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8 **SAVE THE PLASTIC BAG COALITION**

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN LUIS OBISPO**

12 **SAVE THE PLASTIC BAG COALITION,**
13 **an unincorporated association,**

14 **Petitioner,**

15 **v.**

16 **SAN LUIS OBISPO COUNTY**
17 **INTEGRATED WASTE MANAGEMENT**
18 **AUTHORITY, a joint powers agency;**
19 **COUNTY OF SAN LUIS OBISPO, a political**
20 **subdivision of the State of California; CITY**
21 **OF ARROYO GRANDE, a California**
22 **municipal corporation; CITY OF**
23 **ATASCADERO, a California municipal**
24 **corporation; CITY OF GROVER BEACH, a**
25 **California municipal corporation; CITY OF**
26 **MORRO BAY, a California municipal**
27 **corporation; CITY OF PASO ROBLES, a**
28 **California municipal corporation; CITY OF**
PISMO BEACH, a California municipal
corporation; CITY OF SAN LUIS OBISPO, a
California municipal corporation; and DOES
1-100, inclusive,

Respondents.

) **Case No. CV120078**

)
) **Assigned to Hon. Charles S. Crandall for all**
) **purposes**

)
) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE UNDER THE CALIFORNIA**
) **ENVIRONMENTAL QUALITY ACT;**
) **VERIFIED COMPLAINT FOR**
) **INVALIDATION OF ORDINANCE BASED**
) **ON UNAUTHORIZED VOTE OF**
) **INTEGRATED WASTE MANAGEMENT**
) **AUTHORITY DIRECTOR**
) **REPRESENTING TEMPLETON**
) **COMMUNITY SERVICES DISTRICT;**
) **REQUEST FOR DECLARATORY AND**
) **INJUNCTIVE RELIEF**

) **NOTE: PETITIONER HAS WITHDRAWN**
) **THE SECOND CAUSE OF ACTION TO**
) **ENABLE OTHER PARTIES TO SEEK**
) **INVALIDATION OF THE ORDINANCE**
) **BASED ON THE UNAUTHORIZED VOTE**
) **OF IWMA DIRECTOR GREG**
) **O'SULLIVAN**

1 8. The Ordinance provides that on and after October 1, 2012, “stores” (as defined
2 in the Ordinance) plastic bags to consumers and must charge at least 10 cents for paper carryout
3 bags (“paper bags”).

4 9. The Ordinance applies to the “IWMA Region” which is the geographic area that
5 includes the unincorporated area of San Luis Obispo County and the seven cities named as
6 Respondents herein.

7 10. The Ordinance is a “project” subject to the California Environmental Quality Act
8 (“CEQA”).

9 11. The County violated CEQA by failing to complete and certify an Environmental
10 Impact Report (“EIR”) prior to adopting the Ordinance.

11 12. IWMA is the lead agency for the project, responsible for compliance with
12 CEQA, including but not limited to preparation of an EIR.

13 13. Under the Ordinance, IWMA, the District Attorney, County Counsel, and any
14 City Attorney are responsible for enforcement of the Ordinance in their respective jurisdictions.

15 14. Respondents COUNTY OF SAN LUIS OBISPO, CITY OF ARROYO
16 GRANDE, CITY OF ATASCADERO, CITY OF GROVER BEACH, CITY OF MORRO
17 BAY, CITY OF PASO ROBLES, CITY OF PISMO BEACH, and CITY OF SAN LUIS
18 OBISPO are real parties in interest as to the First Cause of Action under Pub. Res. Code §
19 21167.6.5.

20 15. The Second Case of Action herein seeks invalidation of the IWMA Board of
21 Directors (“IWMA Board”) vote on January 11, 2012 approving the Ordinance, as the IWMA
22 Board member representing the Templeton Community Services District (“CSD”), Greg
23 O’Sullivan, was directed by the Templeton CSD to vote against the Ordinance. If he had voted
24 as directed by the Templeton CSD, the Ordinance would not have been adopted. (See Exhibits
25 D and E attached hereto.)

26 16. Petitioner is ignorant of true names and capacities of DOES named herein as
27 DOES 1-100, inclusive, and therefore sues said Respondents by such fictitious names.
28 Petitioner will amend this Petition to allege their true names and capacities when ascertained.

17. Petitioner is informed and believes and thereon alleges that some or all of these fictitiously named Respondents were, and continue to be, responsible in some manner for the acts or omissions alleged herein.

18. Petitioner is informed and believes that at all times relevant to the allegations herein, each Respondent, including the DOE Respondents, were the employees, agents, or partners of each of the other Respondents, and were at all times acting within the purpose and scope of their, agency or partnership, or at the direction of the other Respondents.

19. 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.

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

21. Petitioner complied with Pub. Res. Code § 21177(a) and (b) by filing the Objections attached hereto as Exhibit B prior to adoption of the Ordinance.

STANDING

22. Petitioner is a non-profit environmental organization that was formed on June 3, 2008.

23. Petitioner was formed and exists for the purpose of responding to environmental misinformation about plastic bags and ensuring that the environmental impacts of banning plastic bags are made known to decision-makers and the public. Petitioner maintains a website at www.savetheplasticbag.com.

24. Petitioner seeks to promote and enforce the informational purposes of CEQA in this action as set forth in CEQA Guidelines § 15002. Ascertaining the true facts about the environmental impacts of projects and disclosing those true facts to decision-makers and the public are within the zone of interests that CEQA was intended to preserve and protect.

25. The question in this action is one of public right and the object of this action is to enforce a public duty in the public interest.

26. Petitioner is interested as a citizen in having the public laws including CEQA executed and the public duties and purposes in CEQA enforced.

27. Petitioner has a commitment to the subject matter of the public right being

1 asserted.

2 28. Petitioner is also interested in protecting the interests of its members.

3 29. Petitioner has standing as an association to bring this action, because (i) its
4 members would otherwise have standing to sue on their own behalf; (ii) the interests Petitioner
5 seeks to protect herein are germane to the organization's purpose; and (iii) neither the claims
6 asserted herein, nor the relief requested, require participation of the members in this lawsuit.

