

1 **STEPHEN L. JOSEPH (SBN 189234)**
2 350 Bay Street, Suite 100-328
3 San Francisco, CA 94133
4 Telephone: (415) 577-6660
5 Facsimile: (415) 869-5380
6 E-mail: savetheplasticbag@earthlink.net

7 Attorney for Petitioner
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. CIV 1100996
13 an unincorporated association,)
14) Assigned to Judge M. Lynn Duryee
15) Dept. L
16)
17) **PETITIONER'S STATEMENT OF ISSUES**
18)
19) [Pub. Res. Code § 21167.8]
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF ISSUES

Pursuant to Public Resources Code §21167.8(f), Petitioner hereby files and serves on Respondents this statement of the issues that Petitioner intends to raise in its opening and reply briefs and at the hearing or trial on the merits.

FIRST CAUSE OF ACTION

Non-compliance with the California Environmental Quality Act

1. Does Petitioner have standing to bring the First Cause of Action? Petitioner’s contention is that the answer is yes.
2. Is the ordinance a “project” as defined in Pub. Res. Code §21065 and CEQA Guidelines §15378? Petitioner’s contention is that the answer is yes. If the answer is affirmative, the County was required to issue a negative declaration or prepare an EIR before it was adopted. (Pub. Res. Code §21080(d), §21151.)
3. If a lead agency believes that it does not need to prepare an EIR, it must publish a notice of intent to adopt a negative declaration. (Pub. Res. Code §21080(c); CEQA Guidelines §15070; §15072(a) and (b).) In addition, the lead agency must provide a “public review period” for comments on the proposed negative declaration “of not less than 20 days.” CEQA Guidelines §15073(a). Did the County comply with these requirements? Petitioner’s contention is that the answer is no as to both requirements.
4. Did Petitioner make a “fair argument” that an EIR was required? Petitioner’s contention is that the answer is yes.
5. Did Petitioner satisfy the conditions in Pub. Res. Code §21177(a) and (b)? Petitioner’s contention is that the answer is yes.
6. Was the County required to prepare an EIR pursuant to CEQA, including Pub. Res. Code §21080(d), prior to the adoption of the ordinance? Petitioner’s contention is that the answer is yes.
7. Did the County prepare an EIR? Petitioner’s contention is that the answer is no.
8. Did the County timely assert a categorical exemption under CEQA? Petitioner’s contention is that the answer is no.

- 1 9. Did the County waive any and all a categorical exemptions under CEQA? Petitioner’s
2 contention is that the answer is yes.
- 3 10. Is the County entitled to rely upon a class 7 or 8 CEQA categorical exemption?
4 Petitioner’s contention is that the answer is no.
- 5 11. Class 7 and 8 CEQA categorical exemptions only apply “where the regulatory process
6 involves procedures for protection of the environment.” (CEQA Guidelines §15307 and
7 §15308.) In this case, were there any regulatory procedures that provide for protection
8 of the environment? Petitioner’s contention is that the answer is no. If the answer is yes,
9 were such procedures followed by the County? Petitioner’s contention is that the answer
10 is no.
- 11 12. Does the ordinance qualify as a project that requires an EIR based on the California
12 Supreme Court’s decision in *Save The Plastic Bag v. City of Manhattan Beach*?
13 Petitioner’s contention is that the answer is yes.
- 14 13. Should a writ of mandate be issued by this court to set aside, void, annul, and terminate
15 implementation and enforcement of the ordinance? Petitioner’s contention is that the
16 answer is yes.

17 **SECOND CAUSE OF ACTION**

18 **Declaratory relief**

- 19 14. Does Petitioner have standing to bring the Second Cause of Action? Petitioner’s
20 contention is that the answer is yes.
- 21 15. Is the County prohibited from (i) implementing the ordinance prior to January 1, 2013
22 and (ii) banning plastic bags prior to January 1, 2013 based on the preemptive effect of
23 AB 2449? (Pub. Res. Code §§42250-42257.) Specifically, is AB 2449 the State of
24 California’s preemptive resolution of all plastic bag environmental issues until January
25 1, 2013? Petitioner’s contention is that the answer is yes. (The Governor, when signing
26 AB 2449 into law, stated in his signing statement: “Because this is a statewide program
27 the bill precludes locals from implementing more stringent local requirements. The bill
28 sunsets in six years and this will allow locals time to develop additional programs or the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

legislature to consider a more far reaching solution.”)

DATED: July 26, 2011

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am over the age of 18 and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

On July 26, 2011, I deposited a copy of PETITIONER’S STATEMENT OF ISSUES in a sealed envelope with postage fully prepaid in the United States Mail at San Francisco, California. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing stated herein. The envelope was addressed as follows:

Patrick K. Faulkner
COUNTY COUNSEL
David L. Zaltsman, Deputy
3501 Civic Center Drive, #275
San Rafael, CA 94903

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 26, 2011 at San Francisco, California.
