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16 **SAVE THE PLASTIC BAG COALITION**

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

19 **SAVE THE PLASTIC BAG COALITION,**
20 **an unincorporated association,**

21 **Petitioner,**

22 **v.**

23 **CITY OF MANHATTAN BEACH, a**
24 **municipal corporation; CITY COUNCIL OF**
25 **MANHATTAN BEACH, collectively and in**
26 **their official capacities; and DOES 1-20,**
27 **inclusive,**

28 **Respondents.**

) Case No. BS116362
)
) Action filed: August 12, 2008
)
) Assigned to the Honorable David Yaffe
) Dept. 86
)
) **PETITIONER’S NOTICE OF MOTION**
) **AND MOTION FOR PRELIMINARY**
) **INJUNCTION STAYING PLASTIC BAG**
) **ORDINANCE; DECLARATIONS OF**
) **STEPHEN L. JOSEPH, PETER M.**
) **GRANDE AND CATHERINE BROWNE**
)
) [Request For Judicial Notice, Exhibits and
) Proof of Service filed separately herewith]
)
) Date: December 18, 2008
) Time: 9:30 a.m.
) Dept: 86
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

NOTICE IS HEREBY GIVEN that on December 18, 2008 in Department 86 of the above-entitled Court located at 111 North Hill Street, Los Angeles, CA 90012, Petitioner Save The Plastic Bag Coalition will and hereby does move for a preliminary injunction to stay enforcement of City Of Manhattan Beach Ordinance No. 2115 that is the subject of this case.

If the motion is granted, Petitioner requests that Respondents be ordered to inform each business in the City of Manhattan Beach affected by the Ordinance, in writing and within five calendar days, that a preliminary injunction has been issued and provide each of them with a copy of the court's order.

The motion is and will be based on the following grounds:

- A. There is a likelihood and reasonable probability that Petitioner will prevail on the merits.
- B. Petitioner will suffer greater injury from denial of the injunction than Respondents will suffer from its grant.

The motion will be and is based on the supporting Memorandum of Points and Authorities appended hereto, the supporting declarations, the supporting request for judicial notice, the supporting exhibits, and all the papers filed in this case.

DATED: November 18, 2008 **STEPHEN L. JOSEPH**

Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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- *Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster* (1997) 42 Cal.App.4th 1165
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- A. Manhattan Beach Ordinance No. 2115, adopted July 15, 2008.
- B. Oakland Case tentative decision granting writ of mandate.
- C. Oakland Case judgment granting peremptory writ of mandate.
- D. *London Times* editorial dated March 8, 2008.
- E. Californians Against Waste website.
- F. Manhattan Beach Staff Report dated June 3, 2008
- G. Petitioner’s June 3, 2008 objections.
- H. *London Times* article dated March 8, 2008 filed with Petitioner’s June 3, 2008 objections.
- I. *Easy Reader* article, June 5, 2008.
- J. Petitioner’s June 10, 2008 objections.
- K. Draft Initial Study/Environmental Checklist dated June 12, 2008.
- L. Petitioner’s June 18, 2008 objections.
- M. Scottish Report.
- N. ULS Report.
- O. Manhattan Beach Staff Report dated July 1, 2008 (without attachments).
- P. Final Initial Study/Environment Checklist (including Negative Declaration) that was an Attachment A to the July 1, 2008 Staff Report.
- Q. Swedish report that was attached to Manhattan Beach Staff Report dated July 1, 2008. Page 48 was missing from the attachment at the time of the July 1, 2008 hearing.
- R. Santa Monica City Council Report dated February 26, 2008.
- S. Petitioner’s July 1, 2008 supplemental objections including missing page 48 of Swedish report and website pages showing that Swedish report commissioned by paper industry.
- T. Letter from City to Manhattan Beach restaurant owners dated October 30, 2008.
- U. ULS Field Report on City of San Francisco Plastic Bag Ban dated September 22, 2008.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner has filed a petition for a writ of mandate to annul City of Manhattan Beach
4 Ordinance No. 2115 (the “Ordinance”), which bans plastic carryout bags (“plastic bags”).
5 (Ordinance is Exh. A) It was adopted by Respondents (the “City”) on July 15, 2008. (Admitted,
6 Answer ¶1) It takes effect on February 28, 2009 for grocery stores, food vendors, restaurants,
7 pharmacies and city facilities and six months thereafter for other businesses. (Exhs. A, T)

8 The basis for the Petition is that the City failed to prepare an Environmental Impact
9 Report (“EIR”) pursuant to California Environmental Quality Act (“CEQA”). Petitioner hereby
10 moves for a preliminary injunction staying the Ordinance pending final disposition of this case.

11 If the motion is granted, Petitioner requests that the City be ordered to inform each
12 business in the City of Manhattan Beach affected by the Ordinance, in writing and within five
13 calendar days, that the injunction has been issued and provide them with a copy of the order.

14 This court’s decision is greatly simplified by an Alameda County Superior Court ruling
15 on this issue. In July 2007, the City of Oakland adopted an ordinance banning plastic bags.
16 (Admitted, Answer ¶1) It was in all relevant respects identical to the Manhattan Beach
17 Ordinance. A coalition of plastic bag manufacturers filed a petition for writ of mandate against
18 the City of Oakland because the city had failed to prepare an EIR pursuant to CEQA. *Coalition*
19 *To Support Plastic Bag Recycling v. City of Oakland, et al.*, Case No. RG07-339097 (“Oakland
20 Case”).¹

21 In May 2008, the Alameda Superior Court issued a writ of mandate invalidating the
22 Oakland ordinance (“Oakland Decision”). (Exh. B.) It found that there was a possibility that the
23 ordinance would have a significant environmental impact, because paper is worse for the
24 environment and banning of plastic bags would result in increased paper bag usage. The
25 decision was not appealed.

26 While the ruling of the Alameda County Superior Court is not binding on this Court, it
27 should nevertheless be highly persuasive as to Petitioner’s likelihood of success on the merits.

28 _____
¹ The filings in the Oakland case can be viewed at <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>.
Enter case number RG07339097 (case sensitive).

1 **II. STATEMENT OF FACTS**

2 **The Petitioner**

3 For several years, plastic bags have been the subject of an intense national and
4 international vilification campaign by activists. It is Petitioner’s contention that these activists
5 have used myths, misinformation, and exaggerations to promote their goal of banning plastic
6 bags. On March 8, 2008, an editorial in the London Times (Exh. D) stated as follows:

7 Many of those who have demonized plastic bags have enlisted
8 scientific study to their cause. By exaggerating a grain of truth into a
9 larger falsehood they spread misinformation, and abuse the trust of
their unwitting audiences.

