

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

FOOD INDUSTRY ALLIANCE OF
NEW YORK STATE, INC.

Plaintiff/Petitioner,

- against -

THE VILLAGE OF HASTINGS-ON-HUDSON and
THE BOARD OF TRUSTEES OF THE VILLAGE
OF HASTINGS-ON-HUDSON,

Defendants/Respondents.

Plaintiff/Petitioner
Designates Westchester
County as the place of trial.

The basis of this venue is
CPLR §§ 503(c) and 506(b)

SUMMONS

Index No.: 3372/2014

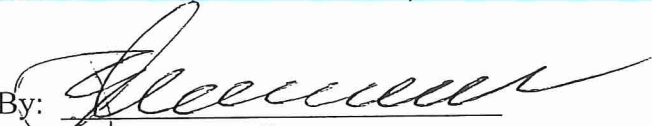
Date Purchased: 10/2/14

To the above-named Defendants/Respondents:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint and Petition in this action and to serve a copy of your answer, or, if the Verified Complaint and Petition is not served with this Summons, to serve a notice of appearance on the Plaintiff/Petitioner's attorneys within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint and Petition.

Dated: October 2, 2014
Mount Kisco, New York

SHAMBERG MARWELL HOLLIS
ANDREYCAK & LAIDLAW, P.C.

By: 

John S. Marwell
Attorneys for Plaintiff/Petitioner
55 Smith Avenue
Mount Kisco, NY 10549
(914) 666-5600

TO: THE VILLAGE OF
HASTINGS-ON-HUDSON
Defendant/Respondent
7 Maple Avenue
Hastings-on-Hudson, NY 10706

THE BOARD OF TRUSTEES OF THE
VILLAGE OF HASTINGS-ON-HUDSON
Defendant/Respondent
7 Maple Avenue
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

FOOD INDUSTRY ALLIANCE OF
NEW YORK STATE, INC.,

Plaintiff/Petitioner,

- against -

THE VILLAGE OF HASTINGS-ON-HUDSON and
THE BOARD OF TRUSTEES OF THE VILLAGE
OF HASTINGS-ON-HUDSON,

Defendants/Respondents.

**NOTICE OF
PETITION**

Index No.: 3372/2014

Assigned Judge:

S I R / M A D A M :

PLEASE TAKE NOTICE, that upon the annexed Verified Complaint and Petition of Food Industry Alliance of New York State, Inc., duly verified on the 1st day of October, 2014, Plaintiff/Petitioner, by its attorneys, Shamberg Marwell Hollis Andreycak & Laidlaw, P.C.; will move this Court, at the Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, on the 5th day of November, 2014 at 9:30 a.m., for a Judgment pursuant to Section 3001 and Article 78 of the Civil Practice Law and Rules: (a) declaring Local Law No. 2 of 2014 of the Village of Hastings-on-Hudson is invalid as preempted by the comprehensive legislative scheme adopted by the State of New York and set forth at NYS ECL § 27-2701 *et seq.* "Plastic Bag Reduction, Reuse and Recycling"; b) vacating the Negative Declaration pursuant to SEQRA made by Defendants/Respondents at the June 3, 2014 Village Board Meeting; c) annulling the passage of Local Law No. 2 of the Village of Hastings-on-Hudson as adopted in violation of the requirements of SEQRA insofar as Defendants/Respondents failed to take a "hard look" prior to making a Negative Declaration of environmental impact; d) declaring that Local Law No. 2 of 2014 of the Village of Hastings-on-

Hudson is invalid as arbitrarily unconstitutional; e) granting to Plaintiff/Petitioner its reasonable costs and disbursements of this action/proceeding; and f) granting such other and further relief as the Court deems just and appropriate under the circumstances.

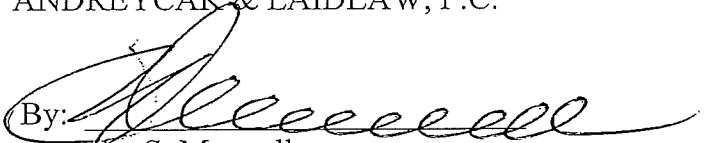
PLEASE TAKE FURTHER NOTICE, that Defendants/Respondents' Answer to the Verified Complaint and Petition, and supporting affidavits, if any, must be served upon Plaintiff/Petitioner's undersigned attorneys at least seven (7) days prior to the return date of this Verified Complaint and Petition, as set forth above.

PLEASE TAKE FURTHER NOTICE, that Defendants/Respondents are required to file with its Answer to the Verified Complaint and Petition, the Certified Transcript of Record of the proceedings under consideration.

Dated: October 2, 2014
Mount Kisco, New York

Respectfully submitted,

SHAMBERG MARWELL HOLLIS
ANDREYCAK & LAIDLAW, P.C.

By: 

John S. Marwell
Attorneys for Plaintiff/Petitioner
55 Smith Avenue
Mount Kisco, NY 10549
(914) 666-5600

TO: THE VILLAGE OF
HASTINGS-ON-HUDSON
Defendant/Respondent
7 Maple Avenue
Hastings-on-Hudson, NY 10706

THE BOARD OF TRUSTEES OF THE
VILLAGE OF HASTINGS-ON-HUDSON
Defendant/Respondent
7 Maple Avenue
Hastings-on-Hudson, NY 10706

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

FOOD INDUSTRY ALLIANCE OF
NEW YORK STATE, INC.,

Plaintiff/Petitioner,

**VERIFIED COMPLAINT
AND PETITION**

- against -

Index No.: 3372/2014

THE VILLAGE OF HASTINGS-ON-HUDSON and
THE BOARD OF TRUSTEES OF THE VILLAGE
OF HASTINGS-ON-HUDSON,

Assigned Judge:

Defendants/Respondents.

Plaintiff/Petitioner, FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.,
("Plaintiff/Petitioner" or "FIA"), by its attorneys Shamberg Marwell Hollis Andreycak &
Laidlaw, P.C., as and for its Complaint and Petition, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff/Petitioner brings this combined declaratory judgment action pursuant to CPLR 3001 and a proceeding pursuant to CPLR Article 78 seeking a Judgment declaring that Local Law No. 2 of 2014, adopted by the Village of Hastings-on-Hudson on June 3, 2014: (a) is invalid because it is preempted by Chapter 27 of Article 27 of the New York State Environmental Conservation Law ("NYS ECL"), NYS ECL § 27-2701 et seq.; (b) is invalid because it was adopted in violation of the mandates of Article 8 of the NYS ECL, the State Environmental Quality Review Act ("SEQRA"), NYS ECL 08-0101 et seq.; and (c) is invalid because it is unconstitutionally vague, arbitrary and violative of due process.

2. Venue is proper in this Court pursuant to CPLR § 503(c) and CPLR § 506(b).

3. This action/proceeding is timely as it is brought within the six-year statute of limitations generally applicable to declaratory judgment actions pursuant to CPLR § 213(1) and within the four-month statute of limitations applicable to special proceedings against a municipal body pursuant to CPLR § 217.

THE PARTIES

4. Plaintiff/Petitioner Food Industry Alliance of New York State, Inc. (“FIA”) is a trade association made up of approximately 850 corporate members who are engaged in the grocery wholesale, retail food, convenience store and drug store businesses. FIA’s mission as an organization is to advance and protect the interests of its membership in state and local legislative and regulatory activities and promote positive relationships among its members.

5. Among FIA’s approximately 850 corporate members is The Great Atlantic & Pacific Tea Company (“A&P”), which operates a supermarket engaged in retail sales within the Village at 87 Main Street, Hastings-on-Hudson 10706.

6. Upon information and belief, Defendant/Respondent, the Village of Hastings-on-Hudson (“the Village”), is a municipal corporation duly organized and existing under the laws of the State of New York. Defendant/Respondent, The Board of Trustees of the Village of Hastings-on-Hudson, consists of Mayor Peter Swiderski, Trustee Bruce Jennings, Trustee Marjorie Apel, Trustee Meg Walker and Trustee Nicola Armacost (“the Village Board”).

THE LOCAL LAW

7. On June 3, 2014, the Village Board adopted Local Law No. 2 of 2014¹ (“the Local Law”). See, **Exhibit A**, a true and accurate copy of the Local Law.

8. The Local Law amended the Code of the Village of Hastings on Hudson (“the Village Code”) by adding “Article IV. RETAIL CHECKOUT BAGS” to Chapter 244 of the Village Code. *Id.*

9. The Local Law states that “[n]on-biodegradable plastic bags often are discarded into the environment and end up polluting our waterways, clogging sewers, endangering marine life and causing unsightly litter.” *Id.*, § 244-15.

10. The Local Law further states that non-biodegradable plastic bags “last hundreds of years in landfills and are a potential source of harmful chemicals when they do break down.” *Id.*

11. The Local Law declares that its purpose and intent is to “improve the environment in Hastings-on-Hudson by encouraging the use of reusable checkout bags and banning the use of plastic bags for retail checkout of purchased goods. *Id.*

12. While the Local Law identifies “non-biodegradable plastic bags” as the purported cause of harm to the natural environment, the Local Law, in defining the scope and reach of its interdictions, creates several groups of non-biodegradable plastic bags which are specifically not banned or regulated by the statute.

13. “Checkout Bag” is defined by the terms of the Local Law as “[a] carry out bag that is provided to a customer at the point of sale. The term “checkout bag” does not

¹ The Local Law was originally introduced as “Local Law No. 4 of 2014” insofar as it was the fourth Local Law introduced or considered by the Village Board in 2014, but was actually adopted as “Local Law No. 2 of 2014” because it was the second Local Law adopted by the Village Board in 2014.

include plastic produce bags, garment bags or plastic bags measuring 28” by 36” or larger in size.” *Id.*, § 244-16.

14. The Local Law further clarifies its terms by defining a “Garment Bag” as “[a] large plastic bag with two openings that is used to transport clothing from a dry cleaner” and by defining a “Plastic Produce Bag” as “[a flexible container made of very thin plastic material with a single opening that is used to transport produce, meats or other items selected by customers to the point of sale.” *See, Exhibit A*, §244-16

15. The Local Law defines “Retail Sales” as “[t]he transfer to a customer of goods in exchange for payment occurring in retails stores, sidewalk sales, farmers’ markets, flea markets and restaurants.” *Id.*

16. The Local Law also specifically states that the ban on plastic bags does not apply to certain types of sales or transactions by excluding the “sales of goods at yard sales, tag sales and other sales by residents at their home” from the definition of “retail sales”. *Id.*

17. The prohibition on the use of certain types of non-biodegradable plastic bags in certain types of transactions which forms the heart of the Local Law is set forth at § 244-17, “Restriction on checkout bags.”

- A. Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers.
- B. Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.

18. Finally, the Local Law sets forth the penalties for violating its proscriptions in § 244-18, “Penalties for offenses.”

- A. In the event that there is noncompliance with this Article, the owner of the property or the owner’s agent or the person performing such violation shall be

notified in writing with a first time warning and shall forthwith stop with the violating activity. Such notice shall be served upon a person to whom it is directed either by delivering it personally to him or her or by posting same upon a conspicuous portion of the property and sending a copy of same by certified mail. Such notice shall provide a period of 10 business days to cure such violation and come into compliance with this chapter, after which a violation and summons may be issued.

