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

Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

SAVE THE PLASTIC BAG COALITION, an unincorporated association, Petitioner, v. CITY OF PALO ALTO, a municipal corporation of the State of California; CITY COUNCIL OF PALO ALTO, collectively and in their official capacities; and DOES 1-20, inclusive, Respondents.	Case No. 1-09-CV-140463 **VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT** Pub. Res. Code § 21080(d)

Petitioner, SAVE THE PLASTIC BAG COALITION, an unincorporated association, alleges as follows:

PARTIES AND JURISDICTION

1. This is an action seeking a writ of mandate to set aside, void, annul, and terminate the implementation and enforcement of an Ordinance (hereinafter the "Ordinance") that was adopted by Respondents CITY OF PALO ALTO (the "City") and CITY COUNCIL OF PALO ALTO (hereinafter the "Council") on March 30, 2009. A true and correct copy of the Ordinance is attached hereto as Exhibit A and incorporated herein by reference. The copy was

provided to Petitioner by the City. Although it is marked "Not Yet Approved," it was approved.

2. The Ordinance amends the Palo Alto Municipal Code to prohibit "Supermarkets" (as defined in the Ordinance) from distributing "Single-Use Plastic Checkout Bags" (as defined in the Ordinance) at the point of sale or point of departure from the store.

3. The Ordinance requires all other retailers to offer paper carryout bags only or a choice between plastic or paper carryout bags. If a choice is offered, customers must be asked whether they require or prefer that the goods be placed in a plastic or paper carryout bag. (Plastic and paper carryout bags are hereinafter referred to as "plastic bags" and "paper bags.")

4. The Ordinance takes effect on September 18, 2009.

5. The Ordinance is a "project" subject to CEQA. CEQA Guidelines § 15378(a)(1).

6. Respondents violated the California Environmental Quality Act ("CEQA") by refusing and failing to prepare an Environment Impact Report ("EIR") prior to adopting the Ordinance. Pub. Res. Code § 21000, *et seq*.

7. Petitioner SAVE THE PLASTIC BAG COALITION is an unincorporated association. Petitioner also uses the name "SaveThePlasticBag.com."

8. Respondent CITY OF PALO ALTO (hereinafter the "City") is a municipal corporation of the State of California.

9. The City is the "Lead Agency" for the project, responsible for compliance with CEQA, including but not limited to preparation of an EIR.

10. Respondent CITY COUNCIL OF PALO ALTO (hereinafter the "Council") is the legislative arm of the CITY OF PALO ALTO. The Council is responsible for complying with CEQA.

11. Petitioner is ignorant of true names and capacities of DOES named herein as DOES 1-20, inclusive, and therefore sues said Respondents by such fictitious names. Petitioner will amend this Petition to allege their true names and capacities when ascertained. Petitioner is informed and believes and thereon alleges that each of these fictitiously named Respondents were, and continue to be, responsible in some manner for the acts or omissions herein alleged.

12. Petitioner is informed and believes that at all times relevant to the allegations

herein, each Respondent, including the DOE Respondents, were the agents, employees, or partners of each of the other Respondents, and were at all times acting within the purpose and scope of their employment, agency or partnership, or at the direction of the other Respondents.

13. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code Civ. Proc. § 1085, and/or § 1094.5, and Pub. Res. Code § 21167.

14. Venue is proper in this Court under Code Civ. Proc. § 394(a).

PETITIONER'S STANDING

15. Petitioner is a non-profit environmental campaign organization.

16. Petitioner's sole and exclusive purposes and missions as an organization are to (i) identify and expose myths, misinformation and exaggerations that are disseminated about the environmental impact of plastic bags; and (ii) take steps to publish the truth about the environmental impacts of banning or imposing fees on plastic bags, including the environmental impacts of paper and reusable bags that are alternatives to plastic bags.

17. Petitioner does not manufacture, sell, supply or distribute plastic bags or any other bags in Palo Alto or any other locations.

18. For several years, plastic bags have been the subject of an intense national and international vilification campaign by anti-plastic bag activists based on alleged environmental impacts.

19. As a result of the anti-plastic bag campaign, plastic bags have become a matter of significant public concern and media attention and pending bills in the California Legislature.

20. Anti-plastic bag activists have created and disseminated myths, misinformation, and exaggerations about the alleged environmental impact of plastic bags to promote their goal of banning plastic bags.

21. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that plastic bags used in this country are made from imported oil. In fact, all or the vast majority of plastic bags used in the United States are made of ethane which is a waste byproduct from domestically produced natural gas. If the ethane is not used to make

plastic bags, it will have to be burned off.

22. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that plastic bags kill large numbers of sea mammals and seabirds. The London Times in an article entitled “Series Of Blunders Turned The Plastic Bag Into Global Villain” exposed this as a myth based on a typographical error. The study on which the myth is based mentioned discarded nets, not plastic bags.

23. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that plastic bags are not recyclable. In fact, special plastic bag recycling bins have been installed in large supermarkets and retail stores throughout California since 2007. Virtually all of the plastic bags deposited in those bins are actually recycled.

24. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that plastic bags "clog up" landfills. In fact, according to the California Integrated Waste Management Board, plastic bags (including all retail bags) use up only 0.4% of landfill space.

25. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that it is a disadvantage that plastic bags do not decompose in landfills. In fact, decomposing paper in landfills produces methane which is a greenhouse gas with 23 times the heat trapping power of CO2. It is better to put an item in a landfill that does not create global warming emissions as a result of decomposition.

26. As a result of misinformation spread by anti-plastic bag activists and the media, many people believe that paper bags are better for the environment than plastic bags. In fact, paper bags result in 3.3 times more greenhouse gases than plastic bags and require much more fuel to transport.

27. On March 8, 2008, an editorial in the London Times stated: “Many of those who have demonized plastic bags have enlisted scientific study to their cause. By exaggerating a grain of truth into a larger falsehood they spread misinformation, and abuse the trust of their unwitting audiences.” Petitioner agrees with this statement.

28. In April 2007, after San Francisco banned plastic bags, Stephen Joseph was approached by plastic bag manufacturers who wanted him to help defeat ban initiatives. He refused. He assumed that the negative environmental information about plastic bags on the Internet was correct and he refused to take on a cause that would hurt the environment.

29. In March 2008, Stephen Joseph read the article in the London Times entitled "Series Of Blunders Turned The Plastic Bag Into Global Villain." This caused him to research the subject of the environmental impact of plastic bags. He was surprised to find that most of the environmental information circulating on the Internet about plastic bags was false. He discovered that paper bags were worse for the environment, especially regarding CO2 and methane emissions and energy consumption. He agreed to conduct a campaign to communicate the truth about the environmental impacts of plastic and paper bags to the public and decision-makers. He was concerned that activists had become obsessed with plastic bags and were shutting their eyes or willfully failing to disclose inconvenient environmental truths about paper bags, thereby misleading the public and decision makers. He believed that spreading environmental misinformation was simply wrong, regardless of the motivation.

30. Petitioner coalition was formed by Stephen Joseph on June 3, 2008 for the sole and exclusive purpose of responding to the myths, misinformation, and exaggerations about the environmental impact of plastic bags. He became the campaign administrator and counsel. He is a U.S. citizen and a member of Petitioner..

31. Since July 11, 2008, Petitioner has maintained an environmental information website at www.savetheplasticbag.com to advise the public about the environmental impacts of plastic bags and paper bags, including addressing the misinformation, myths, and exaggerations identified above.

32. Stephen Joseph maintains a veto over the dissemination of environmental information by Petitioner if he believes that the information is unsupported by reliable and substantial evidence or science.

33. To ensure data impartiality, no plastic industry studies are cited on the savetheplasticbag.com website. All citations on the website are to environmental reports by

governmental entities, environmental groups, or independent organizations.

34. There is no advertising on the savetheplasticbag.com website and no products are sold on the website.

35. More than 40,000 unique visitors have visited the savetheplasticbag.com website as of April 17, 2009.

36. Petitioner's sole purpose in bringing this action is to ensure that the City, the Council, and the citizens of Palo Alto are told the whole truth about the environmental impacts of banning plastic bags.

37. According to CEQA Guidelines §15002, the "basic purposes of CEQA" include the following:

A. Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.

B. Identify the ways that environmental damage can be avoided or significantly reduced.

C. Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

D. Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

38. The following quotations from judicial opinions are found in CEQA Guidelines §15003. They affirm the informational purposes of CEQA.

