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8 **SAVE THE PLASTIC BAG COALITION**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN

12 SAVE THE PLASTIC BAG COALITION,) Case No. CIV1100996
13 an unincorporated association,)
14) Assigned to Judge M. Lynn Duryee
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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 COUNTY OF MARIN (the “County”) is a political subdivision of the State of California.
3. Respondent MARIN COUNTY DEPARTMENT OF AGRICULTURE, WEIGHTS & MEASURES (the “Department”) is an agency of the County.
4. This is an action seeking a writ of mandate to set aside, void, annul, repeal, and

1 terminate implementation and enforcement of Marin County Ordinance No. 3553 “regulating
2 retail establishments provision of single use carryout bags” (the “Ordinance”) that was adopted
3 by the County Board of Supervisors (the “Board”) on January 25, 2010. A true and correct copy
4 of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference.

5 5. The Ordinance provides that on and after January 1, 2012, “stores” (as defined in
6 the Ordinance) may not provide plastic carryout bags (“plastic bags”) to consumers and must
7 charge at least 5 cents for paper carryout bags (“paper bags”).

8 6. The Ordinance is a “project” subject to CEQA. (CEQA Guidelines
9 §15378(a)(1).)

10 7. The County violated the California Environmental Quality Act (“CEQA”) by
11 failing to complete and certify an EIR prior to adopting the Ordinance.

12 8. The County is the lead agency for the project, responsible for compliance with
13 CEQA, including but not limited to preparation of an Environmental Impact Report (“EIR”).

14 9. The Ordinance states that the Department is responsible for its implementation
15 and enforcement.

16 10. 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 11. The DOE Respondents include, but are not limited to, any and all of the cities
23 and towns in the County that adopt ordinances or other measures as part of or pursuant to the
24 project without first completing and certifying an EIR, including but not limited to the City of
25 San Rafael.

26 12. Petitioner is informed and believes that at all times relevant to the allegations
27 herein, each Respondent, including the DOE Respondents, were the employees, agents, or
28 partners of each of the other Respondents, and were at all times acting within the purpose and

1 scope of their, agency or partnership, or at the direction of the other Respondents.

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

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

5 **STANDING**

6 15. Petitioner is a non-profit environmental campaign organization that was formed
7 on June 3, 2008.

8 16. Petitioner was formed and exists for the purpose of responding to environmental
9 misinformation about plastic bags and ensuring that the environmental impacts of banning
10 plastic bags are made known to decision-makers and the public, in the public interest.

11 17. Environmental misinformation about plastic bags is a serious problem that
12 impacts the decision-making process about whether to ban plastic bags. An editorial in *The*
13 *Times* (London) published on March 8, 2008 states:

14 "There is a danger that the green herd, in pursuit of a good cause,
15 stumbles into misguided campaigns.... Analysis without facts is
16 guesswork. Sloppy analysis of bad science is worse. Poor interpretation
17 of good science wastes time and impedes the fight against obnoxious
18 behavior. There is no place for bad science, or weak analysis, in the
19 search for credible answers to difficult questions.... Many of those who
20 have demonized plastic bags have enlisted scientific study to their cause.
21 By exaggerating a grain of truth into a larger falsehood, they spread
22 misinformation and abuse the trust of their unwitting audiences."

20 18. David Laist, a senior policy analyst with the federal Marine Mammal
21 Commission, has stated:

22 "In their eagerness to make their case [against plastic bags], some of the
23 environmental groups make up claims that are not really supportable."

24 19. The Chief Scientist of the Scripps 20-day expedition to study marine debris in
25 the Pacific Ocean including plastic bags has stated:

26 "Misinformation on this issue is rampant."

27 20. As a result of such misinformation, plastic bags have become a matter of
28 significant public concern.

21. The County is guilty of spreading environmental myths and misinformation

1 about plastic bags. Three examples are given below.

