

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
OCT 29 2012

ALEX CALVO, CLERK
BY FLORENCE PATTEN
DEPUTY, SANTA CRUZ COUNTY

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
COUNTY OF SANTA CRUZ, a political subdivision of the State of California; and DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SAVE THE PLASTIC BAG COALITION, an unincorporated association

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Santa Cruz County Superior Court
701 Ocean Street, Santa Cruz, CA 95060

CASE NUMBER:
(Número del Caso):
CV 175460

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Stephen L. Joseph, 350 Bay Street, Suite 100-328, San Francisco, CA 94133 Phone: (415) 577-6660

DATE: OCT 29 2012
(Fecha)

ALEX CALVO Clerk, by FLORENCE PATTEN
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

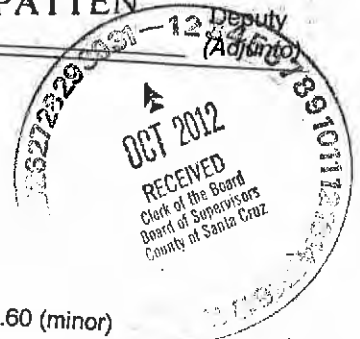
NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): COUNTY OF SANTA CRUZ

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify): CCP 416.50 (public entity)

4. by personal delivery on (date): ~~5-31-12~~ 10-31-12



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TD

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FILED
OCT 29 2012

ALEX CALVO, CLERK
BY FLORENCE PATTEN
DEPUTY, SANTA CRUZ COUNTY

ATTORNEY OF PARTY WITHOUT ATTORNEY (Name, S. Bar number, and address):

Stephen L. Joseph (SBN 189234)
350 Bay Street
Suite 100-328
San Francisco, CA 94133
TELEPHONE NO: (415) 577-6660
ATTORNEY FOR (Name):

FAX NO: (415) 869-5380
Save The Plastic Bag Coalition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz

STREET ADDRESS: 701 Ocean Street

MAILING ADDRESS: Santa Cruz, CA 95060
CITY AND ZIP CODE: Santa Cruz Courthouse
BRANCH NAME:

CASE NAME: Save The Plastic Bag Coalition v. County of Santa Cruz

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CV 175 46 0
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

- | | | |
|---|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input checked="" type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Two
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 22, 2012
Stephen L. Joseph

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

| | |
|--|--|
| <p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stephen L. Joseph (SBN 189234) 350 Bay Street Suite 100-328 San Francisco, CA 94133</p> <p>TELEPHONE NO.: (415) 577-6660 FAX NO. (Optional): (415) 869-5380 E-MAIL ADDRESS (Optional): savetheplasticbag@earthlink.net ATTORNEY FOR (Name): Save The Plastic Bag Coalition</p> | <p>FOR COURT USE ONLY</p> <p>FILED</p> <p>OCT 29 2012</p> <p>ALEX CALVO, CLERK BY FLORENCE PATTEN DEPUTY, SANTA CRUZ COUNTY</p> |
| <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Cruz STREET ADDRESS: 701 Ocean Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Cruz, CA 95060 BRANCH NAME: Santa Cruz Courthouse</p> | |
| <p>PLAINTIFF/PETITIONER: Save The Plastic Bag Coalition DEFENDANT/RESPONDENT: County of Santa Cruz</p> | <p>CASE NUMBER: CV 175460</p> <p>JUDICIAL OFFICER:</p> |
| <p>NOTICE OF RELATED CASE</p> | <p>DEPT.:</p> |

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Save The Plastic Bag Coalition v. City of Santa Cruz, et al.
 - b. Case number: CISCV 174811
 - c. Court: same as above
 other state or federal court (name and address):
 - d. Department: 4
 - e. Case type: limited civil unlimited civil probate family law other (specify):
 - f. Filing date: August 2, 2012
 - g. Has this case been designated or determined as "complex?" Yes No
 - h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
 - i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment
2. a. Title:
 - b. Case number:
 - c. Court: same as above
 other state or federal court (name and address):
 - d. Department:

1 **STEPHEN L. JOSEPH (SBN 189234)**
2 350 Bay Street, Suite 100-328
3 San Francisco, CA 94133
4 Telephone: (415) 577-6660
5 Facsimile: (415) 869-5380
6 E-mail: savetheplasticbag@earthlink.net

FILED
OCT 29 2012

ALEX CALVO, CLERK
BY FLORENCE PATTEN
DEPUTY, SANTA CRUZ COUNTY

7 Attorney for Plaintiff
8 **SAVE THE PLASTIC BAG COALITION**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CRUZ

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

14 Plaintiff,

15 v.