7 30. As to the First Cause of Action herein, Petitioner has beneficial and citizen
8 standing to enforce CEQA against California counties and cities including all of the
9 Respondents. Such standing was confirmed by the California Supreme Court in *Save The*
10 *Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166-171.

11 31. As to the Second Cause of Action herein, Petitioner has beneficial and citizen
12 standing to seek invalidation of the vote approving the Ordinance. Such standing was confirmed
13 by the California Supreme Court in *Manhattan Beach, supra*, 52 Cal.4th 155, 166-171.

14 **STATEMENT OF FACTS REGARDING**
15 **FIRST CAUSE OF ACTION (CEQA)**

16 32. On November 4, 2011, Petitioner submitted objections to IWMA and all the
17 IWMA Board members (the "Objections"). A true and correct copy of the Objections is
18 attached hereto as Exhibit B and incorporated herein by reference. Between November 4, 2011
19 and January 9, 2012, Petitioner submitted to IWMA 102 documents as exhibits supporting the
20 Objections.

21 33. In the Objections, Petitioner timely objected to a proposed ordinance on the
22 IWMA meeting agenda for November 9, 2011. Under the proposed ordinance, plastic bags
23 would be banned at certain stores. Such stores would be required to charge at least 10 cents for
24 paper bags.

25 34. In the Objections, Petitioner demanded that IWMA prepare an EIR before
26 adopting the proposed ordinance or a similar ordinance.

27 35. On November 9, 2011, the IWMA Board held a meeting at which the proposed
28 ordinance was introduced and scheduled a public hearing and vote for January 11, 2012.

1 36. On January 9, 2012, Petitioner submitted supplemental comments to IWMA and
2 all the IWMA Board members. A true and correct copy of those comments is attached hereto as
3 Exhibit C and incorporated herein by reference.

4 37. The Manager of IWMA, William Worrell, prepared a memorandum to the
5 IWMA Board dated January 11, 2012 (the "IWMA Memorandum"). He also filed a Notice of
6 Exemption with the San Luis Obispo County Clerk on January 17, 2012. Regarding CEQA, the
7 IWMA Memorandum and the Notice of Exemption state as follows:

8 The elimination of single use plastic bags within San Luis Obispo
9 County from the establishments subject to this ordinance, coupled with a
10 charge of single use paper bags as a market disincentive, will enhance
11 and protect the environment by reducing single use plastic and paper
12 bags. As a result, the proposed ordinance is not a project or it is subject
13 to the "common sense" exemption within the meaning of the California
14 Environmental Quality Act (CEQA) because it can be seen with certainty
15 that there is no possibility that the ban of single use plastic bags and the
16 reduction of single use paper bags may have a significant effect on the
17 environment.

18 Even assuming the proposed ordinance were somehow considered a
19 project under CEQA, it would be categorically exempt under CEQA as
20 "Class 7 and 8 exemptions" under Public Resources Code sections 21083
21 and 20184, and Sections 15307 and 15308 (Actions by Regulatory
22 Agencies for Protection of Natural Resources and the Environment) of
23 the CEQA Guidelines (California Code of Regulations, Title 14,
24 Division 6, Chapter 3). The categorical exemptions provide as follows:

25 **Section 15307. Actions By Regulatory Agencies For Protection Of**
26 **Natural Resources.** Class 7 consists of actions taken by regulatory
27 agencies as authorized by state law or local ordinance to assure the
28 maintenance, restoration, or enhancement of a natural resource where the
regulatory process involves procedures for protection of the
environment. Examples include but are not limited to wildlife
preservation activities of the State Department of Fish and Game.
Construction activities are not included in this exemption.

Section 15308. Actions By Regulatory Agencies For Protection Of
The Environment. Class 8 consists of actions taken by regulatory
agencies, as authorized by state or local ordinance, to assure the
maintenance, restoration, enhancement, or protection of the environment
where the regulatory process involves procedures for protection of the
environment. Construction activities and relaxation of standards allowing
environmental degradation are not included in this exemption.

1 38. On January 11, 2012, the IWMA Board held a meeting and public hearing.
2 39. At the January 11, 2012 meeting, the IWMA Board adopted the Ordinance.
3 40. IWMA did not respond to Petitioner’s Objections at any time.
4 41. IWMA did not prepare an Initial Study or EIR.
5 42. IWMA did not prepare a notice of intent to adopt a Negative Declaration or
6 adopt a Negative Declaration.
7 43. The IWMA Board did not make or adopt findings regarding the “common
8 sense” exemption in CEQA Guidelines § 15061(b)(3).
9 44. The IWMA Board did not assert the “common sense” exemption.
10 45. The IWMA Board did not make or adopt findings regarding the categorical
11 exemptions in CEQA Guidelines §§ 15307 and 15308.
12 46. The IWMA Board did not assert said categorical exemptions.
13 47. IWMA never issued any CEQA notices of any kind at any time prior to adoption
14 of the Ordinance.

15 **THE IWMA MEMORANDUM BASED ITS RECOMMENDATION**
16 **TO BAN PLASTIC BAGS ON LIFE CYCLE IMPACTS**

17 48. The IWMA Memorandum states at page 4 as follows:
18 The Green Cities California’s Master Environmental Assessment on
19 Single-use and Reusable Bags confirmed that single-use carryout plastic
20 and paper bags both pose significant environmental impacts. Attachment
21 2 is Table 1 Comparative Impacts of Grocery Bag Types from the Green
22 Cities California, Master Environmental Assessment on Single-Use and
23 Reusable Bags, Executive Summary dated March 2010. As shown on
24 Table 1, reusable bags have the lowest relative impacts in all rated
25 categories. In some categories single-use paper bags have a relatively
26 lower impact than single-use plastic bags while in other categories single-
27 use plastic bags have a relatively lower impact than single-use paper
28 bags.