2 22. The first example is a letter dated December 7, 2010 from the Department to the
3 Board regarding the proposed Ordinance which states as follows:

4 “On April 25, 2007, the SW-JPA AB 939 Local Task Force report cited
5 plastic bags as a major solid waste issue in Marin. It reported that plastic
6 bags had no recycling markets, took 500 years to decompose, and posed
7 a hazard to the environment as bag litter is ‘... responsible for the death
8 of a million sea birds and 100,000 marine mammals annually
9 worldwide.’”

10 23. In fact, the allegation that 100,000 sea mammals and a million seabirds are killed
11 each year by plastic bags is untrue. An article in *The Times* (London) in an article published on
12 March 8, 2008 states:

13 “Scientists and environmentalists have attacked a global campaign to ban
14 plastic bags which they say is based on flawed science and exaggerated
15 claims.

16 The widely stated accusation that the bags kill 100,000 animals and a
17 million seabirds every year are false, experts have told *The Times*. They
18 pose only a minimal threat to most marine species, including seals,
19 whales, dolphins and seabirds....

20 They “don’t figure” in the majority of cases where animals die from
21 marine debris, said David Laist, the author of a seminal 1997 study on
22 the subject. Most deaths were caused when creatures became caught up
23 in waste produce. “Plastic bags don’t figure in entanglement,” he said.
24 “The main culprits are fishing gear, ropes, lines and strapping bands.
25 Most mammals are too big to get caught up in a plastic bag.”

26 He added: “The impact of bags on whales, dolphins, porpoises and seals
27 ranges from nil for most species to very minor for perhaps a few species.
28 For birds, plastic bags are not a problem either.”

The central claim of campaigners is that the bags kill more than 100,000
marine mammals and one million seabirds every year. However, this
figure is based on a misinterpretation of a 1987 Canadian study in
Newfoundland, which found that, between 1981 and 1984, more than
100,000 marine mammals, including birds, were killed by discarded nets.
The Canadian study did not mention plastic bags.

Fifteen years later in 2002, when the Australian Government
commissioned a report into the effects of plastic bags, its authors
misquoted the Newfoundland study, mistakenly attributing the deaths to

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“plastic bags”.

The figure was latched on to by conservationists as proof that the bags were killers. For four years the “typo” remained uncorrected. It was only in 2006 that the authors altered the report, replacing “plastic bags” with “plastic debris”. But they admitted: “The actual numbers of animals killed annually by plastic bag litter is nearly impossible to determine.”

In a postscript to the correction they admitted that the original Canadian study had referred to fishing tackle, not plastic debris, as the threat to the marine environment.

Regardless, the erroneous claim has become the keystone of a widening campaign to demonise plastic bags.

David Santillo, a marine biologist at Greenpeace, told The Times that bad science was undermining the Government’s case for banning the bags. “It’s very unlikely that many animals are killed by plastic bags,” he said. “The evidence shows just the opposite. We are not going to solve the problem of waste by focusing on plastic bags....”

A 1968 study of albatross carcasses found that 90 per cent contained some form of plastic but only two birds had ingested part of a plastic bag.

Professor Geoff Boxshall, a marine biologist at the Natural History Museum, said: “I’ve never seen a bird killed by a plastic bag. Other forms of plastic in the ocean are much more damaging. Only a very small proportion is caused by bags.”

24. The U.S. National Oceanic and Atmospheric Administration states as follows:

Question: “Is it true that 100,000 marine mammals and/or sea turtles die each year due to marine debris/plastics/plastic bags?”

Answer: “We were able to find no information to support this statement. An erroneous statement attributing these figures to plastic bags was published in a 2002 report published by the Australian Government; it was corrected in 2006.”

Question: “Is it true that marine debris kills a million seabirds each year?”