- B. Any owner, representative or business establishment who violates any provision of this Article shall, upon conviction of violation, be fined not more than \$100 for a first violation after a first-time warning and a fine not exceeding \$200 for a second or subsequent violation.
- C. Any violation of this article may also be enjoined pursuant to law.

THE ENACTMENT OF THE LOCAL LAW

The March 4, 2014 Village Board Meeting

19. The Local Law was initially discussed by the Village Board at a public meeting on March 4, 2014 (“the March 4 Village Board Meeting”). *See, Exhibit B*, a true and accurate copy of the Meeting Minutes of the March 4, 2014 meeting of the Village Board.

20. The agenda for the March 4 Village Board Meeting identified the item to be discussed as “Proposed Ban on Plastic Bags - Conservation Commission” and the discussion was initiated by “Jean Hamerman, 32 Frasier Place,” a member of the Conservation Commission. *Id.*

21. Upon information and belief, the Conservation Commission is a municipal commission created by the Village Board pursuant to Village Law § 4-412(1), “which advises the Village Board and the Village Manager on issues relating to sustainability and the environment.” *See, Exhibit C*, a true and accurate copy of the webpage² for the

² *See*, http://www.hastingsgov.org/Pages/HastingsNY_BComm/Conservation/index

Conservation Commission of the Village of Hastings-on-Hudson.

22. Upon information and belief, the Conservation Commission drafted the proposed legislation regarding the use of plastic bags by retail stores at checkout which was discussed at the March 4 Village Board Meeting. *See, Exhibit B*, p. 15 (“The proposal before you the Conservation Commission approved unanimously.”)

23. At the March 4 Village Board Meeting, the proposed legislation was repeatedly characterized, both by members of the Conservation Commission and by members of the Village Board, as a “ban on the use of plastic bags” which was aimed squarely at retailers within the Village like A&P³. *See, Exhibit B; see also, ¶ 37, 46, infra.*

24. At the March 4 Village Board Meeting, Jean Hamerman, a member of the Conservation Commission, thanked the Village Board for “taking up the legislation proposal to ban the use of plastic bags” and stated that the Conservation Commission wanted “to propose a ban that would eliminate single-use plastic bag usage in retail stores.” *See, Exhibit B*, p. 15.

25. Ms. Hamerman also stated that the proposed legislation “would not eliminate laundry bags, produce bags, newspaper bags. It is what we are calling ‘single-use’ bags.”

3 *See e.g.*, *Exhibit B*, p. 17, “Ms. Zordan: “... We are going to give a grace period to the merchants to use their storage. And to provide the customer with reusable bags for a charge. I just noticed that **the A&P** has increased the amount of bags, the reusable bags available, for just 99 centers [*sic*]”; “Ms. Zordan:... In the future, if the legislation goes on, we have a plan to go to the merchants, **especially A&P**, and try to educate the customers and also educate the sellers, the people at the registers.”;

p. 19, “Ms. Hamerman: But the concept of allowing **the A&P** to charge 10 cents for the use of a recyclable bag, probably paper, you agree with that concept, to make that clear.”; “Trustee Armacost:... It seems as if you do not have a problem if **the A&P** is receiving food that is being sent in those containers by someone else.”; “Ms. Hamerman:... But we are not going to make **the A&P** unload all its meat products and use a different method.”;

p. 20, “Trustee Armacost: My question was a very practical question. If you are in the meat section, that meat has been put in those little Styrofoam containers by **the A&P**, not by someone else. So how are you going to get your meat home from **the A&P**?”

p. 21, “Trustee Jennings: ...And are we getting to the point where people can use paper bags that **the A&P** supplies, or where they can purchase and bring home their own reusable bags.”

p. 22 “Mayor Swiderski: Companies will either choose to eat it or oppose it. **The big offender is the A&P**, and I

26. Upon information and belief, the record is devoid of any underlying statistical, scientific or objectively factual support for the characterization that plastic bags provided by retailers within the Village at checkout are, in fact, “‘single-use’ bags.”

27. Upon information and belief, the record is devoid of any underlying factual support which identifies the frequency of the reuse of “laundry bags, produce bags, newspaper bags” such as to distinguish those non-biodegradable plastic bags from the plastic bags provided by retailers within the Village at checkout such as to support the characterization of plastic bags provided by retailers within the Village at checkout as uniquely “‘single-use’ bags.”

28. At the March 4 Village Board Meeting, Costanza Zordan, a member of the Conservation Commission stated that “I think everybody is aware of the toxicity of plastic.” *See, Exhibit B*, p. 16.

29. Upon information and belief, the record is devoid of any underlying statistical, scientific or objectively factual support for the characterization of plastic as “toxic.”

30. At the March 4 Village Board Meeting, Ms. Zordan stated “The problem is not with plastic bags only. It is with not reusable bags. Paper is also a problem for the environment, the way it made, prepared with the chemicals.” *See, Exhibit B*, p. 18.

31. At the March 4 Village Board Meeting, Trustee Marjorie Apel, a member of the Village Board, and Ms. Zordan and Ms. Hamerman, as part of a discussion about the Local Law’s ban of both plastic bags provided by retailers within the Village at checkout and Styrofoam containers, had the following exchange regarding the underlying statistical,

suspect they will try to move to recyclable bags.” [*emphasis supplied*]

scientific or objectively factual support for the bans in the proposed Local Law:

Trustee Apel: "Are there medical studies that show that the Styrofoam has permeated the food?"

Ms. Zordan: Not even plastic, you are not so sure. They are starting now to say if you put plastic in the microwave it can be toxic for you.

Trustee Apel: But that is not my question. **My question is if there are actual studies. We are not scientists and doctors here, and we do not have proof. We cannot just say we think, we feel.**

Ms. Hamerman: Those are excluded under where it says "Restriction on Styrofoam Containers, where A says that this subsection shall not apply to expanded polystyrene containers used for prepackaged foods that have been filled and sealed prior to receipt in service, and also used to store raw, butchered meats." So those would be excluded.

Trustee Apel: I think you work on it at this point, and once we are successful this way then the people will come in and say I can't buy this because it's on there. That would be added pressure on. So you do this in steps.

Ms. Hamerman: The language on the polystyrene containers comes from the New York City council, which recently approved and passed this legislation for New York City. **So they probably did the research both in terms of its impact in the environment and health. See, Exhibit B, p. 20-1.**

32. Upon information and belief, the record is devoid of any evidence of any actual research conducted by New York City on the "impact in the environment and health" which will result from the Local Law.

33. At the March 4 meeting, Trustee Jennings stated:

I do not think my quality of life has improved one iota in the last 10 or 15 years by having the paper bags disappear and these plastic bags appear in their place. **My quality of life is worse, as evidenced by the environmental effects. We do not even need to get into debates about the health effects. The environmental effects alone are enough** to warrant our community pushing back against this. *See, Exhibit B, p. 22.*

34. Upon information and belief, the record is devoid of any underlying

statistical, scientific or objectively factual support concerning any environmental or health effects of plastic or that plastic bags provided by retailers within the Village at the checkout has worsened any person's "quality of life" or has caused any adverse "health effects" or "environmental effects."

35. The record does contain scientific evidence that paper bags, which are specifically permitted by the Local Law, have a greater negative impact on the environment than the plastic bags which are banned by the Local Law. *See*, ¶¶ 47-51, 72-86, 110-118, *infra*.

The March 18, 2014 Village Board Meeting

36. On March 18, 2014, the Local Law was again discussed by members of the Village Board ("the March 18 Village Board Meeting") and a public hearing on the proposed Local Law was scheduled for April 23, 2014.

37. At the March 18 Village Board Meeting, members of the Board acknowledged that "merchants" within the Village "will be the ones most directly affected by this [Local Law]." *See*, **Exhibit D**, attached, a true and accurate copy of the Meeting Minutes of the March 18, 2014 meeting of the Village Board.

38. At the March 18 Village Board Meeting, the Village Attorney at that time, Marianne Stecich, advised the Board:

In addition to making sure you notify the merchants, you are going to have to do a SEQRA determination on this and you are enacting it because it states that it is going to serve the public health. **It is important to have at that meeting some sort of proof, some evidence on this, other than you have a sense that plastic bags are bad, let us get rid of them.** I mentioned it in my email to you and copied the person from the Conservation Commission. **It is important for the Board, before they enact this, to hear some evidence as to why it is better. I am not saying have a lot of weight, but there are articles out there contradictory to it. So you need a basis for passing the law, both as to the Styrofoam and to the plastic bags.** *See*, **Exhibit D**, p. 6.

39. Upon information and belief, the record is devoid of any “proof” or any underlying statistical, scientific or objectively factual evidence that provides a “basis for passing the law” which bans plastic bags provided by retailers within the Village at checkout.

Communications prior to the April 23, 2014 Public Hearing

40. Upon information and belief, prior to the April 23 Public Hearing, the Conservation Commission, either at the direction of or with the approval of the Village Board, distributed and disseminated an informational flyer regarding the intents, anticipated impacts, rationale, scope and necessity of the proposed Local Law (“the FAQ flyer”). *See, Exhibit E*, a true and accurate copy of the FAQ flyer.

41. The FAQ flyer stated that “[s]ingle-use, disposable plastic bags are a major source of litter and pollution in our environment” and that these bags “can only be ‘reused’ once before being discarded.” *Id.*, p. 1

42. Upon information and belief, the record is devoid of any underlying statistical, scientific or objectively factual evidence that the plastic bags banned by the Local Law are, in fact, “single-use” bags in contrast with those bags which the Local Law specifically permits to continue to be used and distributed by retailers in the Village.

43. The FAQ flyer stated that “[t]he ordinance is part of a larger educational campaign to encourage the use of reusable bags, thereby contributing to a cleaner, healthier environment”. *Id.*

44. Upon information and belief, the Local Law does not actually create or provide for any “larger educational campaign” but rather consists of prohibitions of certain

types of plastic bags and the express exemption of other types of plastic bags from that prohibition.

45. Upon information and belief the record is devoid of any underlying statistical, scientific or objectively factual evidence that the Local Law will contribute to a cleaner, healthier environment.

46. The FAQ flyer states that “[t]he ordinance targets only retail transactions.” *See, Exhibit E*, p. 1.

47. Prior to the April 23 Public Hearing, upon information and belief, Trustee Meg Walker solicited information regarding the impact of plastic bags on the environment from Mr. Lee Califf, Executive Director of American Progressive Bag Alliance.

48. Upon information and belief, Mr. Califf responded to Trustee Walker via email on April 18, 2014 and, upon information and belief, Trustee Walker forwarded on Mr. Califf’s email to the entire Board of Trustees and Haven Colgate of the Conservation Commission (“the April 18 Califf email”) *See, Exhibit F*, a true and accurate copy of the April 18 Califf email from Mr. Califf to Trustee Walker and from Trustee Walker to the Board of Trustees and Haven Colgate.