 Given the environmental impact of single-use bags, the IWMA has
 looked at strategies to reduce the use of single-use bags.
49. Attachment 2 (Table 1) appended to the IWMA Memorandum addresses air
quality (including greenhouse gas emissions, atmospheric acidification and ground-level
ozone), mineral resources (including oil and presumably trees), solid waste and waste reduction,

1 and other life cycle impacts of plastic, paper, and reusable bags. It shows that plastic bags are
2 *better* for the environment than paper bags regarding greenhouse gas emissions, atmospheric
3 acidification, ground-level ozone, water consumption, and mineral resources. It states: “Plastic
4 bags require less fossil fuel in their manufacture than other bags” and “occupy less space than
5 other bags in landfills.” It also states that the environmental issues it addresses are based on
6 CEQA Guidelines, Appendix G, with the addition of solid waste and waste reduction.

7 50. The Master Environmental Assessment prepared by Green Cities California is
8 not an Initial Study or EIR under CEQA. (CEQA Guidelines § 15169.)

9 **IWMA IGNORED THE SUPREME COURT’S**
10 **DECISION IN THE MANHATTAN BEACH CASE**

11 51. Petitioner pointed out at page 5 of the Objections that the California Supreme
12 Court had ruled in July 2011 that cities or counties larger than the City of Manhattan Beach
13 “will be required” to prepare EIRs before banning plastic bags and that such projects “should
14 not be allowed to escape review.” (*Manhattan Beach, supra*, 52 Cal.4th at 174, n.10.)

15 52. Petitioner pointed out at page 9 of the Objections that the population of San Luis
16 Obispo County in 2010, including the unincorporated and incorporated areas, was 269,637,
17 which means that it is approximately eight times larger than the City of Manhattan Beach which
18 has a population of only 33,852. Therefore, based on the Supreme Court’s decision, IWMA is
19 required to prepare an EIR.

20 53. The IWMA Memorandum states that “the proposed ordinance is not a project”
21 under CEQA. IWMA is incorrect. A plastic bag ban ordinance is a “project” under CEQA, as
22 the Supreme Court discussed and confirmed. (*Manhattan Beach, supra*, 52 Cal.4th at 171, n.7.)

23 54. Based on the decision of the Supreme Court in Manhattan Beach, IWMA was
24 required to prepare an EIR before adopting the Ordinance.

25 **IWMA COULD NOT RELY ON THE “COMMON SENSE” EXEMPTION**

26 55. In the alternative, IWMA could not rely on the “common sense” exemption in
27 Guidelines § 15061(b)(3).

28 56. In order to assert the “common sense” exemption,” IWMA was first required to
prepare an Initial Study and issue a 20-day notice of intent to adopt a Negative Declaration.

1 CEQA Guidelines §§ 15063(a), 15070, 15072. IWMA refused and failed to follow these
2 mandatory requirements of the CEQA Guidelines.

3 57. At page 2 of the Objections, Petitioner objected to IWMA's failure to prepare an
4 Initial Study and follow mandatory CEQA procedures. Nothing herein is intended to waive
5 Petitioner's contention that an EIR was required, rather than merely an Initial Study.

6 **IWMA COULD NOT RELY ON CATEGORICAL EXEMPTIONS**

7 58. In the alternative, IWMA could not rely on categorical exemptions.

8 59. According to the California Natural Resources Agency, which issues the CEQA
9 Guidelines:

10 Statutory exemptions are descriptions of *types* of projects for which the
11 California Legislature has provided a *blanket* exemption from CEQA
procedures and policies.

12 (<http://ceres.ca.gov/ceqa/flowchart/exemptions/index.html>, italics added.)

13 60. As the Supreme Court ruled that comprehensive environmental review "will be
14 required" for cities and counties larger than the City of Manhattan Beach and that such projects
15 "should not be allowed to escape review," there can be no *blanket* exemption for this *type* of
16 project.

17 61. In the alternative, Petitioner pointed out at page 35 of the Objections that CEQA
18 Guidelines §§ 15307 and 15308 only apply to "regulatory agencies...where the regulatory
19 process involves procedures for protection of the environment." IWMA was not acting as a
20 "regulatory agency" when it adopted the Ordinance. It was acting as a legislative body. Further,
21 there was no preexisting "regulatory process involving procedures for protection of the
22 environment" regarding the banning of plastic bags.

23 62. In the alternative, Petitioner pointed out at page 35 of the Objections that IWMA
24 was not permitted to rely on the proposed 10-cent paper bag fee in determining whether the
25 categorical exemptions applied. Petitioner cited *Azusa Land Reclamation Co. v. Main San*
26 *Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 in which the court stated: "Appellants
27 cannot escape the law by taking a minor step in mitigation and then find themselves exempt
28 from the exception to the exemption." (*Id.* at 1200.) Petitioner also cited *Salmon Protection &*

1 *Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098 in which the court stated:
2 “[T]he County erred in relying upon mitigation measures to grant a categorical exemption from
3 CEQA.... If a project may have a significant effect on the environment, CEQA review must
4 occur, and only then are mitigation measures relevant.... The County made a premature and
5 unauthorized environmental evaluation at the preliminary stage of considering eligibility for a
6 categorical exemption.” (*Id.* at 1107-08.)

7 63. In the alternative, IWMA Board failed to make findings of fact, which means
8 that it could not rely on categorical exemptions. In *CalBeach Advocates v. City of Solana Beach*
9 (2002) 103 Cal.App.4th 529 the court stated that “the determination that a project falls under a
10 categorical exemption requires discretionary factfinding.” (*Id.* at 541.) In *Davidon Homes v.*
11 *City of San Jose* (1997) 54 Cal.App.4th 106 the court stated that an agency must “produce
12 substantial evidence supporting its exemption decision” when “opponents of the project have
13 raised arguments regarding possible significant environmental impacts.” (*Id.* at 117.)

14 **PETITIONER MADE A FAIR ARGUMENT, THEREBY DEFEATING**
15 **THE COMMON SENSE AND CATEGORICAL EXEMPTIONS**
16 **ASSUMING THAT THEY COULD BE RELIED UPON**

17 64. In the alternative, even if IWMA would have prepared an Initial Study,
18 according to CEQA Guidelines § 15061(b)(3) the “common sense” exemption would only be
19 available if the following strict test is satisfied:

20 Where it can be seen with *certainty* that there is *no possibility* that the
21 activity in question *may* have a significant effect on the environment, the
22 activity is not subject to CEQA. [Italics added.]