16 **COUNTY OF SANTA CRUZ,** a political
17 subdivision of the State of California; and
18 **DOES 1-10,** inclusive,

19 Defendants.

) Case No. **CV 175460**
)
) **VERIFIED COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF INVALIDATING AND**
) **PROHIBITING IMPLEMENTATION OF**
) **ORDINANCES BANNING PLASTIC**
) **CARRYOUT BAGS**

20 Plaintiff, **SAVE THE PLASTIC BAG COALITION**, alleges as follows:

21 **PARTIES AND JURISDICTION**

22 1. Plaintiff **SAVE THE PLASTIC BAG COALITION** is an unincorporated
23 association.

24 2. Defendant **COUNTY OF SANTA CRUZ** (the "County") is a political
25 subdivision of the State of California.

26 3. This is an action to invalidate and set-aside, and prohibit implementation and
27 enforcement of County Ordinances Nos. 5103 and 5138. True and correct copies thereof are
28 attached hereto as Exhibits A and C respectively and incorporated herein by reference.

4. Plaintiff seeks a declaratory judgment that Ordinance Nos. 5103 and 5138 are

1 invalid and void as they are preempted and prohibited by the California Retail Food Code (as
2 alleged in the First Cause of Action herein) and void for vagueness under the U.S. Constitution
3 (as alleged in the Second Cause of Action herein). Plaintiff also requests preliminary and
4 permanent injunctive relief to prevent Ordinance No. 5138 from being implemented and taking
5 effect.

6 5. Plaintiff is ignorant of true names and capacities of DOES named herein as
7 DOES 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff
8 will amend this Complaint to allege their true names and capacities when ascertained.

9 6. Plaintiff is informed and believes that at all times relevant to the allegations
10 herein, each Defendant, including the DOE Defendants, were the employees, agents, or partners
11 of each of the other Defendants, and were at all times acting within the purpose and scope of
12 their, agency or partnership, or at the direction of the other Defendants.

13 7. This Court has jurisdiction over the matters alleged herein pursuant to Code Civ.
14 Proc. §410.10.

15 8. This Court is the proper forum under Code Civ. Proc. §393(b) and §394.

16 STANDING

17 9. Plaintiff is an unincorporated non-profit campaign association that was formed
18 on June 3, 2008.

19 10. Plaintiff's organizational purposes include, but are not limited to, the following:

20 A. Responding to misinformation about plastic bags, paper bags, and reusable
21 bags.

22 B. Ensuring that the impacts of banning plastic bags are made known to
23 decision-makers and the public, in the public interest.

24 C. Ensuring that cities and counties do not infringe upon and violate the legal
25 rights of manufacturers, distributors, retailers, restaurants, consumers, and
26 the general public when plastic bags are banned or restricted.

27 11. In fact, the County plastic bag ban is based on entirely false and absurd
28 premises, as pointed out in a letter submitted by Plaintiff to the Santa Cruz County Board of

1 Supervisors (the "Board") on September 12, 2012, which is attached hereto as Exhibit E and
2 incorporated and realleged herein by reference.

3 12. Plaintiff's members include Grand Packaging, Inc. (doing business as
4 "Command Packaging") which manufactures, markets, and distributes plastic carryout bags to
5 restaurants and other food facilities in Santa Cruz County, including but not limited to
6 unincorporated parts of Santa Cruz County.

7 13. Plaintiff maintains a website at www.savetheplasticbag.com to respond to
8 misinformation about plastic bags and to address the impacts of plastic, paper, and reusable
9 bags, for the benefit of decision-makers and the public.

10 14. This case is filed on behalf of Plaintiff's members, including but not limited to
11 Command Packaging, and in the public interest.

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

17 16. Plaintiff has beneficial interest standing and citizen/public interest standing.

18 17. The California Supreme Court has ruled that Plaintiff has standing in cases of
19 this nature. (*Save The Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155,
20 165-170.)

21 STATEMENT OF FACTS

22 The two prior ordinances and the first lawsuit

23 18. On or about September 6, 2011, the California Restaurant Association submitted
24 to the Board a written objection to the proposed inclusion of restaurants and other food facilities
25 in the proposed plastic bag ban which was later adopted as Ordinance No. 5103. A true and
26 correct copy of the letter is attached hereto as Exhibit D. All of the comments and objections
27 stated and asserted therein are incorporated and realleged herein by reference.

28 19. On September 9, 2011, Plaintiff submitted a written objection to the County and

1 the Board. Plaintiff objected to the proposed inclusion of restaurants and other food facilities in
2 the proposed plastic bag ban which was later adopted as Ordinance No. 5103. Plaintiff's
3 objection was based on Retail Food Code preemption.

