

1 8. Such groups have used myths, misinformation, and exaggerations to promote
2 their goal of banning plastic bags.

3 9. On March 8, 2008, an editorial in the London Times stated as follows: ““Many
4 of those who have demonized plastic bags have enlisted scientific study to their cause. By
5 exaggerating a grain of truth into a larger falsehood they spread misinformation, and abuse the
6 trust of their unwitting audiences.”

7 10. One environmental group, Californians Against Waste, states on its website that
8 “plastic bag manufacturers may indeed be behind a vast global conspiracy aimed at increasing
9 the proliferation of plastic bag litter and waste.” This statement allegation exemplifies the
10 hysteria about plastic bags.

11 11. One reason for the formation of Petitioner coalition was to counter such myths,
12 misinformation and exaggerations by publishing the truth about plastic bags. In July 2008,
13 Petitioner launched a website at www.savetheplasticbag.com to provide factual information to
14 the public and decision-makers. No plastic industry studies are cited on the website. All
15 citations are to reports by governmental entities, environmental groups, or independent
16 organizations.

17 12. Another reason for the formation of Petitioner coalition was to file lawsuits to
18 require governmental entities to prepare EIRs before banning or taking action against plastic
19 bags. Petitioner’s members believe that EIRs will force governmental entities to make decisions
20 about plastic bags based on the truth instead of myths, misinformation and exaggerations.

21 13. Petitioner has standing as an association to bring this action, because (i) its
22 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner
23 seeks to protect in this lawsuit are germane to the organization’s purpose; and (iii) neither the
24 claims asserted herein, nor the relief requested, require participation of the members in this
25 lawsuit. This action involves public rights, and Petitioner’s objective in bringing this action is
26 that of an interested citizen seeking to procure enforcement of Respondents’ public duties and
27 compliance with applicable state and local laws.
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1 said Staff Report, was to promote the “sustainability of our environment.” A true and correct
2 copy of said Staff Report and the proposed ordinance are attached hereto as Exhibit B and
3 incorporated herein by reference.

4 24. The June 3, 2008 Staff Report was a totally one-sided anti-plastic bag advocacy
5 document and was not an objective or accurate assessment of the environmental impact of
6 banning plastic bags. City staff included therein many of the myths, misinformation and
7 exaggerations that had been published about plastic bags on various websites.

8 25. On June 3, 2008, Petitioner filed a letter with Respondents objecting to said Staff
9 Report and addressing the myths, misinformation, and exaggerations therein. In the letter,
10 Petitioner requested and demanded that an EIR be prepared prior to adoption of the proposed
11 ordinance in order to ascertain the truth. Among other points in the letter, Petitioner identified
12 ways in which paper carryout bags (hereinafter “paper bags”) are worse for the environment
13 than plastic bags. A true and correct copy of said letter is attached hereto as Exhibit C and
14 incorporated herein by reference. Petitioner simultaneously filed the following two further
15 documents with Petitioner.

- 16 • A printout of an article in the London Times dated March 8, 2008 regarding sea
17 animals and seabirds entitled: “Series Of Blunders Turned The Plastic Bag Into
18 Global Villain.” A true and correct copy of the article is attached to Exhibit D
19 and incorporated herein by reference.
- 20 • The Oakland Decision (which is discussed below). A true and correct copy of
21 the Oakland Decision is attached hereto as Exhibit E and incorporated herein by
22 reference.

23 26. A Council meeting was held on June 3, 2008, following receipt by Respondents
24 of said letter.

25 27. At said meeting, the City Attorney commented on said letter and told the
26 Council that the City would not need to prepare a full EIR. He told the Council that the purpose
27 of the exercise was merely to “beef up the record” to justify a plastic bag ban and that as long as
28 a study was not “obviously flawed” it would be good enough. He also told the Council: “What

1 we are looking for is studies that say why plastic is bad.”

2 28. On June 5, 2008, the following report appeared in *Easy Reader*, a local
3 publication:

4 [Manhattan Beach] Councilman Jim Aldinger said the [Save The
5 Plastic Bag Coalition] was hijacking environmental law, harboring
6 ulterior motives other than the improvement of the environment.
“Using CEQA for this purpose is ridiculous,” he said.

7 29. On June 10, 2008, Petitioner filed a letter with Respondents objecting to the City
8 Attorney’s comments referenced above. A true and correct copy thereof is attached hereto as
9 Exhibit F and incorporated herein by reference.

