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9 **SAVE THE PLASTIC BAG COALITION**

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SANTA CLARA**

13 **SAVE THE PLASTIC BAG COALITION,**) Case No. 1-09-CV-140463
14 an unincorporated association,)
15) **VERIFIED PETITION FOR WRIT OF**
16) **MANDATE UNDER THE CALIFORNIA**
17) **ENVIRONMENTAL QUALITY ACT**
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19) Pub. Res. Code § 21080(d)
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Petitioner, SAVE THE PLASTIC BAG COALITION, an unincorporated association, alleges as follows:

PARTIES AND JURISDICTION

1. This is an action seeking a writ of mandate to set aside, void, annul, and terminate the implementation and enforcement of an Ordinance (hereinafter the “Ordinance”) that was adopted by Respondents CITY OF PALO ALTO (the “City”) and CITY COUNCIL OF PALO ALTO (hereinafter the “Council”) on March 30, 2009. A true and correct copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference. The copy was

1 provided to Petitioner by the City. Although it is marked “Not Yet Approved,” it was approved.

2 2. The Ordinance amends the Palo Alto Municipal Code to prohibit
3 “Supermarkets” (as defined in the Ordinance) from distributing “Single-Use Plastic Checkout
4 Bags” (as defined in the Ordinance) at the point of sale or point of departure from the store.

5 3. The Ordinance requires all other retailers to offer paper carryout bags only or a
6 choice between plastic or paper carryout bags. If a choice is offered, customers must be asked
7 whether they require or prefer that the goods be placed in a plastic or paper carryout bag.
8 (Plastic and paper carryout bags are hereinafter referred to as “plastic bags” and “paper bags.”)

9 4. The Ordinance takes effect on September 18, 2009.

10 5. The Ordinance is a “project” subject to CEQA. CEQA Guidelines § 15378(a)(1).

11 6. Respondents violated the California Environmental Quality Act (“CEQA”) by
12 refusing and failing to prepare an Environment Impact Report (“EIR”) prior to adopting the
13 Ordinance. Pub. Res. Code § 21000, *et seq.*

14 7. Petitioner SAVE THE PLASTIC BAG COALITION is an unincorporated
15 association. Petitioner also uses the name “SaveThePlasticBag.com.”

16 8. Respondent CITY OF PALO ALTO (hereinafter the “City”) is a municipal
17 corporation of the State of California.

18 9. The City is the “Lead Agency” for the project, responsible for compliance with
19 CEQA, including but not limited to preparation of an EIR.

20 10. Respondent CITY COUNCIL OF PALO ALTO (hereinafter the “Council”) is
21 the legislative arm of the CITY OF PALO ALTO. The Council is responsible for complying
22 with CEQA.

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

28 12. Petitioner is informed and believes that at all times relevant to the allegations

1 herein, each Respondent, including the DOE Respondents, were the agents, employees, or
2 partners of each of the other Respondents, and were at all times acting within the purpose and
3 scope of their employment, agency or partnership, or at the direction of the other Respondents.

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

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

7 **PETITIONER'S STANDING**

8 15. Petitioner is a non-profit environmental campaign organization.

9 16. Petitioner's sole and exclusive purposes and missions as an organization are to
10 (i) identify and expose myths, misinformation and exaggerations that are disseminated about the
11 environmental impact of plastic bags; and (ii) take steps to publish the truth about the
12 environmental impacts of banning or imposing fees on plastic bags, including the
13 environmental impacts of paper and reusable bags that are alternatives to plastic bags.

14 17. Petitioner does not manufacture, sell, supply or distribute plastic bags or any
15 other bags in Palo Alto or any other locations.

16 18. For several years, plastic bags have been the subject of an intense national and
17 international vilification campaign by anti-plastic bag activists based on alleged environmental
18 impacts.

19 19. As a result of the anti-plastic bag campaign, plastic bags have become a matter
20 of significant public concern and media attention and pending bills in the California
21 Legislature.

22 20. Anti-plastic bag activists have created and disseminated myths, misinformation,
23 and exaggerations about the alleged environmental impact of plastic bags to promote their goal
24 of banning plastic bags.