> The EIR requirement is the heart of CEQA.
>
> The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.
>
> The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.
>
> The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day

should a majority of the voters disagree.

39. Petitioner seeks to promote and enforce the aforementioned informational purposes of CEQA in this litigation by demanding an EIR. Ascertaining the true facts about the environmental impact of projects and informing and disclosing those true facts to decision-makers and the public are purposes that are within the zone of interests CEQA was intended to preserve and protect. This is a clear, present and beneficial right and interest of Petitioner for the purpose of standing in this litigation.

40. Petitioner is endeavoring to have the true facts of the environmental impact of plastic bags analyzed and told to the City and the Council and the citizens of Palo Alto, because disclosing the environmental truth about plastic bags is beneficial to the environment and in the public interest. Disseminating environmental misinformation to the public is contrary to the public interest.

41. Petitioner seeks to prevent significant, avoidable damage to the environment that would be caused by a shift from plastic bags to paper bags, by demanding an EIR.

42. Loss of sales, damage to competitive interests, or other economic harm are not part of Petitioner's claim in this litigation. This litigation is being prosecuted solely and exclusively for the protection of the environment in the public interest.

43. An EIR that complies with CEQA will ensure that the City and Council at least have correct environmental information before adopting an ordinance banning plastic bags, or favoring paper bags over plastic bags, even if they ultimately choose to ignore such information.

44. An EIR that complies with CEQA will ensure that the citizens of Palo Alto know the environmental truth about plastic and paper bags and can use that information to judge the actions of their elected representatives on the Council. They will have the choice of voting the Council Members out of office and the information necessary to make that choice.

45. Petitioner's membership includes, but is not limited to, the following: (i) Elkay Plastics Co., Inc., (ii) Crown Poly, Inc., and (iii) Grand Packaging, Inc. doing business as "Command Packaging." They were all incorporated in California prior to 2008 and are in good

standing. They were members of Petitioner at all times mentioned herein. All three companies manufacture or supply various types of plastic bags in the State of California.

46. Petitioner's membership also includes companies and that do not manufacture, supply, or distribute plastic bags. They have no financial interest in the success of this litigation. One such company that has been a member of Petitioner since June 2008 is Sun Plastics, Inc., which has its principal place of business in Los Angeles County. Sun Plastics, Inc. does not supply plastic carryout bags or paper carryout bags and is not adversely affected by the Ordinance in any way, directly or indirectly. The company does supply reusable bags which are promoted by the Ordinance. Therefore, the company will benefit commercially only if this litigation fails. Nevertheless, the company believes in and fully support Petitioner's mission to correct the environmental misinformation that has been disseminated about plastic bags and approves and support this litigation. The company believes and takes the position that environmental truth is a value in itself that must be respected and overrides any commercial interests.

47. Petitioner's membership also includes natural persons who are U.S. citizens who are not employed by businesses that manufacture, sell, supply, distribute, provide, or use plastic bags in Palo Alto or any other locations. They have no financial interest in this litigation. They will not be affected financially or commercially in any way by this litigation.

48. Pete Grande, Louis Chertkow, Cathy Browne and Tom MacMillan are U.S. citizens and have been members of Petitioner since June 2008.

49. Prior to January 1, 2008, Tom MacMillan personally made a financial contribution to Heal the Bay, which is an environmental organization, as he is concerned about the environment.

50. Chandler Hadraba has been a member of Heal the Bay since August 11, 2008. Heal the Bay is an organization that campaigns against plastic bags. He is a U.S. citizen. He is a member of Petitioner. He joined Petitioner as a member in September 2008 because he was concerned about the environmental misinformation being disseminated by anti-plastic bag activists, including Heal the Bay. He has no financial stake in the outcome of this litigation.

51. All of Petitioner's members identified above are concerned about the environmental misinformation being disseminated about plastic bags because such misinformation is harmful to the environment and contrary to the public interest. They firmly believe that a switch to paper bags will cause environmental damage that should be avoided. They firmly believe that the public, including but not limited to the citizens of Palo Alto, should be provided with accurate environmental information on this issue in the public interest.

52. Petitioner and all of Petitioner's members are "persons" entitled to file an action under CEQA. "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company. CEQA Guidelines §15376.

53. Petitioner has a genuine and continuing interest and commitment to the subject matter of ascertaining and publicizing the true facts about the environmental impact of plastic and paper bags.

