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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

SURFRIDER FOUNDATION, by and through the
local chapter; CALIFORNIANS AGAINST
WASTE; and ORANGE COUNTY
COASTKEEPER,

Petitioners/Plaintiffs,

v.

CITY OF HUNTINGTON BEACH, a charter
city; HUNTINGTON BEACH CITY COUNCIL;
and DOES 1 through 100, inclusive,

Respondents/Defendants.

CASE NO.

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**(Public Resources Code, § 21168.5;
Code Civ. Proc., §§ 525, 1060 &
1085)**

**CALIFORNIA ENVIRONMENTAL
QUALITY ACT ("CEQA") ACTION**

1 COME NOW Petitioners and Plaintiffs Surfrider Foundation, by and through the local
2 Chapter; Californians Against Waste; and Orange County Coastkeeper, and allege as follows:

3 INTRODUCTION

4 1. Petitioners and Plaintiffs Surfrider Foundation, Californians Against Waste, and
5 Orange County Coastkeeper (collectively, "Petitioners") bring this action to challenge the
6 ordinance passed by Respondents and Defendants City of Huntington Beach (the "City") and
7 Huntington Beach City Council ("Council"; collectively, "Respondents") on May 4, 2015,
8 repealing the City's ban on single-use plastic bags (the "Repeal Ordinance"). In so doing,
9 Respondents have taken a dramatic step backwards in the fight to keep the City's streets,
10 coastline, and waterways free of dangerous and toxic pollutants, and to protect the local
11 environment and wildlife from the deleterious effects of plastic litter. More importantly,
12 Respondents have shielded their actions from public scrutiny, thereby denying the public its
13 right for the public and the decisionmakers to be informed of the true environmental impacts
14 resulting from Respondents' actions, and to participate in the process by which those actions
15 are taken.

16 2. Crucially, Respondents' environmental analysis of the Repeal Ordinance under
17 the California Environmental Quality Act ("CEQA") consisted of the same Environmental
18 Impact Report ("EIR") they had prepared to support the original enactment of the bag ban,
19 together with a short Addendum that was not circulated for public or expert review and
20 comment. Both the purpose and the effect of the Repeal Ordinance are, in every material
21 respect, the opposite of the purpose and effect of the original bag ban ordinance that was
22 studied in the EIR. The Addendum improperly concluded that the environmental impact of
23 repealing the bag ban today, seventeen months after it went into effect, would be the same as
24 the environmental impact of never having enacted it at all.

25 3. Single-use plastic bags are a widely-recognized source of environmental
26 pollution. Even when consumers attempt to properly dispose of single-use plastic bags, the
27 bags are easily dispersed into the environment by wind, scattering onto land and into
28 waterways. These bags do not break down quickly, taking hundreds of years to fully degrade,

1 scattering into fragments as they do. In the marine environment, single-use plastic bags can be
2 ingested by marine animals that mistake the bags for prey, resulting in the suffocation and
3 death of the ingesting creature. Sea turtles and marine mammals are among the most frequent
4 ocean-dwelling animals to accidentally consume single-use plastic bags. Moreover, single-use
5 plastic bags result in unsightly debris that mars urban and natural settings alike.

6 4. In recognition of the hazards that such bags pose to the health of the aquatic
7 ecosystem and the degradation they inflict on the aesthetic environment, Huntington Beach,
8 known as “Surf City USA” because of the Southern California beach culture and active
9 outdoor lifestyle of its residents, banned nearly all use of single-use plastic bags beginning in
10 November 2013. The City determined that its ban would eliminate 95 percent of the single-use
11 plastic bags, leading to significant benefits for the area’s marine environment and overall
12 aesthetics. The ban was adopted in part as a result of support by local environmental groups,
13 including Petitioners in this action.

14 5. The ban on single-use plastic bags significantly reduced the use and
15 consumption of such bags within the City. Respondents’ consultants estimated a reduction in
16 use of over 97 million single-use plastic bags per year. Removing 97 million plastic bags per
17 year from consumer use was predicted to have beneficial effects on air quality, the marine
18 environment, and local plant and wildlife species.

19 6. In 2015, a newly-elected City Council majority became determined to reverse
20 the City’s progress in eliminating marine and terrestrial pollution from single-use plastic bags.
21 On May 4, 2015, the Council took the final vote necessary to repeal the ban on single-use
22 plastic bags, sending the City on a backwards course, in contradiction to numerous state and
23 local water pollution and trash reduction efforts.