25 21. As a result of misinformation spread by anti-plastic bag activists and the media,
26 many people believe that plastic bags used in this country are made from imported oil. In fact,
27 all or the vast majority of plastic bags used in the United States are made of ethane which is a
28 waste byproduct from domestically produced natural gas. If the ethane is not used to make

1 plastic bags, it will have to be burned off.

2 22. As a result of misinformation spread by anti-plastic bag activists and the media,
3 many people believe that plastic bags kill large numbers of sea mammals and seabirds. The
4 London Times in an article entitled “Series Of Blunders Turned The Plastic Bag Into Global
5 Villain” exposed this as a myth based on a typographical error. The study on which the myth is
6 based mentioned discarded nets, not plastic bags.

7 23. As a result of misinformation spread by anti-plastic bag activists and the media,
8 many people believe that plastic bags are not recyclable. In fact, special plastic bag recycling
9 bins have been installed in large supermarkets and retail stores throughout California since
10 2007. Virtually all of the plastic bags deposited in those bins are actually recycled.

11 24. As a result of misinformation spread by anti-plastic bag activists and the media,
12 many people believe that plastic bags "clog up" landfills. In fact, according to the California
13 Integrated Waste Management Board, plastic bags (including all retail bags) use up only 0.4%
14 of landfill space.
15

16 25. As a result of misinformation spread by anti-plastic bag activists and the media,
17 many people believe that it is a disadvantage that plastic bags do not decompose in landfills. In
18 fact, decomposing paper in landfills produces methane which is a greenhouse gas with 23 times
19 the heat trapping power of CO₂. It is better to put an item in a landfill that does not create
20 global warming emissions as a result of decomposition.

21 26. As a result of misinformation spread by anti-plastic bag activists and the media,
22 many people believe that paper bags are better for the environment than plastic bags. In fact,
23 paper bags result in 3.3 times more greenhouse gases than plastic bags and require much more
24 fuel to transport.

25 27. On March 8, 2008, an editorial in the London Times stated: “Many of those who
26 have demonized plastic bags have enlisted scientific study to their cause. By exaggerating a
27 grain of truth into a larger falsehood they spread misinformation, and abuse the trust of their
28 unwitting audiences.” Petitioner agrees with this statement.

1 28. In April 2007, after San Francisco banned plastic bags, Stephen Joseph was
2 approached by plastic bag manufacturers who wanted him to help defeat ban initiatives. He
3 refused. He assumed that the negative environmental information about plastic bags on the
4 Internet was correct and he refused to take on a cause that would hurt the environment.

5 29. In March 2008, Stephen Joseph read the article in the London Times entitled
6 “Series Of Blunders Turned The Plastic Bag Into Global Villain.” This caused him to research
7 the subject of the environmental impact of plastic bags. He was surprised to find that most of
8 the environmental information circulating on the Internet about plastic bags was false. He
9 discovered that paper bags were worse for the environment, especially regarding CO2 and
10 methane emissions and energy consumption. He agreed to conduct a campaign to communicate
11 the truth about the environmental impacts of plastic and paper bags to the public and decision-
12 makers. He was concerned that activists had become obsessed with plastic bags and were
13 shutting their eyes or willfully failing to disclose inconvenient environmental truths about paper
14 bags, thereby misleading the public and decision makers. He believed that spreading
15 environmental misinformation was simply wrong, regardless of the motivation.

16 30. Petitioner coalition was formed by Stephen Joseph on June 3, 2008 for the sole
17 and exclusive purpose of responding to the myths, misinformation, and exaggerations about the
18 environmental impact of plastic bags. He became the campaign administrator and counsel. He is
19 a U.S. citizen and a member of Petitioner..

20 31. Since July 11, 2008, Petitioner has maintained an environmental information
21 website at www.savetheplasticbag.com to advise the public about the environmental impacts of
22 plastic bags and paper bags, including addressing the misinformation, myths, and exaggerations
23 identified above.

24 32. Stephen Joseph maintains a veto over the dissemination of environmental
25 information by Petitioner if he believes that the information is unsupported by reliable and
26 substantial evidence or science.

27 33. To ensure data impartiality, no plastic industry studies are cited on the
28 savetheplasticbag.com website. All citations on the website are to environmental reports by

1 governmental entities, environmental groups, or independent organizations.

2 34. There is no advertising on the savetheplasticbag.com website and no products
3 are sold on the website.

4 35. More than 40,000 unique visitors have visited the savetheplasticbag.com website
5 as of April 17, 2009.

