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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO

11 SAVE THE PLASTIC BAG COALITION,
12 an unincorporated association,
13
14 Petitioner,

15 v.

16 CITY AND COUNTY OF SAN FRANCISCO,
17 a political subdivision of the State of California)
18 and a municipal corporation; SAN)
19 FRANCISCO PLANNING DEPARTMENT,)
20 an agency of the City and County of San)
21 Francisco; SAN FRANCISCO)
22 DEPARTMENT OF THE ENVIRONMENT,)
23 an agency of the City and County of San)
24 Francisco; and DOES 1-100, inclusive,)

25 Respondents.

) Case No. CPF-12-511978
)
) Action filed: February 29, 2012
) CEQA case assigned to Dept. 503
)
) **NOTICE OF MOTION AND**
) **PETITIONER'S MOTION FOR**
) **PRELIMINARY INJUNCTION TO STAY**
) **IMPLEMENTATION AND**
) **ENFORCEMENT OF CARRYOUT BAG**
) **ORDINANCE; MEMORANDUM OF**
) **POINTS AND AUTHORITIES;**
) **DECLARATIONS OF STEPHEN L.**
) **JOSEPH, PETER M. GRANDE, AND**
) **CATHERINE BROWNE**
) [Exhibits A through J and Request For Judicial
) Notice filed separately herewith]
)
) Hearing date: June 1, 2012
) Time: 9:00 a.m.
) Dept. 503
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, HEREBY GIVEN, that on June 1, 2012 at 9:00 a.m., or as soon thereafter as the matter may be heard, Petitioner will appear in Department 503 of the above-entitled Court at 400 McAllister Street, San Francisco, CA 94102, to move, and hereby does move, for the following relief, pursuant to Code Civ. Proc. §§ 526 and 527(a) and Pub. Res. Code § 21167.3(a).

- A. A preliminary injunction staying implementation and enforcement of San Francisco Ordinance No. 33-12 which bans plastic bags and requires payment of a minimum 10-cent fee for paper, compostable, and reusable bags.
- B. For all affected stores, except restaurants and other “food facilities” (as defined by the California Retail Food Code), the preliminary injunction would stay the effective date of the Ordinance until the end of seven full months after the conclusion of this case including any appeals and Supreme Court review. This is the same amount of time as the grace period in the Ordinance.
- C. For all restaurants and other “food facilities” (as defined by the California Retail Food Code), the preliminary injunction would stay the effective date of the Ordinance until the end of sixteen full months after the conclusion of this case including any appeals and Supreme Court review. This is the same amount of time as the grace period in the Ordinance.
- D. The City would be required to make prominent public announcements advising the public and stores, restaurants, and other food facilities affected by the Ordinance that the preliminary injunction has been issued, including but not limited to sending e-mails to the media and all neighborhood and merchant associations.
- E. Such other or further relief as the Court may deem just and proper.

This motion is based upon this Notice; the grounds, points, and authorities in the Memorandum of Points and Authorities appended hereto; the declarations appended thereto; the files and pleadings in this action, the administrative record, and such other evidence as may be introduced at the hearing on this matter.

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DATED: May 8, 2012

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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1 **TABLE OF AUTHORITIES**

2 **CASES**

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4 • *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* 11,14
(1997) 52 Cal.App.4th 1165

5 • *Banker's Hill, Hillcrest, Park West Community Preservation Group v.* 11,12
6 *City of San Diego*
(2006) 139 Cal.App.4th 249

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8 • *Berkeley Hillside Preservation v. City of Berkeley* 13
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9 • *California Grocers Assn. v. City of Los Angeles* 6
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11 • *County Sanitation District No. 2 v. County of Kern* 11,13
(2005) 127 Cal.App.4th 1544

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13 • *Davidon Homes v. City of San Jose* 11,13
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14 • *IT Corp. v. County of Imperial* 15
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16 • *Manufacturers Life Ins. Co. v. Superior Court* 12
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18 • *Robbins v. Superior Court* 15
(1985) 38 Cal.3d 199

19 • *Save The Plastic Bag Coalition v. City of Manhattan Beach* *passim*
(2011) 52 Cal.4th 155

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21 • *Salmon Protection & Watershed Network v. County of Marin* 11,14
(2004) 125 Cal.App.4th 1098

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23 • *Wright v. State of California* 12
(2004) 122 Cal.App.4th 659

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TABLE OF AUTHORITIES
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14 California Code of Regulations (CEQA Guidelines)

§ 15064(f)(1) 11,13

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OTHER AUTHORITIES

“Can’t Mitigate Your Way To A Categorical Exemption, Court Says.” 15

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Admin Rec. pages

A. Ordinance	TBD*
B. SF Planning Department Certificate of Determination – Exemption From Environmental Review	TBD*
C. Petitioner’s letter to City Attorney dated November 16, 2011	TBD*
D. Petitioner’s Objections dated November 18, 2011	TBD*
E. Petitioner’s additional objection submitted on February 6, 2012	TBD*
F. News article about Vargas burn injury including photograph	TBD*
G. McDonald’s hot coffee spillage photographs WARNING: DISTURBING IMAGES. MAY CAUSE DISTRESS TO SENSITIVE VIEWERS	TBD*
H. California Restaurant Association objections to San Francisco proposal to ban plastic bags	TBD*
I. Use-Less-Stuff survey of paper bag usage in San Francisco after 2007 plastic bag ban	TBD*
J. State Board of Equalization Special Notice regarding sales tax on paper bag fees	N/a

The City Attorney’s office is currently preparing the administrative record. A disc containing the administrative record and an updated table of exhibits with administrative record page numbers will be submitted to the Court when or before Petitioner files its reply brief.

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TEXT OF RELEVANT CEQA GUIDELINES SECTIONS

§ 15307. ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

§ 15308. ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF THE ENVIRONMENT

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

THE “UNUSUAL CIRCUMSTANCES” EXCEPTION

§ 15300.2(c). EXCEPTIONS

Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

1 **TEXT OF RELEVANT CALIFORNIA RETAIL FOOD CODE SECTIONS**

2 The Retail Food Code is Division 104, Part 7 of California Health and Safety Code. The
3 section numbers herein are Health and Safety Code section numbers.

