

DEC 26 2017

Sherri R. Carter, Executive Officer/Clerk

By Shaunya Bolden, Deputy

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9 COALITION TO ENFORCE SB 270

10 **SUPERIOR COURT OF THE STATE CALIFORNIA**
11 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 **UNLIMITED JURISDICTION**

13 **BS171972**

14 COALITION TO ENFORCE SB 270, an
15 unincorporated association,

16 Petitioner,

17 v.

18 CALIFORNIA DEPARTMENT OF
19 RESOURCES RECYCLING AND
20 RECOVERY, an agency of the State of
21 California,

22 Respondent.

) Case No.

) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE DIRECTING CALRECYCLE**
) **TO REMOVE NONCOMPLIANT**
) **REUSABLE GROCERY BAG**
) **PRODUCERS AND BAGS FROM ITS**
) **WEBSITE, PURSUANT TO SB 270**

) [Pub. Res. Code §§ 42282(f)(1)]

1 Petitioner COALITION TO ENFORCE SB 270, acting in the public interest, alleges as
2 follows:

3 **PARTIES AND STANDING**

4 1. This Petition is filed pursuant to California Senate Bill SB 270. SB 270 was signed
5 by the Governor on September 30, 2014. It was approved by the voters by referendum on
6 November 8, 2016 and became law on that date. It is codified as Pub. Res. Code §§ 42280-88. It
7 establishes a system of environmental certification of reusable grocery bags.

8 2. Petitioner is an unincorporated association. Its mission is to enforce the reusable
9 grocery bag provisions of SB 270, including the environmental certification requirements.
10 Petitioner is a “person” entitled to enforce those requirements, within the meaning of Pub. Res.
11 Code § 42282(f)(1).

12 3. Respondent California Department of Resources Recycling and Recovery
13 (“CalRecycle”) is an agency of the State of California. It is named as Respondent because writs
14 of mandate may be issued by the Court directing it to take action pursuant to Pub. Res. Code §
15 42282(f)(3) and (4).

16 4. “A person may object to the certification of a reusable grocery bag producer
17 pursuant to [§ 42282] by filing an action for review of that certification in the superior court of a
18 county that has jurisdiction over the reusable grocery bag producer. The court shall determine if
19 the reusable grocery bag producer is in compliance with [SB 270].” (Pub. Res. Code §
20 42282(f)(1).)

21 5. Pursuant to Pub. Res. Code § 42282(f)(1)), Petitioner objects to the certification
22 of certain reusable grocery bag producers and bags, based on the objections attached hereto as
23 Exhibit A (and any future updated versions thereof).

24 6. Petitioner requests that the Court determine if the producers and their bags to
25 which objection is made in Exhibit A (and any future updated versions thereof) are in compliance
26 with SB 270.

27 7. Based on the foregoing, Petitioner has standing to file this Petition and request
28 writs of mandate.

1 **VENUE AND JURISDICTION**

2 8. This matter is within the unlimited jurisdiction of this Court.

3 9. SB 270 states that an action for review of a certification of a reusable grocery bag
4 producer or bag shall be filed in the superior court of a county that has jurisdiction over the
5 producer. (Pub. Res. Code § 42282(f)(1).)

6 10. This Court has jurisdiction over all of the reusable grocery bag producers on the
7 list of “Certified Reusable Grocery Bag Producers” that is published by CalRecycle on its website
8 at <https://www2.calrecycle.ca.gov/ReusableBags/>, pursuant to Pub. Res. Code § 42282(b). All
9 such producers have submitted to the jurisdiction of this Court by providing certifications and
10 documentation to CalRecycle pursuant to SB 270, and by manufacturing, importing, marketing,
11 selling, or distributing reusable grocery bags in Los Angeles County and in California generally.

12 11. This Court has jurisdiction and venue, because all or parts of Los Angeles County
13 are subject to the provisions of SB 270. Many incorporated cities in the county did not adopt
14 ordinances that were grandfathered by Pub. Res. Code § 42287(c).

15 12. There are no administrative remedies. CalRecycle’s General Counsel has advised
16 undersigned counsel that CalRecycle’s position regarding enforcement of the environmental
17 certification requirements of SB 270 is as follows:

- 18 A. CalRecycle does not have statutory authority to enforce any provision of SB 270.
19 B. CalRecycle does not have the statutory authority to verify or evaluate the
20 documents submitted to it by reusable grocery bag producers. CalRecycle cannot
21 verify whether a third-party entity has properly certified a reusable grocery bag.
22 C. In order to challenge whether a certification is proper, a challenge in superior court
23 pursuant to Pub. Res. Code § 42282(f) is necessary.
24 D. SB 270 provides a mechanism for challenging completeness and veracity of
25 certifications in Pub. Res. Code § 42282(f)(1) through (4). This process is
26 performed *entirely* in the superior court. Only after being ordered by the Superior
27 Court can CalRecycle remove a reusable bag producer from the list of Certified
28 Reusable Grocery Bag Producers on the CalRecycle website.