6 36. Petitioner's sole purpose in bringing this action is to ensure that the City, the
7 Council, and the citizens of Palo Alto are told the whole truth about the environmental impacts
8 of banning plastic bags.

9 37. According to CEQA Guidelines §15002, the "basic purposes of CEQA" include
10 the following:

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

13 B. Identify the ways that environmental damage can be avoided or significantly
14 reduced.

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

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

20 38. The following quotations from judicial opinions are found in CEQA Guidelines
21 §15003. They affirm the informational purposes of CEQA.

22 The EIR requirement is the heart of CEQA.

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

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

27 The EIR process will enable the public to determine the
28 environmental and economic values of their elected and appointed
officials thus allowing for appropriate action come election day

1 should a majority of the voters disagree.

2 39. Petitioner seeks to promote and enforce the aforementioned informational
3 purposes of CEQA in this litigation by demanding an EIR. Ascertaining the true facts about the
4 environmental impact of projects and informing and disclosing those true facts to decision-
5 makers and the public are purposes that are within the zone of interests CEQA was intended to
6 preserve and protect. This is a clear, present and beneficial right and interest of Petitioner for
7 the purpose of standing in this litigation.

8 40. Petitioner is endeavoring to have the true facts of the environmental impact of
9 plastic bags analyzed and told to the City and the Council and the citizens of Palo Alto, because
10 disclosing the environmental truth about plastic bags is beneficial to the environment and in the
11 public interest. Disseminating environmental misinformation to the public is contrary to the
12 public interest.

13 41. Petitioner seeks to prevent significant, avoidable damage to the environment that
14 would be caused by a shift from plastic bags to paper bags, by demanding an EIR.

15 42. Loss of sales, damage to competitive interests, or other economic harm are not
16 part of Petitioner’s claim in this litigation. This litigation is being prosecuted solely and
17 exclusively for the protection of the environment in the public interest.

18 43. An EIR that complies with CEQA will ensure that the City and Council at least
19 have correct environmental information before adopting an ordinance banning plastic bags, or
20 favoring paper bags over plastic bags, even if they ultimately choose to ignore such
21 information.

22 44. An EIR that complies with CEQA will ensure that the citizens of Palo Alto know
23 the environmental truth about plastic and paper bags and can use that information to judge the
24 actions of their elected representatives on the Council. They will have the choice of voting the
25 Council Members out of office and the information necessary to make that choice.

26 45. Petitioner’s membership includes, but is not limited to, the following: (i) Elkay
27 Plastics Co., Inc., (ii) Crown Poly, Inc., and (iii) Grand Packaging, Inc. doing business as
28 “Command Packaging.” They were all incorporated in California prior to 2008 and are in good

1 standing. They were members of Petitioner at all times mentioned herein. All three companies
2 manufacture or supply various types of plastic bags in the State of California.

3 46. Petitioner's membership also includes companies and that do not manufacture,
4 supply, or distribute plastic bags. They have no financial interest in the success of this litigation.
5 One such company that has been a member of Petitioner since June 2008 is Sun Plastics, Inc.,
6 which has its principal place of business in Los Angeles County. Sun Plastics, Inc. does not
7 supply plastic carryout bags or paper carryout bags and is not adversely affected by the
8 Ordinance in any way, directly or indirectly. The company does supply reusable bags which are
9 promoted by the Ordinance. Therefore, the company will benefit commercially only if this
10 litigation fails. Nevertheless, the company believes in and fully support Petitioner's mission to
11 correct the environmental misinformation that has been disseminated about plastic bags and
12 approves and support this litigation. The company believes and takes the position that
13 environmental truth is a value in itself that must be respected and overrides any commercial
14 interests.

15 47. Petitioner's membership also includes natural persons who are U.S. citizens who
16 are not employed by businesses that manufacture, sell, supply, distribute, provide, or use plastic
17 bags in Palo Alto or any other locations. They have no financial interest in this litigation. They
18 will not be affected financially or commercially in any way by this litigation.

19 48. Pete Grande, Louis Chertkow, Cathy Browne and Tom MacMillan are U.S.
20 citizens and have been members of Petitioner since June 2008.

21 49. Prior to January 1, 2008, Tom MacMillan personally made a financial
22 contribution to Heal the Bay, which is an environmental organization, as he is concerned about
23 the environment.