49. Mr. Califf informed Trustee Walker that “plastic bags are in fact more environmentally-friendly than most other bagging options” and that plastic bags “make up **less than 0.5 percent of the municipal waste stream** and constitute **less than 1 percent of litter** in most cities.” *See, Exhibit F*.

50. Mr. Califf also informed Trustee Walker that “plastic bags have a significantly lower impact on landfills than alternative bagging options” and that paper bags take more energy and water to produce in the first place.” *Id.*

51. Mr. Califf further informed Trustee Walker that plastic bags “are 100% recyclable, contain recycled content (via true closed loop recycling) and are reused for many household purposes.” *Id.*

52. Mr. Califf informed Trustee Walker the presumption contained within the Local Law that the best way to achieve the stated goal of the Local Law “to improve the environment in Hastings-on-Hudson” is not to ban plastic bags but rather to recycle plastic bags (“it is our contention that recycling – as opposed to a ban – is the best and most effective means of responsible environmental stewardship”). *Id.*

53. Mr. Califf also advised Trustee Walker that Hilex Poly, a manufacturer and recycler of plastic bags “is committed to working with lawmakers like yourself to develop comprehensive recycling programs. Through its retailer collector program, Bag-2-Bag, Hilex enables people to deposit their used plastic bags and wrap into bins at local stores for recycling. In 2011 alone, an estimated one billion pounds of plastic bags, sacks and wraps were recycled.” *Id.*

54. In his April 18 email to Trustee Walker, Mr. Califf offered to “meet with the Board of Trustees to discuss environmentally-sound policies and increased recycling solutions.” *Id.*

55. In response to the April 18 email from Mr. Califf, Trustee Walker followed up with questions to Mr. Califf regarding plastic bag recycling, and specifically asked about local stores collecting bags for recycling. *See, Exhibit F.*

56. Upon information and belief, Mr. Califf responded to Trustee Walker’s questions via email on April 22, 2014, and, upon information and belief, Trustee Walker forwarded on Mr. Califf’s email to the entire Board of Trustees and Haven Colgate of the

Conservation Commission (“the April 22 Califf email”). *See, Exhibit G*, a true and accurate copy of the April 22 Califf email from Mr. Califf to Trustee Walker and from Trustee Walker to the Board of Trustees and Haven Colgate.

57. In the April 22 Califf email, Mr. Califf informed Trustee Walker that “depositing plastic bags in retailer collection bins is far more effective method of recycling than putting them in the general recycling stream.” *Id.*

58. Mr. Califf further informed Trustee Walker that “the Bag-2-Bag program is not confined simply to grocery bags. Shoppers can also drop off dry cleaning bags and plastic retail bags in these take-back bins” and that “the vast majority of plastic retail bags meet the requirements of our recycling process.” *Id.*

59. Mr. Califf again offered to “partner with Hastings-on-Hudson to help educate the community and implement effective recycling solutions for its residents.” *Id.*

The April 23, 2014 Public Hearing

60. On April 23, 2014 a public hearing was conducted on the advisability of adopting the proposed Local Law (“the April 23 Public Hearing”). *See, Exhibit H*, a true and accurate copy of the Meeting Minutes of the April 23 Public Hearing.

61. At the April 23 Public Hearing, Mayor Swiderski, a member of the Village Board stated that the proposed law had been “tweaked” since it was introduced a few weeks prior, and also asked Jean Hamerman of the Conservation Commission “to describe what is in the law and what things were tweaked.” *See, Exhibit H*, p. 1. Mayor Swiderski further stated that “[t]he Conservation Commission carries out initiatives, sometimes started by the Board and sometimes on their own recognizance. This project comes to us; it has been

raised before. The Board of Trustees expressed interest and the Conservation Commission has pursued it and come up with a draft.” *Id.*

62. At the April 23 Public Hearing, Ms. Hamerman of the Conservation Commission stated of the Local Law, “[t]he ban would only extend to single-use plastic bags. It does not include produce or include garment bags. * * * From the law that was distributed several weeks ago with the counsel of Linda Whitehouse [*sic*], and we appreciate very much your input, we have made some minor changes, clarifying what was included, .i.e. just the single-use bags, not the produce or garment bags; we loosened the definition of a paper bag; the ban was expanded to include not-for-profit organizations; added the cure period; and we clarified that stores can continue to sell Styrofoam products, that that would not be included in the Styrofoam ban.” *Id.*, p. 1-2.

63. At the April 23 Public Hearing, John Gonder, of 153 James Street in the Village of Hastings-on-Hudson, stated that the ban on plastic bags “should include those bags that newspapers come in. * * * On a windy day like this, what do they do? They blow, and a lot of them are up in Pulvers Woods... they go up on my garage roof, sun porch roof, in my driveway.” *Id.*, p. 2.

64. At the April 23 Public Hearing, two students from Hastings High School who identified themselves as “pro-ban” showed a poster documenting pictures depicting “more than 60 bags” found around Hastings in the span of one random hour. *Id.*, p. 3.

65. Upon information and belief, there was no statistical, scientific or objectively factual evidence or analysis offered along with this “project” that identified any of the littered plastic bags as “plastic bags for retail checkout of purchased goods” as distinguished from newspaper bags, produce bags, garment bags or plastic bags over 28” by 36” in size.

66. At the April 23 Public Hearing, Peter Rockwood of 51 Buena Vista Drive, identified himself as the owner of Rockwood Perry Fine Wine and Spirits. *Id.*, p. 4.

67. Mr. Rockwood stated that “a ban on plastic bags creates some serious issues for my business... The bags we use in the store and have used for 25 years are heavy bags. They do not fly through the air. I have not ever seen one hanging in a tree. They are reusable and, very importantly, are recyclable. These bags are needed by people who are picking up 10, 15, 20 even 30 pounds of glass and liquid in my store. They have handles... If people are limited to paper bags, the paper bags do not gather these bottles. Things come loose, the bags can tear. There is going to be a safety issue.” *See, Exhibit H*, p. 4.

68. Mr. Rockwood further stated at the April 23 Public Hearing, “[t]he matter of recycling is a key issue. * * * People can be trained just like we were trained to recycle all these other things to recycle plastic bags. Every plastic bag that comes into my house from the A&P I recycle. I bring it down to the A&P, they recycle it. We can train people to recycle these products so the convenience and safety of using them is not eliminated.” *Id.*

69. At April 23 Public Hearing, Brian Allen, of 101 Southside Avenue stated that “[t]he law does not say that it operates only within Hastings.” Mr. Allen stated that he was concerned that the law was not clear about how it applied to a situation in which “I order food from Lemon Tree [outside of the Village] and it comes to me in a plastic bag, is that driver breaking a law in Hastings? If Corey Glass, which has a location on Main Street and a location in Yonkers, sends a box with glass or framing materials with peanuts that they got from China to a customer in Hastings, are they breaking the law? If they send it to Main Street and open it and give it to a customer, are they breaking the law? It does not seem to be clear.” *See, Exhibit H*, p. 4.

70. At the April 23 Public Hearing, Brayden Cohen, from Edgemont, who identified himself as a “sustainability educator and specialist” and stated that “banning the distribution of plastic bags” is “a public health concern. It is also a concern of food security.” *See, Exhibit H*, p. 5. Mr. Cohen also stated “[w]e have taught people to recycle, we have taught [*sic*] to separate recycling. Recycling is a part of every child’s education in public school, so why can this simple behavior not change of just using a reusable bag. Voluntary measures are not enough.” *Id.*

71. Upon information and belief, the record is devoid of any statistical, scientific or objectively factual evidence that plastic bags are a “public health concern” or “a concern of food security.”

72. At the April 23 Public Hearing, Joseph Madden, an Attorney from Shamberg Marwell Hollis Andreycak & Laidlaw, P.C., on behalf of the Plaintiff/Petitioner, submitted, in writing, an analysis of the technical and legal defects of the proposed Local Law and asked that the submission be made a part of the record of the Public Hearing and the consideration of the Local Law (“Plaintiff/Petitioner’s April 23 Submission”). *See, Exhibit I*, a true and accurate copy of Plaintiff/Petitioner’s April 23 Submission; *see also, Exhibit H*, p. 7-8.

73. Plaintiff/Petitioner’s April 23 Submission included as attachments:

-Written Comments prepared by Jay M. Peltz General Counsel and Vice President of Government Relations for the FIA;

-“A Survey of the Economic Effects of Los Angeles County’s Plastic Bag Ban,” National Center for Policy Analysis, Policy Report No. 340, by Pamela Villarreal and Baruch Feigenbaum (“NCPA Report”);

-An Environmental Resources Planning, LLC, Planning Brief Report regarding Plastic Bags in Litter;

-Moore Recycling Associates, Inc., 2011 Postconsumer Plastic Bag & Film Recycling Report, prepared for the American Chemistry Council;

-“A Point-Source Norovirus Outbreak Caused by Exposure to Fomites” a Brief Report by Kimberly K Repp and William E. Keene. *See*, **Exhibit I**.

74. Plaintiff/Petitioner’s April 23 Submission identified three major legal deficiencies with the proposed Local Law: 1) that it is preempted by New York State Law (ECL § 27-2701 *et seq.*) which requires retailers to recycle plastic bags; 2) that it is arbitrary and unconstitutional: a) in its distinction amongst various classes of non-biodegradable plastic bags and who may distribute those various classes of plastic bags, and b) because it is unsupported by the type of scientific and statistical evidence necessary to show a connection between banning the use of plastic bags for retail checkout of purchased goods and the stated objective of the Local Law to improve the environment in Hastings-on-Hudson; and 3) that a failure to prepare a full Environmental Impact Statement studying all of the actual environmental and economic impacts of the proposed Local Law would be a violation of the State Environmental Quality Review Act (“SEQRA”, ECL § 8-0101 *et seq.*). *See*, **Exhibit I**.

75. At the April 23 Public Hearing, Jay Peltz submitted written remarks regarding the proposed Local Law. *Id.*, attachment 1, (Written Comments prepared by Jay M. Peltz General Counsel and Vice President of Government Relations for the Food Industry Alliance of New York State, Inc.).

76. Mr. Peltz also testified at the April 23 Public Hearing, about the relative environmental impacts from plastic bags and paper bags. *See*, **Exhibit H**, p. 8-12.

77. Mr. Peltz stated at the April 23 Public Hearing, “Legislation adopting a ban should meet the highest policy standards. A ban should not be based on an arbitrary case,

one that springs from false, exaggerated and uncorroborated claims. Unfortunately, the case to ban plastic bags rests on such claims and will have myriad negative environmental impacts, as described below. Environmental claims: it is commonly argued that plastic bags fill up landfills at an alarming rate. However, to our knowledge no studies have been cited to corroborate that assertion. According to the National Center for Policy Analysis, a non-profit, nonpartisan public policy research organization, plastic bags amounted to less than one-half of one percent of landfill space.” See, **Exhibit H**, p. 9; **Exhibit I**, attachment 2, “NCPA Report.”