10 One prominent environmental group, Californians Against Waste, states on its website
11 that “plastic bag manufacturers may indeed be behind a vast global conspiracy aimed at
12 increasing the proliferation of plastic bag litter and waste.” (Exh. E) This absurd allegation
13 exemplifies the bias and hysteria about plastic bags and the plastic bag industry.

14 Petitioner was formed on June 3, 2008 to respond to the anti-plastic bag misinformation
15 campaign. Petitioner maintains an information website at www.savetheplasticbag.com. No
16 plastic industry studies are cited on the website. All citations on the website are to reports by
17 governmental entities, environmental groups, or independent organizations.

18 Petitioner believes that EIRs will force governmental entities to make decisions about
19 plastic bags with the benefit of accurate information instead of myths and misinformation
20 disseminated by activists. “Only by requiring [an agency] to fully comply with the letter of the
21 law can a subversion of the important public purposes of CEQA be avoided, and only by this
22 process will the public be able to determine the environmental and economic values of their
23 elected and appointed officials, thus allowing for appropriate action come election day should a
24 majority of the voters disagree.” *People v. County of Kern* (1974) 39 Cal. App. 3d 830, 842.

25 Petitioner strongly believes that anti-plastic bag campaigners, including the staff and the
26 City Council of Manhattan Beach, are hearing only what they want to hear about plastic bags
27 and disregarding the rest. Petitioner believes that they have been swept up by anti-plastic bag
28 fervor, symbolism, and political correctness and are refusing to examine, in good faith and with

1 an open mind, the unintended consequences of banning plastic bags.

2 Petitioner is an unincorporated association. Its members include plastic bag
3 manufacturers and distributors directly and indirectly affected and prejudiced by the Ordinance.
4 One member has supplied plastic bags to 44 businesses in the City including grocery stores,
5 food vendors, restaurants and pharmacies. These are continuing and potential customers for that
6 member that will be lost if the Ordinance takes effect.² Grande Decn. ¶19.

7 **The process leading to the Ordinance**

8 On June 3, 2008, City staff presented a Staff Report with a proposed ordinance to ban
9 plastic bags. (Exh. F) According to the Staff Report, the purpose was to promote the
10 “sustainability of our environment.” The Staff Report was a totally one-sided anti-plastic bag
11 advocacy document and not an objective or accurate assessment of the environmental impact of
12 banning plastic bags. The report contained many of the myths, misinformation and
13 exaggerations that have been published about plastic bags on various websites.

14 On June 3, 2008, Petitioner filed objections to the Staff Report and addressed the myths
15 and misinformation therein. (Exh. G) Petitioner demanded that an EIR be prepared. Petitioner
16 identified ways in which paper bags are worse for the environment than plastic bags. Petitioner
17 also filed the Oakland Decision and a London Times article entitled: “Series of blunders turned
18 the plastic bag into global villain.” (Exhs. B, H)

19 A Council meeting was held on June 3, 2008, following receipt by Respondents of
20 Petitioner’s letter. [Admitted, Answer ¶1] The following exchange took place on the record:

21 City Attorney: [Save The Plastic Bag Coalition] have raised in their
22 letter what’s called in CEQA terminology a fair argument that in
23 fact there could be a negative impact from adopting this
ordinance....

24 City Attorney: Oakland did pretty much what we are proposing
25 doing, that is relying on an exemption that is called the common
26 sense exemption....

27 _____
28 ² Petitioner has also filed a petition in this court against Los Angeles County demanding that it prepare an EIR prior to implementing its anti-plastic bag phased-ban program. Case No. BS115845 (assigned to Judge James C. Chalfant). Judge Chalfant has declined to consolidate the cases. Petitioner is requesting that Dept. 86 take judicial notice of that case in support of this motion.

1 City Attorney: Certainly if we could beef up the record we may well
2 be able to proceed.... As long as [the Initial Study] is not obviously
3 flawed, even if the judge believes that the study that we rely on is
4 inferior to the one that they've introduced, it doesn't make any
5 difference. It's still substantial evidence.

6

7 Lindy Coe-Juell (staff): I don't know that we would go to a full EIR
8 in our study....

9 City Attorney: We can do it in two weeks.

10 Council Member: Seriously?

11 City Attorney: Yeah I don't think that we would need an EIR for
12 this. They've just simply raised an issue. It would depend on what
13 information is out there. But if we can come up with studies that
14 contradict the argument they've made about paper bags being more
15 negative to the environment than plastic bags then I think we can
16 move forward rather quickly on it. What we are looking for is
17 studies that say why plastic is bad.

18 On June 5, 2008, the following report appeared in a local publication (Exh. I):

19 [Manhattan Beach] Councilman Jim Aldinger said the [Save The
20 Plastic Bag Coalition] was hijacking environmental law, harboring
21 ulterior motives other than the improvement of the environment.
22 "Using CEQA for this purpose is ridiculous," he said.

23 On June 10, 2008, Petitioner filed a letter with the City objecting to the City Attorney's
24 comments quoted above. [Exh. J; Admitted, Answer ¶1]

25 On June 12, 2008, the City issued a Draft Initial Study ("Initial Study"). (Exh. K) It
26 found (at 2) the proposed ordinance "could not have a significant effect on the environment"
27 and stated that a Negative Declaration would be prepared.³ [Admitted, Answer ¶1] The final
28 Initial Study and Negative Declaration were identical in all material respects. (Exh. P)

Regarding paper bags, the Initial Study stated as follows:

Page 9: There is a potential that the banning of plastic bags in the
City of Manhattan Beach may result in an increase in paper bag
usage. The proposed ordinance does require that all paper bags used
in the City at the point of sale be at least composed on 40%
recyclable material. However, it is well documented that the

³ Respondent "City of Manhattan Beach" is identified as the "lead agency" in the study. [Admitted, Answer ¶1]

1 manufacturer and distribution of paper bags can consume more
2 energy than plastic bags. This increased use of energy could have an
3 impact on the environment by increasing emissions from power
plants and possibly from trucks carrying the heavier bulkier bags.

4 *The City thereby conceded that there was a fair argument and a possibility that the proposed*
5 *ordinance will have a significant environmental effect.* However, the City made a *de minimis*
6 argument, which is discussed in Section C of the Arguments section below.⁴

7 On June 18, 2008, Petitioner filed formal objections to the proposed Negative
8 Declaration, again demanding that an EIR be prepared. (Exh. L) In support of the objections,
9 Petitioner filed two reports with the City: the Scottish Report and ULS Report. [Exhs. M and
10 N.) Admitted, Answer ¶1]

11 The Scottish Report, issued by the “Scottish Government” in 2005, contains an
12 environmental impact assessment on the effects of a proposed plastic bag levy in Scotland (the
13 “Scottish Report”). (Exh. M) The report states:

14 If only plastic bags were to be levied..., then studies and experience
15 elsewhere suggest that there would be some shift in bag usage to
16 paper bags (which have worse environmental impacts).