24 50. Chandler Hadraba has been a member of Heal the Bay since August 11, 2008.
25 Heal the Bay is an organization that campaigns against plastic bags. He is a U.S. citizen. He is a
26 member of Petitioner. He joined Petitioner as a member in September 2008 because he was
27 concerned about the environmental misinformation being disseminated by anti-plastic bag
28 activists, including Heal the Bay. He has no financial stake in the outcome of this litigation.

1 51. All of Petitioner’s members identified above are concerned about the
2 environmental misinformation being disseminated about plastic bags because such
3 misinformation is harmful to the environment and contrary to the public interest. They firmly
4 believe that a switch to paper bags will cause environmental damage that should be avoided.
5 They firmly believe that the public, including but not limited to the citizens of Palo Alto, should
6 be provided with accurate environmental information on this issue in the public interest.

7 52. Petitioner and all of Petitioner’s members are “persons” entitled to file an action
8 under CEQA. "Person" includes any person, firm, association, organization, partnership,
9 business, trust, corporation, limited liability company, company. CEQA Guidelines §15376.

10 53. Petitioner has a genuine and continuing interest and commitment to the subject
11 matter of ascertaining and publicizing the true facts about the environmental impact of plastic
12 and paper bags.

13 54. All of Petitioner’s members will be harmed by an increase in global warming
14 and the other environmental damage alleged herein caused by a switch from plastic bags to
15 paper bags, because such environmental damage affects and harms everyone. It is impossible to
16 isolate such environmental damage to particular persons or locations as it is general,
17 widespread, and universal.

18 55. Petitioner consists of and is representing citizens beneficially interested in this
19 action who would find it difficult or impossible to act on their own. No citizen who did not have
20 the financial support of business interests could reasonably be expected to incur the substantial
21 cost of litigating against Respondents to enforce CEQA. This is due to the fact that the
22 environmental damage caused by increased paper bag usage is general, widespread and
23 universal rather than particularized to particular persons or locations.

24 56. The question in this litigation is one of public right and the object of this
25 litigation is to enforce a public duty. Petitioner’s members are interested as citizens in having
26 the public laws including CEQA executed and the public duties and purposes in CEQA
27 enforced.

28 57. There is an overriding public policy in this state, expounded by the California

1 Supreme Court, “guaranteeing citizens the opportunity to ensure that no governmental body
2 impairs or defeats the purpose of legislation establishing a public right.” *Green v. Obledo*
3 (1981) 29 Cal.3d 126, 144. This is an independent basis for standing in a writ of mandate case.
4 An EIR is a public right. If Petitioner does not have standing in this case, then no entity or
5 person could have standing to enforce CEQA against Respondents regarding banning plastic
6 bags and CEQA could be disregarded by Respondents with absolute, unfettered, and
7 unchallengeable impunity. There would be no remedy whatsoever for the CEQA violation. This
8 would violate the public policy of “guaranteeing” the opportunity to ensure that CEQA is
9 enforced, as stated by the California Supreme Court.

10 58. Citizen standing in this case does not conflict with other public policies. Citizen
11 standing in this case promotes the public policy of guaranteeing citizens an opportunity to
12 ensure that the purpose of legislation establishing a public right, such as CEQA, is not impaired
13 or defeated by a governmental agency.

14 59. There is a genuine and substantial public controversy, in which Petitioner is fully
15 engaged, about the environmental facts of plastic bags that needs to be resolved to the
16 maximum extent possible by an EIR.

17 60. Petitioner has standing as an association to bring this action, because (i) its
18 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner
19 seeks to protect in this lawsuit are germane to the organization’s purpose; and (iii) neither the
20 claims asserted herein, nor the relief requested, require participation of the members in this
21 lawsuit. This action involves public rights, and Petitioner’s objective in bringing this action is
22 that of an interested citizen seeking to procure enforcement of Respondents’ public duties and
23 its compliance with applicable state and local laws.

24 61. In accordance with Pub. Res. Code § 21177(a) and (b), the alleged grounds for
25 noncompliance with CEQA were presented to Respondents by Petitioner during the public
26 comment period provided by CEQA and prior to the close of the public hearing on the proposed
27 Ordinance before the issuance of the notice of determination.

28 62. Based on the foregoing, Petitioner has standing.

