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FILED
 ALAMEDA COUNTY
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 7 COALITION TO SUPPORT PLASTIC BAG
 8 RECYCLING

By Yasmin Shufb

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF ALAMEDA

11 COALITION TO SUPPORT PLASTIC
 12 BAG RECYCLING, an unincorporated
 association,

CASE NO. RG07339097

**PETITIONER'S STATEMENT OF ISSUES
 [PUBLIC RESOURCES CODE § 21167.8(f)]**

13 Petitioner,

14 v.

Date: January 29, 2008
 Time: 9:00 a.m.
 Dept: 31

15 CITY OF OAKLAND, a municipal
 16 corporation, CITY COUNCIL OF THE
 17 CITY OF OAKLAND, collectively and in
 their official capacities, and DOES 1
 through 20 inclusive,

ASSIGNED FOR ALL PURPOSED TO:
 JUDGE: FRANK ROESCH
 DEPARTMENT: 31

18 Respondents.

19
 20 PLEASE BE ADVISED THAT Petitioner COALITION TO SUPPORT PLASTIC BAG
 21 RECYCLING intends to raise the issues set forth herein in connection with its Verified Petition
 22 for Writ of Mandate, filed and served on August 3, 2007. Petitioner raises these issues pursuant
 23 to Code of Civil Procedure section 1085, and Public Resources Code section 21168.5 of the
 24 California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 *et seq.*

25 Petitioner intends to raise, in briefs or at any hearing or trial in connection with the
 26 Petition, factual and legal issues demonstrating that Respondents CITY OF OAKLAND and
 27 CITY COUNCIL OF THE CITY OF OAKLAND, violated CEQA in connection with the
 28 Respondents' July 17, 2007 adoption of Oakland Ordinance No. 12818 (the "Ordinance").

1 Specific issues include:

2 1. The Ordinance has the potential to result in either a direct physical change on the
3 environment, or a reasonably foreseeable indirect physical change in the environment, and
4 therefore, constitutes a “project” under CEQA, the discretionary approval of which triggers
5 CEQA review absent an applicable exemption. Pub. Resources Code § 21065.

6 2. No exemption, and certainly none of Respondents’ claimed exemptions, are
7 applicable.

8 3. Respondents fail to meet their burden under the “common sense” exemption to
9 provide substantial evidence that the Ordinance would not significantly effect the environment.
10 Where as here the agency’s action document merely includes a conclusory recital that the project
11 is exempt pursuant to section 15061(b)(3) of the CEQA Guidelines, the agency must point to
12 substantial evidence to demonstrate that the agency properly considered the potential
13 environmental impacts. Here, Respondents did not meet this evidentiary burden, and they
14 steadfastly refused to acknowledge that there would be any impacts, even in light of the
15 substantial evidence to the contrary.

16 4. Respondents mistakenly rely upon two of CEQA’s categorical exemptions,
17 sections 15307 and 15308 of the CEQA Guidelines. These sections provide an exemption for
18 projects that “assure” protection of the environment and natural resources. 14 Cal. Code Regs.
19 §§ 15307, 15308. Here, substantial evidence establishes that the Ordinance does not “assure”
20 protection of the environment or natural resources, because the Ordinance merely causes
21 consumers to shift to environmentally harmful alternatives. 14 Cal. Code Regs. §§ 15307, 15308.

22 5. Even if this Court finds that the Ordinance falls within the scope of any categorical
23 exemption, the categorical exemptions are not absolute. Pursuant to 14 C.C.R. section 15300.2,
24 an exemption should be denied if one of the exceptions listed in section 15300.2 of the CEQA
25 Guidelines applies. One of these exceptions applies where there is a “reasonable possibility” of a
26 “significant effect on the environment due to unusual circumstances.” Here, the Court must
27 disallow reliance on these exemptions because substantial evidence supports a fair argument that
28 there may be a significant effect on the environment due to the unusual circumstances

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surrounding the effects of the Ordinance.

6. Respondents' reliance on CEQA Guidelines section 15183 is without merit, as there is no evidence that the City considered a "Land Use and Transportation Element EIR," upon which this exemption relies. Additionally, the facts and circumstances of this case demonstrate that the project-specific effects which are peculiar to the Ordinance would require independent environmental review under CEQA in any event, thereby eliminating the application of this partial statutory exemption. 14 Cal. Code Regs. § 15183, subd. (a).

7. The City's adoption of the Ordinance is not exempt from CEQA.

DATED: November 29, 2007

Respectfully submitted,

DOWNEY BRAND LLP

By: 

MICHAEL N. MILLS
Attorneys for Petitioner
COALITION TO SUPPORT
PLASTIC BAG RECYCLING

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 555 Capitol Mall, Tenth Floor, Sacramento, California, 95814-4686. On November 29, 2007, I served the within document(s):

PETITIONER'S STATEMENT OF ISSUES

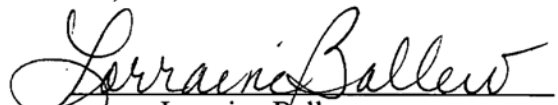
- BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
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- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- VIA E-MAIL DELIVERY**

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on November 29, 2007, at Sacramento, California.


 Lorraine Ballew

DOWNEY BRAND LLP

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