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8 SAVE THE PLASTIC BAG COALITION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SAVE THE PLASTIC BAG COALITION,
an unincorporated association,

Petitioner,

v.

CITY AND COUNTY OF SAN FRANCISCO,
a political subdivision of the State of California
and a municipal corporation; SAN
FRANCISCO PLANNING DEPARTMENT,
an agency of the City and County of San
Francisco; SAN FRANCISCO
DEPARTMENT OF THE ENVIRONMENT,
an agency of the City and County of San
Francisco; and DOES 1-100, inclusive,

Respondents.

) Case No. CPF-12-511978

) Action filed: February 29, 2012

) CEQA case assigned to Dept. 503

) **PETITIONER'S STATEMENT OF ISSUES**

) [Pub. Res. Code § 21167.8(f)]

1 **STATEMENT OF ISSUES**

2 Pursuant to Public Resources Code §21167.8(f), Petitioner hereby states the CEQA
3 issues that Petitioner intends to raise in its opening and reply briefs and at the hearing or trial on
4 the merits regarding the First Cause of Action.

- 5 1. Does Petitioner have standing? Petitioner's contention is that the answer is yes.
- 6 2. Is the ordinance a "project" as defined in Pub. Res. Code §21065 and CEQA Guidelines
7 §15378? Petitioner's contention is that the answer is yes.
- 8 3. Is the County entitled to rely upon the categorical exemptions in CEQA Guidelines
9 ("Guidelines") §§ 15307 and 15308? Petitioner's contention is that the answer is no.
- 10 4. Is the San Francisco Board of Supervisors (the "Board") a "regulatory agency" under
11 Guidelines §§ 15307 and 15308? Petitioner's contention is that the answer is no.
- 12 5. Is the Ordinance "authorized by state law or local ordinance" in accordance with
13 Guidelines §§ 15307 and 15308? Petitioner's contention is that the answer is no.
- 14 6. Is there a preexisting "regulatory process [that] involves procedures for protection of the
15 environment" as required by with Guidelines §§ 15307 and 15308? Petitioner's
16 contention is that the answer is no.
- 17 7. The agency must determine that none of the exceptions in Guidelines § 15300.2 are
18 applicable, including 15300.2(c) which states: "A categorical exemption shall not be
19 used for an activity where there is a reasonable possibility that the activity will have a
20 significant effect on the environment due to unusual circumstances." Is there a
21 reasonable possibility that the Ordinance will have a significant negative effect on the
22 environment due to unusual circumstances? Petitioner's contention is that the answer is
23 yes.
- 24 8. Did Petitioner make a "fair argument" pursuant to Guidelines 15300.2(c) that there is a
25 reasonable possibility that the Ordinance will have a significant negative effect on the
26 environment due to unusual circumstances? Petitioner's contention is that the answer is
27 yes.
- 28 9. Is there substantial evidence in the administrative record that there is a reasonable

- 1 possibility that the Ordinance will have a significant effect on the environment due to
2 unusual circumstances? Petitioner's contention is that the answer is yes.
- 3 10. If a member of the public makes a "fair argument" that the activity may have a
4 significant cumulative negative effect on the environment, the agency must also satisfy
5 all of the following conditions, an agency must respond to the fair argument and make
6 findings of fact that refute the fair argument to a *certainty*. (*Banker's Hill, Hillcrest,*
7 *Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th
8 249, 264; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 118.) Did the
9 agency respond to the fair argument? Petitioner's contention is that the answer is no.
- 10 11. Did the agency make findings of fact that refuted the fair argument to a *certainty*?
11 Petitioner's contention is that the answer is no.
- 12 12. An agency cannot rely on contrary evidence to refute the fair argument. (Guidelines §
13 15064(f)(1); *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4th
14 1544, 1580.) Did the agency in this case rely on contrary evidence? Petitioner's
15 contention is that the issue does not arise as the agency did not even attempt to refute the
16 fair argument. To the extent that the agency attempts to rely on such contrary evidence,
17 it may not do so.
- 18 13. An agency cannot rely on mitigation measures to refute the fair argument. (*Azusa Land*
19 *Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165,
20 1200; *Salmon Protection & Watershed Network v. County of Marin* (2004) 125
21 Cal.App.4th 1098, 1102.) Petitioner's contention is that the issue does not arise as the
22 agency did not even attempt to refute the fair argument. To the extent that the agency
23 attempts to rely on the 10-cent fee to refute the fair argument, it may not do so.
- 24 14. An agency cannot find that greenhouse gas impacts are insignificant without making "a
25 good-faith effort, based to the extent possible on scientific and factual data, to describe,
26 calculate or estimate the amount of greenhouse gas emissions resulting from [the]
27 project." (Guidelines § 15064.4.) Petitioner's contention is that the agency did not
28 describe, calculate or estimate the amount of greenhouse gas emissions resulting from

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the Ordinance.

15. Was an EIR required before the Board adopted the Ordinance? Petitioner's contention is that the answer is yes. The Supreme Court's confirms this ruling in *Save The Plastic Bag v. City of Manhattan Beach*.

16. Did the County prepare an EIR? Petitioner's contention is that the answer is no.

17. Did the agency abuse its discretion and violate CEQA by not preparing an EIR? Petitioner's contention is that the answer is yes.

18. Did Petitioner satisfy the conditions in Pub. Res. Code §21177(a) and (b)? Petitioner's contention is that the answer is yes.

19. Should this court to set aside issue a writ of mandate, void, annul, and terminate implementation and enforcement of the ordinance? Petitioner's contention is that the answer is yes.

The Second Cause of Action is not CEQA-related. The issue is whether the California Retail Food Code preempts the Ordinance? Petitioner's contention is that the answer is yes.

DATED: May 8, 2012

STEPHEN L. JOSEPH



Attorney for Petitioner
SAVE THE PLASTIC BAG COALITION

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I am over the age of 18 and not a party to the within action. My business address is 350 Bay Street, Suite 100-328, San Francisco, CA 94133.

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

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

STEPHEN L. JOSEPH