1 **STATEMENT OF FACTS**

2 63. On August 28, 2008, the City issued a “Notice of Intent to Adopt A Negative
3 Declaration” in support of a proposed ordinance to ban plastic bags at supermarkets (as defined)
4 in Palo Alto.

5 64. On September 17, 2008, in accordance with said notice, Petitioner timely filed
6 with the City “Objections To Proposed Negative Declaration And Notice Of Intent To File
7 Lawsuit.” Petitioner objected therein to the proposed Negative Declaration, the lack of an EIR
8 and the proposed ordinance and presented substantial evidence that the ordinance would result
9 in a switch to paper bags that would result in a significant negative environmental impact.
10 Petitioner made a fair argument. A true and correct copy of said Objections is attached hereto as
11 Exhibit B and incorporated herein by reference.

12 65. On November 3, 2008, the Council held a “Study Session” and public hearing on
13 the proposed ordinance. Petitioner made oral comments to the Council stating that the City had
14 a legal obligation to prepare an EIR and objected again to the lack of an EIR.

15 66. On February 3, 2009, the City issued a “Notice of Intent to Adopt A Mitigated
16 Negative Declaration” in support of the proposed Ordinance.

17 67. On February 13, 2009, in accordance with said notice, Petitioner timely filed
18 with the City “Objections To City Of Palo Alto Proposed Mitigated Negative Declaration And
19 Notice Of Intent To File Lawsuit.” Petitioner objected therein to the proposed Mitigated
20 Negative Declaration, the lack of an EIR and the proposed Ordinance and presented substantial
21 evidence that the Ordinance would result in a switch to paper bags that would result in a
22 significant negative environmental impact. Petitioner made a fair argument. A true and correct
23 copy of said Objection is attached hereto as Exhibit C and incorporated herein by reference.

24 68. On or about March 13 or 16, 2009, the City Manager issued a memorandum
25 dated March 16, 2009 to the Council recommending that the Council adopt the proposed
26 Ordinance.

27 69. On March 16, 2009, prior to the public hearing that the Council held later that
28 day, Petitioner filed with the City and Council a response to said memorandum reiterating that

1 Petitioner had made a fair argument that adoption of the proposed Ordinance might have a
2 significant negative effect on the environment. Petitioner reaffirmed therein its objections to the
3 lack of an EIR. A true and correct copy of said response is attached hereto as Exhibit D and
4 incorporated herein by reference.

5 70. In all three documents (Exhibits B, C and D), Petitioner also objected to the
6 Mitigated Negative Declaration, the lack of an EIR, and the proposed Ordinance on the grounds
7 that (i) reusable bags might have a significant negative effect on the environment and (ii)
8 Respondents had not presented substantial evidence that there was no possibility that reusable
9 bags would have a significant negative impact on the environment.

10 71. The Council held a public hearing on the proposed Ordinance on March 16,
11 2009. Petitioner made oral comments to the Council at the hearing stating that the City had a
12 legal obligation to prepare an EIR and objected again to the lack of an EIR.

13 72. Following said hearing, the Council approved the Ordinance on its first reading.

14 73. On March 30, 2009, the Council approved the Ordinance on its second reading,
15 thereby adopting it and enacting it into law.

16 74. The City did not prepare an EIR prior to adopting the Ordinance.

17 75. The Ordinance states:

18 The City Council finds that the adoption of this Ordinance is subject
19 to environmental review under provisions of the California
20 Environmental Quality Act (CEQA) under section 15070 of the
21 CEQA Guidelines (“Decision to Prepare a Negative or Mitigated
22 Negative Declaration”). The Department of Planning and
23 Community Environment prepared an Initial Study for this
24 Ordinance, which confirmed that the Ordinance does not have the
25 potential to result in a significant impact on the environment, with
26 appropriate mitigation. Consequently, a Mitigated Negative
27 Declaration was prepared, made available for public review
28 beginning February 4, 2009 through February 23, 2009, and is
hereby adopted.

ENVIRONMENTAL IMPACTS OF BANNING PLASTIC BAGS

27 76. The Ordinance will have the effect of increasing the usage of paper bags.

28 77. As stated in Petitioner’s objections filed with the City, paper bags have greater
significant negative environmental effects than plastic bags.