17 [A] paper bag has a more adverse impact than a plastic bag for most
18 of the environmental issues considered. Areas where paper bags
19 score particularly badly include water consumption, atmospheric
20 acidification (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).⁵

21 Paper bags are anywhere between six to ten times heavier than
22 lightweight plastic carrier bags and, as such, require more transport
23 and its associated costs. They would also take up more room in a
landfill if they were not recycled.

24 The Scottish Report contains the following comparison of the environmental metrics of
25 plastic bags and paper bags. (Exh. M at 23) The report takes into account the fact that a paper
26

27 ⁴ The term *de minimis* when used herein means insignificant.

28 ⁵ “Eutrophication” means the process by which a body of water becomes rich in dissolved nutrients, thereby
encouraging the growth and decomposition of oxygen-depleting plant life and resulting in harm to other organisms.

1 bag holds more than a plastic bag. According to the report, paper bags result in:

- 2 • 1.1 times more consumption of nonrenewable primary energy than plastic bags.
- 3 • 4.0 times more consumption of water than plastic bags.
- 4 • 3.3 times more emissions of climate changing greenhouse gases than plastic bags.
- 5 • 1.9 times more acid rain (atmospheric acidification) than plastic bags.
- 6 • 1.3 times more negative air quality (ground level ozone formation) than plastic bags.
- 7 • 14.0 times more water body eutrophication than plastic bags.
- 8 • 2.7 times more solid waste production than plastic bags.

9 One of the grounds in the June 18, 2008 objections was that the City had not addressed
10 *all* of the possible negative environmental effects identified in the Scottish and ULS reports.
11 (Exh. L at 2, ¶F) The Initial Study only mentioned increased energy and emissions without
12 quantifying them. It did not state what type of “emissions” were involved in paper production
13 or transportation. It did not mention water consumption, acid rain, ground level ozone
14 formation, water body eutrophication, solid waste production, or landfill space.

15 The ULS Report was issued in March 2008. (Exh. N) It analyzes the types of paper bags
16 required under San Francisco’s plastic bag ban ordinance, which defines paper bags in the same
17 manner as the Manhattan Beach Ordinance.⁶ It makes the following findings:

- 18 • Plastic bags generate 39% less greenhouse gas emissions than uncomposted paper bags,
19 and 68% less greenhouse gas emissions than composted paper bags.
- 20 • Plastic bags consume less than 6% of the water needed to make paper bags.
- 21 • Plastic bags consume 71% less energy during production than paper bags.
- 22 • Paper sacks generate almost five times more solid waste than using plastic bags.
- 23 • After four or more uses, reusable plastic bags are superior to all types of disposable bags
24 -- paper, polyethylene and compostable plastic -- across all significant environmental
25 indicators.

26 The ULS report concludes as follows (at 5):
27

28 _____
⁶ San Francisco, Cal., Ordinance 81-07, §1702, subd. (j) (“no old growth fiber ... 100% recyclable ... contains a minimum of 40% post-consumer recycled content”).

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

10 On July 1, 2008, the City published a second Staff Report. [Exh. O; Admitted, Answer
11 ¶1] Like the first Staff Report, it was a totally one-sided anti-plastic bag advocacy document.

12 The July 1, 2008 Staff Report cited and attached a study “prepared by an independent
13 Swedish Environmental Consulting Group” published in 2000, including metrics comparing
14 plastic and paper. (Exh. Q.) According to the July 1, 2008 Staff Report, the Swedish report
15 concluded that paper bags were better for the environment than plastic bags.

16 The City failed to mention that page 48 of the Swedish report was *missing* from the
17 copy attached to the July 1, 2008 Staff Report. Petitioner found page 48 on the Internet. (Part of
18 Exh. S; Joseph Decn. ¶34) Page 48 states that the Swedish report was prepared *on behalf of*
19 *European paper bag producers*. The following statement also appeared on missing page 48: “It
20 is noted that the products analyzed in this study are fundamentally different products to
21 checkout carrier bags – they are bigger bags.” In fact, the plastic bags that were the subject of
22 the Swedish report were approximately ten times thicker and heavier than plastic carryout bags.
23 *See Grande Decn. ¶14; Browne Decn. ¶13.*

24 On July 1, 2008, the Council held a meeting to vote on the proposed ordinance.
25 [Admitted, Answer ¶1] Before the vote, Petitioner’s counsel made public comments to the
26 Council and filed supplemental objections addressing the July 1, 2008 Staff Report. (Exh. S)
27 Petitioner objected to the City’s misinformation about the Swedish report and the omission of
28 crucially important page 48.

 The Ordinance was adopted by the City on July 15, 2008 and states as follows:

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

1 hereby adopted.

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

8 No EIR was prepared prior to the adoption of the Ordinance.⁷ [Admitted, Answer ¶1]

9 On October 30, 2008, the City sent a letter to restaurant owners advising them that the
10 ban will take effect on February 28, 2009 and that they must discontinue the use of all plastic
11 bags by that date. (Exh. T)

12 **III. STANDARD OF REVIEW**

13 The standard of review is whether the agency has abused its discretion. “Abuse of
14 discretion” exists if the agency failed to proceed in a manner required by law, or if its decision
15 was not supported by “substantial evidence” in the record. Pub. Res. Code §21168.5.

16 **IV. ARGUMENT**

17 **A. The Oakland Case Is In All Relevant Respects Identical To This Case**

18 The petitioner in the Oakland Case filed the Scottish Report and the ULS Report with
19 the City of Oakland in support of its demand for an EIR. Nevertheless, the Oakland asserted the
20 same two exemptions as Manhattan Beach: CEQA §15061(b)(3) and §15308.⁸ (See Exh. B)

21 **1. CEQA §15061(b)(3)**

22 CEQA §15061(b)(3), known as the “common sense exemption,” states: “Where it can
23 be seen *with certainty* that there is *no possibility* that the activity in question may have a
24 significant effect on the environment, the activity is not subject to CEQA.”

25 The Alameda Superior Court held that the burden was on the City of Oakland to
26 produce evidence to support its determination that it was absolutely certain that there was no

27 ⁷ In September 2008, ULS published a study on the impact of the plastic bag ban in San Francisco. (Exh. U) ULS
28 found that all food chains affected by the ordinance had switched to paper bags only. ULS also found that "very few
people" brought reusable bags to the store -- no more than in other cities. www.use-less-stuff.com.

⁸ 14 Cal. Code. Regs. Ch. 3 is referred to herein as “CEQA.”

