Addendum

55. The City invited public comments on the Addendum for submission by April 29, 2011.

56. On April 28, 2011, Petitioner submitted written comments on and objections to the Addendum (the “Objections”). Petitioner objected to the (proposed) Ordinance in part based on its objections to the GHG threshold of significance in the Addendum. A true and correct copy of the Objections is attached hereto as Exhibit B and incorporated herein by reference. Said objections are reasserted herein.

1 environmental goals.” Accordingly, the County adopted a goal-oriented
2 approach to determining the threshold of significance for this project based on
3 the following two County goals for the project: (i) sustainability (as it relates to
4 the County’s energy and environmental goals); and (ii) landfill disposal
5 reduction. The City failed to adopt this mandatory goal-oriented approach.

6 G. There was no public review process regarding adoption of the GHG threshold of
7 significance in the Addendum. (CEQA Guidelines §15064.4(b)(3).)

8 H. The Addendum contradicts the EIR and the County’s Statement of Overriding
9 Considerations.

10 61. In effect, the City “moved the goalposts” to avoid having to admit that the
11 Ordinance would have a significant negative impact on the environment.

12 62. As a result of its tampering with the applicable threshold, the City did not adopt
13 a Statement of Overriding Considerations.

14 63. The Council and the public were misinformed by the Addendum in that they
15 were told that the Ordinance would have no significant effects on the environment, which is
16 untrue as established by the County EIR.

17 64. Informing decision-makers and the public about the environmental impacts of a
18 project and whether those impacts are significant is a core purpose and requirement of CEQA.
19 (CEQA Guidelines §15002.)

20 65. Based on the foregoing and the Objections, the Ordinance is invalid, void, or
21 voidable. This action is timely filed within 30 days of the filing of any Notice of Exemption or
22 within 180 days from the date of the City’s decision to carry out or approve the project. (Pub.
23 Res. Code §21167.)

24 **SECOND CAUSE OF ACTION**
25 **AGAINST BOTH RESPONDENTS**
26 **(STATE LAW PREEMPTION – WRIT OF MANDATE)**

27 66. Petitioner realleges and incorporates herein each and every allegation made
28 above.

67. In 2006, the Legislature enacted AB 2449. (Pub. Res. Code §§42250-57.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

68. The Legislature declared its intent in AB 2449 as follows:

It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.

69. The Governor’s signing statement is part of the legislative history. The signing statement includes the following language:

I am signing Assembly Bill 2449 that implements a statewide plastic bag recycling program. While this bill may not go as far as some local environmental groups and cities may have hoped, this program will make progress to reduce plastics in our environment. This measure requires every retail establishment that provides its customers plastic bags to have an in store plastic bag recycling program, a public awareness program promoting bag recycling, post recycling requirements, record keeping and penalties. Because this is a statewide program the bill precludes locals from implementing more stringent local requirements. The bill sunsets in six years and this will allow locals time to develop additional programs or the legislature to consider a more far reaching solution.

70. AB 2449 sunsets and expires on January 1, 2013 (Pub. Res. Code §42257), one year after the Ordinance takes effect on August 1, 2011.

71. AB 2449 only applies to “stores.” (Pub. Res. Code §42251.) A “store” is defined as a supermarket or large retail store “that provides plastic carryout bags to its customers.” (Pub. Res. Code §42250(e).) If plastic bags are banned by local ordinances, then stores in those localities will not be subject to AB 2449 and the statewide statutory scheme of AB 2449 would be defeated.

72. Under AB 2449, stores that provide plastic bags to customers must install plastic

1 bag collection bins “for the purpose of collecting and recycling plastic carryout bags.” (Pub.
2 Res. Code §42252(b).) Any member of the public may use those bins to deposit any discarded
3 plastic carryout bags. If stores in the City are prohibited from handing out plastic bags, then all
4 such stores would be permitted to remove their plastic bag recycling bins. Such bins are used to
5 collect and recycle all types of plastic bags, including bags that are not prohibited under the
6 Ordinance, including but not limited to retail bags, produce bags, newspaper bags, and dry
7 cleaning bags. The statewide statutory scheme of AB 2449 would be defeated. There would be
8 no way to recycle such bags as they are not accepted in curbside recycling programs in the City.

9 73. AB 2449 states that “[t]he operator of the store shall make reusable bags
10 available to customers within the store, which may be purchased and used in lieu of using a
11 plastic carryout bag or paper bag.” (Pub. Res. Code §42252(e).) If plastic bags are banned by
12 local ordinances, such stores will not be subject to the state law requirement to make reusable
13 bags available to customers in lieu of paper bags. Therefore, the declared legislative intent of
14 AB 2449 “to encourage the use of reusable bags by consumers and retailers and to reduce the
15 consumption of single-use bags,” including paper bags, would be defeated. Although a city or
16 county ordinance banning plastic bags may require such stores to make reusable bags available
17 in lieu of paper bags, there is no guarantee that a city or county will include such a requirement
18 in an ordinance.

19 74. Based on the foregoing, if cities and counties may enact plastic bag bans that
20 take effect before AB 2449 sunsets on January 1, 2013, the comprehensive and integrated
21 statewide plastics reduction, recycling, and reusable bag scheme of AB 2449 would be
22 defeated, which would have a negative impact on the environment.

23 75. The definition of “stores” in the Ordinance includes retail establishments that are
24 defined as “stores” in AB 2449.

25 76. It is the intent of the Legislature in enacting AB 2449 that it precludes and
26 preempts local plastic bag ban ordinances that take effect prior to January 1, 2013.

27 77. Based on the foregoing, the Ordinance is void and invalid.

28 78. Petitioner timely asserted this ground for invalidity in its Objections attached

1 hereto as Exhibit B and incorporated herein by reference.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Petitioner prays for all of the following:

- 4 A. A judgment that the Ordinance is void and invalid as the City violated CEQA.
5 B. A judgment that the Ordinance is void and invalid as it is preempted by AB 2449.
6 C. A peremptory writ of mandate directing the City to set aside, void, annul, and
7 terminate the Ordinance for failure to comply with CEQA, in accordance with Pub.
8 Res. Code §21168.9, and because the Ordinance is preempted by AB 2449.
9 D. A preliminary injunction prohibiting the City from implementing and enforcing the
10 Ordinance during the pendency of this action.
11 E. Costs of this action.
12 F. For other such further relief as the Court may deem just and proper.

13
14 DATED: June 8, 2011

STEPHEN L. JOSEPH

15
16 
17

18 _____
19 Attorney for Petitioner
20 SAVE THE PLASTIC BAG COALITION
21
22
23
24
25
26
27
28

VERIFICATION

I, Stephen L. Joseph, declare:

1. I am an attorney at law duly admitted and licensed to practice in the State of California.
2. I am the attorney of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. Petitioner was formed by me on June 3, 2008.
4. At all times since June 3, 2008, I have been sole Counsel, sole administrator, and sole manager of Petitioner. In those capacities, I have been involved in and have been aware of all actions taken by Petitioner since that time.
5. I am authorized by Petitioner to make this verification for and on its behalf.
6. I have read the VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND BASED ON STATE LAW PREEMPTION and know the contents thereof.
7. I know all of the facts alleged therein of my own personal knowledge and hereby declare them to be true.
8. If called upon as a witness to this proceeding, I would and could competently testify thereto under oath.

I declare under penalty of perjury under the laws of the State of California that I have read the forgoing, that the foregoing is true and correct, and that I would be competent to so testify.

Executed on June 8, 2011 at San Francisco, California.



STEPHEN L. JOSEPH