23 65. In the alternative, even if IWMA could assert the categorical exemptions in
24 CEQA Guidelines §§ 15307 and 15308, CEQA Guidelines § 15300.2(c) states that such
25 exemptions are unavailable in the following situation:

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

66. If a member of the public such as Petitioner makes a “fair argument” that there is
a possibility that the project may have a significant negative effect on the environment, the

1 “common sense” exemption in § 15061(b)(3) and the categorical exemptions in §§ 15307 and
2 15308 may not be relied upon by the agency. (*Banker’s Hill, Hillcrest, Park West Community*
3 *Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 264-267.)

4 67. Under the fair argument standard, “[i]f legitimate questions can be raised about
5 whether the project might have a significant impact and there is any dispute about the
6 possibility of such an impact, the agency cannot find with certainty that a project is exempt.”
7 (*Davidon Homes, supra*, 54 Cal.App.4th at 117.) The agency “must refute that claim to a
8 *certainty* before finding that the exemption applies.” (*Id.* at 118, italics added.) Guidelines §
9 15064(f)(1) states: “[I]f a lead agency is presented with a fair argument that a project may have
10 a significant effect on the environment, the lead agency shall prepare an EIR even though it
11 may also be presented with other substantial evidence that the project will not have a significant
12 effect.”

13 **Fair argument regarding increased number of paper bags**

14 68. At pages 6 to 19 and 36 to 38 of the Objections, Petitioner made a “fair
15 argument” that the proposed ordinance may have a significant negative effect on the
16 environment as a result of increased numbers of paper bags. Petitioner produced substantial
17 evidence including but not limited to the Franklin Report, the Scottish Report, the Boustead
18 Report, the British Report, the ULS Report, and the Los Angeles County EIR on banning
19 plastic bags. All of those reports and the Los Angeles County EIR constitute substantial
20 evidence that paper bags are far worse for the environment than plastic bags.

21 69. The Scottish Report includes findings that the life cycle of paper bags results in:

- 22 • 3.3 times *more* emissions of greenhouse gases than plastic bags;
- 23 • 1.1 times *more* consumption of nonrenewable primary energy than plastic bags;
- 24 • 4.0 times *more* consumption of water than plastic bags;
- 25 • 1.9 times *more* acid rain than plastic bags;
- 26 • 1.3 times *more* negative air quality than plastic bags;
- 27 • 14.0 times *more* water body eutrophication than plastic bags; and
- 28 • 2.7 times *more* solid waste production than plastic bags.

70. The Scottish Report also includes the following finding:

[A] paper bag has a more adverse impact than a plastic bag for most of the environmental issues considered. Areas where paper bags score particularly badly include water consumption, atmospheric acidification (which can have effects on human health, sensitive ecosystems, forest decline and acidification of lakes) and eutrophication of water bodies (which can lead to growth of algae and depletion of oxygen).

71. The Boustead Report is a comprehensive life cycle assessment of the environmental impacts of the types of plastic and paper carryout bags used in the United States. It takes into account that a paper bag holds more than a plastic bag and applies an adjustment factor of 1 paper bag = 1.5 plastic bags. The Boustead Report findings are as follows:

Carrying Capacity of paper and plastic bags equivalent to 1000 paper bags	Paper bags (30% recycled fiber)	Plastic bags
Total Energy Used (MJ)	2622	763
Fossil Fuel Use (kg)	23.2	14.9
Municipal Solid Waste (kg)	33.9	7.0
Greenhouse Gas Emissions (CO ₂ Equiv. Tons)	0.08	0.04
Fresh Water Usage (Gal)	1004	58

72. The Boustead Report analyzes paper bags with 30% post-consumer recycled content. The Ordinance requires that paper bags have 20% (small bags) or 40% (larger bags) post-consumer recycled content. An additional 10% of recycled content would not result in a 10% improvement in environmental impacts. Even if an extra 10% of recycled content decreased all environmental impacts of paper bags by a full 10%, paper bags are still far worse than plastic bags in every environmental category. For example, instead of consuming 2622 megajoules of total energy, 1000 paper bags would consume 2360 megajoules. Plastic bags with the same carrying capacity consume only 763 megajoules.

73. At pages 36 to 38 of the Objections, Petitioner cited the EIR prepared and certified by Los Angeles County before it banned plastic bags.

1 74. Los Angeles County determined in its EIR that even imposing a 10-cent fee on
2 paper bags, requiring that paper bags be made of at least 40 percent post-consumer material,
3 and promoting and distributing reusable bags would not ensure that there would be no
4 significant negative environmental impacts caused by its ordinance. The EIR contains a section
5 entitled “Significant Unavoidable Adverse Impacts That Cannot Be Mitigated To Below The
6 Level Of Significance” which states:

7 Based on a conservative analysis, [Los Angeles] County has determined
8 that cumulative indirect GHG emissions resulting from implementation
9 of the recommended ordinances will have the potential to result in
10 significant unavoidable impacts even with implementation of mitigation
11 measure GHG-1, which will be expected to reduce significant adverse
12 impacts to GHG emissions to the maximum extent feasible. Consequently, in accordance with Section 15093 of the State CEQA
13 Guidelines, a Statement of Overriding Considerations has been prepared
14 (see Section IX of this document) to substantiate the County’s decision
to accept this potential unavoidable adverse environmental effect
because it is outweighed by the potential benefits afforded by the
recommended ordinances.

15 75. The Los Angeles County Board of Supervisors adopted a Statement of
16 Overriding Considerations to enable it to pass its ordinance, notwithstanding the EIR findings.

17 76. In the IWMA Memorandum and a PowerPoint presentation to the Templeton
18 Community Services District on December 6, 2011 and the IWMA Board on January 11, 2012,
19 prior to the vote on the Ordinance, IWMA acknowledged that paper bags are worse for the
20 environment than plastic bags regarding greenhouse gas emissions, atmospheric acidification,
21 ground level ozone, water consumption, and solid waste.