24 7. In its rush to enact the Repeal Ordinance, Respondents committed serious legal
25 errors. Instead of preparing a full environmental impact report on the potential consequences
26 of repealing the bag ban—which would include an analysis of alternatives to the outright
27 repeal—and giving the public the opportunity to comment upon the analysis of the likely
28 environmental impacts, Respondents elected to simply use the EIR they had prepared to

1 support the original enactment of the bag ban together with a short non-circulating Addendum.
2 Respondents released the Addendum just days before the first vote on the repeal. The
3 environmental analysis of the Repeal Ordinance failed to account for the fact that the bag ban
4 had removed over 97 million single-use plastic bags from the City. Instead, it ignored almost
5 two years of environmental progress by concluding that the environmental impact of repealing
6 the bag ban would be the same as the environmental impact of never having enacted it at all
7 (i.e. the “No Project” Alternative of the original EIR). This analysis makes a critical legal
8 misstep: The local environment has changed as a result of the bag ban, and Respondents may
9 not ignore the fact that the environment has since changed for the better. CEQA is a law of
10 accountability, and Respondents have erred on the most basic level by failing to honestly and
11 accurately evaluate the impact of the Repeal Ordinance. If Respondents want to take a giant
12 leap backward, they may do so only after disclosing and considering the environmental
13 consequences of that action and feasible alternatives to it, and permitting the public to
14 comment upon that analysis. Anything less fails to live up to CEQA’s mandates.

15 8. Petitioners seek a determination from this Court that Respondents have failed to
16 meet their obligations under CEQA to conduct a thorough and accurate environmental review
17 of the significant harmful effects that will result from the Repeal Ordinance, to educate the
18 public about the true environmental impacts that will be caused by Respondents’ decision to
19 pass that ordinance, to allow an opportunity for the public to comment on the environmental
20 impacts of the City’s repeal of the bag ban, and to consider the environmental impacts and the
21 public comments in their decisionmaking.

22 **PARTIES**

23 9. Petitioner and Plaintiff SURFRIDER FOUNDATION (“Surfrider”) is a
24 grassroots, non-profit environmental organization dedicated to the protection and enjoyment
25 of the world’s oceans, waves and beaches for all people, through a powerful activist network
26 of more than 250,000 supporters, activists, and members who live in the United
27 States. Organized as a 501(c)(3) non-profit corporation, Surfrider has over 80 local Chapters
28 nationwide, including the volunteer-based grassroots Surfrider Foundation Huntington

1 Beach/Seal Beach Chapter. Surfrider Foundation also has grassroots Chapters in South Orange
2 County, Newport Beach in Orange County, as well as neighboring Long Beach. Surfrider has
3 a particular interest in protecting Orange County beaches and waterways, including in
4 Huntington Beach, California. Surfrider brings this action on its own institutional behalf and
5 on behalf of its members, board, and volunteers, some of whom regularly enjoy and will
6 continue to enjoy surfing, bathing, swimming and recreating in the waters of Orange County,
7 including Huntington Beach. The interests of Surfrider and its members, board, and
8 volunteers in surfing, bathing, swimming and recreating in the waters of Huntington Beach
9 have been, and will continue to be, harmed by the prevalence of physical trash, including
10 single-use bags, impacting these waters and the wildlife that live in Huntington Beach's
11 waterways, wetlands and coast. Surfrider, its members, board, and volunteers have worked to
12 protect the coastal environment, including the beaches, waterways and related wildlife habitat
13 in Huntington Beach for decades, and have expended significant organizational resources on
14 advocacy and public education efforts aimed at protecting the oceans, waves and beaches in
15 Huntington Beach.

16 10. Petitioner and Plaintiff CALIFORNIANS AGAINST WASTE ("CAW") is a
17 non-profit environmental research and advocacy organization that identifies, develops,
18 promotes and monitors policy solutions to pollution and conservation problems posing a threat
19 to public health and the environment. CAW is one of the nation's most active and recognized
20 non-profit organizations focused on waste reduction and recycling. For 37 years, CAW has
21 worked to protect California's environment through the development, promotion, and
22 implementation of waste reduction and recycling policies and programs. CAW has been
23 working to reduce single-use plastic bag pollution by advocating for single-use plastic bag
24 bans at the local and state level for more than a decade, resulting in over 100 local ordinances.
25 Last year, CAW sponsored California Senate Bill 270, which was the first statewide plastic
26 bag ban to be passed into law.