SB 270 CERTIFICATION PROVISIONS

13. SB 270 defines a “reusable grocery bag producer” as a person or entity that does any of the following:

- A. Manufactures reusable grocery bags for sale or distribution to a store.
- B. Imports reusable grocery bags into this state, for sale or distribution to a store.
- C. Sells or distributes reusable bags to a store.

(Pub. Res. Code § 42280(e)(1). “Store” is defined in Pub. Res. Code § 42280(g).)

14. Stores may sell or distribute a reusable grocery bag to a customer at a point of sale only if the bag is made by a reusable grocery bag producer that is certified by a qualified third-party certification entity pursuant to SB 270. (Pub. Res. Code § 42281.)

15. A producer of reusable grocery bags made from plastic film is required to provide proof of certification to CalRecycle demonstrating that its bags comply with the specific requirements of SB 270. The proof of certification submitted to CalRecycle must include specific documents and information. (Pub. Res. Code § 42281.5.)

16. CalRecycle is required to accept from a producer of plastic film and all other types of reusable grocery bags proof of certification by a qualified third-party certification entity, submitted under penalty of perjury, for each type of such bag that is manufactured, imported, sold, or distributed in California and provided to a store for sale or distribution, at the point of sale, that meets all the applicable requirements of this SB 270. (Pub. Res. Code § 42282(a).)

17. A reusable grocery bag producer is required to submit certified test results to the CalRecycle. (Pub. Res. Code § 42282(f).)

18. A reusable grocery bag producer is required to provide CalRecycle with an updated proof of certification conducted by a third-party certification entity if any modification that is not solely aesthetic is made to a previously certified reusable bag. (Pub. Res. Code § 42282(b).)

19. Proof of certifications must be submitted on a biennial basis. (Pub. Res. Code § 42282(b).)

20. CalRecycle is required to publish a list on its website that includes the name,

1 location, and appropriate contact information of certified reusable grocery bag producers, and the
2 reusable grocery bags of producers that have provided the required certification. (Pub. Res. Code
3 § 42282(e).) CalRecycle has published the list at <https://www2.calrecycle.ca.gov/ReusableBags/>.

4 **SB 270 ENFORCEMENT PROVISIONS**

5 21. “A person may object to the certification of a reusable grocery bag producer
6 pursuant to [§ 42282] by filing an action for review of that certification in the superior court of a
7 county that has jurisdiction over the reusable grocery bag producer. The court shall determine if
8 the reusable grocery bag producer is in compliance with [SB 270].” (Pub. Res. Code §
9 42282(f)(1).)

10 22. “A reusable grocery bag producer whose certification is being objected to pursuant
11 to [§ 42282(f)(1)] shall be deemed in compliance with [SB 270] pending a determination by the
12 court.” (Pub. Res. Code § 42282(f)(2).)

13 23. “Based on its determination, the court shall direct [CalRecycle] to remove the
14 reusable grocery bag producer from, or retain the reusable grocery bag producer on, its list
15 published pursuant to [§ 42282(e).]” (Pub. Res. Code § 42282(f)(3).)

16 24. “If the court directs [CalRecycle] to remove a reusable grocery bag producer from
17 its published list, the reusable grocery bag producer shall remain off of the published list for a
18 period of one year from the date of the court’s determination.” (Pub. Res. Code § 42282(f)(4).)

19 **PURPOSE OF THIS ACTION**

20 25. The purpose of this action is to ensure that all reusable grocery bag producers and
21 their bags listed on the CalRecycle website conform to the requirements of SB 270, in the public
22 interest. Petitioner asks this Court to give all such producers that are not yet in compliance with
23 SB 270 sufficient time to comply, in accordance with the proposed procedure in the First Cause
24 of Action herein.

25 26. It is not Petitioner’s purpose to penalize non-compliant producers or bags, simply
26 because they have *not yet* complied with the requirements of SB 270. By filing this Petition,
27 Petitioner is initiating a process for enforcing *future* compliance that will give every producer a
28 full and fair opportunity to demonstrate compliance with SB 270.