4 **§ 113705. LEGISLATIVE INTENT TO PREEMPT LOCAL STANDARDS**

5 The Legislature finds and declares that the public health interest requires that
6 there be **uniform statewide health and sanitation** standards for retail food
7 facilities to assure the people of this state that the food will be pure, safe, and
8 unadulterated. Except as provided in Section 113709, it is the intent of the
9 Legislature to **occupy the whole field** of health and sanitation standards for retail
10 food facilities, and the standards set forth in this part and regulations adopted
11 pursuant to this part shall be **exclusive of all local health and sanitation**
12 **standards relating to retail food facilities.**

13 **§ 113709. AUTHORITY TO ESTABLISH LOCAL REQUIREMENTS**

14 This part does not prohibit a local governing body from adopting an evaluation
15 or grading system for food facilities, from prohibiting any type of food facility,
16 from adopting an employee health certification program, from regulating the
17 provision of consumer toilet and handwashing facilities, or from adopting
18 requirements for the public safety regulating the type of vending and the time,
19 place, and manner of vending from vehicles upon a street pursuant to its
20 authority under subdivision (b) of section 22455 of the Vehicle Code.

21 **§ 113789. DEFINITION OF “FOOD FACILITY”**

22 (a) “Food facility” means an operation that stores, prepares, packages, serves,
23 vends, or otherwise provides food for human consumption at the retail level,
24 including, but not limited to, the following:

25 (1) An operation where food is consumed on or off the premises, regardless of
26 whether there is a charge for the food.

27 (2) Any place used in conjunction with the operations described in this
28 subdivision, including, but not limited to, storage facilities for food-related
29 utensils, equipment, and materials.

30 (b) “Food facility” includes permanent and nonpermanent food facilities,
31 including, but not limited to, the following:

32 (1) Public and private school cafeterias.

33 (2) Restricted food service facilities.

34 (3) Licensed health care facilities.

- 1 (4) Commissaries.
- 2 (5) Mobile food facilities.
- 3 (6) Mobile support units.
- 4 (7) Temporary food facilities.
- 5 (8) Vending machines.
- 6 (9) Certified farmers’ markets, for purposes of permitting and enforcement
- 7 pursuant to Section 114370.
- 8 (10) Farm stands, for purposes of permitting and enforcement pursuant to
- 9 Section 114375.

10 [§ 113789(c) contains exclusions from the above definition.]

11 **§ 113895. DEFINITION OF “RETAIL”**

12 “Retail” means the storing, preparing, serving, manufacturing, packaging,

13 transporting, salvaging, or otherwise handling food for dispensing or sale

14 directly to the consumer or indirectly through a delivery service.

15 **§ 113914. DEFINITION OF “SINGLE-USE ARTICLES”**

16 “Single-use articles” mean utensils, tableware, carry-out utensils, bulk food

17 containers, and other items such as bags, containers, placemats, stirrers, straws,

18 toothpicks, and wrappers that are designed and constructed for one time, one

person use, after which they are intended for discard....

19 **§ 113934. DEFINITION OF “UTENSIL”**

20 “Utensil” means a food-contact implement or container used in the storage,

21 preparation, transportation, dispensing, sale, or service of food....

22 **§ 114081. REUSE OF SINGLE-USE ARTICLES**

23 (d) Single-use articles shall not be reused.

24 **§ 114130(a). DURABILITY OF UTENSILS**

25 Equipment and utensils shall be designed and constructed to be durable and to

26 retain their characteristic qualities under normal use conditions.

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§ 114130.1. MATERIALS USED TO MAKE UTENSILS

Materials that are used in the construction of utensils and food-contact surfaces of equipment shall not allow the *migration* of *deleterious* substances or impart colors, odors, or tastes to food and under normal use conditions shall be *safe*, *durable*, corrosion-resistant, and *nonabsorbent*, sufficient in weight and thickness to withstand repeated warewashing, finished to have a smooth, easily cleanable surface, and resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

§ 114130.2. MATERIALS USED TO MAKE SINGLE-USE ARTICLES

Materials that are used to make single-use articles shall not allow the *migration* of *deleterious* substances or impart colors, odors, or tastes to food, and shall be *safe* and clean.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Petitioner requests that this Court grant the relief requested in the Notice Of Motion.

4 The exhibits are submitted under separate cover. Exhibits A through J are part of the
5 administrative record. Exhibits D, F, G, and I are submitted in ***color*** in the courtesy copy.

6 Petitioner submitted objections to the City prior to adoption of the Ordinance. (Exhs. C,
7 D, E.) ***Exh. D is the primary objections document which Petitioner recommends that this***
8 ***Court review.*** Petitioner submitted 137 supporting exhibits which are in the record.

9 **SUMMARY OF FACTS AND CLAIMS**

10 In February 2012, the Board of Supervisors adopted an ordinance (Exh. A) that:

- 11 • Bans plastic carryout bags at retail stores, restaurants, and other food facilities;
12 • Requires that consumers pay at least 10 cents for each paper, compostable, and
13 reusable carryout bags at stores, restaurants, and other food facilities; and
14 • Dictates the materials and specifications of paper bags and reusable bags that stores,
15 restaurants, and other food facilities may provide to consumers.

16 The Ordinance takes effect for all retail stores, except restaurants, on October 1, 2012. It
17 takes effect for restaurants on July 1, 2013.

18 **FIRST CAUSE OF ACTION (CEQA):**

19 The City determined that the project was categorically exempt under CEQA Guidelines
20 §§ 15307 and 15308. (Exhs. A, B.) In Exhs. D and E, Petitioner objected on the grounds that:

- 21 (i) The San Francisco Board of Supervisors is not a “regulatory agency”;
22 (ii) The Ordinance is not a “regulatory” action that is “authorized by” a preexisting
23 state law or local ordinance”; and
24 (iii) There is no preexisting “regulatory process [that] involves procedures for
25 protection of the environment.”

26 The City based its categorical exemption determination on the assertion that the 10-cent
27 fee would prevent an increase in the number of paper and compostable bags. (Exh. B.)
28 Petitioner objected as the fee is a mitigation measure that must be disregarded when

1 determining whether a project is categorically exempt. (See page 14 below; Exhs. D, E.)