78. Mr. Peltz also stated that a 2011 study released by the U.K.’s Environment Agency “evaluated nine categories of environmental impacts caused by different types of supermarket bags. The study found that paper bags have a worse effect on the global environment than plastic bags in all nine impact categories, including global warming potential, abiotic depletion, acidification, eutrophication, human toxicity, fresh water aquatic ecotoxicity, marine aquatic ecotoxicity, terrestrial ecotoxicity and photochemical oxidation.” See, **Exhibit H**, p. 9; see also, **Exhibit L**, *infra*.

79. Mr. Peltz stated that “... paper bags biodegrade into methane. However, according to a July, 2013 briefing note from the British Columbia Environment Ministry staff, methane emissions are a particular concern since they have a global warming impact 21 times higher than carbon dioxide... Accordingly, a local law that will increase paper bag use seems likely to harm rather than help the environment because of practical limitations on the use of reusable bags.” See, **Exhibit H**, p. 10.

80. At the April 23 Public Hearing, Mr. Peltz further stated “[a] plastic bag ban usually leads to a surge in the use of paper rather than reusable bags. In fact, according to an

environmental impact report by L.A. County, in response to a plastic bag ban, 85 percent of consumers will switch to paper bags instead of resubmit bags. A surge in paper bag use has occurred in places where plastic bags have been eliminated, including San Francisco and Whole Foods. And what would this switch to paper bags mean for global warming? According to that same report, 85 percent of Californians switching to paper bags would be the equivalent greenhouse gas emissions of between 250,000 and 550,000 more cars on the road every year. That is because life cycle analysis calculated that paper bags result in more than three times the gas emission of plastic bags.” See, **Exhibit H**, p. 10

81. At the April 23 Public Hearing, Mr. Peltz stated “under a law enacted in 2008 and effective in 2009, most retailers have to recycle plastic, any kind of plastic, essentially. Not technically, but we take back any kind of plastic. If you give out free plastic at checkout, which we do. So those efforts have been extremely successful to date, contrary to popular knowledge or popular perception. We have one member that recycled 3,187 tons of plastic film bags and hard plastic last year: one member, one year. And that mirrors a national trend. According to a 2011 national post consumer [*sic*] plastic bag and film recycling report which is part of the record now because it is part of our counsel’s attachment, in 2011 half a million tons of plastic bags and product wrap were recycled, and recycling of polyethylene bags, sacks and wraps has grown in nine out of the last 10 years.” See, **Exhibit H**, p. 11; **Exhibit I**, attachment 3, (Moore Recycling Associates, Inc., 2011 Postconsumer Plastic Bag & Film Recycling Report, prepared for the American Chemistry Council).

82. Mr. Peltz further stated at the April 23 Public Hearing that there has been a “widespread failure to corroborate other claims by ban proponents: our counsel has outlined

what we believe are the Village's obligations under SEQRA to do a fully compliant SEQRA study, scientific study, including an EIS et cetera. On top of that, in all the localities, to our knowledge, that have considered a plastic bag ban to date none of them have produced specific credible evidence that the alleged environmental impacts and other problems associated with plastic bags have occurred in their localities. Nothing, no evidence. That means there is no rational basis for the law." See, **Exhibit H**, p. 11.

83. Mr. Peltz also stated at the April 23 Public Hearing, "[r]egarding the litter allegations, numerous studies show that the allegations are not true. According to the federal EPA, plastic bags account for less than one-half of 1 percent of the U.S. municipal solid waste stream. That is not on [sic] the record, sorry. According to a report by the Environmental Resources Planning Group, and this is in the record, a study using random sampling methodologies, it found that retail plastic bags comprise a minor portion of litter, usually less than one percent, according to a California state-wide waste characterization study of plastic bags, including grocery and other merchandise bags. So grocery bags are only a part of the total bag pool, and that is the point of this ban. It is to mostly get grocery bags. So plastic bags account for just 3/10 of 1 percent of the waste stream in the entire state. That is a huge state, right? It is a tiny share. In comparison, organic waste makes up 32 percent in that state, while construction debris comprises about 30 percent. In addition, even that small amount of litter does not necessarily decline when bans are enacted. In San Francisco, for example, plastic bags comprised 6/10 of 1 percent of litter before the city banned plastic bags, and 0.64 percent a year after the ban took effect. So it went up a little bit." See, **Exhibit H**, p. 11; **Exhibit I**, attachment 3, (An Environmental Resources Planning, LLC, Planning Brief Report regarding Plastic Bags in Litter).

84. At the April 23 Public Hearing, Mr. Peltz also referred to an email sent to Mayor Swiderski from John Niccollai, president of the United Food and Commercial Workers Local 464-A, which is the union representing employees at the A&P store located in the Village, which email was, upon information and belief, made a part of the record of the April 23 Public Hearing (“the Niccollai email). Mr. Peltz quoted the Niccollai email as stating that “the implementation of your pending legislation will, without question, raise the operating costs and place encumbrances on the business... thus making it more difficult to achieve our goal of profitability.... In addition, to the extent that prices increase and plastic bags are barred, shoppers will be encouraged to shop outside the Village.” *See, Exhibit H*, p. 12;

85. At the April 23 Public Hearing, Mr. Peltz also referred to “A Survey on the Economic Effects of L.A. County’s Plastic Bag Ban”, which study was included as part of Plaintiff/Petitioner’s April 23 Submission and which Mr. Peltz stated, “[that study] noted that in the unincorporated areas of the county when the ban was in effect sales and employment went down. In the incorporated areas, they went up. So the inference is that business migrated, together with sales tax revenue.” *See, Exhibit H*, p. 12

86. Finally, Mr. Peltz stated at the April 23 Public Hearing, “for the foregoing reasons, there is no rational basis to enact a plastic bag ban. This is because the case to ban plastic bags is based on false, exaggerated and uncorroborated claims, including the assertion that plastic bags are worse for the environment than paper or reusable bags. In addition, there is no rational basis to believe that any of the environmental impacts or problems associated with plastic bags use have occurred in this village. Accordingly, we respectfully request that the plastic bag ban provisions of the proposed local law number

four be stricken.” *Id.*

87. At the April 23 Public Hearing, John Ryan, District Manager, A&P Supermarkets, stated, “I started my career as a store manager of the Hastings A&P. So I know the area very well and I would like to talk about the fact that A&P is not in favor of a plastic ban. We are much more in favor of recycling and education of customers, children and everything. In our recycling efforts, we have a two cent bag rebate. For every bag a customer brings in, we give the customer back two cents. * * * Every day, every week, we send back plastic to our warehouses. We collect them from the town. We package them, put them back on our trucks and send them back for recycling every week, 52 weeks a year.” *Id.* at p. 13.

88. Mr. Ryan further stated “[w]e just recently, a year ago, had a plastic ban in the Village of Mamaroneck... Our Mamaroneck store was impacted significantly with revenue and sales. The gentleman from the liquor store was voicing that concern. It is a real concern and it is not talked about a lot. When I say significant, it is significant. The problem is there if there are no plastic bags in the A&P then they are going to go right down the street to Dobbs Ferry to the Stop & Shop because it is easier. And that does happen. Stew Leonard’s has plastic bags. They are right down the street, a quarter of the mile.” *See, Exhibit H*, p. 13.

89. At the April 23 Public Hearing, Costanza Zordan of 1 Zinsser Way, and upon information and belief a member of the Conservation Commission⁴ stated “I am going to go backward from the last comment of the gentleman from A&P. He said he started in 1972 being a manager of the supermarket. We all love A&P and we want that it stays in business.

But if you started this in 1972, probably you did not use any plastic bags at the time.... The plastic bag has been introduced recently, in the mid-80's. So it is a recent phenomenon, and in just a few decades has caused so much problems, dramatic changes to our environment that we cannot deny. We can maybe hide ourselves statistics and figures and do the magic with the numbers, but still if we go outside and walk in the A&P parking lot you see a lot of plastic bags. My daughter took the pictures." *Id.*, at p. 14

90. Upon information and belief, the record is devoid of any statistical, scientific or objectively factual evidence that plastic bags have "caused so much problems, dramatic changes to our environment" or that there are "a lot of plastic bags" in A&P's parking lot.

91. Ms. Zordan further stated, "I agree that education is absolutely needed and that is our goal with the Conservation Commission and with the transition on Hastings that I represent. **But so far the voluntary efforts have proven to be insufficient to reduce the volume of plastic consumed. To ban the plastic bags, the carryout plastic bags, it is just a minimum reduction of the entire plastic bags used globally in the world, I agree with that. It is a very little change.** But we must start from somewhere. We are using too much plastic." *See, Exhibit H*, p. 14

92. Upon information and belief, the Local Law does not actually create or provide for any "education" but rather consists of prohibitions of certain types of plastic bags and the express exemption of other types of plastic bags from that prohibition.

93. Upon information and belief, the record is devoid of any statistical, scientific or objectively factual evidence that voluntary efforts to recycle have proven insufficient to reduce the amount of plastic consumed.

⁴ *See, ¶ 28, supra.*

94. At the April 23 Public Hearing, Andrea Gabarini of Pleasantville stated, “[i]t is a simple fact that single-use plastic bags are a chronic litter and pollution problem. While bags are for a few minutes of convenience, **most are only used for 12 minutes**.... They often end up polluting our waterways, clogging sewers endangering marine life and causing unsightly litter.” *Id.*

95. Upon information and belief, the record is devoid of any statistical, scientific or objectively factual evidence that plastic bags are a chronic litter and pollution problem or that most plastic bags are only used for 12 minutes.

96. At the April 23 Public Hearing, Noah Prisement of 50 Clarewood Drive stated “it was pointed out that there might not be a big cause of damage in this community per se from plastic bags; however just the idea that we are trying to get rid of the harm that is caused by plastic bags as a whole is a great help to everybody. It shows people who are learning about this that it is a serious problem and sets up for a longer-term help.” *Id.*, at p. 17

97. Upon information and belief, the record is devoid of any statistical, scientific or objectively factual evidence that getting rid of something that is not “a big cause of damage in this community” will actually serve to be a big help to “everybody”.

98. At the April 23 Public Hearing, Haven Colgate, a member of the Conservation Commission, criticized the use of “A Survey on the Economic Effects of L.A. County’s Plastic Bag Ban” by Mr. Peltz in his statement at the April 23 Public Hearing. Ms. Colgate stated that “I read the study and I read all of the footnotes, and communicated with the author of the study, and found they actually only had a three percent response rate for their entire study. They wished for more, but they only had three percent. So in the end,

they canvassed 27 stores, 19 of which were small convenience stores and eight major retailers. Right there, you cannot draw conclusions from your study.” See, **Exhibit H**, p. 17

99. Ms. Colgate also stated at the April 23 Public Hearing, “[m]eanwhile, L.A. County itself, all those stores are in the incorporated and unincorporated zones in L.A. County, they had to do mandatory reporting to the county of L.A. In their own analysis, they found that consumers adapted very quickly to using reusable bags and that the major retailers on average which would use 2.2 million plastic bags a year, got that down to 195,000 paper bags.” *Id.*

100. Upon information and belief, Ms. Colgate did not submit any studies or documentary evidence of the claims made and statistics provided in her statement and that the record is otherwise devoid of any objective factual support for her claims.