1 78. Compared with plastic bags, paper bags have significant negative environmental
2 effects, including but not limited to:

- 3 • 1.1 times increased consumption of nonrenewable primary energy.
- 4 • 4.0 times increased consumption of water.
- 5 • 3.3 times increased emission of climate changing greenhouse gases;
- 6 • 1.9 times increased acid rain (atmospheric acidification);
- 7 • 1.3 times increased negative air quality (ground level ozone formation);
- 8 • 14.0 times increased water body eutrophication (defined below); and
- 9 • 2.7 times increased solid waste production.

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

13 79. The foregoing negative environmental impacts are described in a report by the
14 “Scottish Government” issued in 2005 entitled “Proposed Plastic Bag Levy- Extended Impact
15 Assessment Report” (“Scottish Report”).

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

19 Plastic bags generate 39% less greenhouse gas emissions than
20 uncomposted paper bags, and 68% less greenhouse gas emissions
21 than composted paper bags. The plastic bags generate 4,645 tons of
22 CO2 equivalents per 150 million bags; while uncomposted paper
23 bags generate 7,621 tons, and composted paper bags generate
24 14,558 tons, per 100 million bags produced.

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

28 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

1 and up to 64% less than that consumed by biodegradable plastic
2 bags.

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

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

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

17 81. Petitioner referenced the Scottish Report and the ULS Report in its objections
18 filed with the City and provided links to download the reports.

19 82. Pursuant to the U.S. Clean Air Act §202(a), the U.S. Environmental Protection
20 Agency has proposed to make an “endangerment” finding that current and projected
21 concentrations of the mix of six key greenhouse gases in the atmosphere, including carbon
22 dioxide (CO₂) and methane (CH₄), “threaten the public health and welfare of current and future
23 generations.” EPA has also stated: “These high atmospheric levels [of greenhouse gases] are the
24 unambiguous result of human emissions.” *See*:

25 <http://epa.gov/climatechange/endangerment.html>

26 <http://epa.gov/climatechange/endangerment/downloads/GHGEndangermentProposal.pdf>

27 83. As paper bags produce far more CO₂ than plastic bags, the action of the City and
28 Council in adopting the Ordinance constitutes part of the “endangerment” that the EPA has
29 identified. Decomposing paper in landfills also produces methane (CH₄), while plastic bags
30 have the important advantage of not decomposing in landfills.

31 84. The Environmental Paper Network is an environmental organization not
32 sponsored by the plastic industry. In its report entitled “The State of the Paper Industry” it

1 states:

2 [T]he paper industry’s activities - and our individual use and
3 disposal of paper in our daily lives - have enormous impacts. These
4 include loss and degradation of forests that moderate climate
5 change, destruction of habitat for countless plant and animal species,
6 pollution of air and water with toxic chemicals such as mercury and
7 dioxin, and production of methane - a potent greenhouse gas - as
8 paper decomposes in landfills, to name just a few. (Page iv)

9 One of the most significant, and perhaps least understood, impacts
10 of the paper industry is climate change. Every phase of paper’s
11 lifecycle contributes to global warming, from harvesting trees to
12 production of pulp and paper to eventual disposal. (Page v)

13 The climate change effects of paper carry all the way through to
14 disposal. If paper is landfilled rather than recycled, it decomposes
15 and produces methane, a greenhouse gas with 23 times the heat-
16 trapping power of carbon dioxide. More than one-third of municipal
17 solid waste is paper, and municipal landfills account for 34 percent
18 of human related methane emissions to the atmosphere, making
19 landfills the single largest source of such emissions. The U.S.
20 Environmental Protection Agency has identified the decomposition
21 of paper as among the most significant sources of landfill methane.
22 (Page v)

23 85. The report also notes that

- 24 • the paper industry is the fourth largest contributor to greenhouse gas emissions
25 among United States manufacturing industries;
- 26 • the paper industry contributes 9% of the manufacturing sector's carbon
27 emissions;
- 28 • if the United States cut office paper use by just 10% it would prevent the
emission of 1.6 million tons of greenhouse gases which is the equivalent of
taking 280,000 cars off the road.

86. At the March 16, 2009 Council meeting, a City staff person stated to the Council
as follows in support of banning plastic bags: “When we sit up in the seventh floor conference
room and see the map of the sea level rise within ninety years that could swallow up large
portions of Palo Alto, it does seem like we have to make more progress on some of these things
faster.” (City video recording 01:40:50 to 01:41:13) Clearly, that staff person did not

1 understand that paper, not plastic, would result in the greatest rise in the sea level as a result of
2 greenhouse gas emissions.