1 possibility of a significant negative environmental effect. (Exh. B at 5.) The court cited and
2 followed *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117 in which the
3 Court of Appeal stated:

4 If legitimate questions can be raised about whether the project might
5 have a significant impact and there is any dispute about the
6 possibility of such an impact, the agency cannot find with certainty
7 that a project is exempt. (Exh. B at 6)

8 The court referred to a Scottish Report finding that plastic bags levy would result in a
9 25% switch to paper bags and that paper bags are worse for the environment than plastic bags.
10 (Exh. B at 8) The court observed that a 25% percent shift was conservative as applied to
11 Oakland, because Oakland was banning plastic bags rather than imposing a levy. (Exh. B at 9)
12 The court concluded that the findings of the Scottish Report “raise a reasonable inference that
13 an outright ban on [plastic bags] may result in increased use of paper bags.” (Exh. B at 9) The
14 court ruled as follows:

15 This evidence [the Scottish Report] is sufficient to defeat the
16 assertion of the “common sense exemption” because, with such
17 evidence as part of the record, the City cannot meet the standard that
18 there is no possibility that the Ordinance will cause a significant
19 environmental effect. (Exh. B at 10)

2. **CEQA §15308**

20 CEQA §15308 is a categorical exemption. It applies to “actions taken by regulatory
21 agencies, as authorized by state or local ordinance, to assure the maintenance, restoration,
22 enhancement, or protection of the environment where the regulatory process involves
23 procedures for protection of the environment.”

24 The court noted that CEQA §15300.2(c) contains an exception to the categorical
25 exemptions when there is a “reasonable possibility” that the activity will have a significant
26 effect on the environment due to “unusual circumstances.” (Exh B. at 11) The court further
27 noted that this is reviewed under the “fair argument” standard. *Citing, Banker’s Hill, Hillcrest,*
28 *Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249,
29 264, 265. (Exh. B at 11). The court ruled that the question is whether “on the basis of the whole
30 record, there was *no* substantial evidence that there would be a significant [environmental]

1 effect.” *Citing, Azusa Land Reclamation Company v. Main San Gabriel Basin Watermaster*
2 (1997) 42 Cal.App.4th 1165, 1202 (emphasis in original *Azusa* opinion). (Exh. B at 11) The
3 court concluded as follows:

4 A shift in consumer use from one environmentally damaging
5 product to another constitutes an “unusual circumstance” of an
6 activity that would otherwise be exempt from review under CEQA
7 as activity undertaken to protect the environment. (See, e.g., *Magan*
8 *v. County of Kings* (2002) 105 Cal.App.4th 468, 474.) The court also
9 finds that substantial evidence in the record supports at least a fair
argument that single use paper bags are more environmentally
damaging than single use plastic bags. [Citing Scottish Report and
ULS Report.] (Exh. B at 11-12)

10 **B. The City Cannot Rely On §15061(b)(3) and §15308**

11 The City cannot rely on §15061(b)(3) and §15308 for exactly the same reasons as
12 Oakland could not according to the Alameda Super Court. There is substantial evidence in the
13 record that supports a fair argument that (i) single use paper bags are more environmentally
14 damaging than single use plastic bags; and (ii) paper bag usage will increase. The City has not
15 satisfied the requirement of showing with *certainty* that there is *no possibility* that the
16 Ordinance will have a significant environmental effect.⁹

17 **C. The City Cannot Rely On A De Minimis Argument**

18 CEQA §15065(3) states that an EIR must be prepared if “the project has *possible*
19 environmental effects that are individually limited but cumulatively considerable.” CEQA
20 §15065(3) states that “cumulatively considerable” means that the “incremental effects of an
21 individual project are significant when viewed in connection with the effects of past projects,
22 the effects of other current projects, and the effects of probable future projects.” CEQA §15355
23 defines “cumulative impacts” as “two or more individual effects which, *when considered*
24 *together*, are considerable or which compound or increase other environmental impacts.”
25 CEQA §15355(b) states that “[c]umulative impacts can result from individually minor but
26 collectively significant projects taking place over a period of time.”

27 In *Communities for a Better Environment v. California Resources Agency*, (2002) 103
28

⁹ The Ordinance is a “project” according to CEQA §15378(a)(1).

1 Cal.App.4th 98, the court stated:

2 Cumulative impact analysis is necessary because the full
3 environmental impact of a proposed project cannot be gauged in a
4 vacuum. [Footnote] One of the most important environmental
5 lessons that has been learned is that environmental damage often
6 occurs incrementally from a variety of small sources. These sources
7 appear insignificant when considered individually, but assume
8 threatening dimensions when considered collectively with other
9 sources with which they interact. [*Id.* at 114.]

10 From *Kings County* and *Los Angeles Unified*, the guiding criterion
11 on the subject of cumulative impact is whether *any* additional effect
12 caused by the proposed project should be considered significant
13 given the existing cumulative effect. [*Id.* at 118.] (Emphasis added.)

14 The court stated that the agency must “focus on the combined effects of these impacts.” 103
15 Cal.App.4th at 121.

16 In the Initial Study, the City stated the population of the City is “only” 33,852 and there
17 are “only” 217 retail establishments which might use plastic bags. (Exh. K at 15). It stated:

18 Page 16: [I]t appears that any increase in the total use of paper bags
19 resulting from the proposed ban on plastic bags in Manhattan Beach
20 (and even considering it as a cumulative increase in the bans in
21 Malibu and San Francisco) would be relatively small with a minimal
22 or nonexistent increase in pollutants generated from production and
23 recycling. This is counterbalanced by a modest reduction in plastic
24 refuse being generated in a coastal region. No further investigation
25 is required. (Page 16) (Emphasis added). [See also page 20 of Initial
26 Study]

27 Page 21: While the ordinance would ban plastic shopping bags, it
28 would allow paper bags to be used Citywide. The ordinance will
require those paper bags to have 40% recycled content reducing
landfill demand and encouraging reduced use with increased costs
for paper bags. Since the substituted paper bags can also become
litter, education programs will be launched to encourage patrons to
choose and use reusable bags, and thereby reduce the total use of
single-use bags. The substitution of paper bags for plastic that does
occur, although larger in mass per square foot compared to plastic,
would not significantly increase landfill capacity since a larger
proportion of paper bags is recycled than plastic, substituted paper
bags will be at least 40% paper diverted from landfills, and the City
of Manhattan Beach represents a small proportion of regional
landfill users. No further investigation is required.

1 In response, Petitioner stated in its June 18, 2008 objections as follows (Exh. L at 9, ¶E):

2 The size of the city and the number of retail outlets have nothing to
3 do with whether the activity in question may have a significant
4 negative effect on the environment. If it were otherwise, then each
5 small city could avoid the preparation of an EIR, but the cumulative
6 effect of many small cities doing the same thing would be large. The
7 Coalition hereby makes a *fair argument* that it is *possible* that
banning plastic bags in a city with 217 retail outlets would have a
significant negative effect on the environment caused by a shift to
paper bags. (Emphasis in original.)