54. All of Petitioner's members will be harmed by an increase in global warming and the other environmental damage alleged herein caused by a switch from plastic bags to paper bags, because such environmental damage affects and harms everyone. It is impossible to isolate such environmental damage to particular persons or locations as it is general, widespread, and universal.

55. Petitioner consists of and is representing citizens beneficially interested in this action who would find it difficult or impossible to act on their own. No citizen who did not have the financial support of business interests could reasonably be expected to incur the substantial cost of litigating against Respondents to enforce CEQA. This is due to the fact that the environmental damage caused by increased paper bag usage is general, widespread and universal rather than particularized to particular persons or locations.

56. The question in this litigation is one of public right and the object of this litigation is to enforce a public duty. Petitioner's members are interested as citizens in having the public laws including CEQA executed and the public duties and purposes in CEQA enforced.

57. There is an overriding public policy in this state, expounded by the California

Supreme Court, "guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." *Green v. Obledo* (1981) 29 Cal.3d 126, 144. This is an independent basis for standing in a writ of mandate case. An EIR is a public right. If Petitioner does not have standing in this case, then no entity or person could have standing to enforce CEQA against Respondents regarding banning plastic bags and CEQA could be disregarded by Respondents with absolute, unfettered, and unchallengeable impunity. There would be no remedy whatsoever for the CEQA violation. This would violate the public policy of "guaranteeing" the opportunity to ensure that CEQA is enforced, as stated by the California Supreme Court.

58. Citizen standing in this case does not conflict with other public policies. Citizen standing in this case promotes the public policy of guaranteeing citizens an opportunity to ensure that the purpose of legislation establishing a public right, such as CEQA, is not impaired or defeated by a governmental agency.

59. There is a genuine and substantial public controversy, in which Petitioner is fully engaged, about the environmental facts of plastic bags that needs to be resolved to the maximum extent possible by an EIR.

60. Petitioner has standing as an association to bring this action, because (i) its members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner seeks to protect in this lawsuit are germane to the organization's purpose; and (iii) neither the claims asserted herein, nor the relief requested, require participation of the members in this lawsuit. This action involves public rights, and Petitioner's objective in bringing this action is that of an interested citizen seeking to procure enforcement of Respondents' public duties and its compliance with applicable state and local laws.

61. In accordance with Pub. Res. Code § 21177(a) and (b), the alleged grounds for noncompliance with CEQA were presented to Respondents by Petitioner during the public comment period provided by CEQA and prior to the close of the public hearing on the proposed Ordinance before the issuance of the notice of determination.

62. Based on the foregoing, Petitioner has standing.

STATEMENT OF FACTS

63. On August 28, 2008, the City issued a "Notice of Intent to Adopt A Negative Declaration" in support of a proposed ordinance to ban plastic bags at supermarkets (as defined) in Palo Alto.

64. On September 17, 2008, in accordance with said notice, Petitioner timely filed with the City "Objections To Proposed Negative Declaration And Notice Of Intent To File Lawsuit." Petitioner objected therein to the proposed Negative Declaration, the lack of an EIR and the proposed ordinance and presented substantial evidence that the ordinance would result in a switch to paper bags that would result in a significant negative environmental impact. Petitioner made a fair argument. A true and correct copy of said Objections is attached hereto as Exhibit B and incorporated herein by reference.

65. On November 3, 2008, the Council held a "Study Session" and public hearing on the proposed ordinance. Petitioner made oral comments to the Council stating that the City had a legal obligation to prepare an EIR and objected again to the lack of an EIR.

66. On February 3, 2009, the City issued a "Notice of Intent to Adopt A Mitigated Negative Declaration" in support of the proposed Ordinance.

67. On February 13, 2009, in accordance with said notice, Petitioner timely filed with the City "Objections To City Of Palo Alto Proposed Mitigated Negative Declaration And Notice Of Intent To File Lawsuit." Petitioner objected therein to the proposed Mitigated Negative Declaration, the lack of an EIR and the proposed Ordinance and presented substantial evidence that the Ordinance would result in a switch to paper bags that would result in a significant negative environmental impact. Petitioner made a fair argument. A true and correct copy of said Objection is attached hereto as Exhibit C and incorporated herein by reference.