3 87. In their zeal to eliminate plastic bags, anti-plastic bags activists and the City and
4 Council have willfully ignored and brushed aside the environmental impacts caused by
5 increasing the use of paper.

6 88. The City and Council have a civic and legal responsibility to alert the citizens of
7 Palo Alto to the global warming emissions that will be increased by the use of paper bags by
8 preparing an objective and thorough EIR that addresses the issue (as well as other issues).

9 89. Petitioner hopes that the EIR will be read by Whole Foods and other retailers
10 that have stopped providing plastic bags and provide paper bags only purportedly for the sake
11 of the environment. These retailers are in fact contributing to the dangerous increase in climate
12 changing greenhouse gases by their actions.

13 90. Paper bags attract cockroaches, including the German cockroach, while plastic
14 bags do not. This is a significant negative environmental impact for houses, apartment blocks,
15 restaurants and food service establishments in Palo Alto.

16 **FIRST CAUSE OF ACTION**

17 (Non-compliance with CEQA against both Respondents)

18 91. Petitioner realleges and incorporates herein each and every allegation contained
19 above.

20 92. Prior to the adoption of the Ordinance and in a timely manner, Petitioner made a
21 fair argument and presented substantial evidence to Respondents that a significant negative
22 environment effect might occur if the Ordinance was adopted as a result of the increase in the
23 use of paper bags and reusable bags.

24 93. The mitigation measures identified by the City in its Mitigated Negative
25 Declaration are voluntary and it cannot be said with certainty that they will reduce the adverse
26 environmental impacts caused by the Ordinance to an insignificant level. Petitioner stated in its
27 March 16, 2009 objections (Exhibit D attached hereto) as follows:
28

1 On page 3 of the Memo, the City Manager states: “The City
2 estimates that the conversion to reusable bags will be sufficient to
3 offset any negative environmental impacts associated with
4 conversion from SUPCBs to paper.” This is a hope expressed by the
5 City Manager, but not a *certainty*. It is indisputably *possible* that
6 there will be a massive switch to free paper bags. That triggers the
7 requirement of an EIR. (Emphasis in original.)

8 94. An EIR pursuant to CEQA was appropriate, necessary, and legally required prior
9 to adoption of the Ordinance. Pub. Res. Code § 21080(d).

10 95. Petitioner incorporates herein by reference, as if alleged verbatim herein, all of
11 the objections and points in Exhibits B, C and D attached hereto in their entirety as part of the
12 basis for this first cause of action.

13 96. Respondents abused their discretion and failed to act in a manner required by
14 CEQA by refusing and failing to prepare an EIR prior to adopting the Ordinance.

15 97. Said abuse of discretion is prejudicial to Petitioner and the environmental
16 purposes of CEQA that Petitioner seeks to protect, promote, enforce in this action as alleged
17 herein.

18 98. Respondents did not act in good faith regarding compliance with CEQA.

19 99. When adopting the Ordinance without an EIR, Respondents were well aware of
20 the decision in *Save The Plastic Bag Coalition v. City of Manhattan Beach, et al.*, Los Angeles
21 Superior Court, Case No. BS116362. In that case, the Superior Court issued a writ of mandate
22 invalidating a Manhattan Beach ordinance banning plastic bags as no EIR had been prepared.
23 As Respondents knew when adopting the Palo Alto Ordinance, the Manhattan Beach case is
24 identical in all material respects to the present case.

25 100. Respondents’ failure to comply with CEQA before adopting the Ordinance
26 necessitates the need for this Court to issue a writ of mandate to set aside, void, annul, and
27 terminate the Ordinance.

28 101. There is not a plain, speedy, and adequate remedy, in the ordinary course of law.

102. Accordingly, Petitioner requests that this Court issue a writ of mandate to set
aside, void, annul, and terminate the Ordinance.

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D. Costs of this action.

E. Such other or further relief as the Court may deem just and proper.

DATED: April 20, 2009

STEPHEN L. JOSEPH



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 the attorney 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 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 San Francisco, California on April 20, 2009.

STEPHEN L. JOSEPH