4 20. On September 20, 2011, the Board adopted Ordinance No. 5103 which banned
5 plastic carryout bags at certain retail stores and at restaurants and other food facilities.

6 21. On October 18, 2011, Plaintiff filed an action in this Court to invalidate and set-
7 aside the ban of plastic carryout bags at restaurants and other food facilities in Ordinance No.
8 5103, based on Retail Food Code preemption and unconstitutional vagueness. (*Save The Plastic*
9 *Bag Coalition v. County of Santa Cruz*, Case No. CV 172379.)

10 22. On February 14, 2012, the Board adopted Ordinance No. 5116 which amended
11 Ordinance No. 5103 by exempting restaurants and other food facilities from the plastic carryout
12 bag ban. A true and correct copy of Ordinance No. 5116 is attached hereto as Exhibit B and
13 incorporated herein by reference.

14 23. On February 16, 2012, Plaintiff dismissed the action without prejudice as a result
15 of the Board's adoption of Ordinance No. 5116.

16 24. Subsequently, the Board placed on its agenda for its September 25, 2012
17 meeting the first reading of a proposed ordinance to remove the exemption for restaurants and
18 other food facilities. That proposed ordinance subsequently became Ordinance No. 5138.

19 25. On September 24, 2012, the California Restaurant Association submitted to the
20 Board a letter objecting to the proposed inclusion of restaurants and other food facilities in the
21 plastic bag ban. A true and correct copy of the letter is attached hereto as Exhibit F. The letter
22 pointed out the health, safety, and sanitation risks of banning plastic bags. All of the comments
23 and objections stated and asserted therein are incorporated and realleged herein by reference.

24 26. On September 25, 2012, Plaintiff submitted a written objection and notice of
25 intent to sue to the County and the Board in response to the to the proposed inclusion of
26 restaurants and other food facilities in the plastic bag ban. Plaintiff's objection was based on
27 Retail Food Code preemption. A true and correct copy of said written objection and the
28 documents that were attached to said objection are attached hereto as Exhibit G and

1 incorporated herein by reference.

2 27. Plaintiff attached to its September 25, 2012 objection a copy of the ruling in
3 *Save The Plastic Bag Coalition v. City of Carpinteria*, Santa Barbara Superior Court Case No.
4 1385674. A true and correct copy thereof is attached hereto as Exhibit H and incorporated
5 herein by reference. In that ruling, the Santa Barbara Superior Court overruled the City of
6 Carpinteria's demurrer and ruled that the Retail Food Code preempts and prohibits cities and
7 counties from banning plastic carryout bags at restaurants and other food facilities.

8 28. On September 25, 2012, after Plaintiff had submitted its written objection and a
9 copy of the Carpinteria ruling to the County and the Board, the Board approved Ordinance No.
10 5138 at its first reading.

11 29. On October 16, 2012, the Board finally adopted Ordinance No. 5138 reinstating
12 the plastic carryout bag ban at restaurants and other food facilities effective April 22, 2013.

13 30. As a result of the adoption of Ordinance No. 5138, Santa Cruz County Code
14 §5.48.020(A) and (E) state that restaurants and other food facilities may not provide plastic
15 carryout bags.

16 31. The County and the Board never conducted any study or made any findings
17 regarding the health, safety, sanitary, liability impacts of banning plastic carryout bags at
18 restaurants and other food facilities.

19 32. With only four exceptions, all other California jurisdictions that have banned
20 plastic bags have exempted restaurants, including Alameda County, Los Angeles County,
21 Marin County, Santa Clara County, Santa Cruz County, the City of Long Beach, the City of San
22 Jose, and the City of Santa Monica.

23 33. The four jurisdictions that have adopted plastic carryout bag bans at restaurants
24 and other food facilities are the City of Santa Cruz, the City and County of San Francisco, the
25 City of Malibu, and the Town of Fairfax.

26 34. Plaintiff has filed an action to challenge the validity of the City of Santa Cruz
27 ban. (*Save The Plastic Bag Coalition v. City of Santa Cruz*, Santa Cruz County Superior Court,
28 Case No. CV 174811.)

1 35. Plaintiff has filed an action to challenge the validity of the San Francisco ban.
2 (*Save The Plastic Bag Coalition v. City and County of San Francisco*, San Francisco Superior
3 Court, Case No. CPF-12-511978.) The San Francisco Superior Court ruled against Plaintiff on
4 the issue of Retail Food Code preemption, but Plaintiff plans to appeal that ruling. The San
5 Francisco Superior Court's ruling is legally incorrect and contradicts the Santa Barbara
6 Superior Court ruling.