Answer: “This statement is currently unknown. We are so far unable to find a scientific reference for this figure. The closest we have found is “214,500 to 763,000 seabirds are killed annually incidental to driftnet fishing by Japanese fishermen in the North Pacific Ocean (US

1 Department of Commerce, 1981)” from Laist, 1987.”

2 25. The second example is in the same letter where the Department cites a local
3 report that “plastic bags had no recycling markets.”

4 26. In fact plastic bags are readily recyclable in Marin County and throughout
5 California by being deposited in plastic bag recycling bins that are required to be located at all
6 supermarkets and other AB 2449 stores. (Pub. Res. Code §§42250-57.) Under AB 2449, which
7 was enacted into law in 2006 and took effect in July 2007, “all plastic bags collected by the
8 store shall be collected, transported, and recycled in a manner that does not conflict with the
9 local jurisdiction's source reduction and recycling element.” There are many markets for
10 recycled plastic bags deposited in the bins, including Trex, AERT, and Hilex. The County is by
11 its own action making plastic bags non-recyclable by banning plastic bags, because stores that
12 do not provide plastic bags may remove the plastic bag recycling bins. (Pub. Res. Code §§
13 42250(e), 42251, 42252.)

14 27. The third example is a Marin County Bring Your Own Bag leaflet about plastic
15 bags that is part of the County’s document appendix in support of the Ordinance. BYOB Marin,
16 which issued the leaflet as part of its anti-plastic bag campaign, is a project of the County,
17 EcoMom Alliance, Green Sangha, iReuse and Teens Turning Green. The leaflet states as
18 follows:

19 “Certain chemicals found in plastics (especially BPA, phthalates, PFOA,
20 PFOs, polystyrene, and additives such as antimony, cadmium, and lead)
21 are associated with a who’s who of modern disorders, including asthma,
22 cancer, diabetes, obesity, premature puberty, and reproductive failure.”

22 28. In fact plastic bags do not contain any of those chemicals.

23 29. Petitioner is the only organization that has responded to the above instances of
24 misinformation by the County. (See Exhibit B attached hereto.) Other “environmental
25 organizations” have remained silent.

26 30. Petitioner performs a crucial and indispensable role in ensuring that
27 environmental truth is not compromised or lost when environmental initiatives are being
28 considered by public agencies.

31. Petitioner’s members include U.S. citizens and California companies involved in

1 plastic bag manufacturing and distribution. Three such companies are Grand Packaging, Inc.
2 doing business as “Command Packaging”, Crown Poly, Inc., and Elkay Plastics Co., Inc. They
3 were incorporated in California are in good standing. They have been members of Petitioner
4 since 2008.

5 32. Chandler Hadraba is a U.S. citizen. He has been a member of Heal the Bay since
6 August 2008. Heal the Bay is one of the leading organizations campaigning for the banning of
7 plastic bags. He has been a member of Petitioner since September 2008. He became a member
8 of Petitioner because he was concerned about the environmental misinformation being
9 disseminated by anti-plastic bag activists, including Heal the Bay. He has no financial stake in
10 the outcome of this litigation.

11 33. Petitioner and all of Petitioner’s members are “persons” entitled to file an action
12 under CEQA. "Person" includes any person, firm, association, organization, partnership,
13 business, trust, corporation, limited liability company, company. (CEQA Guidelines §15376.)

14 34. Petitioner has demanded that California cities and counties complete and certify
15 EIRs before banning plastic bags.

16 35. Petitioner maintains a website at www.savetheplasticbag.com to respond to
17 environmental misinformation about plastic bags and to address the environmental impacts of
18 plastic, paper, and reusable bags, for the benefit of decision-makers and the public.

19 36. According to CEQA Guidelines §15002, the “basic purposes of CEQA” include
20 the following:

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

23 B. Identify the ways that environmental damage can be avoided or significantly
24 reduced.

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

28 D. Disclose to the public the reasons why a governmental agency approved the

1 project in the manner the agency chose if significant environmental effects are involved.