2 Pursuant to Guidelines § 15300.2(c), Petitioner also made a fair argument. Exh. D
3 contains the fair argument. The following pages of Exh. D contain the main points:

4 **A. Negative impacts of paper and compostable bags:**

5 Exh. D at 21-36, 73-75: Paper and compostable bags are far worse for the environment
6 than plastic bags, creating greater greenhouse gases, greater nonrenewable energy consumption,
7 greater atmospheric acidification, and greater solid waste production impacting landfills, and of
8 course massive loss of trees.

9 Exh. D at 22: Even Heal the Bay has said that paper bags are “fraught with environment
10 impacts.” Heal the Bay criticized the City for not preparing an EIR and permitting compostable
11 bags in 2007, calling it a “huge mistake” by the City.

12 **B. Negative impacts of reusable bags:**

13 Exh D at 28-30, 33, 37-49: There are major negative environmental impacts of reusable
14 bags. According to the Los Angeles County EIR, polypropylene and cotton reusable bags must
15 be used 104 times to offset their greater negative environmental impacts compared to plastic
16 bags. According to a British Government study, polypropylene reusable bags must be used 11
17 times and reusable cotton bags must be used 131 times to offset their huge greenhouse gas
18 emissions and resource impacts compared to plastic bags.

19 Exh. D at 59: There is serious problem of low utilization of reusable bags, especially by
20 the 15.9 million annual visitors and tourists in San Francisco.

21 Exh. D at 76: Polypropylene, canvas, cloth, and jute reusable bags are not recyclable
22 and do not biodegrade. In contrast, plastic bags are recyclable and when they are deposited in
23 plastic bag recycling bins at stores they are actually recycled.

24 **C. Impact of non-availability of free paper bags:**

25 Exh. D at 50: Residents save free brown paper carryout bags for recycling. They dispose
26 of so many recyclables that the paper bags fill up quickly. They may not be willing to pay for
27 paper bags to collect recyclables. As a result, citywide recycling could be reduced significantly.

28 This is an enormously important environmental issue.

1 **D. Other negative impacts:**

2 Exh. D at 13: The Ordinance may result in a significant increase in paper bag litter. (See
3 video at www.youtube.com/watch?v=pazWMPTCDmE which is in the administrative record.)

4 Exh. D at 51-55: The Ordinance may result in a significant increase in small litter and
5 significant increase in dog waste on sidewalks.

6 **E. The City cannot be certain that the 10-cent fee will prevent the negative**
7 **impacts**

8 Exh. D at 32-33, 59, 76-82: Without waiving the objection that the fee must be
9 disregarded when determining if the Ordinance is categorically exempt (see page 14 below), a
10 10-cent fee will not prevent a major shift to paper, compostable, and reusable bags which are
11 worse for the environment than plastic bags. The LA County EIR determined a 10-cent fee is
12 not enough to avoiding significant negative environmental impacts. (Exh. D at 32-33.)

13 Exh. D at 59: **The 10-cent fee may be particularly ineffective in San Francisco as**
14 **the overwhelming majority of the annual 15.9 million visitors and tourists to the city, who**
15 **are big spenders and shoppers, may buy paper or compostable bags. Tourists don't need a**
16 **clunky reusable bag that can be used more than 100 times if they are here for a day or a**
17 **few days. They will not carry around reusable bags to save a few cents. Those that do buy**
18 **reusable bags will use them once or a handful of times and discard them in hotel trash**
19 **bins or other trash containers before they leave town.**

20 Moreover, Petitioner advised the City that the Supreme Court has ruled that an EIR
21 “will be required” for plastic bag ban ordinances adopted by “larger governmental bodies”
22 than the City of Manhattan Beach “which might precipitate a significant increase in paper
23 bag consumption.” (Save The Plastic Bag Coalition v. City of Manhattan Beach (2011) 52
24 Cal.4th 155, 174.)

25 Petitioner demanded an EIR based on a cumulative analysis. (Exh. D at 61-62, 109.)
26 Petitioner identified subjects that the EIR must address. (Exh. D at 63-64.) **The City never**
27 **responded to any of Petitioner's points.** No EIR was prepared. This was a prejudicial abuse of
28 discretion and a violation of CEQA. Therefore, the Ordinance is invalid.

1 **SECOND CAUSE OF ACTION (PREEMPTION):**

2 The Ordinance prohibits restaurants and other food facilities from providing plastic
3 carryout bags and requires that they charge 10 cents for paper, compostable, and reusable bags.
4 Petitioner objected as the California Retail Food Code (which is part of the California Health
5 and Safety Code) states that “it is the intent of the Legislature to **occupy the whole field** of
6 health and sanitation standards for retail food facilities, and the standards set forth in this part
7 and regulations adopted pursuant to this part shall be **exclusive** of all local health and sanitation
8 standards relating to retail food facilities.” (Health and Safety Code § 113705, Exhs. C, D.)

- 9 • Health and Safety Code § 113914 defines “single-use” articles as including single-use
10 “carry-out utensils” and “bags” and “wrappers.” The words **“carry-out”** and **“bags”**
11 leave no room for doubt that the Retail Food Code covers carryout bags.
- 12 • Health and Safety Code § 113934 defines **“carryout-out utensils”** (the term used in §
13 113914) as including any carryout **“container** used in the storage, preparation,
14 **transportation, dispensing, sale, or service** of food.” A bag is a container.
- 15 • Health and Safety Code § 114081 states that “single-use articles [including carryout
16 bags] **shall not be reused.**”
- 17 • Health and Safety Code § 114130(a) states that “utensils [including carryout bags] shall
18 be designed and constructed to be **durable** and to **retain their characteristic qualities**
19 **under normal use conditions.**”
- 20 • Health and Safety Code §§ 114130.1 and 114130.2 state that “materials” that are used to
21 make single-use articles and utensils [including carryout bags] shall not allow the
22 migration of deleterious substances or impart colors, odors, or tastes to food and under
23 normal use conditions shall be **“durable,” “nonabsorbent,” “safe” and clean.**

24 The above standards require, among other things, that a bag not become soggy or break
25 when hot liquid is spilled inside and tied at the top if necessary. Paper does not always satisfy
26 the standard.

27 The City of Santa Monica stated: “This [restaurant] exemption is included as a public
28 health safeguard based on input from restaurant owners who expressed concern that some hot

1 and liquid foods could leak from take-out containers and potentially cause paper bags to
2 weaken and fail.” (Petition ¶ 108.) The City of San Jose also stated that it exempted restaurants
3 from its plastic bag ban because of health and safety concerns. (See Petition ¶ 109.)