7 36. If the Court of Appeal or Supreme Court uphold Plaintiff's Retail Food Code
8 preemption claim, Plaintiff plans to take action to have the Malibu and Fairfax bans of plastic
9 carryout bags at restaurants and other food facilities repealed or invalidated.

10 **HEALTH AND SAFETY CONCERNS REGARDING**
11 **BANNING PLASTIC BAGS AT RESTAURANTS**

12 37. In its written objection submitted to the Board on September 12, 2011, which is
13 attached hereto as Exhibit D, the California Restaurant Association stated as follows:

14 Restaurants should have the freedom of choice to determine what type of
15 bag works best to maintain the integrity of their product. Paper bags are
16 not always the most practical choice for restaurants.

17 Plastic bags are superior to paper bags in protecting against accidental
18 spills and leaks during transport, whereas the content would just seep
19 through a paper bag. Customers become disgruntled when food from the
20 bag leaks onto their car, carpet, clothes, etc.

21 In addition, some types of containers don't fit as well in paper bags.
22 Whereas plastic bags conform to the size of the container, paper bags do
23 not. The bottom of paper bags is generally rectangular-shaped which
24 doesn't work when you have a standard, large square container.

25 38. The City of Santa Monica explained its restaurant exemption as follows:

26 Restaurants and other food vendors may provide single-use plastic
27 carryout bags to customers only for the transportation of take-out food
28 and liquids intended for consumption off of the food provider's
premises. This exemption is included as a public health safeguard based
on input from restaurant owners who expressed concern that some hot
and liquid foods could leak from take-out containers and potentially
cause paper bags to weaken and fail.

(http://www.smgov.net/uploadedFiles/Departments/OSE/Business/Bag_Ban_Summary.pdf)

1 39. The City of San Jose explained its restaurant exemption as follows:

2 Restaurants and food establishments would not be subject to the ban for
3 public health reasons. Reusable bags are considered impractical for these
4 purposes.

4 (City of San Jose Bag Ordinance Development, February 2010.)

5 40. The City of Los Angeles states as follows regarding its proposed plastic bag ban:

6 Restaurants, coffee shops, and fast food restaurants are exempt from the
7 proposed policy due to sanitary and health concerns.

8 (City of Los Angeles Proposed Reusable Bag Policy Frequently Asked Questions.)

9 41. Restaurants and other food facilities prepare and sell freshly cooked foods that
10 may contain extremely hot liquid, grease, oil, sauce, or soup. Oil is heated in fryers to 375
11 degrees or more. Hot soup and other foods may be served at 180 degrees or more.

12 42. Restaurants and other food facilities prepare and sell hot beverages including
13 coffee.

14 43. Plastic is obviously safer than paper for transporting such foods and beverages.

15 44. Plastic bags are waterproof and greaseproof. Paper bags are not.

16 45. When liquids spill inside a paper bag, the bag can break. That does not happen to
17 a plastic bag.

18 46. Carryout bags from restaurants and other food facilities are often transported or
19 opened in moving vehicles, so safe and secure packaging is essential.

20 47. The impact on a young child of hot liquid, hot soup, or hot oil seeping or spilling
21 from a paper bag onto his or her lap or legs could be disastrous.

22 48. Some restaurants tightly pack up food in a plastic bag and use the handles to tie
23 the bag so as to prevent the food from moving around and spilling. This cannot be done with a
24 paper bag.

25 49. The Burn Center at the University of Florida states as follows on its website:

26 Examples of hot liquids which can cause burns include hot water, coffee,
27 grease and hot soup.

28 A true and correct copy of the website page containing that quotation is part of Exhibit G

1 attached hereto.

2 50. The Burn Center at Saint Francis Memorial Hospital in San Francisco states as
3 follows on its website:

4 Hot liquids can cause life threatening burn injuries and are the leading
5 cause of burn injuries in children under the age of 4 years. The experts in
6 burn treatment at Saint Francis Memorial Hospital's Both Burn Center
7 want you to know:

7 Coffee, tea, soup and hot tap water can be hot enough to cause serious
8 burn injury....

9 60-70% of all pediatric patients seen in the Bothin Burn Center have a
10 scald injury.

11 A true and correct copy of the website page containing that quotation is part of Exhibit G
12 attached hereto.

13 51. The lady who sued in the McDonald's hot coffee case was burned so severely
14 that her doctors thought that she would die. The movie about the hot coffee case shows horrific
15 photographs of her injuries. (<http://hotcoffeethemovie.com>.) The photographs are part of
16 Exhibit G attached hereto. Her cotton sweatpants absorbed the coffee and held it against her
17 skin, burning her thighs, buttocks, and groin. She suffered third-degree burns on 6% of her skin
18 and lesser burns over 16%. She remained in the hospital for eight days while she underwent
19 skin grafting. During this period, she lost 20 pounds (nearly 20% of her body weight), reducing
20 her down to 83 pounds. Two years of medical treatment followed.