2 37. Petitioner seeks to promote and enforce the aforementioned informational
3 purposes of CEQA in this action. Ascertaining the true facts about the environmental impacts of
4 projects and informing and disclosing those true facts to decision-makers and the public are
5 purposes that are within the zone of interests CEQA was intended to preserve and protect.

6 38. The question in this action is one of public right and the object of the action is to
7 enforce a public duty in the public interest.

8 39. Petitioner is interested as a citizen in having the public laws including CEQA
9 executed and the public duties and purposes in CEQA enforced.

10 40. Petitioner has a genuine and continuing interest in and concern for
11 environmental matters including environmental truth and for compliance with the CEQA
12 process.

13 41. Petitioner has a commitment to the subject matter of the public right being
14 asserted.

15 42. Petitioner coalition consists of or represents individuals beneficially
16 interested in this action who would find it difficult or impossible to seek vindication of their
17 own rights. No citizen who did not have the financial support of business interests could
18 reasonably be expected to incur the substantial cost of litigating against the County to enforce
19 CEQA. This is due to the fact that the environmental damage caused by increased distribution
20 of paper bags and reusable bags is general, widespread and universal rather than particularized
21 to particular persons or locations. Further, much of the environmental damage is caused outside
22 the County.

23 43. Broad and long-term environmental effects are involved when plastic bags are
24 banned. The environmental impacts include, but are not limited to, increased greenhouse gas
25 emissions and increased air and water pollution.

26 44. Prosecution of this action as a citizen's suit by Petitioner does not conflict with
27 other competing legislative or public policies.

28 45. Standing serves the important public policy in CEQA of disclosure of

1 environmental impacts to decision makers and the public.

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

5 47. Petitioner has standing as an association to bring this action, because (i) its
6 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner
7 seeks to protect in this lawsuit are germane to the organization’s purpose; and (iii) neither the
8 claims asserted herein, nor the relief requested, require participation of the members in this
9 lawsuit.

10 48. Loss of sales, damage to competitive interests, or other commercial or economic
11 harm are not part of Petitioner’s claims in this action. This action is being prosecuted solely and
12 exclusively for the protection of the environment in the public interest, including the promotion
13 of environmental truth.

14 49. Petitioner complied with Pub. Res. Code § 21177(a) and (b) by filing the
15 Objections attached hereto as Exhibit B.

16 50. Based on the foregoing, Petitioner has standing.

17 51. The Court of Appeal has confirmed that Petitioner has standing. (*Save The*
18 *Plastic Bag Coalition v. City of Manhattan Beach* (2010) 181 Cal.App.4th 521.) That case is
19 pending in the Supreme Court.

20 **STATEMENT OF FACTS**

21 52. On December 14, 2010, the Board held its first reading of the draft Ordinance.
22 At that time, it announced that it would hold a public hearing at its January 4, 2011 meeting.

23 53. On December 28, 2010, in accordance with Pub. Res. Code § 21177(a) and (b),
24 Petitioner timely asserted and submitted objections to the project alleging grounds for
25 noncompliance with CEQA, including failure to complete and certify an EIR, and objecting to
26 approval of the project (“Objections”). A true and correct copy of the Objections is attached
27 hereto as Exhibit B and incorporated herein by reference.

28 54. On January 4, 2011, the Board deferred the public hearing to its January 25,

1 2011 meeting.

2 55. On January 25, 2011, the Board held a meeting and public hearing. Petitioner
3 reasserted its Objections at the public hearing in its oral statement by counsel.

4 56. On January 25, 2011, following the conclusion of the public hearing, the Board
5 adopted the Ordinance, thereby banning plastic bags and requiring that stores charge at least a 5
6 cents for paper bags, with effect from January 1, 2012.

7 57. The County did not complete an Initial Study or complete and certify an EIR
8 prior to adopting the Ordinance.