10 30. On June 12, 2008, the City issued a Draft Initial Study/Environmental Checklist
11 containing a finding that the proposed ordinance could not possibly have a significant negative
12 effect on the environment and stating that a Negative Declaration would be prepared. A true
13 and correct copy thereof is attached hereto as Exhibit G and incorporated herein by reference.

14 31. On June 18, 2008, Petitioner filed formal objections to the proposed Negative
15 Declaration, again demanding that an EIR be prepared prior to a vote on the proposed
16 ordinance. A true and correct copy thereof is attached hereto as Exhibit H and incorporated
17 herein by reference.

18 32. The City published a second Staff Report dated July 1, 2008. A true and correct
19 copy thereof is attached hereto as Exhibit I and incorporated herein by reference.

20 33. Said Staff Report was a totally one-sided anti-plastic bag advocacy document
21 and not an objective or accurate assessment of the environmental impact of banning plastic
22 bags.

23 34. Said Staff Report cited a study “prepared by an independent Swedish
24 Environmental Consulting Group” published in 2000. The report included unfavorable findings
25 about the environmental impact of plastic bags compared to paper bags.

26 35. Said Staff Report failed to disclose that the Swedish study was in fact prepared
27 on behalf of European paper bag producers and was not independent at all.

28 36. Said Staff Report also failed to disclose that the Swedish study contained the

1 following statement: “It is noted that the products analyzed in this study are fundamentally
2 different products to checkout carrier bags – they are bigger bags.” In fact, the plastic bags that
3 were the subject of the Swedish study were approximately ten times thicker and heavier than
4 plastic carryout bags.

5 37. The misinformation in the July 1, 2008 Staff Report about the Swedish report
6 was misinformation disseminated to the residents and businesses of Manhattan Beach.

7 38. On July 1, 2008, the Council held a meeting to vote on the proposed ordinance.

8 39. Prior to the July 1, 2008 vote, Petitioner’s counsel, Stephen Joseph, made public
9 comments to the Council and filed supplemental objections addressing the July 1, 2008 Staff
10 Report. A true and correct copy of the supplemental objections is attached hereto as Exhibit J
11 and incorporated herein by reference.

12 40. In all of the aforementioned letters and objections and in Petitioner’s counsel’s
13 public comments on July 1, 2008, Petitioner requested and demanded that Respondents prepare
14 an EIR to ascertain the truth about the environmental impact of banning plastic bags before the
15 Council voted on the proposed ordinance.

16 41. The Ordinance adopted on July 15, 2008 states as follows:

17 An Initial Environmental Study was prepared in compliance with the
18 provisions of [CEQA]. Based upon this study it was determined that
19 the project is not an action involving any significant impacts upon
20 the environment, and a Negative Declaration was prepared and is
hereby adopted.

21 42. No EIR was ever prepared prior to the adoption of the Ordinance by the Council
22 on July 15, 2008.

23 **IMPACT OF PLASTIC BAGS ON MARINE ENVIRONMENT**

24 43. In Section 1 of the Ordinance, the sole reason stated for its adoption was the
25 impact of plastic bags on the marine environment.

26 44. Section 1 states that plastic bags are carried by the wind and find their way into
27 the ocean where they do not break down and remain indefinitely.

28 45. Section 1 further states as follows:

1 While plastic does not bio-degrade it does “photo-degrade” breaking
2 down into smaller pieces which can make their way into the food
chain vis [sic] such animals as jellyfish.

3 While their exact numbers are unknown there are many reported
4 instances of marine animals being injured or dying from ingesting or
5 choking on plastic debris in the ocean. It is reasonable to conclude
6 from such information that the presence of plastic debris in the
ocean provides a hazard for marine life.

7 46. Section 1 of the Ordinance makes the finding that “plastic debris” is responsible
8 for the alleged injuries to marine animals, not plastic bags. Plastic debris is not the same thing
9 as plastic bags. Plastic debris would include hard plastics, plastic bottles, and other plastic
10 items.

11 47. Respondents did not conduct any research into the issue of whether marine
12 animals are being injured or dying from ingesting or choking on plastic bags in the ocean.
13 (Hereinafter the term “marine animals” includes marine mammals.)

14 48. In the London Times article (Exhibit D) that Petitioner filed with the City on
15 June 3, 2008, the claim that large numbers of marine animals and seabirds are dying from
16 ingesting or choking on plastic bags is shown to be a myth based on a typographical error.