8 No sources, evidence, studies, measurements, calculations or metrics were cited for the
9 City's *de minimis* assertions. There was no determination of how many bags the 217 stores use.
10 The City did not say how it knew that the effects would be *de minimis* or what standards it was
11 using. It just decreed it by making declarative and unsubstantiated conclusory statements.

12 CEQA §15064(f) specifically addresses the kind of evidence that an agency may and
13 may not rely upon in determining whether there will be a significant effect:

14 Argument, speculation, unsubstantiated opinion or narrative, or
15 evidence that is clearly inaccurate or erroneous, or evidence that is
16 not credible, shall not constitute substantial evidence. Substantial
17 evidence shall include facts, reasonable assumptions predicated
upon facts, and expert opinion supported by facts.

18 CEQA §15064.7(a) states that an agency may develop "thresholds of significance." A
19 threshold of significance is an identifiable quantitative, qualitative or performance level of a
20 particular environmental effect, non-compliance with which means the effect will normally be
21 determined to be significant by the agency and compliance with which means the effect
22 normally will be determined to be less than significant. CEQA §15064.7(a) The City has not
23 developed any such thresholds of significance.

24 In the Initial Study when discussing pollutants (at 16), the City referred only to the
25 Malibu and San Francisco ordinances. Regarding the landfill issue (discussed at page 21 of the
26 Initial Study), it did not even mention Malibu and San Francisco. It did not mention anywhere
27 in the Initial Study a *major* phased ban program being implemented by Los Angeles County.
28 However, it referred to the Los Angeles County program in its June 3, 2008 Staff Report,
stating:

1 On January 22, 2008, the Los Angeles Board of Supervisors voted to
2 reduce plastic bag usage by enacting voluntary reductions of 30
3 percent and 65 percent respectively. If these targets are not met by
the deadlines, a mandatory ban may be implemented. (Exh. F at 3)

4 There was no reason for the City to exclude consideration or even any mention of the
5 Los Angeles County program in the Initial Study. This was a fatal omission.¹⁰

6 The Initial Study also failed to mention a City of Santa Monica staff recommendation to
7 ban plastic bags, that was attached to the City's July 1, 2008 Staff Report.¹¹ (Exh. R)

8 There are two further points:

- 9 1. The City referred to "pollutants" created by paper bags as being *de minimis*. However,
10 as stated in the Scottish and ULS Reports, the environmental effects of paper bags
11 include increased energy consumption, increased water consumption, and increased
12 solid waste production. *The City did not assert that those non-pollutant effects would be*
13 *"minimal or nonexistent."*
- 14 2. Second, the City stated that decreasing plastic bag "refuse" would counterbalance the
15 negative environmental effects of paper bags. That is a *non sequitur*. "Refuse" is not the
16 same thing as CO2 emissions, air or water pollution, energy usage, or water
17 consumption. The City was comparing apples and oranges.¹²

18 Petitioner presented a fair argument, based on substantial evidence, that increased paper
19 bag usage may have significant negative environmental effects, viewing the City alone and in
20 connection with other projects. *The City did not preclude that possibility.*

21 **D. A Preliminary Injunction Should Be Granted**

22 Petitioner requests preliminary injunctive relief to maintain the status quo while this
23 action is pending. There is no adequate remedy at law as the City has sovereign immunity.
24 *Wright v. State of California* (2004) 122 Cal.App.4th 659, 671.

25 _____
26 ¹⁰ Petitioner is filing herewith a request for judicial notice of its case against Los Angeles County pending in this
27 court. The administrative record has been lodged in that case containing full details of the county's program.

28 ¹¹ On November 5, 2008, the citizens of the Town of Fairfax in Marin County, California, approved Measure C
which was a ballot initiative to ban plastic carryout bags. www.smartvoter.org/2008/11/04/ca/mrn/meas/C/

¹² Petitioner strongly disputed the alleged positive environmental effects of banning plastic bags in its objections.

1 In *Robbins v. Superior Court* (1985) 38 Cal.3d 199, the court has held as follows:

2 At 206: The trial courts consider two interrelated questions in
3 deciding whether to issue a preliminary injunction: 1) are the
4 plaintiffs likely to suffer greater injury from a denial of the
5 injunction than the defendants are likely to suffer from its grant; and
6 2) is there a reasonable probability that the plaintiffs will prevail on
7 the merits.

8 At 205-06: [The trial court] must exercise its discretion ‘in favor of
9 the party most likely to be injured.’ [Citation]

10 There is a likelihood and reasonable probability that Petitioner will prevail on the
11 merits.

12 Petitioner will suffer greater injury from denial of the injunction than the City will suffer
13 from its grant. Petitioner admits the only environmental benefit to the City from banning plastic
14 bags may be “a modest reduction in plastic refuse.” (Exh. K at 16) The following damage to
15 Petitioner and the interests that it seeks to protect in this lawsuit are greater and more serious.

- 16 1. All but six of the retail stores affected by the Ordinance are small stores, according to
17 the Initial Study (Exh. K at 15). Typically, when small retail stores or restaurants buy
18 plastic carryout bags they usually purchase several months, sometimes up to two years,
19 worth of supply. To force them to stop using plastic carryout bags in February 2009 or
20 before would essentially mean they lose on their plastic carryout bag inventory plus pay
21 a higher price for paper bags. The plastic bag industry would not have the opportunity to
22 sell them plastic carryout bags again for as much as two years. (Grande Decn. ¶16;
23 Browne Decn. ¶15)
- 24 2. Chain supermarkets do not operate in only one city. For example, Kroger (Ralphs)
25 operates a district or region of which Manhattan Beach is one part. It is almost
26 impossible for a chain to operate differently in one city only. The most likely solution
27 by large chain retailers is that they will change the entire region to conform to the legal
28 requirements of one city in the region, or the retailer will have additional handling costs
for one city which will result in higher prices for the consumers of that city. (Grande
Decn. ¶17; Browne Decn. ¶16)

- 1 3. Supermarkets will remove their racks for holding and dispensing plastic carryout bags at
2 the checkouts. They would have to be reinstalled if Petitioner is successful in this
3 lawsuit. (Grande Decn. ¶18; Browne Decn. ¶17)
- 4 4. Command Packaging, which is a member of Petitioner coalition, has supplied plastic
5 carryout bags to 44 stores and restaurants in Manhattan Beach that would be subject to
6 the Ordinance, including grocery stores, food vendors, restaurants and pharmacies. All
7 of these stores and restaurants are continuing customers or potential customers for
8 plastic carryout bags manufactured by Command Packaging. Command Packaging will
9 lose all such customers and potential customers if Ordinance No. 2115 takes effect.
10 (Grande Decn. ¶19)
- 11 5. Businesses that have only used plastic carryout bags will have to purchase paper bags
12 including having their logos printed on them. (Grande Decn. ¶20; Browne Decn. ¶18)
- 13 6. Paper bags are approximately four to eight times more expensive than plastic carryout
14 bags, thereby causing retail stores and restaurants to incur unnecessary costs. (Grande
15 Decn. ¶21; Browne Decn. ¶19)
- 16 7. The environmental effects caused by an increased number of paper bags will increase,
17 including the environmental effects identified in the Scottish and ULS Reports. (Grande
18 Decn. ¶22; Browne Decn. ¶20)