4 The Ordinance dictates that single-use bags must be made of paper. The City is creating
5 a standard that only paper may be used. The Ordinance also includes detailed and complex
6 standards for the material used in paper and reusable bags. (Ordinance §§ 1702(i), (j).)

7 There are major health and safety concerns regarding the use of non-waterproof and
8 non-greaseproof paper bags, non-heat resistant compostable bags, and dirty and contaminated
9 reusable bags at restaurants and other food facilities. (Petition ¶¶ 108-131.) A leading
10 compostable bag supplier admits that compostable bags are totally unsuitable and unsafe for hot
11 food. (Petition ¶ 121.) One lady was *severely* burned removing hot soup from a Subway bag.
12 (Exh. F; see also Exh. G which is McDonald’s hot coffee spillage case injury photos.)

13 The Ordinance allows free plastic bags to “contain unwrapped prepared foods or bakery
14 goods.” However, prepared food is rarely placed “unwrapped” into a bag. This is addressed
15 extensively at Petition ¶¶ 116-119 and Grande Dec’n ¶ 26-27.)

16 In addition, requiring restaurants and other food facilities to charge 10 cents for a paper
17 or compostable carryout bag is an incentive for customers to either choose to take no bag at all,
18 thereby substantially increasing the likelihood of injuries from spillages of hot liquids or oils, or
19 bring a reusable bag. (Petition ¶¶ 129-130.) The purpose of the fee, including at restaurants, is
20 to “increase customers’ use of reusable bags.” (Ordinance § 2, finding # 8.) This is a major
21 health risk as the bag may have been used to carry dirty items. Many reusable bags contain
22 dangerous bacteria. (Petition ¶ 130.) The California Restaurant Association (“CRA”) has stated:

23 Charging a fee is designed to steer customers to use reusable bags.
24 Encouraging customers to bring dirty reusable bags in restaurants for use
25 places public health and safety at risk. Let the [San Francisco]
26 supervisors know this is a risk restaurants shouldn’t have to take. Other
27 jurisdictions have recognized that reusable bags pose a food safety risk
28 in a prepared food environment and have exempted restaurants from
their respective ordinances.

(Petition ¶ 131; *Exh. H is a CRA e-mail and letter to the City objecting to the ban.*)

1 The Retail Food Code preempts even in the absence of health and safety concerns. In
2 *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, the Supreme Court
3 discussed Retail Food Code preemption. **The Supreme Court confirmed that “the state alone”**
4 **may regulate “food transportation, storage, and preparation,” “how food should be handled**
5 **or transported,” and “food display and service.” These are subject matters and fields that are**
6 **subject to “exclusive state regulation.”** (Id. at 189.)

7 The Supreme Court ruled that the purpose of the Ordinance is irrelevant. The court said
8 that the only relevant question is “whether the *effect* of the local ordinance is in fact to regulate
9 in the very field the state has reserved to itself.” (Id. at 190, italics added.)

10 Suppose another city banned plastic carryout bags at restaurants, because it deemed
11 paper bags to be safer. That would undoubtedly be preempted. San Francisco banned plastic
12 carryout bags at restaurants, because it deemed it good for the environment. Same act, different
13 purpose, but it too is preempted. The Supreme Court explained the reason in *California*
14 *Grocers*:

15 To rest preemption analysis solely on considerations of purpose would
16 generate the anomalous circumstance, rejected by the United States
17 Supreme Court, that one jurisdiction’s measure might survive
18 preemption, while another identical measure passed in a different
jurisdiction might fall, “merely because its authors had different
aspirations.”

19 (Id. at 190, n.4.)

20 The Ordinance and the Retail Food Code legislate the **same subject matter**. In fact, the
21 City’s standard that only paper and reusable bags may be used directly conflicts with the state
22 standard that the determination of what kind of bag may be used depends on durability and
23 safety. The City cannot make that determination by eliminating plastic as an option.

24 Every city and county with plastic bag bans has exempted restaurants, except
25 Carpinteria, which Petitioner has sued, based on preemption. (*Save The Plastic Bag Coalition v.*
26 *City of Carpinteria*, Santa Barbara Sup. Court, Case No. 1385674.) Santa Cruz County and the
27 City of Manhattan Beach did ban plastic bags at restaurants, but they have repealed those bans.

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7. The State Board of Equalization has ruled that stores and restaurants are not required to pay sales tax on the paper or reusable bag fee because it is a “charge imposed by the local jurisdiction upon the customer, not the retailer.” (Exh. J filed herewith, emphasis added.) **If the Ordinance is ultimately determined to be invalid and no preliminary injunction has been issued, thousands of stores and restaurants will be liable for back sales taxes on all fees collected, plus interest and penalties.**
8. If the Ordinance is ultimately determined to be invalid and no preliminary injunction has been issued, customers may sue for refunds of the fee as the charge will not have been *validly* “imposed by the local jurisdiction upon the customer,” especially if back sales taxes are not paid by stores and restaurants for some reason. **Class action lawsuits by consumers for refunds of fees are a distinct possibility.**
9. **The environment will suffer irreparable damage** as soon as stores and restaurants start switching to paper, compostable, and reusable bags, as they are far worse for the environment than plastic bags.
10. Charging 10 cents for each paper bag will result in a **reduction of recycling of all recyclable items in San Francisco** as free paper bags are used to collect and dispose of recyclables.
11. Consumers may suffer **burns and property damage** if restaurants and other food facilities that serve hot and scalding liquids and foods (such as soup and sauces) in plastic bags to prevent spillages start switching to paper or compostable bags, or if some consumers elect to take no bag at all rather than pay the paper bag fee.
12. Petitioner’s members include plastic bag manufacturers that supply plastic bags to stores and restaurants in San Francisco. They will suffer **irreparable financial damage** as stores and restaurants begin to replace stocks of plastic bags with paper bags. They will have no recourse against the City for adopting the invalid Ordinance as the City has sovereign immunity. (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 671.)