21 52. The McDonald's hot coffee case shows the impact that hot liquids can have
22 when spilled.

23 53. From 1982 to 1992, McDonald's received more than 700 reports of people
24 burned by its coffee.

25 54. Another incident is related in the following news story:

26 A Miami-Dade woman says that the soup she bought from Subway
27 scalded her thigh, hip, and buttocks so extensively that she had to rush to
28 the hospital -- and undergo emergency treatment for second-degree
burns, according to a recently filed lawsuit.

1 On July 30, Claudia Vargas purchased soup and a sub from the
2 Hollywood sandwich store, located at 6582 Taft St.

3 When she returned to her car, she tried to take the soup out of the bag.
4 But the container was too full and the lid was not attached correctly, so
5 the soup spilled on her lap, Vargas says.

6 Because the soup was extremely hot, 23-year old Vargas says that she
7 suffered from second-degree burns that will leave her with permanent
8 scarring....

9 Lydecker insists that the soup was cooked and served at a reasonable
10 temperature.

11 "I mean, soup is hot. And people want their soup hot. You're not
12 supposed to spill it on yourself. My client just wanted to serve a good
13 tasting, hot soup. He looks forward to exonerating himself in court."

14 Still, Vargas stands by her claim, and insists that Subway was negligent
15 in how it prepped, marketed, and served her the soup.

16 Medical records furnished to the Pulp by Vargas' representative confirm
17 that Vargas had to go to the emergency room after the accident, where
18 she was given antibiotics, a tetanus shot, and topical ointment for the
19 wounds.

20 Vargas thinks that this could have been avoided if Subway hadn't served
21 overly hot soup -- or if she'd had some kind of warning that the soup
22 would be scalding and hazardous.

23 Vargas is suing Subway, in hopes of getting money for her medical bills.

24 A plastic surgeon who examined Vargas shortly after the accident has
25 said that chances for full recovery are grim: The burns will take at least 6
26 months to heal. And, "despite laser intervention, the patient will always
27 have some residual scarring," medical documents note.

28 The news article relating the story about Claudia Vargas, including a photograph of her
extensive burn injury, is part of Exhibit G attached hereto.

55. A restaurant owner has the legal right and duty and the moral responsibility to
take all reasonable steps to prevent such injuries. It is for the restaurant owner to decide whether
a plastic or paper bag is the safest for its food. Denying restaurant owners what they believe is
the safest option could result in personal injuries to customers.

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ALLEGATIONS SUPPORTING CLAIM FOR ATTORNEY’S FEES

56. Plaintiff requests an award of attorney’s fees against the County pursuant to Code Civ. Proc. §1021.5 if the Court grants any of the relief requested herein, as (i) this litigation is intended to result in enforcement of an important public right affecting the public interest; (ii) a significant benefit will be conferred on the general public or a large class of persons; and (iii) the necessity and financial burden of private enforcement are such as to make an award of attorney’s fees appropriate.

FIRST CAUSE OF ACTION
(RETAIL FOOD CODE PREEMPTION)

57. Plaintiff realleges and incorporates herein every allegation made above.

58. The State of California regulates restaurant and food facility carryout bags in the California Retail Food Code, which is Part 7 of Division 104 of the California Health and Safety Code.

59. Health and Safety Code § 113705 states as follows:

Legislative Intent To Preempt Local Standards

The Legislature finds and declares that the public health interest requires that there be uniform statewide health and sanitation standards for retail food facilities to assure the people of this state that the food will be pure, safe, and unadulterated. Except as provided in Section 113709, it is the intent of the Legislature to ***occupy the whole field*** of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be ***exclusive*** of all local health and sanitation standards relating to retail food facilities.

60. Health and Safety Code § 113700 states: “These provisions shall be known, and may be cited, as the California Retail Food Code, hereafter referred to as ‘***this part***.’” Health and Safety Code § 113703 states: “The purpose of ***this part*** is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented through adoption of science-based standards.” The reference to “purpose” in the singular means that all of the provisions are deemed to have the same purpose. The reference to “***this part***” in § 113703 means the Retail Food Code in its entirety, in accordance with § 113700.

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61. Health and Safety Code § 113709 states as follows:

Authority To Establish Local Requirements

This part does not prohibit a local governing body from adopting an evaluation or grading system for food facilities, from prohibiting any type of food facility, from adopting an employee health certification program, from regulating the provision of consumer toilet and handwashing facilities, or from adopting requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon a street pursuant to its authority under subdivision (b) of section 22455 of the Vehicle Code.