1 **PETITIONER’S OBJECTIONS TO CERTIFICATIONS**

2 27. Exhibit A attached hereto is incorporated herein by reference. It is Petitioner’s
3 first objections to the certifications of non-compliant reusable grocery bag producers and bags on
4 CalRecycle’s website, pursuant to Pub. Res. Code § 42282(b), as of December 19, 2017. Exhibit
5 A will be updated from time-to-time. All updated versions will be filed in this Court.

6 **FIRST CAUSE OF ACTION**

7 28. Petitioner realleges and incorporates herein every allegation contained above.

8 29. Petitioner requests that this Court issue an order adopting the following procedure
9 to review the certifications to which Petitioner has objected and make appropriate determinations
10 pursuant to Pub. Res. Code § 42282(f)(1). Petitioner will submit a proposed order to the Court.

11 A. Following entry of the order, Petitioner would promptly transmit to each such
12 producer a copy of this Petition including Exhibit A (or any updated version
13 thereof) and a copy of the order. They would be sent to the producers’ e-mail
14 addresses as shown on the CalRecycle’s website. (The e-mail addresses were
15 provided to CalRecycle by the producers, pursuant to Pub. Res. Code §
16 42282(e)(1).)

17 B. The order would allow each such producer to correct and resolve each deficiency
18 shown in Exhibit A (or any updated version thereof) within 60 days of such
19 transmission.

20 C. Provided the producer can demonstrate that it commenced the correction and
21 resolution process within the initial 60-day period, the producer would have an
22 additional 60 days to correct and resolve each deficiency shown in Exhibit A (or
23 any updated version thereof).

24 D. Each such producer would submit its corrected and updated submission to
25 CalRecycle using CalRecycle’s Reusable Grocery Bag Reporting System at
26 <http://www.calrecycle.ca.gov/Plastics/CarryOutBags/RGBRS.htm> and serve a
27 copy of its entire corrected and updated submission to Petitioner by e-mail to
28 bags@sljosephlaw.com.

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- E. After all producers have been given the opportunity to correct and resolve each deficiency shown in Exhibit A (or any updated version thereof), Petitioner would provide an updated version of Exhibit A to the Court with a proposed writ of mandate directing CalRecycle to remove from its list of Certified Reusable Grocery Bag Producers all producers that the Court determines have failed to correct the deficiencies within the allotted time.
- F. The Court would hold a hearing to determine each producer’s compliance. Any producer would be permitted to participate in the hearing.
- G. Pursuant to Pub. Res. Code § 42282(3), the Court would issue one or more writs of mandate directing CalRecycle to remove all producers from its list of Certified Reusable Grocery Bag Producers on its website that the Court determines have failed to correct or resolve the deficiencies within the allotted time.
- H. Pursuant to Pub. Res. Code § 42282(f)(4), the writ(s) of mandate would provide that CalRecycle shall keep such non-compliant producers off the list for a period of one year from the date of the Court’s determination.
- I. Petitioner would be responsible for sending all court filings to all producers’ e-mail addresses as shown on the CalRecycle website, including but not limited to those as to which Petitioner has not objected.
- J. Service of all documents, including to counsel, would be by e-mail only.
- K. The Court would issue a general order adopting the foregoing procedure for objections that may be made from time-to-time by Petitioner or other objectors pursuant to SB 270.

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PRAYER FOR RELIEF

Petitioner requests that the Court:

- A. Determine whether the reusable grocery bag producers and their bags are in compliance with the requirements of SB 270, based on the objections in Exhibit A (or any updated version thereof), pursuant to Pub. Res. Code § 42282(f)(1).
- B. Adopt the procedure proposed herein, or a substantially similar procedure; and
- C. Issue one or more writs of mandate directing CalRecycle to take action pursuant to Pub. Res. Code § 42282(f)(3) and (4) as appropriate.

Dated: December 26, 2017

LAW OFFICES OF STEPHEN L. JOSEPH



Stephen L. Joseph, Esq.
Attorney for Petitioner
COALITION TO ENFORCE SB 270

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VERIFICATION

I, STEPHEN L. JOSEPH, am the attorney for Petitioner in the above-entitled matter. I have read the foregoing “Verified Petition For Writ Of Mandate Directing CalRecycle To Remove Noncompliant Reusable Grocery Bag Producers And Bags From Its Website, Pursuant To SB 270” and know the contents thereof. I affirm and verify that all of the contents are true and correct.

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

Executed on December 26, 2017 at the City of Los Angeles, California.



STEPHEN L. JOSEPH