27 11. Petitioner and Plaintiff ORANGE COUNTY COASTKEEPER ("Coastkeeper")
28 is a non-profit public benefit corporation whose mission is to protect and promote water

resources that are swimmable, drinkable, fishable, and sustainable. Coastkeeper works collaboratively with diverse groups in the public and private sectors to achieve healthy, accessible, and sustainable water resources for the region. Coastkeeper implements innovative, effective programs in education, advocacy, restoration, research, enforcement, and conservation. Coastkeeper has over 2,000 members who live and/or recreate in and around Orange County and the Santa Ana River watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of their local watersheds, including those in Huntington Beach. To further these goals, Coastkeeper actively seeks implementation of the California Environmental Quality Act, and, where necessary, directly initiates actions on behalf of itself and its members. The interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by the actions of the City of Huntington Beach's failure to comply with the California Environmental Quality Act by reintroducing millions of plastic bags into the local waste stream.

12. Respondent and Defendant CITY OF HUNTINGTON BEACH is the public governmental entity serving the people of the City of Huntington Beach.

13. Respondent and Defendant HUNTINGTON BEACH CITY COUNCIL (the "City Council" or "Council") is the elected governing body of the City of Huntington Beach, a charter city in the State of California. The Council has an office in Huntington Beach.

14. Petitioners and Plaintiffs are unaware of the true names and capacities of Respondent DOES 1 through 100, inclusive, and they are therefore sued by fictitious names pursuant to Code of Civil Procedure section 474. Petitioners allege on information and belief that each such fictitiously named Respondent is responsible or liable in some manner for the events and happenings referred to herein, and Petitioners will seek leave to amend this Petition to allege their true names and capacities after the same have been ascertained.

JURISDICTION, VENUE AND STANDING

15. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of the California Constitution and sections 1085 and 1094.5 of the Code of Civil

1 Procedure.

2 16. Venue is proper in the County of Orange pursuant to Code of Civil Procedure
3 section 394 in that Respondents are government entities and/or agents of the City of
4 Huntington Beach.

5 17. Petitioners are, separately and individually, beneficially interested in the
6 outcome of this litigation. As set forth as paragraphs 9-11 above, Petitioners all advocate for
7 improved water quality and the reduction of waste and pollution, both in Huntington Beach
8 and around the state. As such, Petitioners have a strong interest in public disclosure of the
9 impacts of actions that will increase water pollution and add to the volume of waste generated
10 by citizens of this state.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 18. On May 4, 2015, Petitioners submitted a thirteen-page letter via e-mail to all
13 members of the City Council, detailing Petitioners' objections to the Repeal Ordinance.
14 Petitioners also appeared at the City Council meeting held that same evening and spoke
15 publicly about their opposition to the Repeal Ordinance and the corresponding inadequate
16 environmental review. In addition, several community members belonging to Petitioners'
17 organizations appeared and spoke out against the Repeal Ordinance at earlier City Council
18 meetings on January 20, 2015 and April 20, 2015. These written and oral statements apprised
19 the City and the City Council of Petitioners' concerns regarding the Repeal Ordinance.

20 19. On June 2, 2015, as required by Public Resources Code section 21167.5,
21 Petitioners notified Respondents that they intended to file suit to enforce the requirements of
22 CEQA. Proof of service of that notification is attached hereto as Exhibit A.

23 20. On June 3, 2015, as required by Public Resources Code section 21167.7,
24 Petitioners notified the Attorney General of their intent to file this action. Proof of service of
25 that notification is attached hereto as Exhibit B.

26 21. Along with this Verified Petition, Petitioners have also filed a Notice of Election
27 to Prepare Administrative Record.
28

STATEMENT OF FACTS

Background

22. Plastic litter is one of the most pervasive and menacing problems affecting the marine environment. The amount of plastic being produced worldwide has increased sharply in recent decades. Most of the plastic found on beaches and in our nearshore waters is the result of single-use plastic litter, such as plastic bags. Because of their ubiquitous and lightweight nature, single-use plastic bags can easily enter the litter stream, and frequently blow into our waterways, damaging our watershed, oceans, waves, and beaches, and the ecosystems these areas support. It is estimated that land-based sources account for 60 to 80 percent of all marine litter, and of that land-sourced marine litter, between 60 and 90 percent is plastic.