101. Ms. Colgate also stated at the April 23 Public Hearing “I understand that plastic and paper both have environmental impacts. For me, the real question is the impact of the litter on the environment. It is not only an eyesore and a nuisance because it is so big, but the fact that it is so light that it blows around and blows into the water. Plastic molecules do absorb organic pollutants like PCBs, oily pollutants. We may find out, in 15 years, they have biomagnified up the food chain because they are being absorbed by plankton and the plankton are being eaten by fish. **And all of that, we really do not know the consequences. So plastic bags are one small portion of the tsunami of plastic waste that is flowing into our river.** I would encourage this to be the beginning of trying to keep plastic out of the environment and disposing of it properly, all plastics, not just plastic bags.” See, **Exhibit H**, p. 18

102. Upon information and belief, Ms. Colgate did not submit any studies or

documentary evidence of the claims made and statistics provided in her statement and that the record is otherwise devoid of any objective factual support for her claims.

103. At the April 23 Public Hearing, Elisa Zazzera, a member of the Conservation Commission, stated “Lots of facts and figures flying around. Recycling is not a fix. Plastic bags, plastic bottle, we are finding out that recycling is not really the answer to our waste problems. We need to stop making so much waste. **Banning plastic bags is a tiny, tiny part of what we can do to reduce our waste stream.**” *Id.*

104. At the April 23 Public Hearing Ms. Zazzera also stated “So we have lots of studies and data in support of the ban and in support of the continued use of these plastic bags and Styrofoam. What is no debatable is that our climate is in crisis. That means life on this planet, including us and all life, is in danger. Not dramatic, this is happening. We are creating this crisis and we have got to try to act fast and try to turn it around. One thing we can do is reduce the amount of stuff we dispose of... The externalities of the manufacture, use, disposal or recycling of these material are large and devastating to our environment.” *Id.* at p. 19

105. Upon information and belief, Ms. Zazzera did not submit any studies or documentary evidence of the claims made and statistics provided in her statement and that the record is otherwise devoid of any objective factual support for her claims.

106. At the April 23 Public Hearing, Jordan Christensen of the Citizens Campaign for the Environment stated “Plastic bags remain in our environment, littering open spaces, clogging our storm drains and causing localized flooding, polluting waterways and killing wildlife.” *See, Exhibit H*, p. 19.

107. Upon information and belief, Ms. Christensen did not submit any studies or

documentary evidence of the claims made and statistics provided in her statement and that the record is otherwise devoid of any objective factual support for her claims.

108. At the conclusion of the April 23 Public Hearing, Village Attorney Linda Whitehead advised the Village Board to continue the public hearing on May 6, 2014, “[b]ecause there have been changes in the law, we want to give the public the opportunity to review and comment on the changes.” *Id.* at p. 21

The May 6, 2014 Public Hearing

109. On May 6, 2014 a public hearing was conducted on the advisability of adopting the proposed Local Law (“the May 6 Public Hearing”). *See, Exhibit J*, a true and accurate copy of the Meeting Minutes of the May 6 Public Hearing.

110. At the May 6 Public Hearing, Jay Peltz, General Counsel and Vice President of Government Relations for Plaintiff/Petitioner, again addressed the proposed Local Law. *Id.*, p. 1-5.

111. Mr. Peltz stated at the May 6 Public Hearing, “plastic grocery bags require 40 percent less energy than paper bags to manufacture, and consume less than 4 percent of the water needed to make paper bags. The attributes that make plastic bags affordable and light also make them easier on the environment than alternatives like paper bags and reusable totes. * * *In addition, policy makers should be mindful that unlike plastic bags reusable bags require ongoing maintenance. It is recommended that reusable bags be washed in 140 degree soapy water to negate the possibility of cross-contamination. In addition, storing reusable bags in a hot trunk should be avoided, since storage may cause bacteria to grow 10 times faster. To the extent customers ignore these protocols, the chance of transmission increases.” *Id.*, p. 2.

112. Mr. Peltz further followed up on his remarks from the April 23 Public Hearing and stated “On April 23 I discussed how false, exaggerated or untrue claims by ban proponents had been accepted by localities throughout the country without corroboration. Tonight I would like to complete those remarks by noting comments by David Santillo, a Greenpeace marine biologist. Regarding alleged harm to marine wildlife, Mr. Santillo quoted in an article in the London Times said, quote, ‘it is very unlikely that many animals are killed by plastic bags. It doesn’t do the government’s case any favors if you’ve got statements being made that aren’t supported by the scientific literature that’s out there. On a global basis, plastic bags are not an issue. It would be great if statements like that weren’t made’. Moreover, the National Oceanic and Atmospheric Administration have stated that it is unable to find studies to support many of the statements that plastic bags cause harm to marine wildlife and that quotes about plastic marine debris are false, unproven or exaggerated.” *See, Exhibit J*, p. 3.

113. Mr. Peltz further stated at the May 6 Public Hearing, “in my testimony on April 23 I described the leadership role that grocery stores have established in pursuing environmentally sustainable solutions. Included in these efforts are ongoing successful initiatives to reduce, reuse and recycle plastic bags and increase the use of reusable bags. Accordingly, we respectfully request that in lieu of a ban the Village establish a dialogue with FIA and A&P, as other New York localities have done, with the goal of establishing a collaborative approach focused on education, outreach and collection to accelerate these ongoing successful efforts.” *Id.*, p. 4.

114. Following the May 6 Public Hearing, Mr. Peltz, on behalf of Plaintiff/Petitioner, as per the instructions of the Village Board, submitted to the Town Clerk

of the Village, a study produced by the Environment Agency of the UK in February, 2011 entitled “Life Cycle assessment of the supermarket carrier bags: a review of the bags available in 2006, Report SC 030148” (“the February, 2011 UK Environment Agency Study”). *See*, **Exhibit K**, a true and accurate copy of the email from Jay Peltz to Susan Maggiotto, Village Clerk.

115. Mr. Peltz asked that the February, 2011 UK Environment Agency Study be included in the public hearing record. *Id.*

116. The February, 2011 UK Environment Agency Study was commissioned by the Environment Agency of the United Kingdom, “an executive, non-departmental public body sponsored by the Department for the Environment, Food and rural Affairs”, which is the “UK government department responsible for policy and regulations on environmental, food and rural issues.”⁵

117. The February, 2011 UK Environment Agency Study “assesses the life cycle environmental impacts of the production, use and disposal of different carrier bags for the UK in 2006” in order to determine the “environmental impacts of providing, using and disposing of a product or providing a service throughout its life cycle . . . [and] identifies the material and energy usage, emissions and waste flows of a product, process or service over its entire life cycle to determine its environmental performance” *See*, **Exhibit L**, a true and accurate copy of the February, 2011 UK Environment Agency Study, p. 11.

118. According to the February, 2011 UK Environment Agency Study, “the environmental impact of all types of carrier bags is dominated by resource use and

⁵ *See*, <https://www.gov.uk/government/organisations/environment-agency>; and <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>

production stages” and the conventional lightweight plastic bag, “had the lowest environmental impacts... in eight of the nine impact categories” including having lower impacts than paper bags in all categories. *See*, **Exhibit L**, pp. 6-7; 53-61.

The May 20, 2014 Village Board Meeting

119. On May 20, 2014, the Village Board held a public meeting to discuss the Local Law and the comments made at the April 23 Public Hearing, the May 6 Public Hearing and the other comments and information received by the Village Board regarding the proposed Local Law. (“the May 20 Village Board Meeting”). *See*, **Exhibit M**, a true and accurate copy of the Meeting Minutes of the May 20 Village Board Meeting.

120. At the May 20 Village Board Meeting, Mayor Swiderski, a member of the Village Board, stated, “We have received quite a few comments, e-mail and by phone, and a petition that had 160–odd signatures from residents in favor of the ban. A couple of letters. Most in favor, but not all. A couple of citizens wrote in opposition. We have also heard from the Conservation Commission, from concerned citizens in the public meeting, from students at the school, from representatives of various associations supporting both stores and plastic bag manufacturers. Today we review what we have heard. If the Board has comments or thoughts, this is the chance to discuss it. Then we will decide if we are prepared to put this up for a vote at the next meeting, or not. Bruce, since ultimately this evolved out of a proposal from the Conservation Commission, which has been nominally under your wing, I will allow you to kick it off.” *Id.*, p. 4.

121. At the May 20 Village Board Meeting, Trustee Bruce Jennings, a member of the Village Board, stated “I am very appreciative that the response to this legislation was rich and broad and participatory. I feel better prepared to deliberate and make a

determination on this than I often feel where we did not get nearly as much input.” *Id.*, p. 4.

122. Trustee Meg Walker, a member of the Village Board, stated at the May 20 Village Board Meeting, “**I am appreciative of the Conservation Commission’s thoroughness in reviewing this for us** and presenting us with the severity of the issue, helping us understand even more. We see the bags around us, of course, but understanding the larger picture. I do appreciate so much A&P and Mr. Peltz, your arguments. I appreciate you presenting the facts you have.” *See, Exhibit M*, p. 4

123. Trustee Marjorie Apel, a member of the Village Board, stated at the May 20 Village Board Meeting, “I concur with my colleagues on the things they have said. It is too easy to walk around and not see things. Now that they are brought up, you see them. The type of concerns I have in terms of plastic, anyway, I see a more global concern. **I did some research, sent it to my colleagues about an island of plastic out in the ocean which is like the size of Texas or more, floating out there.** While we cannot go out there to that island and pick up some of the garbage, there is something we can do right here in our village and feel very proud of ourselves that we have taken a small step toward the environment.... With all the other things going on in the world like global warming, we have a chance to do something. It is not huge but it certainly says something. I think it is very important that we do this, and I am ready to vote.” *Id.*, p. 5.

124. Mayor Swiderski further stated at the May 20 Village Board Meeting, “The role of government is always about a collective good versus an individual good, and the balancing of those two. It is a difficult thing to do. * * * But you restrict liberty consciously, not trivially. Here it is a choice that we are making to take away an option. I do not do it lightly. I know there is a claim of potential economic impact and, as a result, it has to be

balanced against the good it does. There is no formal cost-benefit here. **It is more seat of the pants**, where you realize that the visual litter that comes from plastic bags is not trivial. It is not a made-up thing, it is real. * * * **it will yield a real, not a theoretical benefit. A visual blight will be significantly lowered**, and it will make a statement about what the government values and what people in this village value.” See, **Exhibit M**, p. 5-6.

The June 3, 2014 Village Board Meeting

125. At the June 3, 2014 Village Board Meeting, the Village Board voted unanimously to adopt a Negative Declaration under SEQRA the proposed Local Law (“the Negative Declaration”). See, **Exhibit N**, a true and accurate copy of the Meeting Minutes of the June 3, 2014 Village Board Meeting, p. 3-9.

126. The Negative Declaration was made following the preparation of a Short Environmental Assessment Form (“Short EAF”) dated March 27, 2014. See, **Exhibit O**, a true and accurate copy of the Short EAF.

127. The Negative Declaration adopted by the Village Board stated that “the Mayor and the board of Trustees find that the proposed action will not have a significant adverse impact on the environment and does not require an Environmental Impact statement (EIS) for the reasons as set forth in the EAF.” See, **Exhibits N and O**.