1 ARGUMENT

2 **I. THE SUPREME COURT HAS RULED THAT AN EIR “WILL BE REQUIRED”**
3 **BEFORE PLASTIC BAGS MAY BE BANNED IN CITIES AND COUNTIES**
4 **LARGER THAN THE CITY OF MANHATTAN BEACH**

5 In 2008, the City of Manhattan Beach banned plastic bags. It prepared an Initial Study
6 and Negative Declaration. Petitioner Save The Plastic Bag Coalition objected and demanded an
7 EIR on the ground that a shift to paper bags would have a significant negative impact on the
8 environment. Petitioner filed a petition for writ of mandate. In *Save The Plastic Bag Coalition*
9 *v. City of Manhattan Beach* (2011) 52 Cal.4th 155, the Supreme Court ruled as follows:

- 10 A. Save The Plastic Bag Coalition has standing to file CEQA cases regarding plastic bag
11 bans as its members’ operations are directly affected. (*Id.* at 170.)
- 12 B. An ordinance to ban plastic bags is a “project” subject to CEQA. (*Id.* at 171, n.7.)
- 13 C. The City of Manhattan Beach was too small to have been required to prepare an EIR.
14 The population is only 33,852. “There are only two supermarkets, three (and two future)
15 drug stores, and one Target store known to be high volume users of plastic shopping
16 bags in the City which would be affected by the ban.” (*Id.* at 161.)
- 17 D. The court stated: “[T]he analysis would be different for a ban on plastic bags by a larger
18 governmental body, which might precipitate a significant increase in paper bag
19 consumption.” (*Id.* at 174.)¹
- 20 E. The court stated:

21 While cumulative impacts should not be allowed to escape review when
22 they arise from a series of small-scale projects, that prospect does not
23 appear in this case. According to plaintiff, the movement to ban plastic
24 bags is a broad one, active at levels of government where an
25 appropriately comprehensive environmental review **will be required.**

26 (*Id.* at 174, n.10, italics added.)

27 _____
28 ¹ There was no discussion of the negative environmental impacts of compostable or
reusable bags in the *Manhattan Beach* case. The City of Manhattan Beach banned compostable
bags. The LA County EIR analysis and the U.K. Government analyses of the negative
environmental impacts of reusable bags (discussed in Petitioner’s objections Exh. D at 32-33,
28-30) were not issued until 2010 and 2011 respectively, more than two years after the City of
Manhattan Beach adopted its plastic bag ban ordinance.

1 In summary, EIRs are required for plastic bag bans by (i) cities and counties that are
2 larger than Manhattan Beach and (ii) small cities and counties based on cumulative impacts.

3 The population of San Francisco in 2010 was 805,235, approximately 24 times larger
4 than the City of Manhattan Beach. (Petition ¶ 46.) In addition, San Francisco hosted
5 approximately 15.9 million visitors and tourists in 2010. (Petition ¶ 47.)²

6 **II. WITHOUT WAIVING THE POINT THAT THE SUPREME COURT RULED**
7 **THAT AN EIR “WILL BE REQUIRED”, THE CITY DID NOT MEET THE**
8 **CONDITIONS FOR RELIANCE ON THE CATEGORICAL EXEMPTIONS**

9 The City asserts that the Ordinance is categorically exempt from CEQA under §§ 15307
10 and 15308. The Supreme Court did not say that a city or county could rely on categorical
11 exemptions to avoid preparing an EIR before banning plastic bags. The Supreme Court said that
12 comprehensive environmental review “will be required.” (*Manhattan Beach, supra*, 52 Cal.4th
13 at 174, n.10). In any event, as discussed below without waiving the point that the Supreme
14 Court’s ruling requires the City to prepare an EIR, the City cannot rely on §§ 15307 and 15308.

15 There are two stages when an agency proposes to rely on Guidelines §§ 15307 or 15308.

16 **First Stage: Make the exemption determination:**

17 All of the following conditions must be satisfied:

- 18 A. The agency must be a “regulatory agency.” (§§ 15307 and 15308.)
19 B. The regulatory action must be “authorized by state law or local ordinance.” (§§
20 15307 and 15308.)
21 C. The purpose of the action must be protection of the environment or a natural
22 resource. (§§ 15307 and 15308.)

23 ² In January 2011, Marin County adopted an ordinance banning plastic bags. It refused to
24 prepare an EIR. It claims that its ordinance is categorically exempt under §§ 15307 and 15308.
25 Petitioner filed a petition for writ of mandate in the Marin Superior Court. The grounds were
26 that the County could not rely on §§ 15307 and 15308 and that Petitioner had made a fair
27 argument. Marin Superior Court Judge Lynn Duryee ruled in favor of the County. Despite
28 Petitioner’s requests, she refused to discuss the Supreme Court ruling or any of the
requirements for asserting the categorical exemptions. She simply ruled that the ordinance was
reasonable. Petitioner appealed. Briefing in the Court of Appeal will be completed by May 14,
2012. (*Save The Plastic Bag Coalition v. County of Marin*, First App. Dist., Div. Three, No.
A133868, Marin County Superior Court Case No. CIV1100996.)

1 D. The preexisting “regulatory process involves procedures for protection of the
2 environment.” (§§ 15307 and 15308.)

3 E. The agency must determine that none of the exceptions in § 15300.2 are
4 applicable, including 15300.2(c) which states: “A categorical exemption shall not be used for an
5 activity where there is a reasonable possibility that the activity will have a significant effect on
6 the environment due to unusual circumstances.”

7 **Second stage: Respond to a “fair argument”:**

8 If a member of the public makes a “fair argument” that the activity may have a
9 significant cumulative negative effect on the environment, the agency must also satisfy all of
10 the following conditions.

11 F. The agency must respond to the fair argument and make findings of fact that
12 refute the fair argument to a *certainty*. (*Banker's Hill, Hillcrest, Park West Community*
13 *Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 264; *Davidon Homes v.*
14 *City of San Jose* (1997) 54 Cal.App.4th 106, 118.)

15 G. The agency cannot rely on contrary evidence to refute the fair argument.
16 (Guidelines § 15064(f)(1); *County Sanitation District No. 2 v. County of Kern* (2005) 127
17 Cal.App.4th 1544, 1580.)

18 H. The agency cannot rely on mitigation measures to refute the fair argument.
19 (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th
20 1165, 1200; *Salmon Protection & Watershed Network v. County of Marin* (2004) 125
21 Cal.App.4th 1098, 1102.)