62. California Health and Safety Code § 113789 defines "food facility" as follows:

(a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant

1 to Section 114375.

2 [§ 113789(c) contains exclusions from the above definition.]

3 63. Health and Safety Code § 113914 defines “single-use” articles as including
4 single-use “carry-out utensils” and “bags” and “wrappers.” The words “carry-out” and “bags”
5 leave no room for doubt that local bans and fees on carryout bags are preempted.

6 64. “Carryout-out utensils” (the term used in § 113914) includes any “container”
7 used in the storage, preparation, transportation, dispensing, sale, or service of food.” (Health
8 and Safety Code § 113934.) A carryout bag is a utensil.

9 65. Health and Safety Code § 114081 states: “Single-use articles [including carryout
10 bags] shall not be reused.” This bans the use of reusable bags at restaurants.

11 66. Health and Safety Code § 114130(a) states: “Equipment and utensils [including
12 carryout bags] shall be designed and constructed to be durable and to retain their characteristic
13 qualities under normal use conditions.”

14 67. Health and Safety Code § 114130.1 states: “Materials that are used in the
15 construction of utensils [including carryout bags] ...shall not allow the migration of deleterious
16 substances or impart colors, odors, or tastes to food and under normal use conditions shall be
17 safe, durable, corrosion-resistant, and nonabsorbent, sufficient in weight and thickness to
18 withstand repeated warewashing, finished to have a smooth, easily cleanable surface, and
19 resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.”

20 68. Health and Safety Code § 114130.2 states: “Materials that are used to make
21 single-use articles [including carryout bags] shall not allow the migration of deleterious
22 substances or impart colors, odors, or tastes to food, and shall be safe and clean.”

23 69. Based on the foregoing, the Retail Food Code regulates the “material” from
24 which carryout bags are made (plastic or paper) and bans reusable bags. Ordinances No. 5103
25 and 5138 legislate in the same field as the Retail Food Code.

26 70. The Retail Food Code originated as Senate Bill 144 which was enacted in 2006.
27 The Legislative Analysis of SB 144 includes a section (at page SP-5) entitled “Uniformity and
28 Consistency” which includes five bullet points, including the following: “Contains provisions

1 that will clarify and expand the requirements pertaining to equipment, utensils, and linens used
2 in retail food service operations.” (Emphasis added.) This confirms that the utensil provisions of
3 the Retail Food Code are intended to be uniform and consistent across the state. As noted
4 above, a carryout bag is a “utensil.” A copy of the Legislative Analysis is attached hereto as
5 Exhibit I and incorporated herein by reference.

6 71. In *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, the
7 Supreme Court discussed Retail Food Code preemption and stated:

8 [T]he state alone may adopt ‘health and sanitation standards for retail
9 food facilities.’ The remainder of the statutory scheme demonstrates by
10 way of example the precise scope of exclusive state regulation,
11 comprehensively detailing standards for, e.g., employee training on
12 health matters (id., §§ 113947-113947.3), employee health and hygiene
13 (id., §§ 113949-113978), food transportation, storage, and preparation
14 (id., §§ 113980-114057.1), food display and service (id., §§ 114060-
114083), food labeling (id., §§ 114087-114094), the design and
15 sanitizing of food preparation areas and utensils (id., §§ 114095-
114185.5), and the design and cleanliness of food facilities (id., §§
114250-114282).

16 (*California Grocers, supra*, 52 Cal.4th at 189, emphasis added.)

17 72. The fact that the Supreme Court mentioned the “design” of “utensils” as within
18 the scope of preemption confirms that the design of carryout bags is preempted. In addition, the
19 Supreme Court referred to ranges of section numbers as preemptive (§§ 114060-114083,
20 114095-114185.5) that include §§ 114081 and 114130 which address carryout bags.

21 73. The Supreme Court stated:

22 Purpose alone is not a basis for concluding a local measure is preempted.
23 While we and the Courts of Appeal have occasionally treated an
24 ordinance’s purpose as relevant to state preemption analysis, we have
25 done so in the context of a nuanced inquiry into the ultimate question in
26 determining field preemption: whether the effect of the local ordinance is
27 in fact to regulate in the very field the state has reserved to itself.

28 (*California Grocers, supra*, 52 Cal.4th at 190, emphasis added.)

74. The Supreme Court explained why purpose is not relevant:

To rest preemption analysis solely on considerations of purpose would
generate the anomalous circumstance, rejected by the United States
Supreme Court, that one jurisdiction’s measure might survive

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preemption, while another identical measure passed in a different jurisdiction might fall, 'merely because its authors had different aspirations.'