9 **FIRST CAUSE OF ACTION**
10 **AGAINST BOTH RESPONDENTS**
11 **(CEQA – FAILURE TO COMPLETE AND CERTIFY AN EIR)**

12 58. Petitioner realleges and incorporates herein each and every allegation made
13 above.

14 59. The Ordinance states as follows:

15 “WHEREAS, the use of single-use paper bags result in greater (GHG)
16 emissions, atmospheric acidification, water consumption, and ozone
17 production than single use plastic bags.”

18 60. The Ordinance also states that all types of bags, plastic, paper, and reusable,
19 have “severe environmental impacts.”

20 61. The Ordinance will or might result in significant negative environmental impacts
21 as a result of a switch by consumers to paper bags and reusable bags.

22 62. In the Objections attached hereto as Exhibit B, Petitioner made a fair argument
23 that the Ordinance will or might result in significant negative environmental impacts as a result
24 of a switch by consumers to paper bags and reusable bags. Based thereon, Petitioner demanded
25 that the County complete and certify an EIR prior to adopting the Ordinance or any ordinance
26 banning plastic bags.

27 63. Each and every point and objection made in the Objections attached hereto as
28 Exhibit B is reasserted in support of this First Cause of Action as if fully restated herein.

64. Along with and as part of its Objections, Petitioner submitted the Franklin
Report, the Scottish Report, the Boustead Report, and the ULS Report. All of these reports

1 constitute substantial evidence that paper bags are far worse for the environment than plastic
2 bags.

3 65. The Scottish Report includes findings that the life cycle of paper bags results in:

- 4 • 3.3 times more emissions of greenhouse gases than plastic bags;
- 5 • 1.1 times more consumption of nonrenewable primary energy than plastic bags;
- 6 • 4.0 times more consumption of water than plastic bags;
- 7 • 1.9 times more acid rain than plastic bags;
- 8 • 1.3 times more negative air quality than plastic bags;
- 9 • 14.0 times more water body eutrophication than plastic bags; and
- 10 • 2.7 times more solid waste production than plastic bags.

11 66. The Scottish Report also includes the following finding:

12 “[A] paper bag has a more adverse impact than a plastic bag for most of
13 the environmental issues considered. Areas where paper bags score
14 particularly badly include water consumption, atmospheric acidification
15 (which can have effects on human health, sensitive ecosystems, forest
decline and acidification of lakes) and eutrophication of water bodies
(which can lead to growth of algae and depletion of oxygen).”

16 67. Los Angeles County, the City of San Jose, and the City of Santa Monica have
17 banned plastic bags. Prior to adopting their ordinances, they completed and certified EIRs. The
18 EIRs included analyses of the minimum amount of a paper bag fee that would be required to
19 offset the environmental impacts of paper bags.

20 68. Based on the EIRs, they have required in their ordinances that stores charge the
21 following minimum fees for paper bags:

- 22 • Los Angeles County: 10 cents
- 23 • San Jose: 10 cents initially, automatically increasing to 25 cents in 2014
- 24 • Santa Monica: 10 cents

25 In contrast, Marin County’s Ordinance which was adopted without an EIR requires only a 5-
26 cent minimum fee for paper bags.

27 69. Marin County Supervisor Charles McGlashan, who is spearheading the project,
28 claimed in an interview with the MarinScope Newspaper published on January 12, 2011 and at

1 the Board meeting on January 25, 2011 that the lower fee is justified because it sends a “signal”
2 to break “bad habits.”

3 70. Sending such a “signal” does not eliminate the possibility that the Ordinance will
4 or might result in significant negative environmental impacts as a result of a switch by
5 consumers to paper bags.

6 71. Los Angeles County decided to impose a 10-cent fee on paper bags because a
7 straight switch from plastic to paper bags could not be environmentally justified according to its
8 EIR.