128. There was ample information before the Village Board in the form of documents and testimony about potential environmental impacts in at least the following areas required to be addressed under SEQRA: Solid waste; Public health and toxicity; Energy; Greenhouse gas emissions (“GHGs”); Water quality; and Socioeconomic impacts.

129. Rather than taking a hard look at these potential impacts, the Village merely checked the boxes on a “short form” EAF without demonstrating or documenting any

serious thought about the actual environmental impacts of its action.

130. Upon information and belief, the short form EAF completed by the Village is not fully or correctly completed. *See, Exhibit O*

131. The first question in Part 1 of the short form EAF asks: “1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2.” *Id.*

132. The Village checked the “yes” box, but, upon information and belief, did not provide the required narrative description. *Id.*

133. In addition to being substantively deficient, the EAF is procedurally deficient as well. *Id.*

**AS AND FOR A FIRST CAUSE OF ACTION-
THE LOCAL LAW IS PREEMPTED BY NEW YORK STATE LAW**

134. Plaintiff/Petitioner repeats, reiterates and realleges each and every allegation set forth above as if fully set forth herein.

135. The Local Law is specifically and intentionally directed at retailers, including Plaintiff/Petitioner’s member A&P, and the Local Law is designed to regulate the behavior and business practices of Plaintiff/Petitioner’s members such as A&P. ¶ 23, 46 *supra*.

136. The Local Law adversely affects Plaintiff/Petitioner and its members by prohibiting them from providing plastic bags to their customers and requiring them to provide paper bags to customers who do not bring their own bags to the retail establishments.

137. The Local Law is preempted by comprehensive New York State legislation regulating the reduction, reuse, and recycling of plastic bags. ¶¶ 72-74, *supra*.

138. It is well settled that, while the New York Municipal Home Rule Law generally grants broad authority to local governments to regulate with respect to the health, safety, and welfare of its citizens, this authority is fundamentally limited by the preemption doctrine. *Albany Areas Business Association v. Town of Guilderland*, 74 N.Y.2d 372, 547 N.Y.S2d 627 (1989).

139. The preemption doctrine states that “[w]here the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State’s transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute.” *Id.*

140. New York State has preempted the field of the regulation of plastic bags as a solid waste when it adopted the Plastic Bag Reduction, Reuse and Recycling Law, which went into effect on January 1, 2009 (Article 27, Chapter 27 of the Environmental Conservation Law, ECL § 27-2701 *et seq.*, hereinafter the “State Law”).

141. The State Law mandates that all qualifying retail establishments establish a procedure to accept plastic bags for recycling and offer reusable bags to its customers. The New York State Department of Environmental Conservation is responsible for enforcing the State Law.

142. Within this context, the State has directed that the manner in which plastic bags should be regulated *as a solid or hazardous waste*, is by the recycling scheme set forth in Chapter 27 of Article 27, “Plastic Bag Reduction, Reuse and Recycling”.

143. Indeed, the Legislative Findings for L.2008, c. 641 at the time of the adoption

of the Plastic Bag Reduction, Reuse and Recycling Act set forth: “It is the intent of the legislature to encourage the use of reusable bags by consumers and retailers and to encourage the reduced consumption of single-use bags, the reuse of such bags, and the recycling of such bags.”

144. The Local Law is preempted by the State Law because the Local Law attempts to regulate plastic bags in a manner inconsistent with the State Legislature’s comprehensive regulation of plastic bags. ¶¶ 9-17, *supra*.

145. New York State has determined that the way to address plastic bags as a potential pollutant or solid waste is to devise a recycling scheme; the Village has regulated certain types of plastic bags as a potential pollutant or solid waste by banning retailers from providing certain types of plastic bags by retailers at the point of purchase.

146. Under the principles of state preemption, the Village is not authorized to deviate from the State scheme set forth in Article 27, Chapter 27 of the ECL.

147. Section 27-2713 of the State Law preempts any ordinance “governing the recycling of plastic bags” and states that “[j]urisdiction in all matters pertaining to plastic bag recycling is by this article vested exclusively in the state.” Thus, the State has assumed full regulatory responsibility of plastic bags in the State.

148. The Local Law, which regulates the use of plastic bags by retail establishments in order to address the way that plastic bags are discarded and in order to address the purported pollution created by plastic bags, violates the principle of State preemption and “inhibit[s] the operation of the State’s general law and thereby thwart the operation of the State’s overriding policy concerns.” *See e.g., Woodbury Heights Estates Water Co., Inc. v. Village of Woodbury*, 37 Misc.3d 180, 943 N.Y.S.2d 385 (N.Y. Sup. Ct.

Orange Co. 2012) citing *Sunrise Check Cashing and Payroll Services, Inc. v. Town of Hempstead*, 91 A.D.3d 126, 933 N.Y.S.2d 388 (2d Dep't 2011).

149. In weighing all of these concerns and establishing a recycling program for plastic bags, the State did not determine that any sort of ban of the use of plastic bags by retailers was the appropriate way to accomplish that goal. *Id.*

150. Plaintiff/Petitioner pointed out to the Village Board that the passage of the Local Law would frustrate and undermine the State Law's recycling scheme. ¶¶ 72-86, *supra*; see also, 47-59, *supra*.

151. A representative from the A&P informed the Village Board about its success in recycling plastic bags under the State Law. ¶ 84-88, *supra*.

152. Members of the public advocated recycling of plastic bags to the Village Board. ¶¶ 67-68, *supra*.

153. In response to the inquiry of a member of the Board of Trustees, the Board of Trustees were informed about the recyclability of all kinds of plastic bags by retailers. ¶¶ 47-59, *supra*.

154. A representative of Plaintiff/Petitioner, informed the Village Board about the success of recycling plans undertaken by its members under the State Law. ¶¶ 81, 87, *supra*.

155. Members of the Conservation Commission acknowledged that the Local Law would thwart efforts to recycle plastic bags. ¶¶ 95, 103, *supra*.

156. The Local Law prohibits retailers from providing their customers with plastic carryout bags and thereby actively thwarts the intended purpose of the State scheme because those retail stores which are prohibited from providing plastic bags at the point of purchase would no longer be required to accept used plastic bags for recycling under the State Law.

ECL § 27-2701 *et seq.*

157. The State Legislature not only intended to enact a comprehensive recycling scheme in 2008 to deal with plastic bags, but also recently reaffirmed its support for a preemptive, statewide program by voting to expand the law this year to include plastic films, such as newspaper bags, dry cleaning bags, and shrink wrap.⁶

158. Under the amended State Law, only stores that give out plastic *bags* must establish in-store recycling programs that accept *both* bags and plastic film. Since the Local Law bans plastic bags but allows the distribution of plastic film, the Local Law directly hinders the State Law, since it will eliminate the requirement of in-store recycling programs in the Village.

159. On the basis of the foregoing, it is respectfully submitted that the Local Law being proposed by the Village is outside the scope of the authority of the Board due to the preemption by Article 27 of the Environmental Conservation Law.

**AS AND FOR A SECOND CAUSE OF ACTION-
FAILURE TO COMPLY WITH SEQRA**

160. Plaintiff/Petitioner repeats, reiterates and realleges each and every allegation set forth above as if fully set forth herein.

161. Prior to enacting the Local Law, Defendants/Respondents had an obligation

⁶ The assembly passed A.191-A on February 11, 2014 by a margin of 129-7 and the senate passed S.5817-A on May 13, 2014 by a vote of 59-1; the bill has not yet been signed by the Governor. This bill requires retailers who offer plastic bags to customers to also accept film plastic for recycling. Recognizing the preemptive effect of the State law, the Legislature chose to expand the law in order to allow provisions of a previously enacted, stricter local law in New York City to take effect. "The changes proposed in this bill would align state law with the City's preempted stricter standard by adding film plastic to the plastic bag recycling program that is already in place statewide." A. 191B Memo, 2013-14 Regular Session, NY Assembly, Jan. 9, 2013.

under SEQRA to (1) identify “the relevant areas of environmental concern; (2) take a “hard look” at them; and (3) make a “reasoned elaboration” of the basis for its determination. *Jackson v. N.Y. State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986); ECL § 08-0101 et seq.

162. Plaintiff/Petitioner also informed the Village Board that the term “environment” is broadly defined under SEQRA and that as lead agency the Village Board must consider potential socio-economic impacts in its environmental review of a proposed action. *See Ginsburg Development Corp. v. Town Bd. of Town of Cortlandt*, 150 Misc.2d 24, 565 N.Y.S.2d 371 (N.Y. Sup. Ct. 1990) citing *Chinese Staff and Workers Ass’n v. City of New York*, 68 N.Y.2d 359, 509 N.Y.S.2d 499 (1986).

163. There is ample evidence in the record to demonstrate that the Local Law could have negative impacts on the environment. ¶¶ 72-86; 110-118, *supra*.

164. The record does contain objective scientific and statistical evidence that paper bags, which are specifically permitted by the Local Law, have a greater negative impact on the environment than the plastic bags which are banned by the Local Law. *See*, ¶¶ 48-52, 72-86, 110-118, *infra*.

165. In addition to the potential negative effects on the physical environment, the proposed Local Law would have a significant adverse economic impact on the businesses directly regulated by its provisions in this difficult economic environment, meriting a full review under SEQRA and the preparation of an EIS. ¶¶ 84, 87-88, *supra*.

166. At the March 18 Village Board Meeting, the Village Attorney at that time, Marianne Stecich, advised the Board:

In addition to making sure you notify the merchants, you are going to have to do a SEQRA determination on this and you are enacting it because it states that it is going to serve the public health. **It is important to have at that meeting some sort of proof,**

some evidence on this, other than you have a sense that plastic bags are bad, let us get rid of them. I mentioned it in my email to you and copied the person from the Conservation Commission. **It is important for the Board, before they enact this, to hear some evidence as to why it is better. I am not saying have a lot of weight, but there are articles out there contradictory to it. So you need a basis for passing the law, both as to the Styrofoam and to the plastic bags.** See, **Exhibit D**, p. 6.

167. Plaintiff/Petitioner similarly advised the Village Board that it must commission or prepare or review SEQRA-compliant scientific studies and conduct a transparent public review process that would constitute the Village Board taking the required “hard look” at the significant potential adverse environmental impacts, including the socio-economic impacts of the proposed Local Law, by preparing an EIS prior to making its determination as to whether to further consider the enactment of the Local Law. ¶¶ 72-86, *supra*, see also, **Exhibit I**.

168. It is respectfully submitted that the Village Board did not establish any “sort of proof” that the Local Law “is going to serve the environment” as required by SEQRA and its regulations.

169. Mayor Swiderski, a member of the Village Board, acknowledged that the Village Board did not engage in any “formal cost-benefit analysis” of the Local Law, and only acknowledged potential economic impacts, not environmental impacts. ¶ 124, *supra*.

170. Again and again, the record demonstrates that the purported basis for the Local Law is symbolic and ideological and not rooted in any demonstrable scientific, statistical or objectively factual evidence on the record. The Local Law is, rather, rooted in a deep belief that all plastic is dangerous and a grave threat to life and the environment and that that belief justifies singling out “plastic bags for retail checkout of purchased goods” to be banned. ¶¶ 28-30, 33, 70, 89, 94, 96, 101, 104, 106, *supra*.