(*Id.* at 190, n.4, internal quotation marks and citation omitted.)

75. Based on the foregoing, the Ordinance is invalid as it bans plastic bags at restaurants and other "food facilities" (as defined by § 113789) and has the effect of regulating in the very field the state has reserved to itself The Ordinance intrudes into an area that the State of California has reserved to itself.

76. Consumers could suffer severe physical injuries, including burns, and property damage if enforcement of the Ordinance is not enjoined by a preliminary injunction during the pendency of this action.

77. Plaintiff's members that manufacture or supply plastic bags for restaurants and food establishments in San Francisco, including but not limited to Command Packaging, will suffer irreparable damage if their products are banned. They have no adequate remedy at law to obtain compensation for such losses, as the City is immune from liability for compensatory damages for adopting an invalid ordinance.

78. This cause of action is substantially identical to the First Cause of Action in the first lawsuit. (*Save The Plastic Bag Coalition v. County of Santa Cruz*, Case No. CV 172379.)

SECOND CAUSE OF ACTION
(VIOLATION OF FOURTEENTH AMENDMENT
TO THE U.S. CONSTITUTION - VOID FOR VAGUENESS)

79. Plaintiff realleges and incorporates herein each and every allegation made above.

80. The Ordinance is a penal statute. It provides that a violation shall constitute an infraction and imposes fines. (Ordinance No. 5103 §5.48.035 and §5.48.040.)

81. Ordinance No. 5103 §5.48.020(F) states as follows:

The ban on single-use plastic bags and the charge on single-use paper bags would not apply to plastic or paper bags used to protect produce, meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples include: paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags or paper bags to protect greeting cards.

1 82. As the exemption for restaurants and other food facilities has been repealed by
2 Ordinance No. 5138, Ordinance No. 5103 §5.48.020(F) now applies again to restaurants and
3 other food facilities.

4 83. Ordinance No. 5103 §5.48.020(F) gives five non-exhaustive examples: “paper
5 bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to
6 weigh candy, paper pharmacy bags or paper bags to protect greeting cards.” However, these
7 examples do not constitute a definition and do not narrow the broad potential meaning of the
8 vague and ambiguous terms at all. All plastic carryout bags “protect” items, including but not
9 limited to those in the aforementioned examples.

10 84. It is impossible to ascertain its meaning of “wet items” in the context of food and
11 beverages. The following items may or may not be “wet items”:

- 12 • A hot coffee container that might become “wet” as a result of spillage of the
13 contents over the outside of the cup
- 14 • Oily French fries
- 15 • Cooked hamburger from which meat juices drip
- 16 • Pizza
- 17 • A container of Chinese, Thai, or Indian food which may become “wet” from
18 dripping or spilled sauce or curry
- 19 • Tacos with moist dripping ground beef and gravy filling
- 20 • Sandwiches from which juices seep, such as sandwiches containing tomatoes,
21 pickles, peppers, mustard, mayonnaise, or ketchup
- 22 • Hot steaming food that creates “wet” condensation inside a bag
- 23 • Moist foods that could be considered “wet” such as cooked vegetables
- 24 • “Wet” fresh fruits or vegetables such as washed whole apples, apple or peach
25 slices, or wet raw carrots
- 26 • Pickles
- 27 • Soups
- 28 • Creamy foods such as icing on cupcakes

- 1 • Melting chocolate
- 2 • Jam/jelly
- 3 • Apple pie
- 4 • Milk shakes
- 5 • Bags that contain both wet and dry items (a beverage and a dry cookie for
- 6 example)
- 7 • Any item that unintentionally or accidentally could become a "wet item."

8 85. Legislation "may run afoul of the Due Process Clause because it fails to give
9 adequate guidance to those who would be law-abiding, to advise defendants of the nature of the
10 offense with which they are charged, or to guide courts in trying those who are accused."
11 (*Musser v. Utah*, 333 U.S. 95, 97 (1948).) "Men of common intelligence cannot be required to
12 guess at the meaning of [an] enactment." (*Winters v. New York*, 333 U.S. 507, 515-16 (1948).)
13 "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with
14 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a
15 manner that does not encourage arbitrary and discriminatory enforcement." (*Kolender v.*
16 *Lawson* (1983) 461 U.S. 352, 357.")

17 86. Ordinances No. 5103 and 5138 fail to give fair notice of the acts to be avoided
18 and fail to give adequate safeguards to guide law enforcement in order to avoid abusive and
19 arbitrary practices. Ordinances No. 5103 §5.48.020(F) and 5138 are therefore void for
20 vagueness on their face under the Due Process Clause of the Fourteenth Amendment to the U.S.
21 Constitution.