22 I. The agency cannot find that greenhouse gas impacts are insignificant without
23 making “a good-faith effort, based to the extent possible on scientific and factual data, to
24 describe, calculate or estimate the amount of greenhouse gas emissions resulting from [the]
25 project.” (Guidelines § 15064.4.)

26 **In this case, only condition C was satisfied.**

27

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1 **III. THE CATEGORICAL EXEMPTIONS IN §§ 15307 AND 15308 DO NOT APPLY**
2 **TO LEGISLATIVE ACTIONS SUCH AS PLASTIC BAG BAN ORDINANCES**

3 Guidelines §§ 15307 and 15308 are based on the following three-level hierarchy:

- 4 • **Legislative** acts by legislative bodies such as the San Francisco Board of Supervisors
5 banning plastic bags. Such acts are never categorically exempt under §§ 15307/08.
- 6 • **Regulatory** “actions” for environmental protection by “regulatory agencies, as
7 authorized by state law or local ordinance...where the regulatory process involves
8 procedures for protection of the environment.” **There must be an enabling “state law or**
9 **local ordinance” already in place that is the source of the regulatory authority.** The
10 Ordinance states: “The Director, after public hearing, may adopt and may amend
11 guidelines, rules, regulations and forms to implement this Chapter.” (Ordinance § 1704.)
12 Such regulations would be categorically exempt under §§ 15307/08.
- 13 • **Ministerial** acts that involve little or no personal judgment as to the wisdom or manner
14 of carrying out the project. (Guidelines § 15369.) These acts are always exempt.
15 (Guidelines §§ 15268, 15300.1.) An example would be a City of San Francisco
16 inspector citing a storeowner for continuing to provide plastic bags.

17 If the City is correct that it can rely on §§ 15307 and 15308, the words shown below as
18 stricken are meaningless, inoperative, and redundant.

19
20 Class 7 consists of actions ~~taken by regulatory agencies as authorized by~~
21 ~~state law or local ordinance~~ to assure the maintenance, restoration, or
22 ~~enhancement of a natural resource. where the regulatory process involves~~
23 ~~procedures for protection of the environment.~~

23 Class 8 consists of actions ~~taken by regulatory agencies, as authorized by~~
24 ~~state or local ordinance,~~ to assure the maintenance, restoration,
25 ~~enhancement, or protection of the environment. where the regulatory~~
26 ~~process involves procedures for protection of the environment.~~

27 “Well-established canons of statutory construction preclude a construction which renders a part
28 of a statute meaningless or inoperative.” (*Manufacturers Life Ins. Co. v. Superior Court* (1995)
10 Cal.4th 257, 274.)

1 **IV. IF A FAIR ARGUMENT IS MADE, AN AGENCY MAY NOT RELY ON A**
2 **CATEGORICAL EXEMPTION**

3 Guidelines § 15300.2(c), states as follows:

4 A categorical exemption shall not be used for an activity where there is a
5 reasonable possibility that the activity will have a significant effect on
6 the environment due to unusual circumstances.

7 The standard for determining whether a petitioner has demonstrated “unusual
8 circumstances” is the “fair argument” standard. (*Banker’s Hill, supra*, 139 Cal.App.4th at 264-
9 267.) Under that standard, “[i]f legitimate questions can be raised about whether the project
10 might have a significant impact and there is any dispute about the possibility of such an impact,
11 the agency cannot find with certainty that a project is exempt.” (*Davidon Homes, supra*, 54
12 Cal.App.4th at 117.) The agency “must refute that claim to a *certainty* before finding that the
13 exemption applies.” (*Id.* at 118, italics added.)

14 “[I]f a lead agency is presented with a fair argument that a project may have a
15 significant effect on the environment, the lead agency shall prepare an EIR even though it may
16 also be presented with other substantial evidence that the project will not have a significant
17 effect.” (Guidelines § 15064(f)(1); *County Sanitation District No. 2, supra*, 127 Cal.App.4th at
18 1580 [“If substantial evidence establishes a reasonable possibility of a significant environmental
19 impact, then the existence of contrary evidence in the administrative record is not adequate to
20 support a decision to dispense with an EIR.”])

21 There is no separate requirement that the circumstances be “unusual.” “[T]he fact that
22 proposed activity may have an effect on the environment is itself an unusual circumstance,
23 because such action would not fall ‘within a class of activities that does not normally threaten
24 the environment,’ and thus should be subject to further environmental review.” (*Berkeley
25 Hillside Preservation v. City of Berkeley* (2012) ___ Cal.App.4th ___, Slip Op. at 13.)

26 Guidelines § 15063(b)(1) states that if “**any aspect** of the project, either individually or
27 cumulatively, may cause a significant effect on the environment, regardless of whether the
28 overall effect of the project is adverse or beneficial, the Lead Agency shall” prepare an EIR.

1 **V. THE 10-CENT FEE MAY NOT BE TAKEN INTO ACCOUNT IN**
2 **DETERMINING WHETHER THE CATEGORICAL EXEMPTIONS ARE**
3 **APPLICABLE**

4 In determining whether the City may rely on categorical exemptions, the 10-cent fee
5 may not be taken into account. In *Azusa Land Reclamation Co. v. Main San Gabriel Basin*
6 *Watermaster* (1997) 52 Cal.App.4th 1165, the court stated:

7 In determining whether the significant effect exception to a categorical
8 exemption exists, “[i]t is the possibility of a significant effect ... which is
9 at issue, not a determination of the actual effect, which would be the
10 subject of a negative declaration or an EIR. Appellants cannot escape the
11 law by taking a minor step in mitigation and then find themselves
12 exempt from the exception to the exemption.”

13 The reason is not simply because that is what the Guidelines require; the
14 fundamental reason is substantive. The Guidelines dealing with the
15 second phase of the environmental review process [the Initial Study
16 resulting in a possible Mitigated Negative Declaration] contain elaborate
standards -- as well as significant procedural requirements -- for
determining whether proposed mitigation will adequately protect the
environment and hence make an EIR unnecessary; in sharp contrast, the
Guidelines governing preliminary review do not contain any
requirements that expressly deal with the evaluation of mitigation
measures.

17 (*Id.* at 1200, citations omitted.) In *Salmon Protection & Watershed Network v. County of Marin*
18 (2004) 125 Cal.App.4th 1098, the court stated:

19 Mitigation measures may support a negative declaration but not a
20 categorical exemption.

21 (*Id.* at 1102.)