171. The proponents of the Local Law repeatedly state that there is no debate and that there is no evidence necessary to demonstrate that plastic serves a grave threat to the environment in the Village Hastings. However, those assumptions without taking a “hard look” contradict the fundamental purposes of SEQRA. *Id.*

172. Additionally, proponents of the Local Law readily admit that the proposed Local Law will not fix the problem that it ostensibly is meant to address because “it doesn’t go far enough” and “plastic bags are only a small part of the problem.” ¶¶ 62-63, 91, 96, 101, 123, *supra*.

173. Proponents of the Local Law acknowledge, repeatedly, that although there is no meaningful distinction in terms of purported effect on the environment between “plastic bags for retail checkout of purchases” and other types of plastic bags and other plastic materials which are *not* banned by the proposed Local Law, the Local law is drawn narrowly to ban only “plastic bags for retail checkout of purchases” and will not apply to all of the other types of plastic and plastic bags which purportedly constitute a serious and lasting impact on the environment in the Village. ¶¶ 62-63, 91, 96, 101, 123, *supra*.

174. Moreover, proponents of the Local Law and the Conservation Commission also readily admit that this legislation is designed to undermine the State Legislative scheme for the recycling of plastic bags set forth at NYS ECL § 27-2701 *et seq.* and stated that “recycling doesn’t work” and “recycling is not a fix”, in direct contravention of the State Legislative scheme which prescribes recycling of plastic bags as the method by which plastic bags should be disposed of. ¶¶ 91, 103, *supra*.

175. As set forth above, at the June 3, 2014 Village Board Meeting, the Village Board voted unanimously to adopt a Negative Declaration under SEQRA following the

preparation of a Short Environmental Assessment Form (“Short EAF”) dated March 27, 2014. The Short EAF was deficient in that it did not contain a required narrative description of the intent of the Local Law and the environmental resources that are affected. *See, Exhibits N and O.*

176. The adoption of the proposed Local Law was properly characterized as an Unlisted or a Type I action.

177. Pursuant to Section 617.7 of the Regulations, where a lead agency determines that an action is “Type I” or “Unlisted,” the lead agency must make a “reasoned elaboration” of the significance of that action in writing.

178. At the April 23 Public Hearing, Plaintiff/Petitioner made a submission in writing (Plaintiff/Petitioner’s April 23 Submission, **Exhibit I**) and presented remarks by Jay Peltz, General Counsel and Vice President of Government Relations for Plaintiff/Petitioner. ¶¶ 72-86, *supra*.

179. Both the Plaintiff/Petitioner’s April 23 Submission and the remarks by Mr. Peltz, provided ample evidence that the environmental impacts from the Local Law may result in several significant adverse impacts and that the preparation of an Environmental Impact Statement (“EIS”) was warranted and appropriate. *Id.*

180. Mr. Peltz informed the Village Board that the scientific evidence on the issues addressed by the Local Law were in dispute and that formal, scientific engagement with these issues was necessary in order to justify the strictures of the Local Law. ¶¶ 75-86, 110-118, *supra*.

181. Plaintiff/Petitioner submitted scientific evidence demonstrating that the Local Law could produce significant adverse environmental impacts and implored the Village

Board to adopt a positive declaration, and require that an EIS be prepared. ¶¶ 72-86, 110-118 *supra*.

182. To wit, Plaintiff/Petitioner submitted and discussed a National Center for Policy Analysis report which showed that plastic bag bans negatively impact the environment by discouraging recycling efforts and encouraging the use of paper bags and reusable bags, both of which have been shown to have more significant adverse environmental impacts than do recycled plastic bags. *See, Exhibit I*, attachment 2 (NCPA Report).

183. Mr. Peltz stated on the record at the April 23 Public Hearing that the cumulative environmental impacts from plastic bag bans negatively impact the environment by discouraging recycling efforts and encouraging the use of paper bags and reusable bags, both of which have been shown to have more significant adverse environmental impacts than do recycled plastic bags. Plaintiff/Petitioner advised the Village Board that it would be inappropriate to make its determination without considering the scientific evidence and weighing the impacts before taking any action to enact the proposed Local Law. ¶¶ 72-86, *supra*; *see also, Exhibit I*.

184. The Local Law is specifically and intentionally directed at retailers, including Plaintiff/Petitioner's member A&P, and the Local Law is designed to regulate the behavior and business practices of Plaintiff/Petitioner's members such as A&P. ¶ 23, *supra*.

185. Plaintiff/Petitioner's members, including the A&P which is located in the Village, will suffer a direct and unique environmental harm insofar as the Local Law will force Plaintiff/Petitioner's wholesaler and retailer members, including the A&P located in the Village, to substantially increase their distribution of paper bags into the environment.

Accordingly, the Local Law will cause Plaintiff/Petitioner's wholesaler and retailer members, including the A&P located in the Village, to significantly increase their contribution to pollution (as truck shipments substantially increase due to an expected significant expansion in the distribution of paper bags); to global warming (paper bags biodegrade into methane, which has 21 times the global warming impact of carbon dioxide); and to other environmental harm (as one example, plastic grocery bags require 40% less energy than paper bags to manufacture and consume less than 4% of the water needed to make paper bags). ¶¶ 72-88; 110-118, *supra*.

186. Plaintiff/Petitioner has no other remedy at law and there has been no prior application for the relief requested herein.

**AS AND FOR A THIRD CAUSE OF ACTION-
THE LOCAL LAW SHOULD BE DECLARED INVALID AND
UNCONSTITUTIONAL**

187. Plaintiff/Petitioner repeats, reiterates and realleges each and every allegation set forth above as if fully set forth herein.

188. The Local Law is arbitrary and unconstitutional because it simply does not accomplish the Village's stated goals of protecting the environment and reducing litter and there is no support in the record for the Law's requirements. ¶¶ 47-59; 72-74, *supra*.

189. In general, "[i]n determining whether an ordinance is a valid exercise of the regulatory powers granted by the State, substantive principles of due process require that the ordinance have a 'reasonable relation to a proper governmental purpose so as not to constitute an arbitrary exercise of governmental power.'" *Russell v. Town of Pittsford*, 94 A.D.2d 410, 464 N.Y.S.2d 906 (4th Dep't 1983); *see also People v. Pagnotta*, 25 N.Y.2d

333, 305 N.Y.S.2d 484 (1969) (“in order to be upheld as constitutional, a law which places some restriction upon an individual’s freedom of action in the name of the police power must bear some reasonable relation to the public good.”).

190. The restrictions imposed by the proposed Local Law are not reasonably related to the purposes it strives to achieve and are not tailored to achieve the Local Law’s purpose, and there is no credible evidence in the record that the Local Law would actually address the ills it seeks to remedy.

191. The stated purpose of the Local Law is to “improve the environment in Hastings-on-Hudson by encouraging the use of reusable checkout bags and banning the use of plastic bags for retail checkout of purchased goods.” *See, Exhibit A*, § 244-15.

192. The Local Law is arbitrary and therefore unconstitutional because, while it identifies “non-biodegradable plastic bags” as the purported cause of harm to the natural environment in the Village, the Local Law creates several groups of non-biodegradable plastic bags which are specifically not banned or regulated by the statute.

193. To wit, “Checkout Bag” is defined by the terms of the Local Law as “[a] carry out bag that is provided to a customer at the point of sale. The term “checkout bag” does not include plastic produce bags, garment bags or plastic bags measuring 28” by 36” or larger in size.” *See, Exhibit A*, § 244-16.

194. The Local Law further clarifies its terms by defining a “Garment Bag” as “[a] large plastic bag with two openings that is used to transport clothing from a dry cleaner” and by defining a “Plastic Produce Bag” as “[a] flexible container made of very thin plastic material with a single opening that is used to transport produce, meats or other items selected by customers to the point of sale.” *Id.*

195. The Local Law defines “Retail Sales” as “[t]he transfer to a customer of good in exchange for payment occurring in retails stores, sidewalk sales, farmers’ markets, flea markets and restaurants.” *Id.*

196. The Local Law also specifically states that the ban on plastic bags does not apply to certain types of sales or transactions by excluding the “sales of goods at yard sales, tag sales and other sales by residents at their home” from the definition of “retail sales”. *Id.*

197. The prohibition on the use of certain types of non-biodegradable plastic bags in certain types of transactions which forms the heart of the Local Law is set forth at § 244-17, “Restriction on checkout bags.”

A. Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers.

B. Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.

198. Thus, the Local Law rests on the supposition that plastic bags are worse than alternatives such as paper or reusable bags, and that prohibiting retailers from providing their customers with plastic bags at the time of checkout will lead to less pollution of water, the protection of marine life, fewer clogged sewers and less litter. *See, Exhibit B*, pp. 16, 20-1; *Exhibit D*, p. 6.

199. The Local Law further rests on an arbitrary characterization of plastic bags which are provided by retailers at checkout as “single-use bags”. ¶¶ 9-16, 24-26, 41; 62, *supra*.

200. There is evidence in the record that the bags banned by the Local Law are typically used more than once. ¶¶ 67, 114-118, 116-120.

201. There is no evidence in the record to establish that plastic bags which are provided by retailers at checkout are uniquely “single-use bags” and Defendants/Respondents declined to undertake any analysis in order to establish that purported basis for the banning of those plastic bags while exempting all other plastic bags.

202. This distinction in the Local Law is undermined and contradicted by the statements of both members of the Village Board and members of the Conservation Commission that all plastic is toxic and a threat to the environment. ¶¶ 28-31, *supra*.

203. Both members of the Village Board and members of the Conservation Commission claim that all kinds of plastic and paper bags pose threats to the environment, both as pollution and litter. ¶¶ 101, 123, *supra*.

204. Both members of the Village Board and members of the Conservation Commission acknowledge that the Local Law targets retailers like A&P. ¶¶ 23, 37, *supra*.

205. The Local Law directly regulates the businesses of Plaintiff/Petitioner and its members.

206. The Local Law adversely affects Plaintiff/Petitioner and its members by prohibiting them from providing plastic bags to their customers and requiring them to provide paper bags to customers who do not bring their own bags to the retail establishments.

207. At the April 23 Public Hearing, a member of the public pointed out to the Village Board that the Local Law did not actually address the possession or disposal of plastic bags within the Village but rather only targeted retailers within the Village. ¶ 48, *supra*.

208. Both members of the Village Board and members of the Conservation

Commission acknowledge that the proposed Local Law is not actually designed to accomplish what it purports to accomplish, but rather that, essentially, it is the thought that counts and that the Local Law will serve as a symbol of the Village's good intentions with regard to environmental issues. ¶¶ 91, 103-104, *supra*; *see also*, ¶ 43-45, 96, *supra*.