17 49. In its June 3, 2008 objections filed with the City, Petitioner disputed that many
18 marine animals or seabirds are being injured or dying as a result of plastic bags in the ocean.
19 Petitioner continues to dispute it. While there may have been an occasional occurrence, there is
20 no evidence that plastic bags are a continuing significant problem for marine animals or
21 seabirds.

22 50. Heal the Bay is a group based in Santa Monica, California that advocates the
23 banning of plastic bags. Sarah Abramson, Director of Coastal Resources at Heal the Bay, has
24 admitted as follows:

25 When we conduct an autopsy on an animal, it’s difficult to figure
26 out what plastic killed it, but going off of the statistics we have from
27 the amount of high amount of plastic bags found during beach clean-
ups and the large number that wind up in catch basins, it’s fair to say
28 a good percentage of the plastic debris marine life are consuming is
from plastic bags.

1 51. The foregoing statement by Sarah Abramson confirms that environmentalists are
2 merely assuming that plastic bags are injuring or killing marine animals.

3 **ENVIRONMENTAL IMPACTS OF INCREASING PAPER BAG USAGE**

4 52. The Ordinance will inevitably have the effect of increasing the usage of paper
5 bags.

6 53. As stated in Petitioner’s June 3, June 18, and July 1, 2008 objections, paper bags
7 have greater significant negative environmental effects than plastic bags.

8 54. Compared with plastic bags, paper bags have significant negative environmental
9 effects, including but not limited to:

- 10 • 1.1 times increased consumption of nonrenewable primary energy.
- 11 • 4.0 times increased consumption of water.
- 12 • 3.3 times increased emission of climate changing greenhouse gases;
- 13 • 1.9 times increased acid rain (atmospheric acidification);
- 14 • 1.3 times increased negative air quality (ground level ozone formation);
- 15 • 14.0 times increased water body eutrophication (defined below); and
- 16 • 2.7 times increased solid waste production.

17 “Eutrophication” means the process by which a body of water becomes rich in dissolved
18 nutrients, thereby encouraging the growth and decomposition of oxygen-depleting plant life and
19 resulting in harm to other organisms.

20 55. The foregoing negative environmental impacts are described in a report by the
21 “Scottish Government” issued in 2005 entitled: “Proposed Plastic Bag Levy- Extended Impact
22 Assessment Report” that Petitioner filed with the City on June 18, 2008 with Exhibit H.

23 56. In addition, the “Revised Analysis of Life Cycle Assessment (LCA) Relating to
24 Grocery Bags” issued by Use-Less-Stuff (“ULS”) in March 2008 summarizes the
25 environmental impacts of plastic and paper bags and states:

26 Plastic bags generate 39% less greenhouse gas emissions than
27 uncomposted paper bags, and 68% less greenhouse gas emissions
28 than composted paper bags. The plastic bags generate 4,645 tons of
 CO2 equivalents per 150 million bags; while uncomposted paper
 bags generate 7,621 tons, and composted paper bags generate

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14,558 tons, per 100 million bags produced.

Plastic bags consume less than 6% of the water needed to make paper bags. It takes 1004 gallons of water to produce 1000 paper bags and 58 gallons of water to produce 1500 plastic bags.

Plastic grocery bags consume 71% less energy during production than paper bags. Significantly, even though traditional disposable plastic bags are produced from fossil fuels, the total non-renewable energy consumed during their lifecycle is up to 36% less than the non-renewable energy consumed during the lifecycle of paper bags and up to 64% less than that consumed by biodegradable plastic bags.

Using paper sacks generates almost five times more solid waste than using plastic bags.

After four or more uses, reusable plastic bags are superior to all types of disposable bags -- paper, polyethylene and compostable plastic -- across all significant environmental indicators.

Legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended results. While some litter reduction might take place, it would be outweighed by the disadvantages that would subsequently occur (increased solid waste and greenhouse gas emissions). Ironically, reducing the use of traditional plastic bags would not even reduce the reliance on fossil fuels, as paper and biodegradable plastic bags consume at least as much non-renewable energy during their full lifecycle.

Petitioner filed a copy of the ULS Report with the City on June 18, 2008 with Exhibit H.

57. Paper bags degrade in landfills while plastic bags do not. Decomposing paper produces methane, a potent greenhouse gas.

58. Paper bags attract cockroaches, including the German cockroach, while plastic bags do not. This is a significant negative environmental impact in houses, apartment blocks, restaurants and food service establishments, and other places.