19 **V. CONCLUSION**

20 WHEREFORE, Petitioner requests that this motion be granted.

21
22 DATED: November 18, 2008

STEPHEN L. JOSEPH

23
24
25
26 _____
27 Attorney for Petitioner
28 SAVE THE PLASTIC BAG COALITION

1 **DECLARATION OF STEPHEN L. JOSEPH**

2 I, Stephen L. Joseph, declare as follows:

- 3 1. I know all of the facts herein of my own personal knowledge, and if called upon as a
4 witness to this proceeding, I would and could competently testify thereto under oath.
- 5 2. I make this declaration in support of Petitioner’s Motion For Preliminary Injunction
6 Staying Plastic Bag Ordinance.
- 7 3. I am an attorney admitted to practice in the State of California.
- 8 4. I am counsel for Petitioner Save The Plastic Bag Coalition (“Petitioner”).
- 9 5. Petitioner also uses the name “SaveThePlasticBag.com.”
- 10 6. Petitioner is an unincorporated association. Its members include, but are not limited to,
11 plastic bag manufacturers and distributors directly and indirectly affected and prejudiced
12 by the Ordinance. Some of the member companies sell and distribute plastic bags to
13 retailers, restaurants, and other businesses in Manhattan Beach.
- 14 7. **Exhibit A** is a true and correct bag copy of City of Manhattan Beach Ordinance No.
15 2115, which is the subject of this action.
- 16 8. **Exhibit B** is a true and correct copy of the tentative decision granting writ of mandate
17 the Alameda County Superior Court in *Coalition To Support Plastic Bag Recycling v.*
18 *City of Oakland, et al.*, Case No. RG07-339097 (“Oakland Case”). I downloaded the
19 document from <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>. Enter
20 case number RG07339097 (case sensitive).
- 21 9. **Exhibit C** is a true and correct copy of the judgment granting peremptory writ of
22 mandate in the Oakland Case. I downloaded the document from
23 <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>. Enter case number
24 RG07339097 (case sensitive).
- 25 10. For several years, plastic bags have been the subject of an intense national and
26 international vilification campaign by various environmental groups. It is Petitioner’s
27 contention that these groups have used myths, misinformation, and exaggerations to
28 promote their goal of banning plastic bags.

1 11. **Exhibit D** is a true and correct copy of an editorial published in the London Times that I
2 downloaded at www.timesonline.co.uk/tol/comment/leading_article/article3508113.ece,
3 which states as follows:

4 Many of those who have demonized plastic bags have enlisted
5 scientific study to their cause. By exaggerating a grain of truth into a
6 larger falsehood they spread misinformation, and abuse the trust of
their unwitting audiences.

7 12. **Exhibit E** is a true and correct copy of a page from the Californians Against Waste
8 website that states that “plastic bag manufacturers may indeed be behind a vast global
9 conspiracy aimed at increasing the proliferation of plastic bag litter and waste.” I
10 downloaded the page at:

11 www.cawrecycles.org/blog/mark_murray/april_24_plastic_bag_conspiracy_revealed.

12 13. Petitioner was formed on June 3, 2008 to respond to the anti-plastic bag misinformation
13 campaign.

14 14. Petitioner maintains an information website at www.savetheplasticbag.com. No plastic
15 industry studies are cited on the website. All citations on the website are to reports by
16 governmental entities, environmental groups, or independent organizations.

17 15. Petitioner believes that preparation of EIRs will force governmental entities to make
18 decisions about plastic bags with the benefit of accurate information instead of myths
19 and misinformation.

20 16. Petitioner has also filed a petition for a writ of mandate against Los Angeles County
21 demanding that it prepare an EIR prior to implementing its anti-plastic bag phased-ban
22 program. *Save The Plastic Bag Coalition vs. County of Los Angeles, et al*, Los Angeles
23 Superior Court, Case No. BS 115845.

24 17. **Exhibit F** is a true and correct copy of the City of Manhattan Beach Staff Report dated
25 June 3, 2008.

26 18. On June 3, 2008, I filed a letter with Respondent City of Manhattan Beach (the “City”)
27 on Petitioner’s behalf. **Exhibit G** is a true and correct copy of that letter.

28 19. **Exhibit H** is a true and correct copy of an article published in the London Times that I

- 1 downloaded at www.timesonline.co.uk/tol/news/environment/article3508263.ece.
- 2 20. A City of Manhattan Beach Council meeting was held on June 3, 2008, following
3 receipt by Respondents of Exhibit G. Video and audio recordings of the meeting are
4 available at www.ci.manhattan-beach.ca.us/Index.aspx?page=1411.
- 5 21. I have listened to the audio recording of the June 3, 2008 meeting and have transcribed
6 part thereof as follows:
- 7 City Attorney: [Save The Plastic Bag Coalition] have raised in their
8 letter what's called in CEQA terminology a fair argument that in
9 fact there could be a negative impact from adopting this
10 ordinance....
- 11 City Attorney: Oakland did pretty much what we are proposing
12 doing, that is relying on an exemption that is called the common
13 sense exemption....
- 14 City Attorney: Certainly if we could beef up the record we may well
15 be able to proceed.... As long as [the Initial Study] is not obviously
16 flawed, even if the judge believes that the study that we rely on is
17 inferior to the one that they've introduced, it doesn't make any
18 difference. It's still substantial evidence.
19
- 20 Lindy Coe-Juell (staff): I don't know that we would go to a full EIR
21 in our study...."
- 22 City Attorney: We can do it in two weeks.
- 23 Council Member: "Seriously?"
- 24 City Attorney: "Yeah I don't think that we would need an EIR for
25 this. They've just simply raised an issue. It would depend on what
26 information is out there. But if we can come up with studies that
27 contradict the argument they've made about paper bags being more
28 negative to the environment than plastic bags then I think we can
move forward rather quickly on it. What we are looking for is
studies that say why plastic is bad."
22. On June 5, 2008, a report of the June 3, 2008 Council meeting appeared in an online
publication called *Easy Reader*. **Exhibit I** is a true and correct copy of that report.
23. On June 10, 2008, I filed a letter with the City on Petitioner's behalf. **Exhibit J** is
a true and correct copy of that letter.