68. On or about March 13 or 16, 2009, the City Manager issued a memorandum dated March 16, 2009 to the Council recommending that the Council adopt the proposed Ordinance.

69. On March 16, 2009, prior to the public hearing that the Council held later that day, Petitioner filed with the City and Council a response to said memorandum reiterating that

Petitioner had made a fair argument that adoption of the proposed Ordinance might have a significant negative effect on the environment. Petitioner reaffirmed therein its objections to the lack of an EIR. A true and correct copy of said response is attached hereto as Exhibit D and incorporated herein by reference.

70. In all three documents (Exhibits B, C and D), Petitioner also objected to the Mitigated Negative Declaration, the lack of an EIR, and the proposed Ordinance on the grounds that (i) reusable bags might have a significant negative effect on the environment and (ii) Respondents had not presented substantial evidence that there was no possibility that reusable bags would have a significant negative impact on the environment.

71. The Council held a public hearing on the proposed Ordinance on March 16, 2009. Petitioner made oral comments to the Council at the hearing stating that the City had a legal obligation to prepare an EIR and objected again to the lack of an EIR.

72. Following said hearing, the Council approved the Ordinance on its first reading.

73. On March 30, 2009, the Council approved the Ordinance on its second reading, thereby adopting it and enacting it into law.

74. The City did not prepare an EIR prior to adopting the Ordinance.

75. The Ordinance states:

> The City Council finds that the adoption of this Ordinance is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under section 15070 of the CEQA Guidelines ("Decision to Prepare a Negative or Mitigated Negative Declaration"). The Department of Planning and Community Environment prepared an Initial Study for this Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment, with appropriate mitigation. Consequently, a Mitigated Negative Declaration was prepared, made available for public review beginning February 4, 2009 through February 23, 2009, and is hereby adopted.

ENVIRONMENTAL IMPACTS OF BANNING PLASTIC BAGS

76. The Ordinance will have the effect of increasing the usage of paper bags.

77. As stated in Petitioner's objections filed with the City, paper bags have greater significant negative environmental effects than plastic bags.

78. Compared with plastic bags, paper bags have significant negative environmental effects, including but not limited to:

- 1.1 times increased consumption of nonrenewable primary energy.
- 4.0 times increased consumption of water.
- 3.3 times increased emission of climate changing greenhouse gases;
- 1.9 times increased acid rain (atmospheric acidification);
- 1.3 times increased negative air quality (ground level ozone formation);
- 14.0 times increased water body eutrophication (defined below); and
- 2.7 times increased solid waste production.

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

79. The foregoing negative environmental impacts are described in a report by the "Scottish Government" issued in 2005 entitled "Proposed Plastic Bag Levy- Extended Impact Assessment Report" ("Scottish Report").

80. In addition, the "Revised Analysis of Life Cycle Assessment (LCA) Relating to Grocery Bags" issued by Use-Less-Stuff in March 2008 ("ULS Report") summarizes the environmental impacts of plastic and paper bags and states:

> Plastic bags generate 39% less greenhouse gas emissions than uncomposted paper bags, and 68% less greenhouse gas emissions than composted paper bags. The plastic bags generate 4,645 tons of CO2 equivalents per 150 million bags; while uncomposted paper bags generate 7,621 tons, and composted paper bags generate 14,558 tons, per 100 million bags produced.
>
> Plastic bags consume less than 6% of the water needed to make paper bags. It takes 1004 gallons of water to produce 1000 paper bags and 58 gallons of water to produce 1500 plastic bags.
>
> Plastic grocery bags consume 71% less energy during production than paper bags. Significantly, even though traditional disposable plastic bags are produced from fossil fuels, the total non-renewable energy consumed during their lifecycle is up to 36% less than the non-renewable energy consumed during the lifecycle of paper bags

> and up to 64% less than that consumed by biodegradable plastic bags.
>
> Using paper sacks generates almost five times more solid waste than using plastic bags.
>
> After four or more uses, reusable plastic bags are superior to all types of disposable bags -- paper, polyethylene and compostable plastic -- across all significant environmental indicators.
>
> Legislation designed to reduce environmental impacts and litter by outlawing grocery bags based on the material from which they are produced will not deliver the intended results. While some litter reduction might take place, it would be outweighed by the disadvantages that would subsequently occur (increased solid waste and greenhouse gas emissions). Ironically, reducing the use of traditional plastic bags would not even reduce the reliance on fossil fuels, as paper and biodegradable plastic bags consume at least as much non-renewable energy during their full lifecycle.