22 As the trial court properly found, the County erred in relying upon
23 mitigation measures to grant a categorical exemption from CEQA.... If a
24 project may have a significant effect on the environment, CEQA review
25 must occur, and only then are mitigation measures relevant.... The
County made a premature and unauthorized environmental evaluation at
the preliminary stage of considering eligibility for a categorical
exemption....

26 The determination of whether a project may impact a designated
27 environmental resource must be made without reference or reliance upon
28 any proposed mitigation measures. Reliance upon mitigation measures
(whether included in the application or later adopted) involves an

1 evaluative process of assessing those mitigation measures and weighing
2 them against potential environmental impacts, and that process must be
3 conducted under established CEQA standards and procedures for EIRs
4 or negative declarations.

5 (*Id.* at 1107-1108, citation omitted; see “Can’t Mitigate Your Way To A Categorical
6 Exemption, Court Says.” <http://www.cp-dr.com/node/443>.) Accordingly, it must be assumed
7 for the purpose of categorical exemptions that there would be no fee on paper bags.

8 In 2007, the City banned plastic bags at supermarkets and certain other stores and
9 imposed no paper bag fee. An extensive survey by ULS (Use Less Waste) confirmed that
10 people simply switched to free paper bags, thereby making the environment worse. (Exh. I).

11 **VI. THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION AS THE**
12 **CITY HAS NO VIABLE DEFENSES AND THE CONSEQUENCES OF**
13 **ALLOWING THE ORDINANCE TO BE ENFORCED WILL BE DIRE IF IT IS**
14 **SUBSEQUENTLY DETERMINED TO BE INVALID**

15 Trial courts consider two interrelated questions in deciding whether to issue a
16 preliminary injunction: 1) are the plaintiffs likely to suffer greater injury from a denial of the
17 injunction than the defendants are likely to suffer from its grant; and 2) is there a reasonable
18 probability that the plaintiffs will prevail on the merits. (*Robbins v. Superior Court* (1985) 38
19 Cal.3d 199, 205-206.) The goal is to minimize the harm which an erroneous interim decision
20 may cause. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 73.)

21 Petitioner is very likely to win this case on the merits. Petitioner has demonstrated that
22 the consequences of not issuing a preliminary injunction are dire and should be avoided.

23 **CONCLUSION**

24 WHEREFORE, Petitioner requests that this Court grant the relief described in the
25 Notice Of Motion.

26 DATED: May 8, 2012

27 **STEPHEN L. JOSEPH**

28 

Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

DECLARATION OF STEPHEN L. JOSEPH

I, Stephen L. Joseph, declare as follows:

1. I know all of the facts herein of my own personal knowledge, and if called upon as a witness to this proceeding, I would and could competently testify thereto under oath.
2. I am an attorney admitted to practice in the State of California.
3. I am counsel for Petitioner Save The Plastic Bag Coalition (“Petitioner”) in this case.
4. Petitioner was formed on June 3, 2008.
5. At all times since June 3, 2008, I have been sole counsel and manager of Petitioner. In those capacities, I have been involved in and have been aware of all actions taken by Petitioner since that time.
6. I make this declaration in support of “Petitioner’s Motion For Preliminary Injunction To Stay Implementation And Enforcement Of Carryout Bag Ordinance.”
7. All of the statements made in said Motion and the Memorandum of Points and Authorities appended thereto are true and correct based on my personal knowledge, or I believe them to be true.
8. All of the allegations and statements made in Petitioner’s “Verified Petition For Writ Of Mandate Under The California Environmental Quality Act; Complaint For Invalidation Of Ordinance Based On State Retail Food Code Preemption; Request For Declaratory And Injunctive Relief” are true and correct based on my personal knowledge, or I believe them to be true.
9. In January 2011, Marin County adopted an ordinance banning plastic bags. It refused to prepare an EIR. It claims that its ordinance is categorically exempt under §§ 15307 and 15308. Petitioner filed a petition for writ of mandate in the Marin County Superior Court. The grounds were that the County could not rely on §§ 15307 and 15308 and that Petitioner had made a “fair argument.” Marin County Superior Court Judge Lynn Duryee ruled in favor of the County. Despite Petitioner’s requests, she refused to discuss the Supreme Court ruling or any of the requirements for asserting the categorical exemptions. She simply ruled that the Marin County ordinance was reasonable.

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 Save The Plastic Bag Coalition’s Motion
6 For Preliminary Injunction To Stay Implementation And Enforcement Of Carryout Bag
7 Ordinance.
- 8 3. Petitioner Save The Plastic Bag Coalition (“Petitioner”) was formed on June 3, 2008.
- 9 4. I have been the Chairman of Petitioner since its formation.
- 10 5. I am also the Chief Executive Officer (CEO) of Grand Packaging, Inc., a California
11 corporation in good standing, which does business (and is hereinafter referred to) as
12 “Command Packaging.”
- 13 6. Command Packaging was formed on May 30, 1989. I have been the CEO of Command
14 Packaging since that time.
- 15 7. Command Packaging is and has been a member of the Petitioner since June 3, 2008.
- 16 8. Command Packaging has at all times since its formation manufactured, marketed and
17 sold plastic carryout bags to the grocery, restaurant, and food industries.
- 18 9. Command Packaging markets and supplies plastic carryout bags to retail stores and
19 restaurants in the City of San Francisco.
- 20 10. As CEO of Command Packaging, I have at all times been the primary manager and
21 supervisor of the company’s operations, including plastic carryout bag manufacturing,
22 marketing and sales.
- 23 11. I am knowledgeable and an expert on plastic carryout bag manufacturing, marketing and
24 sales to the grocery, restaurant and food industries, including ordering lead times.
- 25 12. From 2006 to 2007, I was the Chairman of the Board of Directors of the California Film
26 Extruders and Converters Association (“CFECA”). CFECA, which has been renamed
27 the Western Plastics Association, is the leading trade association representing California
28 and Western U.S. and Western Canadian based manufacturers of plastic film products,