- 1 24. On June 12, 2008, the City issued a Draft Initial Study/Environmental Checklist which
2 included a proposed Negative Declaration under the California Environmental Quality
3 Act (“CEQA”). **Exhibit K** is a true and correct copy of that document.
- 4 25. On June 18, 2008, I filed formal objections to the Draft Initial Study and proposed
5 Negative Declaration on Petitioner’s behalf. Exhibit L is a true and correct copy of those
6 objections. **Exhibit L** is a true and correct copy of those objections.
- 7 26. In support of said objections, I filed two reports with the City: the Scottish Report issued
8 in 2005 and the ULS Report issued in March 2008.
- 9 27. **Exhibit M** is a true and correct copy of said Scottish Report. I obtained the report at
10 www.scotland.gov.uk/Resource/Doc/57346/0016899.pdf.
- 11 28. **Exhibit N** is a true and correct copy of said ULS Report issued in March 2008. It is
12 entitled: “Review Of Life Cycle Data Relating To Disposable, Compostable,
13 Biodegradable, And Reusable Grocery Bags.” I obtained the report at [www.use-less-](http://www.use-less-stuff.com)
14 [stuff.com](http://www.use-less-stuff.com).
- 15 29. On July 1, 2008, the City published a second Staff Report. **Exhibit O** is a true and
16 correct copy of that report.
- 17 30. **Exhibit P** is a true and correct copy of the final Initial Study/Environmental Checklist
18 and Negative Declaration that the City issued with the July 1, 2008 Staff Report.
- 19 31. The July 1, 2008 Staff Report cited a study “prepared by an independent Swedish
20 Environmental Consulting Group” published in 2000, including metrics comparing
21 plastic and paper. According to the Staff Report, the Swedish report concluded that
22 paper bags were better for the environment than plastic bags.
- 23 32. I inspected the copy of the Swedish report attached to the July 1, 2008 Staff Report and
24 found that page 48 of the Swedish report was missing.
- 25 33. The City failed to mention in the July 1, 2008 Staff Report that page 48 of the Swedish
26 report was missing from the copy attached to the July 1, 2008 Staff Report.
- 27 34. I found page 48 of the Swedish report on the Internet. Page 48 states that the Swedish
28 report was prepared on behalf of European paper bag producers.

- 1 35. The following statement also appeared on page 48 of the Swedish report: “It is noted
2 that the products analyzed in this study are fundamentally different products to checkout
3 carrier bags – they are bigger bags.”
- 4 36. **Exhibit Q** is a true and correct copy of the Swedish report, including page 48 which I
5 have added.
- 6 37. **Exhibit R** is a true and correct copy of a City of Santa Monica staff report that was
7 attached to the July 1, 2008 City (Manhattan Beach) Staff Report.
- 8 38. On July 1, 2008, the Council held a meeting to vote on the proposed ordinance which I
9 attended.
- 10 39. Prior to the vote, I made public comments to the Council and filed supplemental
11 objections with the City addressing the July 1, 2008 Staff Report. **Exhibit S** is a true and
12 correct copy of those supplemental objections.
- 13 40. In my public comments and in said supplement objections, I objected to the City’s
14 misinformation about the Swedish report and the omission of important page 48 and
15 provided a copy of page 48 to the City.
- 16 41. I attached to said supplemental objections copies of two website pages identifying the
17 parties that commissioned the Swedish report as European paper producers: Eurosac and
18 CEPI Eurokraft. I downloaded the website pages at www.cepi-eurokraft.org and
19 www.eurosac.org. True and correct copies of those website pages are contained in
20 Exhibit S.
- 21 42. **Exhibit T** is a true and correct copy of a letter from the City to Manhattan Beach
22 restaurant managers and owners stating that the plastic bag ban will take effect starting
23 February 28, 2009.
- 24 43. **Exhibit U** is a true and correct copy of a ULS report issued in September 2008. It is
25 entitled: “A Qualitative Study of Grocery Bag Use in San Francisco.” I obtained a report
26 at www.use-less-stuff.com.
- 27
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1 I declare under penalty of perjury under the laws of the State of California that I have
2 read the forgoing, that the foregoing is true and correct and that I would be competent to so
3 testify.

4 Executed on November 18, 2008 at Tiburon, California.

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STEPHEN L. JOSEPH

1 **DECLARATION OF PETER M. GRANDE**

2 I, Peter M. Grande, declare as follows:

- 3 1. I know all of the facts herein of my own personal knowledge, and if called upon as a
4 witness to this proceeding, I would and could competently testify thereto under oath.
- 5 2. I make this declaration in support of Petitioner’s Motion For Preliminary Injunction
6 Staying Plastic Bag Ordinance (“Motion”).
- 7 3. Petitioner Save The Plastic Bag Coalition (“Petitioner”) was formed on June 3, 2008. I
8 have been the Chairman of Petitioner since that time.
- 9 4. I am also the Chief Executive Officer (CEO) of Grand Packaging, Inc., a California
10 corporation in good standing, doing business as Command Packaging (hereinafter
11 “Command Packaging”).
- 12 5. Command Packaging was formed on May 30, 1989. I have been the CEO of Command
13 Packaging since that time.
- 14 6. Command Packaging is and has been a member of the Petitioner since June 3, 2008.
- 15 7. Command Packaging has at all times since its formation manufactured, marketed and
16 sold plastic carryout bags to the grocery, restaurant and food industries.
- 17 8. Command Packaging markets and supplies plastic carryout bags to retail stores and
18 restaurants in the City of Manhattan Beach.
- 19 9. As CEO of Command Packaging, I have at all times been the primary manager and
20 supervisor of the company’s operations, including plastic carryout bag manufacturing,
21 marketing and sales.
- 22 10. I am knowledgeable and an expert on plastic carryout bag manufacturing, marketing and
23 sales to the grocery, restaurant and food industries.
- 24 11. I am knowledgeable and an expert on plastic carryout bag purchasing and usage by
25 retail stores and restaurants.
- 26 12. From 2006 to 2007, I was the Chairman of the Board of Directors of the California Film
27 Extruders and Converters Association (“CFECA”). CFECA is the leading trade
28 association representing California and Western U.S. and Western Canadian based