22 77. At pages 17 to 20 of the Objections, Petitioner produced additional substantial
23 evidence that a 10-cent paper bag fee will not eliminate the possibility of significant
24 environmental impact caused by increased paper bags usage.

25 78. Under CEQA Guidelines § 15064.4, IWMA was required in an Initial Study or
26 EIR to “make a good-faith effort, based to the extent possible on scientific and factual data, to
27 describe, calculate or estimate the amount of greenhouse gas emissions resulting from a
28 project.” IWMA did not attempt to comply with said requirement regarding paper bags. In
contrast, the Los Angeles County EIR did make this calculation for Los Angeles County.

1 **Fair argument regarding increased number of reusable bags**

2 79. At pages 20 to 32 and 37 of the Objections, Petitioner also made a “fair
3 argument” that the proposed ordinance may have a significant negative effect on the
4 environment as a result of increased numbers of reusable bags.

5 80. In support of its Objections, Petitioner submitted the United Kingdom
6 Government’s Environment Agency’s life cycle assessment of plastic, paper, and reusable bags
7 published in February 2011. The study includes the finding that a cotton reusable bag must be
8 used at least 131 times before it offsets its greater negative environmental impacts compared to
9 a plastic bag, assuming that plastic bags are never reused as bin-liners. If 40.3% of plastic bags
10 are reused as bin-liners, which the study found to be the average figure based on its survey, a
11 cotton reusable bag must be used at least 173 times before it offsets its greater greenhouse gas
12 impacts compared to a plastic bag. The study finds that the global warming potential of a cotton
13 carrier bag “is more than ten times that of any other carrier bag.”

14 81. At page 37 of the Objections, Petitioner pointed out that the Los Angeles County
15 EIR determined that each and every polypropylene and cotton reusable bag distributed in Los
16 Angeles County must be used at least 104 times before it offsets its greater negative
17 environmental impacts compared to a plastic bag. If a consumer received two reusable bags and
18 discards one without using it, the other bag must be used at least 208 times to offset the
19 negative environmental impacts compared to a plastic bag. The overwhelming majority of
20 reusable bags used in California are made of cotton or polypropylene.

21 82. Petitioner pointed at at page 20 of the Objections that the fact that a reusable bag
22 *can* be used 104 or more times does not mean that it is *certain* that it *will* be used that many
23 times, especially as reusable bags become filthy and unhygienic after far fewer uses than that.

24 83. At page 22 of the Objections, Petitioner pointed out that the overwhelming
25 majority of consumers do not clean their reusable bags and replace them than wash them. The
26 University of Arizona asked consumers how often they wash their reusable bags. The responses
27 indicate that 97% of consumers do not regularly wash reusable bags.

28 84. Under CEQA Guidelines § 15064.4, IWMA was required in an Initial Study or

1 EIR to “make a good-faith effort, based to the extent possible on scientific and factual data, to
2 describe, calculate or estimate the amount of greenhouse gas emissions resulting from a
3 project.” IWMA did not comply and did not attempt to comply with said requirement regarding
4 reusable bags.

5 85. In a PowerPoint presentation to the Templeton Community Services District on
6 December 6, 2011 and the IWMA Board on January 11, 2012, prior to the vote on the
7 Ordinance, IWMA’s Manager William Worrell claimed that reusable bags are better for the
8 environmental in every respect, including but not limited to greenhouse gas emissions, without
9 ever stating that this is not true if reusable bags are not used on average at least a certain
10 number of times. This was simplistic, incomplete, and misleading information.

11 **Reuse And Recycling Of Plastic Bags**

12 86. IWMA failed to take into account the fact that so called “single-use” plastic bags
13 are not really single use. People reuse plastic bags for bin liners, dog litter, used diapers, and
14 other purposes. At page 3 of its January 9, 2012 supplemental comments to IWMA (attached
15 hereto as Exhibit C), Petitioner provided substantial evidence that as a result of the plastic bag
16 ban in Canberra, Australia, sales of plastic bags for bin liners had increased by 29% since the
17 law was introduced. In addition, a substantial increase in plastic bags for bin liners, diapers, and
18 other purposes occurred in Ireland.

19 87. At page 16 of the Objections, Petitioner pointed out that plastic bags are readily
20 recyclable if they are deposited in plastic bag recycling bins at all supermarkets and large drug
21 stores in California. (Pub. Res. Code §§ 42250-57.) All bags deposited in the bins must be
22 recycled. (Pub. Res. Code §§42252(c).) Petitioner pointed out that there are many recycling
23 companies that buy plastic bags deposited in the bins, including Trex, AERT, and Hilex.

24 88. The plastic bag recycling rate is not high enough, but banning plastic bags is not
25 the only solution and is too drastic. An EIR must consider alternatives to a ban. (CEQA
26 Guidelines § 15126.6.) One alternative that would be considered in an EIR is requiring more
27 stores to install plastic bag recycling bins, greatly improving signage, and educating consumers
28 to use them.

1 89. At page 26 of the Objections, Petitioner pointed out that reusable bags are not
2 recyclable at all. All cotton, polypropylene, and PET reusable bags must be disposed of in
3 landfills. At pages 23 to 26 of the Objections, Petitioner pointed out that in Australia, unused
4 and underused reusable bags are piling up in landfills at a rapid rate.

5 **CUMULATIVE IMPACTS MUST BE ADDRESSED**

6 90. At pages 32 to 34 of the Objections, Petitioner stated that environmental review
7 must be based on cumulative impacts, taking into account adopted and pending plastic bag bans
8 in other cities and counties.

9 91. The Supreme Court confirmed in *Manhattan Beach* that “cumulative impacts
10 should not be allowed to escape review when they arise from a series of small-scale projects.”
11 (*Manhattan Beach, supra*, 52 Cal.4th at 174, n.10.)