81. Petitioner referenced the Scottish Report and the ULS Report in its objections filed with the City and provided links to download the reports.

82. Pursuant to the U.S. Clean Air Act §202(a), the U.S. Environmental Protection Agency has proposed to make an "endangerment" finding that current and projected concentrations of the mix of six key greenhouse gases in the atmosphere, including carbon dioxide (CO2) and methane (CH4), "threaten the public health and welfare of current and future generations." EPA has also stated: "These high atmospheric levels [of greenhouse gases] are the unambiguous result of human emissions." *See*:

http://epa.gov/climatechange/endangerment.html

http://epa.gov/climatechange/endangerment/downloads/GHGEndangermentProposal.pdf

83. As paper bags produce far more CO2 than plastic bags, the action of the City and Council in adopting the Ordinance constitutes part of the "endangerment" that the EPA has identified. Decomposing paper in landfills also produces methane (CH4), while plastic bags have the important advantage of not decomposing in landfills.

84. The Environmental Paper Network is an environmental organization not sponsored by the plastic industry. In its report entitled "The State of the Paper Industry" it

states:

> [T]he paper industry's activities - and our individual use and disposal of paper in our daily lives - have enormous impacts. These include loss and degradation of forests that moderate climate change, destruction of habitat for countless plant and animal species, pollution of air and water with toxic chemicals such as mercury and dioxin, and production of methane - a potent greenhouse gas - as paper decomposes in landfills, to name just a few. (Page iv)
>
> One of the most significant, and perhaps least understood, impacts of the paper industry is climate change. Every phase of paper's lifecycle contributes to global warming, from harvesting trees to production of pulp and paper to eventual disposal. (Page v)
>
> The climate change effects of paper carry all the way through to disposal. If paper is landfilled rather than recycled, it decomposes and produces methane, a greenhouse gas with 23 times the heat-trapping power of carbon dioxide. More than one-third of municipal solid waste is paper, and municipal landfills account for 34 percent of human related methane emissions to the atmosphere, making landfills the single largest source of such emissions. The U.S. Environmental Protection Agency has identified the decomposition of paper as among the most significant sources of landfill methane. (Page v)

85. The report also notes that

- the paper industry is the fourth largest contributor to greenhouse gas emissions among United States manufacturing industries;
- the paper industry contributes 9% of the manufacturing sector's carbon emissions;
- if the United States cut office paper use by just 10% it would prevent the emission of 1.6 million tons of greenhouse gases which is the equivalent of taking 280,000 cars off the road.

86. At the March 16, 2009 Council meeting, a City staff person stated to the Council as follows in support of banning plastic bags: "When we sit up in the seventh floor conference room and see the map of the sea level rise within ninety years that could swallow up large portions of Palo Alto, it does seem like we have to make more progress on some of these things faster." (City video recording 01:40:50 to 01:41:13) Clearly, that staff person did not

understand that paper, not plastic, would result in the greatest rise in the sea level as a result of greenhouse gas emissions.

87. In their zeal to eliminate plastic bags, anti-plastic bags activists and the City and Council have willfully ignored and brushed aside the environmental impacts caused by increasing the use of paper.

88. The City and Council have a civic and legal responsibility to alert the citizens of Palo Alto to the global warming emissions that will be increased by the use of paper bags by preparing an objective and thorough EIR that addresses the issue (as well as other issues).

89. Petitioner hopes that the EIR will be read by Whole Foods and other retailers that have stopped providing plastic bags and provide paper bags only purportedly for the sake of the environment. These retailers are in fact contributing to the dangerous increase in climate changing greenhouse gases by their actions.

90. Paper bags attract cockroaches, including the German cockroach, while plastic bags do not. This is a significant negative environmental impact for houses, apartment blocks, restaurants and food service establishments in Palo Alto.

FIRST CAUSE OF ACTION

(Non-compliance with CEQA against both Respondents)

91. Petitioner realleges and incorporates herein each and every allegation contained above.

92. Prior to the adoption of the Ordinance and in a timely manner, Petitioner made a fair argument and presented substantial evidence to Respondents that a significant negative environment effect might occur if the Ordinance was adopted as a result of the increase in the use of paper bags and reusable bags.