59. In the June 3, 2008 Staff Report, there was no mention of any negative environmental impacts of paper bags. In the Ordinance as adopted on July 15, 2008, Petitioner made the following admission:

1 Plastic and paper bags each have negative impacts on the
2 environment. It is well known that paper bags require more energy
3 to manufacture and recycle and generate effluent during these
4 processes. It is also known that paper bags are bulkier and heavier
5 than plastic bags.

6 **CEQA PROCEDURES NOT FOLLOWED**

7 60. Respondents claim that the Ordinance will benefit the environment. However,
8 the Ordinance will not produce the benefits that Respondents claim.

9 61. Banning plastic bags in Manhattan Beach will have no significant effect on
10 marine animals or the marine environment.

11 62. Substantial evidence exists that by favoring paper bags over plastic bags, the
12 Ordinance will result in significant adverse environmental impacts as paper bags are
13 substantially worse for the environment than plastic bags.

14 63. If the City would have prepared an EIR prior to adopting and implementing the
15 Ordinance, the Council and the electorate would have known the true facts, including but not
16 limited to the ways in which and the extent to which paper bags are worse for the environment
17 than plastic bags; the extent to which marine animals are injured by plastic bags; and the extent
18 to which banning plastic bags would have any material effect.

19 64. One of the key purposes of an EIR is to “[d]isclose to the public the reasons why
20 a governmental agency approved the project in the manner the agency chose if significant
21 environmental effects are involved.” CEQA Guidelines §15002(a)(4). The following quotations
22 from judicial opinions are found in the CEQA Guidelines §15003.

23 “The EIR requirement is the heart of CEQA.”

24 “The EIR serves not only to protect the environment but also to
25 demonstrate to the public that it is being protected.”

26 “The EIR is to demonstrate to an apprehensive citizenry that the
27 agency has, in fact, analyzed and considered the ecological
28 implications of its action.”

“The EIR process will enable the public to determine the
environmental and economic values of their elected and appointed
officials thus allowing for appropriate action come election day
should a majority of the voters disagree.”

1 65. The public has being denied such information by Respondents.

2 66. Section 1 of the Ordinance states as follows:

3 “This ordinance is not subject to the California Environmental
4 Quality Act (“CEQA”) pursuant to Section 15061(b)(3) in that the
5 activity will not result in direct or indirect or reasonably foreseeable
6 direct or indirect physical change to the environment. Additionally,
7 this ordinance is exempt from CEQA Guidelines Section 15308 as a
8 regulatory program to protect the environment.”

9 67. As alleged above, the Ordinance will in fact result in a significant negative
10 impact on the environment.

11 68. CEQA Guidelines Section 15308 is inapplicable as there is a reasonable
12 possibility that the activity will have a significant effect on the environment due to unusual
13 circumstances including the fact that paper bags are worse for the environment than plastic
14 bags. CEQA Guidelines 15300.2(c). Further, the regulatory process does not involve procedures
15 for the protection of the environment.

16 69. Respondents have not acted in good faith regarding compliance with CEQA.

17 70. In order to afford the fullest possible environmental protection, an analysis of the
18 Ordinance’s potential environmental impacts pursuant to CEQA is appropriate and necessary.
19 Given the adverse impacts to the environment as outlined above, Respondents’ failure to
20 comply with CEQA before adopting the Ordinance necessitates the need for this Court to issue
21 a writ of mandate to set aside, void, annul, and terminate the enforcement and implementation
22 of the Ordinance.

23 71. Accordingly, Petitioner requests that this Court issue a writ of mandate to set
24 aside, void, annul, and terminate the implementation and enforcement of the Ordinance.

25 72. Petitioner also requests preliminary and permanent injunctive relief to maintain
26 the status quo as necessary to prevent significant harm to the environment, unless and until
27 Respondents comply with CEQA.

28 73. This is also an action for declaratory relief seeking a judicial declaration that
 Respondents have no power to ban plastic bags even if they comply with CEQA.

1 **THE OAKLAND DECISION**

2 74. In July 2007, the City of Oakland adopted an ordinance banning plastic bags.

3 75. In August 2007, the “Coalition To Support Plastic Bag Recycling” filed a
4 lawsuit against the City of Oakland and the City Council of Oakland in the Alameda County
5 Superior Court for failure to prepare an Environmental Impact Report pursuant to CEQA prior
6 to adopting the ordinance. *Coalition To Support Plastic Bag Recycling v. City of Oakland, et*
7 *al.*, Case No. RG07-339097.