12 **THE IWMA MANAGER MISINFORMED THE IWMA**
13 **BOARD AND THE PUBLIC ABOUT THE IMPACTS**
14 **OF PLASTIC BAGS ON THE MARINE ENVIRONMENT**

15 92. Environmental misinformation about plastic bags is a serious problem that
16 impacts the decision-making process about whether to ban plastic bags, as Petitioner advised
17 the IWMA Board at pages 2 to 6 of the Objections.

18 93. An editorial in *The Times* (London) published on March 8, 2008 states:

19 There is a danger that the green herd, in pursuit of a good cause,
20 stumbles into misguided campaigns.... Analysis without facts is
21 guesswork. Sloppy analysis of bad science is worse. Poor interpretation
22 of good science wastes time and impedes the fight against obnoxious
23 behavior. There is no place for bad science, or weak analysis, in the
24 search for credible answers to difficult questions....

25 Many of those who have demonized plastic bags have enlisted scientific
26 study to their cause. By exaggerating a grain of truth into a larger
27 falsehood, they spread misinformation and abuse the trust of their
28 unwitting audiences.

29 94. David Laist, a senior policy analyst with the federal Marine Mammal
30 Commission, has stated:

31 In their eagerness to make their case [against plastic bags], some of the
32 environmental groups make up claims that are not really supportable.

1 95. In the PowerPoint presentation given by the IWMA Manager William Worrell to
2 the Templeton Community Services District on December 6, 2011, the San Luis Obispo County
3 Board of Supervisors, some of all of the city councils of the city Respondents, and the IWMA
4 Board on January 11, 2012, prior to the vote on the Ordinance, the following statement is made:

5 For animals the litter problem is lethal. Over one million sea birds and
6 marine mammals die each year from plastic ingestion or entanglement.

7 96. At pages 4 to 5 of the Objections, Petitioner informed IWMA that the allegation
8 is untrue and provided documentary support, including an article in *The Times* (London)
9 published in 2008 and an extract from the U.S. National Oceanic and Atmospheric
10 Administration (“NOAA”) website.

11 97. *The Times* article states as follows:

12 Scientists and environmentalists have attacked a global campaign to ban
13 plastic bags which they say is based on flawed science and exaggerated
14 claims.

15 The widely stated accusation that the bags kill 100,000 animals and a
16 million seabirds every year are false, experts have told *The Times*. They
17 pose only a minimal threat to most marine species, including seals,
18 whales, dolphins and seabirds....

19 They “don’t figure” in the majority of cases where animals die from
20 marine debris, said David Laist, the author of a seminal 1997 study on
21 the subject. Most deaths were caused when creatures became caught up
22 in waste produce. “Plastic bags don’t figure in entanglement,” he said.
23 “The main culprits are fishing gear, ropes, lines and strapping bands.
24 Most mammals are too big to get caught up in a plastic bag.”

25 He added: “The impact of bags on whales, dolphins, porpoises and seals
26 ranges from nil for most species to very minor for perhaps a few species.
27 For birds, plastic bags are not a problem either.”

28 The central claim of campaigners is that the bags kill more than 100,000
marine mammals and one million seabirds every year. However, this
figure is based on a misinterpretation of a 1987 Canadian study in
Newfoundland, which found that, between 1981 and 1984, more than
100,000 marine mammals, including birds, were killed by discarded nets.
The Canadian study did not mention plastic bags.

1 Fifteen years later in 2002, when the Australian Government
2 commissioned a report into the effects of plastic bags, its authors
3 misquoted the Newfoundland study, mistakenly attributing the deaths to
4 “plastic bags”.

5 The figure was latched on to by conservationists as proof that the bags
6 were killers. For four years the “typo” remained uncorrected. It was only
7 in 2006 that the authors altered the report, replacing “plastic bags” with
8 “plastic debris”. But they admitted: “The actual numbers of animals
9 killed annually by plastic bag litter is nearly impossible to determine.”

10 In a postscript to the correction they admitted that the original Canadian
11 study had referred to fishing tackle, not plastic debris, as the threat to the
12 marine environment.

13 Regardless, the erroneous claim has become the keystone of a widening
14 campaign to demonise plastic bags.

15 David Santillo, a marine biologist at Greenpeace, told The Times that
16 bad science was undermining the Government’s case for banning the
17 bags. “It’s very unlikely that many animals are killed by plastic bags,” he
18 said. “The evidence shows just the opposite. We are not going to solve
19 the problem of waste by focusing on plastic bags....”

20 A 1968 study of albatross carcasses found that 90 per cent contained
21 some form of plastic but only two birds had ingested part of a plastic
22 bag.

23 Professor Geoff Boxshall, a marine biologist at the Natural History
24 Museum, said: “I’ve never seen a bird killed by a plastic bag. Other
25 forms of plastic in the ocean are much more damaging. Only a very
26 small proportion is caused by bags.”

27 98. The NOAA website states as follows:

28 Question: Is it true that 100,000 marine mammals and/or sea turtles die
each year due to marine debris/plastics/plastic bags?

Answer: We were able to find no information to support this statement.
An erroneous statement attributing these figures to plastic bags was
published in a 2002 report published by the Australian Government; it
was corrected in 2006.

Question: Is it true that marine debris kills a million seabirds each year?

Answer: This statement is currently unknown. We are so far unable to
find a scientific reference for this figure. The closest we have found is

1 “214,500 to 763,000 seabirds are killed annually incidental to driftnet
2 fishing by Japanese fishermen in the North Pacific Ocean (US
Department of Commerce, 1981)” from Laist, 1987.

3 99. The PowerPoint presentation also included other exaggerated, misleading,
4 unsubstantiated, or untrue information about the environmental impacts of plastic bags. The
5 PowerPoint presentation also used selective photography in a misleading way. This kind of
6 misinformation would never be permitted in an Initial Study or EIR, which must be based on
7 “substantial evidence.” (CEQA Guidelines § 15384.)