93. The mitigation measures identified by the City in its Mitigated Negative Declaration are voluntary and it cannot be said with certainty that they will reduce the adverse environmental impacts caused by the Ordinance to an insignificant level. Petitioner stated in its March 16, 2009 objections (Exhibit D attached hereto) as follows:

> On page 3 of the Memo, the City Manager states: "The City estimates that the conversion to reusable bags will be sufficient to offset any negative environmental impacts associated with conversion from SUPCBs to paper." This is a hope expressed by the City Manager, but not a *certainty*. It is indisputably *possible* that there will be a massive switch to free paper bags. That triggers the requirement of an EIR. (Emphasis in original.)

94. An EIR pursuant to CEQA was appropriate, necessary, and legally required prior to adoption of the Ordinance. Pub. Res. Code § 21080(d).

95. Petitioner incorporates herein by reference, as if alleged verbatim herein, all of the objections and points in Exhibits B, C and D attached hereto in their entirety as part of the basis for this first cause of action.

96. Respondents abused their discretion and failed to act in a manner required by CEQA by refusing and failing to prepare an EIR prior to adopting the Ordinance.

97. Said abuse of discretion is prejudicial to Petitioner and the environmental purposes of CEQA that Petitioner seeks to protect, promote, enforce in this action as alleged herein.

98. Respondents did not act in good faith regarding compliance with CEQA.

99. When adopting the Ordinance without an EIR, Respondents were well aware of the decision in *Save The Plastic Bag Coalition v. City of Manhattan Beach, et al.*, Los Angeles Superior Court, Case No. BS116362. In that case, the Superior Court issued a writ of mandate invalidating a Manhattan Beach ordinance banning plastic bags as no EIR had been prepared. As Respondents knew when adopting the Palo Alto Ordinance, the Manhattan Beach case is identical in all material respects to the present case.

100. Respondents' failure to comply with CEQA before adopting the Ordinance necessitates the need for this Court to issue a writ of mandate to set aside, void, annul, and terminate the Ordinance.

101. There is not a plain, speedy, and adequate remedy, in the ordinary course of law.

102. Accordingly, Petitioner requests that this Court issue a writ of mandate to set aside, void, annul, and terminate the Ordinance.

103. Petitioner also requests preliminary and permanent injunctive relief to maintain the status quo as necessary to prevent significant harm to the environment.

104. Petitioner has no plain, speedy or adequate remedy at law if enforcement of the Ordinance is not immediately enjoined, because significant negative environmental impacts caused by increased usage of paper bags and reusable bags will occur and such environmental impacts cannot be remedied by an award of damages.

105. Petitioner brings this action under Code Civ. Proc. § 1021.5 and other applicable laws which entitle Petitioner to an award of attorney's fees in actions to enforce an important right affecting the public interest, such as the CEQA violation alleged herein.

106. In addition to § 1021.5, or in the alternative, Petitioner brings this action on the basis of Government Code § 800, which entitles Petitioner to an award of attorney's fees to overturn Respondents' arbitrary and capricious adoption of the Ordinance.

107. In accordance with Pub. Res. Code §21167.5, Petitioner has effected prior service by mail upon the City of a written notice of the commencement of this action identifying the Ordinance.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for:

A. A peremptory writ of mandate directing:

i. Respondents to set aside, void, annul, and terminate the enforcement and implementation of the Ordinance and the resolution adopting the Ordinance for failure to comply with CEQA;

ii. Respondents to comply with CEQA, including the preparation of a legally adequate EIR, before taking any action that would limit or ban plastic bag usage or distribution; and

iii. A stay of all action preventing Respondents from implementing or enforcing the Ordinance, pending final resolution of this action.

B. Preliminary and permanent injunctive relief.

C. Attorney's fees.

D. Costs of this action.

E. Such other or further relief as the Court may deem just and proper.

DATED: April 20, 2009

STEPHEN L. JOSEPH

Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

VERIFICATION

I, Stephen L. Joseph, declare:

1. I am an attorney at law duly admitted and licensed to practice in the State of California.
2. I am the attorney of record for Petitioner, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT and know the contents thereof.
4. I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

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

Executed at San Francisco, California on April 20, 2009.

STEPHEN L. JOSEPH