9 72. The Los Angeles County EIR determined that even a 10-cent fee on paper bags
10 and promoting and distributing reusable bags would not be sufficient to ensure that there would
11 be no significant negative environmental impacts caused by a shift from plastic to paper. The
12 EIR states:

13 “Based on a conservative analysis, the County has determined that
14 cumulative indirect [greenhouse gas] emissions resulting from
15 implementation of the recommended ordinances will have the potential
16 to result in significant unavoidable impacts even with implementation of
17 [a paper bag fee and promotion and distribution of reusable bags], which
18 will be expected to reduce significant adverse impacts to GHG emissions
19 to the maximum extent feasible.”

20 73. The Los Angeles County EIR determined that each and every polypropylene and
21 cotton reusable bag distributed in Los Angeles County must be used at least 104 times before
22 delivering environmental benefits compared to plastic bags.

23 74. As banning plastic bags, imposing a fee on paper bags, and promoting and
24 distributing reusable bags would not avoid significant negative environmental impacts, the Los
25 Angeles County Board of Supervisors on November 16, 2010 adopted a “Statement of
26 Overriding Considerations” to enable adoption of its ordinance notwithstanding the findings in
27 the EIR.

28 75. There are many deficiencies in the Los Angeles County EIR, including sweeping
and inaccurate statements designed to justify a plastic bag ban. Petitioner objected to those
deficiencies and continues to assert those objections. Nevertheless, Los Angeles County was
unable to avoid acknowledging and conceding that its ordinance will or may have significant

1 negative environmental impacts, even with a 10-cent fee on paper bags.

2 76. The Los Angeles County EIR is substantial evidence that the Marin County
3 Ordinance will or might result in significant negative environmental impacts as a result of a
4 switch by consumers to paper bags.

5 77. The Los Angeles County EIR is substantial evidence that the Marin County
6 Ordinance will or might result in significant negative environmental impacts as a result of a
7 switch by consumers to reusable bags as it cannot be seen with certainty that all polypropylene
8 and cotton reusable bags in Marin County will be used at least 104 times.

9 78. The Ordinance has a potential for resulting in either a direct physical change in
10 the environment or a reasonably foreseeable indirect physical change in the environment and is
11 therefore subject to CEQA. (Pub. Res. Code §21080(c), (d), §21151; CEQA Guidelines
12 §15378(a).)

13 79. Pursuant to the California Environmental Quality Act (“CEQA”), the County
14 was required to complete and certify and EIR before adopting the Ordinance. (Pub. Res. Code
15 §21080(c), (d), §21151; Guidelines §15378(a).)

16 80. CEQA Guidelines §15061(b)(3) states: “Where it can be seen with certainty that
17 there is no possibility that the activity in question may have a significant effect on the
18 environment, the activity is not subject to CEQA.” In this case, where the County has
19 acknowledged in the Ordinance that “the use of single-use paper bags result in greater (GHG)
20 emissions, atmospheric acidification, water consumption, and ozone production than single-use
21 plastic bags,” it cannot be seen with certainty that a 5-cent fee on paper bags or any other
22 provision in the Ordinance ensures that the Ordinance will not have a significant negative effect
23 on the environment.

24 81. The County has indicated that it might claim a categorical exemption under
25 CEQA as the basis for not preparing an Initial Study or EIR. At the time of preparing this
26 Petition, the County has made no official statement that it is relying on a categorical exemption
27 and it has not filed a Notice of Exemption with the County Clerk or the State Clearinghouse
28 pursuant to CEQA Guidelines §15062. However, if an objector makes a fair argument that a

1 project may have a significant negative impact on the environment, a city or county may not
2 rely on a categorical exemption. Petitioner has made such a fair argument. Therefore, any claim
3 of exemption by the County is invalid.

4 82. According to the Ark newspaper published on February 2, 2011, Supervisor
5 McGlashan said that the County had calculated that an EIR would cost taxpayers \$50,000 to
6 \$100,000, while a possible lawsuit would cost about \$5,000. This is not a valid reason for
7 refusing to prepare an EIR.