- 1 manufacturers of plastic film products, including plastic bags.
- 2 13. I have reviewed page 48 of the Swedish report, which is Exhibit Q to the Motion.
- 3 According to page 48, the Swedish report compared Low Density Polyethylene plastic
- 4 bags (“LDPE”) plastic bags with a thickness of 140 microns with paper bags.
- 5 14. A 140 micron bag is 5.6 mils thick. Plastic grocery and restaurant bags in the United
- 6 States are made of High Density Polyethylene (HDPE), LDPE, or Linear Low Density
- 7 Polyethylene (LLDPE) and are generally about 13 microns thick, which means that they
- 8 contain approximately 90% less material than the plastic bags studied in the Swedish
- 9 report. Such 140 micron thick plastic bags are not representative of plastic carryout bags
- 10 used in the United States.
- 11 15. Petitioner and its members will suffer the following greater injury from denial of the
- 12 Motion than the City of Manhattan Beach will suffer from its grant.
- 13 16. Typically, when small retail stores or restaurants buy plastic carryout bags they usually
- 14 purchase several months, sometimes up to two years, worth of supply. To force them to
- 15 stop using plastic carryout bags in February 2009 or before would essentially mean they
- 16 lose on their plastic carryout bag inventory plus pay a higher price for paper bags. The
- 17 plastic bag industry would not have the opportunity to sell them plastic carryout bags
- 18 again for as much as two years.
- 19 17. Chain supermarkets do not operate in only one city. For example, Kroger (Ralphs)
- 20 operates a district or region of which Manhattan Beach is one part. It is almost
- 21 impossible for a chain to operate differently in one city only. The most likely solution
- 22 by large chain retailers is that they will change the entire region to conform to the legal
- 23 requirements of one city in the region, or the retailer will have additional handling costs
- 24 for one city which will result in higher prices for the consumers of that city.
- 25 18. Supermarkets will remove their racks for holding and dispensing plastic carryout bags at
- 26 the checkouts. They would have to be reinstalled if Petitioner is successful in this
- 27 lawsuit.
- 28 19. Command Packaging has supplied plastic carryout bags to 44 stores and restaurants in

1 Manhattan Beach that would be subject to Ordinance No. 2115, including grocery
2 stores, food vendors, restaurants and pharmacies. All of these stores and restaurants are
3 continuing customers or potential customers for plastic carryout bags manufactured by
4 Command Packaging. Command Packaging will lose all such customers and potential
5 customers if Ordinance No. 2115 takes effect. The identities of the 44 customers are
6 proprietary and confidential, but will be disclosed if requested in accordance with a
7 protective order.

8 20. Businesses that have only used plastic carryout bags will have to purchase paper bags
9 including having their logos printed on them.

10 21. Paper bags are approximately four to eight times more expensive than plastic carryout
11 bags, thereby causing retail stores and restaurants to incur unnecessary costs.

12 22. The environmental effects caused by an increased number of paper bags will increase,
13 including the environmental effects identified in the Scottish and ULS Reports that are
14 attached hereto as Exhibits M and N to the Motion.

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

18

19 Executed on November 11, 2008 at Los Angeles, California.

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PETER M. GRANDE

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1 **DECLARATION OF CATHERINE BROWNE**

2 I, Catherine Browne, declare as follows:

- 3 1. I know all of the facts herein of my own personal knowledge, and if called upon as a
4 witness to this proceeding, I would and could competently testify thereto under oath.
- 5 2. I make this declaration in support of Petitioner’s Motion For Preliminary Injunction
6 Staying Plastic Bag Ordinance (“Motion”).
- 7 3. I am and have been since approximately 1996 the General Manager of Crown Poly, Inc.,
8 a California corporation in good standing, doing business as “Crown Poly.”
- 9 4. Crown Poly was formed on October 8, 1991. I was the Operations Manager of Crown
10 Poly at that time.
- 11 5. Crown Poly is and has been a member of the Petitioner since July 2008.
- 12 6. Crown Poly has at all times since its formation manufactured, marketed and sold plastic
13 bags to the grocery, restaurant and food industries.
- 14 7. Crown Poly has at all times since 2004 manufactured, marketed and sold plastic
15 carryout bags to the grocery, restaurant and food industries.
- 16 8. As General Manager of Crown Poly, I have at all times been the primary manager and
17 supervisor of the company’s operations, including plastic carryout bag manufacturing,
18 marketing and sales.
- 19 9. I am knowledgeable and an expert on plastic carryout bag manufacturing, marketing and
20 sales to the grocery, restaurant and food industries.
- 21 10. I am knowledgeable and an expert on plastic carryout bag purchasing and usage by
22 retail stores and restaurants.
- 23 11. Since September 2007, I have been the President of the Board of Directors of the
24 California Film Extruders and Converters Association (“CFECA”). CFECA is the
25 leading trade association representing California and Western U.S. and Western
26 Canadian based manufacturers of plastic film products, including plastic bags.
- 27 12. I have reviewed page 48 of the Swedish report, which is Exhibit Q to the Motion.
28 According to page 48, the Swedish report compared Low Density Polyethylene plastic

- 1 bags (“LDPE”) plastic bags with a thickness of 140 microns with paper bags.
- 2 13. A 140 micron bag is 5.6 mils thick. Plastic grocery and restaurant bags in the United
3 States are made of High Density Polyethylene (HDPE), LDPE, or Linear Low Density
4 Polyethylene (LLDPE) and are generally about 13 microns thick, which means that they
5 contain approximately 90% less material than the plastic bags studied in the Swedish
6 report. Such 140 micron thick plastic bags are not representative of plastic carryout bags
7 used in the United States.
- 8 14. Petitioner and its members will suffer the following greater injury from denial of the
9 Motion than the City of Manhattan Beach will suffer from its grant.
- 10 15. Typically, when small retail stores or restaurants buy plastic carryout bags they usually
11 purchase several months, sometimes up to two years, worth of supply. To force them to
12 stop using plastic carryout bags in February 2009 or before would essentially mean they
13 lose on their plastic carryout bag inventory plus pay a higher price for paper bags. The
14 plastic bag industry would not have the opportunity to sell them plastic carryout bags
15 again for as much as two years.
- 16 16. Chain supermarkets do not operate in only one city. For example, Kroger (Ralphs)
17 operates a district or region of which Manhattan Beach is one part. It is almost
18 impossible for a chain to operate differently in one city only. The most likely solution
19 by large chain retailers is that they will change the entire region to conform to the legal
20 requirements of one city in the region, or the retailer will have additional handling costs
21 for one city which will result in higher prices for the consumers of that city.
- 22 17. Supermarkets will remove their racks for holding and dispensing plastic carryout bags at
23 the checkouts. They would have to be reinstalled if Petitioner is successful in this
24 lawsuit.
- 25 18. Businesses that have only used plastic carryout bags will have to purchase paper bags
26 including having their logos printed on them.
- 27 19. Paper bags are approximately four to eight times more expensive than plastic carryout
28 bags, thereby causing retail stores and restaurants to incur unnecessary costs.

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20. The environmental effects caused by an increased number of paper bags will increase, including the environmental effects identified in the Scottish and ULS Reports that are attached hereto as Exhibits M and N to the Motion.

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

Executed on November 11, 2008 at Los Angeles, California.

CATHERINE BROWNE