8 76. In April 2008, the Alameda County Superior Court issued a writ of mandate
9 against the City of Oakland and invalidated the ordinance, because the city had failed to prepare
10 an EIR pursuant to CEQA. The court found that there was a possibility that the ordinance would
11 have a significant adverse environmental impact because the banning of plastic bags would
12 result in increased paper bag usage. The court based its ruling on the Scottish Government and
13 ULS reports referenced above. The Alameda Superior Court’s ruling is referred to herein as the
14 “Oakland Decision.” A true and correct copy of the ruling is attached hereto as Exhibit E.

15 77. While the ruling of the Alameda County Superior Court is not binding on this
16 Court, it is nevertheless persuasive.

17 **NO ADEQUATE REMEDY AT LAW**

18 78. Petitioner has no plain, speedy or adequate remedy at law and will suffer
19 irreparable harm, in that if enforcement of the Ordinance is not immediately enjoined, the
20 significant negative environmental impacts of increased usage of paper bags will occur.

21 79. It is necessary for this Court to provide provisional and permanent remedies to
22 Petitioner by means of an injunction and a writ of mandate to prevent Respondents, and each of
23 their agents, officers, employees, representatives, duly elected officials, and all persons acting
24 in concert or participating with them, from implementing or continuing to implement the
25 Ordinance.

26 **ATTORNEY’S FEES**

27 80. Petitioner brings this action under Code of Civil Procedure § 1021.5, and other
28 applicable laws, which entitle Petitioner to an award of attorney’s fees in actions to enforce an

1 important right affecting the public interest, such as the CEQA violation alleged herein.

2 81. In addition to § 1021.5, or in the alternative, Petitioner brings this action on the
3 basis of Government Code § 800, which entitles Petitioner to an award of attorney's fees to
4 overturn Respondents' arbitrary and capricious approval of the Ordinance.

5 **FIRST CAUSE OF ACTION**

6 (Non-compliance with CEQA against both Respondents)

7 82. Petitioner realleges and incorporates herein each and every allegation contained
8 in the above paragraphs.

9 83. Respondents have abused their discretion and failed to act in a manner required
10 by CEQA with respect to the Ordinance, because they have failed to adequately address,
11 analyze, or otherwise consider the environmental impacts, necessary or foreseeable mitigation
12 measures, or a reasonable range of alternatives to the Ordinance.

13 84. Respondents abused their discretion by adopting the Ordinance without prior
14 compliance with CEQA, including but not limited to preparation of an EIR.

15 85. Said abuse of discretion by Respondents is prejudicial to Petitioner and the
16 interests that it represents in this action.

17 **SECOND CAUSE OF ACTION**

18 (Declaratory relief against both Respondents)

19 86. Petitioner realleges and incorporates herein each and every allegation contained
20 in the above paragraphs.

21 87. An actual controversy has arisen and now exists between Petitioner and
22 Respondents.

23 88. Petitioner contends that Respondents have no power to ban plastic bags.

24 89. Pursuant to Code. Civ. Proc. § 1060, Petitioner requests a judicial determination
25 and declaration that said contentions are legally correct.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for:

3 A. A peremptory or alternative writ of mandate directing:

4 i. Respondents to set aside, void, annul, and terminate the enforcement and
5 implementation of the Ordinance and the resolution adopting the Ordinance
6 for failure to comply with CEQA;

7 ii. Respondents to comply with CEQA, including the preparation of a legally
8 adequate EIR, before taking any action that would limit or ban plastic bag
9 usage or distribution; and

10 iii. A stay of all action preventing Respondents from implementing or enforcing
11 the Ordinance, pending final resolution of this action.

12 B. For preliminary and permanent injunctive relief.

13 C. A judicial determination and declaration that Respondents have no power to ban
14 plastic bags.

15 D. For reasonable attorney's fees.

16 E. For costs of this suit incurred herein.

17 F. For other such further relief as the Court may deem just and proper.
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DATED: August 9, 2008

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

DATED: August 9, 2008

ADY LAW GROUP

AFSHIN YOUSEFFYEH
Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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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 one of the attorneys of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND REQUEST FOR DECLARATORY RELIEF and know the contents thereof.
4. I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Tiburon, California on August 9, 2008.

STEPHEN L. JOSEPH