8 83. The County's failure and refusal to complete and certify an EIR prior to adopting
9 the Ordinance was a prejudicial abuse of discretion in that the County did not proceed in the
10 manner required by CEQA.

11 84. Having acknowledged the environmental impacts of increased use of paper bags
12 that will result from the Ordinance, the County had sufficient information before it to trigger the
13 need for an EIR.

14 85. Based on the foregoing and the Objections, the Ordinance is invalid, void, or
15 voidable.

16 86. This action is timely filed within 30 days of the filing of any Notice of
17 Exemption or within 180 days from the date of the County's decision to carry out or approve
18 the project. (Pub. Res. Code §21167.)

19 87. The environment will suffer irreparable harm if enforcement of the Ordinance is
20 not enjoined by a preliminary injunction during the pendency of this action.

21 **SECOND CAUSE OF ACTION**
22 **AGAINST RESPONDENT COUNTY OF MARIN**
23 **(DECLARATORY RELIEF)**

24 88. Petitioner realleges and incorporates herein each and every allegation made
25 above.

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

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

28 "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

1 reduce the consumption of single-use bags.”

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

4 “I am signing Assembly Bill 2449 that implements a statewide plastic
5 bag recycling program.

6 While this bill may not go as far as some local environmental groups and
7 cities may have hoped, this program will make progress to reduce
8 plastics in our environment. This measure requires every retail
9 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.

10 Because this is a statewide program the bill precludes locals from
11 implementing more stringent local requirements. The bill sunsets in six
12 years and this will allow locals time to develop additional programs or
the legislature to consider a more far reaching solution.”

13 92. AB 2449 sunsets and expires on January 1, 2013 (Pub. Res. Code §42257), one
14 year after the Ordinance takes effect on January 1, 2012.

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

20 94. Under AB 2449, stores that provide plastic bags to customers must install plastic
21 bag collection bins “for the purpose of collecting and recycling plastic carryout bags.” Pub. Res.
22 Code §42252(b). Any member of the public may use those bins to deposit any discarded plastic
23 carryout bags. If stores in the County are prohibited from handing out plastic bags, then all such
24 stores would be permitted to remove their plastic bag recycling bins. Such bins are used to
25 collect and recycle all types of plastic bags, including bags that are not prohibited under the
26 Ordinance, including but not limited to retail bags, produce bags, newspaper bags, and dry
27 cleaning bags. The statewide statutory scheme of AB 2449 would be defeated. There would be
28 no way to recycle such bags as they are not accepted in curbside recycling programs in the
County.

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

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

15 97. The definition of “stores” in the Ordinance includes retail establishments that are
16 defined as “stores” in AB 2449.

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

19 99. The Ordinance states as follows:

20 “The County of Marin recognizes carry-out bag regulation as a matter of
21 statewide interest and concern and is best applied uniformly throughout
22 the state.”

23 100. Based on the foregoing, the Ordinance is void and invalid.

24 101. Petitioner timely asserted this ground for invalidity in its Objections attached
25 hereto as Exhibit B and incorporated in this Second Cause of Action by reference.
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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for all of the following:

- A. A judgment that the ordinance is void and invalid as no EIR was completed and certified.
- B. A peremptory writ of mandate directing the County to set aside, void, annul, and terminate the Ordinance for failure to comply with CEQA, in accordance with Pub. Res. Code §21168.9.
- C. A preliminary injunction prohibiting the County from implementing and enforcing the Ordinance during the pendency of this action.
- D. A judgment and declaration that the Ordinance is preempted by AB 2449 and is therefore void and invalid.
- E. Costs of this action.
- F. For other such further relief as the Court may deem just and proper.

DATED: February 21, 2011

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; REQUEST FOR PRELIMINARY INJUNCTION; 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 San Francisco, California on February 21, 2011.

STEPHEN L. JOSEPH