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- including plastic bags.
13. When stores and restaurants buy plastic bags, they usually purchase several months, sometimes up to two years, worth of supply.
14. Businesses that have only used plastic bags in the past will have to purchase paper or compostable bags immediately or soon to comply with San Francisco Ordinance No. 33-12, including having their logos printed on them. Such ordering and printing requires considerable lead-time, which may be six months or longer.
15. Based on an effective date of October 1, 2012, stores that are subject to the Ordinance must order paper and compostable bags immediately or very soon and start running down their stocks of plastic bags. Once they have purchased large quantities of paper and compostable bags to replace inventories of plastic bags, it is highly unlikely that many of them will switch back to plastic bags until they have used up their inventory of paper and compostable bags. The plastic bag industry would not have the opportunity to sell them plastic carryout bags again for as much as two years if they start implementing the Ordinance.
16. Command Packaging supplies plastic bags to multiple stores and restaurants in San Francisco that would be subject to the Ordinance. The identities of our customers are a trade secret, but can be disclosed to the Court on a confidential basis upon request. Command Packaging will lose all such customers and potential customers if a preliminary injunction is not granted.
17. Paper and compostable bags are approximately four to eight times more expensive than plastic bags, thereby causing stores and restaurants to incur greater costs if they switch to paper or compostable bags.
18. More than half of Command Packaging's business is the sale of plastic carryout bags to restaurants and other food facilities.
19. Since Command Packaging was formed in 1989, I have been the lead salesperson for the sale of plastic bags manufactured by our company to restaurants and other food facilities.

- 1 20. Plastic bags are waterproof and greaseproof. Paper bags are not.
- 2 21. When liquids spill inside a paper bag, the bag can break. That does not happen to a
- 3 plastic bag.
- 4 22. Many restaurants and other food facilities purchase plastic bags rather than paper bags,
- 5 because their customers may suffer burns if hot and scalding liquids (such as soup) and
- 6 hot and oily foods are provided in paper or compostable bags. Their customers may
- 7 suffer property damage if any liquids or oily foods are provided in paper or compostable
- 8 bags.
- 9 23. Restaurants prepare and sell freshly cooked foods that may contain extremely hot liquid,
- 10 grease, oil, sauce, or soup. Oil is heated in fryers to 375 degrees or more. Hot soup and
- 11 other foods may be served at 180 degrees or more. Plastic is safer than paper and
- 12 compostable bags for transporting such foods.
- 13 24. Compostable bags tear and break very easily with light loads. They feel like plastic
- 14 bags, which could cause people to believe that they are in fact plastic bags with similar
- 15 properties, especially people who do not live or work in San Francisco and have never
- 16 seen and used a compostable bag.
- 17 25. BioBag is a major supplier of compostable bags in San Francisco. It advises consumers:
- 18 “DON'T put hot liquids inside bag.”
- 19 (<http://www.biobagusa.com/biodegradable-bags.html>.)
- 20 26. The Ordinance allows free plastic bags to “contain unwrapped prepared foods or bakery
- 21 goods.” However, prepared food is rarely placed “unwrapped” into a plastic bag. Food
- 22 is initially “wrapped” as follows:
- 23 • In a box (especially Chinese food including steamed or fried rice and noodles, Thai
 - 24 food, and Indian food)
 - 25 • In an aluminum container with a cardboard lid (all kinds of hot prepared food)
 - 26 • In a paper holster (French fries, onion rings)
 - 27 • In wrapping paper (sandwiches, hamburgers, hot dogs, tacos, burritos, enchiladas)
 - 28 • In a cup (hot and cold beverages, soups, sauces)

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The “wrapped” food is placed in a plastic carryout bag to prevent the escape of spillages from those “wrapped” items. Hot and liquid foods could leak from take-out containers and potentially cause paper and compostable bags to weaken and fail.

27. For example, dim sum is usually placed in cardboard or other containers that do not fully protect against spillages. The containers are placed in plastic bags that are often tied at the top to prevent hot soups and juices from spilling and causing burns. A paper bag cannot be tied at the top and may break if liquids spill inside the bag.

28. Carryout bags from food establishments are often transported or opened in moving vehicles, so safe and secure packaging is essential.

29. I believe that if a preliminary injunction is not issued, customers may suffer personal injury and property damage.

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

Executed on April 13, 2012 at Vernon, California.

[Signed]

PETER M. GRANDE

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compostable bags immediately or soon to comply with San Francisco Ordinance No. 33-12, including having their logos printed on them. Such ordering and printing requires considerable lead time, which may be six months or longer.

12. Based on an effective date of October 1, 2012, stores that are subject to the Ordinance must order paper and compostable bags immediately or very soon and start running down their stocks of plastic bags. Once they have purchased large quantities of paper and compostable bags to replace inventories of plastic bags, it is highly unlikely that many of them will switch back to plastic bags until they have used up their inventory of paper and compostable bags. The plastic bag industry would not have the opportunity to sell them plastic carryout bags again for as much as two years if they start implementing the Ordinance.

13. Crown Poly supplies plastic bags to multiple stores and restaurants in San Francisco that would be subject to the Ordinance. The identities of our customers are a trade secret, but can be disclosed to the Court on a confidential basis upon request. Crown Poly will lose all such customers and potential customers if a preliminary injunction is not granted.

14. Paper and compostable bags are approximately four to eight times more expensive than plastic bags, thereby causing stores and restaurants to incur greater costs if they switch to paper or compostable bags.

I declare under penalty of perjury under the laws of the State of California that I have read the foregoing, that the foregoing is true and correct, and that I would be competent to so testify. Executed on April 13, 2012 at Huntington Park, California.

[SIGNED]

CATHERINE BROWNE

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PROOF OF SERVICE

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 May 8, 2012, I personally delivered a true and correct copy of the foregoing NOTICE OF MOTION AND PETITIONER’S MOTION FOR PRELIMINARY INJUNCTION TO STAY IMPLEMENTATION AND ENFORCEMENT OF CARRYOUT BAG ORDINANCE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF STEPHEN L. JOSEPH, PETER M. GRANDE, AND CATHERINE BROWNE to Counsel for Respondents at San Francisco City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4682, in an envelope clearly labeled to identify the attorneys being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. The envelope was labeled as follows:

DENNIS J. HERRERA
City Attorney
KRISTEN A. JENSEN
JAMES M. EMERY
Deputy City Attorney
San Francisco City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

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

Executed on May 8, 2012 at San Francisco, California.

STEPHEN L. JOSEPH