8 100. The IWMA website also contains an abundance of misinformation about the
9 environmental impacts of plastic bags, including a statement that “some areas of the Pacific
10 Ocean to have six times as much plastic debris as zooplankton.” This is a myth. Oregon State
11 University Assistant Professor of Oceanography, Angel White, participated in a National
12 Science Foundation expedition to the Pacific Ocean to find out whether there is actually a
13 “Great Pacific Garbage Patch” that is “twice the size of Texas” as is frequently alleged by anti-
14 plastic bag campaigners and strongly implied by the IWMA website. An Oregon State
15 University press release, submitted by Petitioner to IWMA in support of its Objections, states as
16 follows:

17 There is a lot of plastic floating in the Pacific Ocean, but claims that the
18 “Great Garbage Patch” between California and Japan is twice the size of
19 Texas are grossly exaggerated, according to an analysis by an Oregon
State University Scientist.

20 Further claims that the ocean is filled with more plastic than plankton,
21 and that the patch has been growing tenfold each decade since the 1950s
22 are equally misleading, pointed out Angelique “Angel” White, an
assistant professor of oceanography at Oregon State.

23 There is no doubt that the amount of plastic in the world’s oceans is
24 troubling, but this kind of exaggeration undermines the credibility of
25 scientists, White said. “We have data that allow us to make reasonable
26 estimates; we don’t need the hyperbole. Given the observed
27 concentration of plastic in the North Pacific, it is simply inaccurate to
state that plastic outweighs plankton, or that we have observed an
28 exponential increase in plastic.”

1 The studies have shown is that if you look at the actual area of the plastic
2 itself, rather than the entire North Pacific subtropical gyre, the
3 hypothetically “cohesive” plastic patch is actually less than 1 percent of
the geographic size of Texas.

4 “The amount of plastic out there isn’t trivial,” White said. “*But using the*
5 *highest concentrations ever reported by scientists* produces a patch that
6 is a small fraction of the state of Texas, not twice the size.”

7 Another way to look at it, White said, is to compare the amount of plastic
8 found to the amount of water in which it was found. “If we were to filter
9 the surface area of the ocean equivalent to a football field *in waters*
10 *having the highest concentration (of plastic) ever recorded*,” she said,
11 “the amount of plastic recovered would not even extend to the 1-inch
12 line.” (Italics added.)

13 101. The Scripps Seaplex expedition went to the Pacific Ocean to survey marine
14 debris. In a document submitted by Petitioner to IWMA in support of its Objections, the Chief
15 Scientist on the expedition, Miriam Goldstein, states as follows regarding the so-called Great
16 Pacific Garbage Patch:

17 Misinformation on this issue is rampant.... There is no evidence for this.
18 There certainly is a lot of trash, but there have been no measurements of
19 either the trash’s total area or its growth rate.

20 102. On January 9, 2012, Petitioner submitted an article about plastic bags by Dr.
21 Marcus Eriksen of the Algalita Marine Research Foundation. Dr. Eriksen is the leading voice
22 and authority on plastic in the Pacific gyre and a well-known anti-plastic bag campaigner. He
23 states as follows in the article:

24 The idea of a single, Texas-size garbage patch is the myth of media
25 sensationalism.

26 103. The misinformation provided by William Worrell in the IWMA Memorandum,
27 the PowerPoint presentation, and on the IWMA website may have caused some IWMA
28 members to vote to approve the Ordinance. They may have voted against the Ordinance if they
had known the true facts. The misinformation may have also influenced members of the public
to believe untrue information.

1 **THE RESPONDENTS AND THE PUBLIC NEED AN EIR**

2 104. The purpose of an EIR is to ensure that environmental policy is based on facts
3 and information, not myths and misinformation. (CEQA Guidelines § 15002(a).)

4 105. An EIR will disclose all of the relevant facts in a scientific way based on
5 substantial evidence, address the prospect of unintended consequences, present alternatives to a
6 plastic bag ban, and dispel myths. (CEQA Guidelines § 15002(a).)

7 106. Such alternatives would include (without limitation) (i) more effective litter
8 cleanup and (ii) requiring more stores to install plastic bag recycling bins, greatly improving
9 signage, and educating consumers to use them.

10 107. An EIR would also enable the public to determine the environmental and
11 economic values of their elected and appointed officials and whether they have acted based on
12 factual and complete information, thus allowing for appropriate action on election day should a
13 majority of the voters disagree. (CEQA Guidelines §§ 15002(a)(4), 15003.)

14 108. Following adoption of the Ordinance, the IWMA Manager William Worrell told
15 the *Paso Robles Press*: “*What we’re saying is that plastic bags, per se, aren’t bad. What we’re*
16 *saying is that if there is an easier alternative, let’s do that if there is less impact.*” (A true and
17 correct copy of the *Paso Robles Press* article is attached hereto as Exhibit D.) This directly
18 contradicts what he was saying before the vote on the Ordinance. His statement to the *Paso*
19 *Robles Press* confirms that the need for an EIR is compelling and strongly in the public interest.

20 **FIRST CAUSE OF ACTION**
21 **AGAINST ALL RESPONDENTS**
22 **(CEQA – FAILURE TO PREPARE AND CERTIFY AN EIR)**

23 109. Petitioner realleges and incorporates herein every allegation made above.

24 110. The refusal and failure to prepare and certify an EIR prior to adopting the
25 Ordinance was a prejudicial abuse of discretion in that IWMA and the other Respondents did
26 not proceed in the manner required by CEQA.

27 111. The Ordinance is void and invalid as a result of the violation of CEQA.

28 112. This action is timely filed within 35 days of the filing of the Notice of
Exemption, which was filed by IWMA with the San Luis Obispo County Clerk on January 17,

2012. (Pub. Res. Code § 21167(d).)

113. The environment will suffer irreparable harm if enforcement of the Ordinance is not enjoined by a preliminary injunction during the pendency of this action.

SECOND CAUSE OF ACTION
AGAINST IWMA
(INVALIDATION OF ORDINANCE BASED ON
UNAUTHORIZED VOTE OF DIRECTOR GREG O’SULLIVAN)

114. Petitioner realleges and incorporates herein every allegation made above.

115. Greg O’Sullivan is a member of the IWMA Board representing the Templeton Community Service District (“CSD”). He is a member of the IWMA Board in his representative capacity and not in his personal capacity.