22 87. Ordinance No. 5103 §5.48.020(F) is not severable from the remainder of the
23 Ordinance. It is an integral part of the entire Ordinance in that it defines the applicability of the
24 plastic bag ban and the paper bag charge for all retail stores covered by the Ordinance, not just
25 restaurants and other food facilities. Therefore, the Ordinance No. 5103 is invalid in its entirety.

26 88. This cause of action is substantially identical to the Third Cause of Action in the
27 first lawsuit. (*Save The Plastic Bag Coalition v. County of Santa Cruz*, Case No. CV 172379.)
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for all of the following:

- A. A declaratory judgment that Ordinances No. 5103 and 5138 are invalid.
- B. An order directing the County to repeal Ordinances No. 5103 and 5138.
- C. A preliminary injunction prohibiting the County from implementing and enforcing Ordinances No. 5103 and 5138 during the pendency of this action.
- D. A permanent injunction prohibiting the County from adopting substantially similar invalid ordinances.
- E. Attorney's fees pursuant to Code. Civ. Proc. §1021.5.
- F. Costs of this action.
- G. Such further relief as the Court may deem just and proper.

DATED: October 22, 2012

STEPHEN L. JOSEPH



Attorney for Plaintiff
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 Plaintiff, SAVE THE PLASTIC BAG COALITION, in the above-entitled matter.
3. Plaintiff was formed on June 3, 2008.
4. At all times since June 3, 2008, I have been sole counsel and manager of Plaintiff. In those capacities, I have been involved in and have been aware of all actions taken by Plaintiff since that time.
5. I am authorized by Plaintiff to make this verification for and on its behalf.
6. I have read the VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF INVALIDATING AND PROHIBITING IMPLEMENTATION OF ORDINANCES BANNING PLASTIC CARRYOUT BAGS 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. Exhibit A attached hereto is a true and correct copy of County of Santa Cruz Ordinance No. 5103.
9. Exhibit B attached hereto is a true and correct copy of County of Santa Cruz Ordinance No. 5116.
10. Exhibit C attached hereto is a true and correct copy of County of Santa Cruz Ordinance No. 5138.
11. Exhibit D hereto is a true and correct copy of a letter submitted to the County of Santa Cruz Board of Supervisors (the "Board") by the California Restaurant Association on September 6, 2011.
12. Exhibit E attached hereto is a true and correct copy of a letter submitted by Plaintiff to the County and the Board on September 12, 2011. The Times Online article which is part of the exhibit is the article referenced as a URL on the first page of the letter.
13. Exhibit F hereto is a true and correct copy of a letter submitted to the Board by the

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California Restaurant Association on September 24, 2012.

14. Exhibit G attached hereto is a true and correct copy of Plaintiff's objection and attachments submitted to the County of Santa Cruz and the Santa Cruz County Board of Supervisors Board on September 25, 2012.

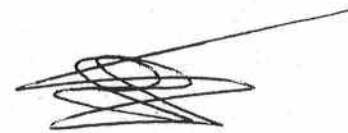
15. Exhibit H attached hereto is a true and correct copy of the tentative ruling of the Santa Barbara Superior Court overruling the demurrer filed by the City of Carpinteria in *Save The Plastic Bag Coalition v. City of Carpinteria*, Santa Barbara Superior Court Case No. 1385674. I was counsel for Save The Plastic Bag Coalition in that case. I certify that the tentative ruling was adopted by the Santa Barbara Superior Court as its final ruling on May 15, 2012, without change.

16. Exhibit I attached hereto is a true and correct copy of the Legislative Analysis of SB 144 which was the bill that became the California Retail Food Code.

17. 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 October 22, 2012 at San Francisco, California.



STEPHEN L. JOSEPH

TABLE OF ATTACHED EXHIBITS

- A. Ordinance No. 5103 adopted September 20, 2011
- B. Ordinance No. 5116 adopted February 14, 2012
- C. Ordinance No. 5138 adopted October 16, 2012
- D. California Restaurant Association's letter to the Santa Cruz Board of Supervisors (the "Board") dated September 6, 2011
- E. Plaintiff's letter to the County of Santa Cruz County Board of Supervisors (the "Board") dated September 12, 2011 and copy of Times Online article referenced in the letter
- F. California Restaurant Association's letter to the County dated September 24, 2012
- G. Plaintiff's objection submitted to the County and the Board on September 25, 2012 (including Vargas news report and McDonald's hot coffee case photographs)
- H. Santa Barbara Superior Court ruling in *Save The Plastic Bag Coalition v. City of Carpinteria*
- I. Legislative Analysis of SB 144