23. Because of their light weight, single-use plastic bags are far more likely than paper or reusable bags to enter the litter stream and subsequently affect water quality. Trash in waterways creates significant local water quality problems, including degradation of coastal water quality. The Ocean Conservancy reports that plastic bags have been one of the top items collected on International Coastal Cleanup Days, with volunteers collecting a total of almost 8 million plastic bags on annual cleanup days over the course of 25 years. In addition, on a recent International Coastal Cleanup Day in 2010, plastic bags were the most commonly collected item after cigarettes and plastic bottles, accounting for 10 percent of total debris items collected worldwide.

24. Plastic debris that ends up in storm water causes a significant reduction in the quality of that water.

25. Plastic litter is also particularly hazardous to marine wildlife because plastics are durable, buoyant, indigestible, and non-biodegradable. Plastics photodegrade instead of biodegrade, which means they break down into smaller and smaller pieces and become entrenched in the ocean ecosystem. In various forms, plastics can starve, poison, or strangle marine life through ingestion and entanglement. Between 50 and 80 percent of deceased sea turtles are found to have ingested some form of plastic, most often plastic bags, which

1 resemble jellyfish.

2 26. Plastic trash can also negatively affect local resources by inhibiting the growth
3 of aquatic vegetation, by reducing spawning and other habitat for wildlife, and through
4 integration into the food chain.

5 27. Plastic litter can also affect the aesthetics and tourism of their local environment.
6 Single-use plastic bags clutter sidewalks, clog storm drains, create urban blight, negatively
7 affect the coastal economy and can diminish the value of a day at the beach.

8 28. In recognition of the manifold harms caused by plastic debris and litter, many
9 communities across the state have adopted ordinances prohibiting the distribution of single-
10 use plastic bags at retail locations, and encouraging the use of reusable bags. As of the filing
11 of this petition, at least 109 cities or counties in California have adopted some form of plastic
12 bag ban ordinance, covering 138 separate cities.

13 29. Respondents' repeal of the bag ban is also in contradiction to current state
14 policies aimed at the reduction of waste entering the state's water. Indeed, a statewide trash
15 policy was recently passed by the State Water Quality Resources Control Board in response to
16 growing concerns regarding trash polluting state waters. On April 7, 2015, the State Water
17 Resources Control Board adopted an Amendment to the Water Quality Control Plan for the
18 Ocean Waters of California to Control Trash (the "California Ocean Plan"), and adopted Part
19 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters, Enclosed
20 Bays, and Estuaries of California (collectively, the "Trash Amendments" or "Trash Policy").
21 The Trash Amendments are expected to take effect in Fall 2015 following approval by the
22 state Office of Administrative Law and the U.S. Environmental Protection Agency. The Trash
23 Policy was promulgated with a goal of zero trash in state waters. The policy rewards source
24 control efforts such as single-use plastic bag bans. Municipalities must implement the Trash
25 Amendments within 18 months of when their municipal separate storm sewer system
26 ("MS4") permits are modified, re-adopted or issued. When other jurisdictions have been
27 faced with meeting similar goals, such as the Los Angeles Trash TMDL (Total Maximum
28 Daily Load), implementation of source controls (such as Los Angeles County's ban on single-

1 use plastic bags) and capture strategies has resulted in successful implementation of the
2 policy.

3 30. Moreover, by repealing the bag ban, Respondents contravene state policy on
4 antidegradation of water quality, which requires that existing quality of waters be maintained
5 unless degradation is justified based on specific findings (State Water Board Resolution No.
6 68-16, as required by federal law 40 C.F.R § 131.12; see also 33 U.S.C. § 1342(o)(1); 40
7 C.F.R. § 122.44(l)(1).)) Permitting an increased number of single-use plastic bags to enter the
8 waterways is likely to degrade water quality and is contrary to the well-established state and
9 federal policy protecting the current quality of surface water.

10 **The Original Bag Ban Ordinance**

11 31. On August 15, 2011, the City Council voted to develop an ordinance that would
12 ban single-use plastic bags in certain retail establishments in the City and promote the use of
13 reusable bags instead (the “Bag Ban Ordinance”). In support of its decision to develop the Bag
14 Ban Ordinance, the Council cited concerns about ocean pollution and the harmful effects of
15 plastic bags on wildlife. The decision was inspired in part by similar measures that had been
16 enacted in neighboring cities and counties, including the City of Long Beach, the City of
17 Calabasas, the City of Manhattan Beach, and the County of Los Angeles.