116. Templeton is an unincorporated area in San Luis Obispo County.

117. On December 6, 2011, the Templeton CSD Board of Directors voted 3 to 2 to “direct” O’Sullivan to vote against the Ordinance.

118. At the IWMA Board meeting on January 11, 2012, Greg O’Sullivan voted to approve the Ordinance, thereby defying his strict instructions and acting without authority.

119. Approval of the Ordinance required a supermajority of eight votes in favor.

120. As a result of Greg O’Sullivan’s vote, the Ordinance was approved by a vote of 8 to 5.

121. Greg O’Sullivan never advised the other IWMA board members or the public that he had been directed to vote against the Ordinance and that he was not authorized to vote to approve the Ordinance.

122. IWMA Manager William Worrell was present at the Templeton CSD Board of Directors meeting on December 6, 2011 when Greg O’Sullivan was directed to vote against the Ordinance. William Worrell had a duty to inform the IWMA Board before the January 11, 2012 vote that Greg O’Sullivan had been directed to vote against the Ordinance.

123. On January 12, 2012, following the IWMA Board vote, the Templeton CSD issued the press release attached hereto as Exhibit E, stating as follows:

1 THE TEMPLETON COMMUNITY SERVICES DISTRICT BOARD
2 OF DIRECTORS AT THEIR REGULAR MEETING OF TUESDAY,
3 DECEMBER 6, 2011, VOTED 3 TO 2 TO DIRECT TEMPLETON
4 CSD DIRECTOR GREG O’SULLIVAN TO VOTE “NO” ON THE
5 PLASTIC BAG BAN ORDINANCE PROPOSED BY IWMA. THE
6 MOTION WAS MADE BY PRESIDENT GANNON AND
7 SECONDED BY DIRECTOR DIETCH TO VOTE NO ON THE IWMA
8 ORDINANCE.

9 ROLL CALL VOTE –
10 AYES: DIETCH, BERGMAN AND GANNON
11 NOES: O’SULLIVAN AND HUNT

12 THE MOTION WAS PASSED TO DIRECT THE SPECIAL DISTRICT
13 MEMBER ON IWMA (GREG O’SULLIVAN) TO VOTE NO ON THE
14 PLASTIC BAG BAN.

15 THERE HAS BEEN CONFUSION THAT THE TEMPLETON
16 COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS
17 WAS IN FAVOR OF THE PLASTIC BAG BAN. THE TEMPLETON
18 COMMUNITY SERVICES DISTRICT BOARD WAS NOT IN
19 FAVOR OF THE PLASTIC BAG BAN.

20 124. On January 17, 2012, the *Paso Robles Press* article referenced above (Exhibit D
21 attached hereto) stated as follows:

22 Despite an aye vote by Templeton Community Services District
23 representative Greg O’Sullivan [at the IWMA Board meeting on January
24 11, 2012, [Templeton CSD’s] board of directors voted no on the
25 proposal.

26 According to a memo issued last week, the [Templeton CSD] board
27 voted 3-2 at its meeting of Dec. 6 to direct the district director to vote no
28 on the plastic bag ban ordinance passed by the IWMA.

The motion was made by [Templeton CSD’s] President, John Gannon,
and seconded by Director Julie Dietch, according to the district. The
third aye vote was made by director Rob Bergman. No votes were made
by O’Sullivan and director Kevin Hunt.

“There has been confusion that the Templeton Community Services
District Board of Directors was in favor of the plastic bag ban,” an e-
mail from the district said. “The Templeton Community Services District
Board was not in favor of the plastic bag ban.”

1 [IWMA Board member] Hamon said that it was not the right thing to do
2 and that he needed to listen to his constituents and carry the message.
3 "We are supposed to represent them and not be a freewheeler," Hamon
4 said. O'Sullivan was contacted but did not return a message left as of
5 press time.

6 125. If Greg O'Sullivan would have voted as authorized and directed, the vote would
7 have been 7-6, which was not a supermajority. Therefore, The Ordinance must be deemed not
8 to have been approved.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays for all of the following:

- 11 A. A judgment that the Ordinance is invalid as no EIR was prepared and certified.
12 B. A peremptory writ of mandate directing IWMA and Respondents to set aside, void,
13 annul, and terminate the Ordinance for failure to comply with CEQA, in accordance
14 with Pub. Res. Code § 21168.9.
15 C. A declaratory judgment that the Ordinance was not legally approved as a result of
16 Greg O'Sullivan's unauthorized vote and that the vote is deemed 7 for and 6 against
17 adoption of the Ordinance, which was not the legally required supermajority to
18 adopt the Ordinance.
19 D. A preliminary injunction suspending the Ordinance and prohibiting all Respondents
20 from implementing and enforcing the Ordinance during the pendency of this action
21 and any appeal. Petitioner will file a motion requesting a preliminary injunction.
22 E. Costs of this action.
23 F. Such other or further relief as the Court may deem just and proper.

24 DATED: January 30, 2012

25 **STEPHEN L. JOSEPH**

26 

27
28

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. Petitioner was formed on June 3, 2008.
4. At all times since June 3, 2008, I have been sole counsel and manager of Petitioner. In those capacities, I have been involved in and have been aware of all actions taken by Petitioner since that time.
5. I am authorized by Petitioner to make this verification for and on its behalf.
6. I have read the VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; VERIFIED COMPLAINT FOR INVALIDATION OF ORDINANCE BASED ON UNAUTHORIZED VOTE OF INTEGRATED WASTE MANAGEMENT AUTHORITY DIRECTOR REPRESENTING TEMPLETON COMMUNITY SERVICES DISTRICT; REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents.
7. The matters stated therein are true of my own knowledge, except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.
8. If called upon as a witness to this proceeding, I would and could competently testify thereto under oath.

I declare under penalty of perjury under the laws of the State of California that I have read the forgoing, that the foregoing is true and correct, and that I would be competent to so testify. Executed on January 30, 2012 at San Francisco, California.



STEPHEN L. JOSEPH