209. The Local Law, rather than based on objective science, is based on what "everybody knows" is "good for everybody", not on science and objective fact. *See e.g.*, ¶ 96, *supra*. The notion that banning plastic bags can be justified by the fact that it will make people think of plastic bags as "a serious problem" in order to "set up" for "a longer-term help" gets the cause and effect of legislation exactly backward. *See e.g.*, ¶ 43, *supra*. A law may not be enacted for the purpose of demonizing a product or consumer choice in order to persuade the public that that product or consumer choice is in fact harmful. The legislature is required to demonstrate the harm being caused *prior to* the legislative enactment.

210. The use of the police power by a municipality in order to ban a product as "part of a larger educational campaign to encourage the use of reusable bags" is constitutionally prohibited as lacking any reasonable relation to a proper governmental purpose so as to constitute an arbitrary exercise of governmental power.

211. The Local Law is arbitrary and unconstitutional because it purports to prohibit littering and pollution, not by actually prohibiting littering and pollution but by prohibiting retailers from providing a plastic bag which the *customer may later on* discard in a manner which constitutes littering or pollution.

212. There is no evidence on the record in the consideration of the Local Law that any of the retailers which are the target of the Local Law were engaged in the pollution or littering which is the stated subject matter of the Local Law.

213. The voluminous public hearing transcripts do not contain any instance of a member of the Village Board, the Conservation Commission or any citizen or member of the public claiming that retailers or their representatives or employees are the persons who are actually littering or polluting with plastic checkout bags.

214. The Local Law does not actually prohibit any person from engaging in littering of any kind of plastic bag or prohibiting the pollution of waterways with any kind of plastic bags. *See, Exhibit A.*

215. The Local Law *only* targets retailers and other providers of plastic bags and prohibits them from providing only those plastic bags that are “provided to the customer at the point of sale.” *Id.*

216. The Local Law continues to permit the use of all other plastic bags by all other retailers. ¶¶ 24-25, 62-63, ¶ 46, *supra.*

217. The Local Law specifically permits the continued use of non-biodegradable plastic garment bags provided by dry cleaners and plastic produce bags used for produce and meat or fish and implicitly continues to permit the use and sale of all other kinds of non-biodegradable plastic bags that are not “provided to the customer at the point of sale”, including, but not limited to, plastic bags for home newspaper delivery, flyers, Penny Savers, phone books and other catalogues, plastic garbage bags and plastic sandwich bags. ¶¶ 9-17, 62-63 *supra.*

218. The Local Law also, without any further elaboration or explanation, continues to permit retailers to provide to customers “plastic bags measuring 28” by 36” or larger in size” as checkout bags. *See, Exhibit A, § 244-16.*

219. Upon information and belief, the Village Board has not reviewed or

considered any scientific studies showing a connection between *only* banning retailers from providing plastic bags which are smaller than 28” by 36” in size to customers at the point of sale and a reduction of litter or harm to the environment.

220. Upon information and belief, the Village Board has not reviewed or considered any scientific studies which demonstrate that plastic bags provided to the customer at the point of sale are more harmful to the environment or contribute more heavily to litter, the pollution of water, the harming of marine wildlife or the clogging of sewers than those types of plastic bags which are specifically or implicitly not banned by the Local Law.

221. The Village Attorney advised the Village Board that it needed to establish, “some sort of proof, some evidence” in order to justify the prohibitions set forth in the Local Law. ¶ 38, *supra*.

222. One member of the Village Board acknowledged that the Village Board needed scientific evidence in order to establish the claims the Local Law makes about the plastic bags which it bans and the effectiveness of the ban to accomplish the stated purpose of the Local Law. ¶ 31, *supra*.

223. A representative of Plaintiff/Petitioner informed the Village Board that the scientific evidence on the issues addressed by the Local Law were in dispute and that formal, scientific engagement with these issues was necessary in order to justify the strictures of the Local Law. ¶¶ 75-86, 110-118, *supra*.

224. Members of the Village Board and the Conservation Committee repeatedly stated that there was *no need* to establish the need for the legislation or the whether the Local Law would accomplish what it stated it was supposed to accomplish by asserting conclusory statements about the underlying issue of the danger of plastic bags that are

provided to the customer at checkout. ¶¶ 28-31, 33, 89, 101, 106, *supra*.

225. It is respectfully submitted that the record does not provide any support for a meaningful distinction between the effect on the environment among the types of non-biodegradable plastic bags which are banned by the Local Law and the types of non-biodegradable plastic bags which are specifically permitted by the Local Law.

226. Members of both the Village Board and the Conservation Commission acknowledge that the proposed Local Law merely asserts what it will accomplish without demonstrating that it is actually, properly designed to accomplish that stated purpose. ¶¶ 91, 123, *supra*.

227. The fact that other municipalities have adopted such bans does not, in and of itself, justify the Village following suit.

228. The Local Law's prohibition of the provision of plastic bags by retailers at the point of purchase does not address the potential introduction into the litter stream by Village residents of various other plastic bags not regulated by this Local Law that also would pollute the environment. ¶ 69, *supra*.

229. The Local Law's exceptions which allow for the continued, unregulated provision of *some* plastic bags by *some* type of businesses in *certain* circumstances, is completely at odds with the Local Law's blanket characterization of all "non-biodegradable plastic bags" as the cause of pollution, sewer-clogging, wildlife endangerment and unsightly litter. ¶¶ 9-17, 62-63, 91, 123, *supra*.

230. The Local Law's distinction between the non-biodegradable plastic bags which are banned and the non-biodegradable plastic bags which may continue to be used without limitation, is the very definition of arbitrariness.

231. Thus, even assuming that the stated municipal goals are well intended, such goals do not justify the adoption of a Local Law whose provisions do not have a reasonable relation to the stated purpose of that law.

232. The Local Law only prevents a retailer who is located within the Village from providing certain types of plastic bags to a customer to carry his or her items away – it does not *require* the *use* of reusable bags by customers. As such, the customer’s use and disposal of whatever bag is provided by the local retailer is entirely unaddressed by this Local Law which, again, purports to regulate solid waste disposal of “retail checkout bags”.

233. The Local Law, while purporting to regulate Retail Checkout Bags as a Solid Waste, does not actually address the disposal of plastic bags as a solid waste. In fact, because retailers who do not provide plastic bags to customers are not required to recycle them under the state environmental conservation law, the Local Law actually makes it harder for people to properly dispose of those plastic bags that may still be provided under the law or are brought into the Village from retailers in other localities. For example, the wholesale buying clubs which do not offer plastic bags to customers and therefore do not participate in the state plastic bag recycling law.

234. The Local Law, while purporting to regulate Retail Checkout Bags as a Solid Waste, does not address retail plastic checkout bags which are purchased outside of the Village and brought into the Village by a person. ¶¶ 9-17, *supra*.

235. The Local Law does not prohibit littering by any of the many “exempt” classes of non-biodegradable plastic bags. *Id.*

236. On the basis of the foregoing, the proposed Local Law should be declared invalid as arbitrary and unconstitutional.

CONCLUSION

While Plaintiff/Petitioner acknowledges that a municipality generally has discretion in enacting legislation, such discretion is not without limits. The Local Law, which prohibits retailers from providing their customers with an item that is legal in all other respects based on its purportedly unique threat to the local environment, must be based on actual evidence. The Local Law, however, in addition to being expressly preempted by State law, was passed without *any* reliance on credible factual information such as scientific studies, peer-reviewed scientific articles or expert reports supporting its targeting of one specific type of bag, and in spite of considerable evidence to the contrary.

Defendants/Respondents failed take a hard look at potential environmental impacts of the Local Law, and failed to set forth in writing that the Local Law would produce any of its intended results, i.e. to reduce overall environmental pollution. Defendants/Respondents repeatedly made conclusory claims about purported environmental harm, and ignored the submitted scientific evidence that undermined or contradicted those claims. The administrative record is devoid of any credible scientific or empirical evidence that would provide the necessary nexus between the declared legislative intent and purpose of the law and consequent legislative action. Accordingly, the Local Law exceeds even the broadest bounds of legislative discretion and should not be granted judicial deference.

WHEREFORE, Plaintiff/Petitioner respectfully requests judgment, pursuant to Article 78 and Section 3001 of the Civil Practice Law and Rules:

(1) Declaring Local Law No. 2 of 2014 of the Village of Hastings-on-Hudson is invalid as preempted by the comprehensive legislative scheme adopted by the State of New York

(2) Vacating the Negative Declaration pursuant to SEQRA made by Defendants/Respondents at the June 3, 2014 Village Board Meeting;

(3) Annuling the passage of Local Law No. 2 of the Village of Hastings-on-Hudson as adopted in violation of the requirements of SEQRA insofar as Defendants/Respondents failed to take a "hard look" prior to making a negative declaration of environmental impact;

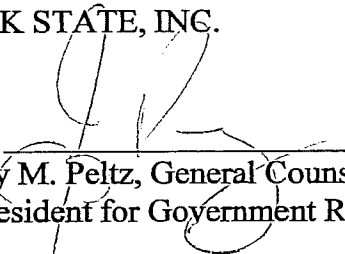
(3) Declaring that Local Law No. 2 of 2014 of the Village of Hastings-on-Hudson is invalid as arbitrarily unconstitutional;

(4) Granting to Plaintiff/Petitioner its reasonable attorneys' fees and costs and disbursements of this action/proceeding; and

(5) Granting such other and further relief as the Court deems just and appropriate under the circumstances.

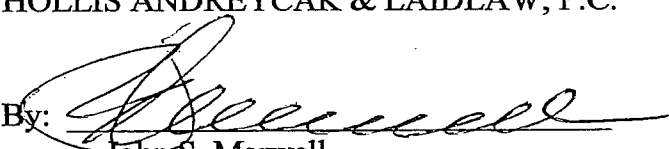
Dated: October 1, 2014
Mount Kisco, New York

FOOD INDUSTRY ALLIANCE OF NEW
YORK STATE, INC.

By: 
Jay M. Peltz, General Counsel and Vice
President for Government Relation

Dated: October 1, 2014
Mount Kisco, New York

SHAMBERG MARWELL
HOLLIS ANDREYCAK & LAIDLAW, P.C.

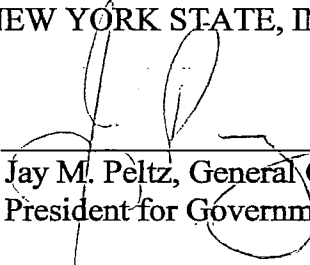
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VERIFICATION

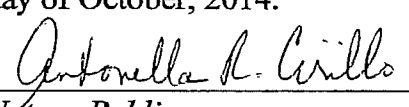
STATE OF NEW YORK)
) s.s.:
COUNTY OF WESTCHESTER)

Jay M. Peltz, being duly sworn, deposes and says: I am the General Counsel and Vice President for Government Relations of Plaintiff/Petitioner, FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC. in the action herein; I have read the foregoing Verified Complaint and Petition and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

**FOOD INDUSTRY ALLIANCE OF
NEW YORK STATE, INC.**

By: 
Jay M. Peltz, General Counsel and Vice
President for Government Relations

Sworn to before me this 1st
day of October, 2014.



Notary Public

ANTONELLA R. CIRILLO
Notary Public, State of New York
No. 01C16056656
Qualified in Westchester County
Commission Expires March 26, 2015

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