18 32. On October 3, 2011, the City Council authorized and approved a contract
19 between the City and Rincon Consultants, Inc. (“Rincon”) for the preparation of an
20 Environmental Impact Report (“EIR”) on the proposed Bag Ban Ordinance. On November 17,
21 2011, the City issued a Notice of Preparation (“NOP”) of the Draft EIR regarding the
22 proposed Bag Ban Ordinance. According to the NOP, the proposed ordinance “would prohibit
23 distribution of plastic carry-out bags in commercial point of sale purchases within the City of
24 Huntington Beach, and establish a ten (10) cent charge on the issuance of recyclable paper
25 carry-out bags at all grocery stores and supermarkets, drug stores, pharmacies, convenience
26 stores, foodmarts and Huntington Beach farmer’s markets.” The City subsequently held a
27 public scoping meeting on the proposed ordinance on December 7, 2011.

28 33. A Notice of Completion of the Draft EIR was filed by the City on February 8,

1 2012. The Draft EIR identified the City’s objectives for enacting the Bag Ban Ordinance as
2 follows: (1) “Reducing the number of single-use plastic bags distributed by retailers and used
3 by customers in Huntington Beach”; (2) “Deterring the use of paper bags by customers in
4 Huntington Beach”; (3) “Promoting a shift toward the use of reusable carryout bags by retail
5 customers in Huntington Beach”; (4) “Reducing the environmental impacts related to single-
6 use plastic carryout bags, such as impacts to biological resources (including marine
7 environments) and water quality”; and (5) “Avoiding litter and the associated adverse impacts
8 to stormwater systems, aesthetics and the marine environment (Pacific Ocean and Bolsa Chica
9 Ecological Reserve).”

10 34. The Draft EIR estimated that a total of 102.2 million single-use plastic bags
11 were in use in Huntington Beach as of 2011. It then calculated the expected reduction in
12 plastic bag usage that would result if the Bag Ban Ordinance were enacted. The Draft EIR
13 found that a conservative estimate of the Bag Ban Ordinance’s impact would reduce single-
14 use plastic bag usage by 95 percent. These plastic bags would instead be partially replaced by
15 a combination of single-use paper bags and reusable bags; however, the overall number of
16 bags in use was expected to decline by almost half.

17 35. The Draft EIR then evaluated the anticipated environmental impacts of enacting
18 the Bag Ban Ordinance in the areas of air quality, biological resources, greenhouse gas
19 emissions, and hydrology and water quality, based on the reductions in bag usage described
20 above. Not surprisingly, half of the predicted impacts were actually *beneficial* to the
21 environment: the Draft EIR found that passing the Bag Ban Ordinance would result in
22 reductions in air pollution emissions related to bag production, litter entering coastal and
23 marine habitats, and litter and waste entering storm drains, waterways, and receiving waters.
24 The remaining anticipated impacts to air quality, greenhouse gas emissions, and hydrology
25 and water quality were calculated and determined to be less than significant, and therefore not
26 in need of mitigation.

27 36. The Draft EIR also examined three alternatives to the Bag Ban Ordinance. The
28 first, called the “No Project Alternative,” assessed the environmental impact that would result

1 if the Bag Ban Ordinance were not adopted. “Because conditions would not change under this
2 alternative,” the Draft EIR concluded, none of the predicted impacts—including the three
3 beneficial impacts described earlier in the Draft EIR—would occur: “[T]his alternative would
4 not achieve the proposed Ordinance’s beneficial effects relative to air quality, biological
5 resources (sensitive species), and hydrology and water quality, nor would it result in the
6 general benefits with respect to litter accumulation that are expected to result from
7 implementation of the proposed Ordinance.” The second alternative explored expanding the
8 Bag Ban Ordinance to include all retail establishments, and the third looked at increasing the
9 charge for single-use paper bags at retail locations from 10 cents to 25 cents. Both the second
10 and third alternatives were found to have even greater beneficial environmental effects as
11 compared to the original ordinance; however, because the Draft EIR had already concluded
12 that the Bag Ban Ordinance would not have any significant negative environmental impacts,
13 neither of these two other alternatives was recommended in its place.

14 37. The Draft EIR was circulated for public review and comment for a 45-day
15 period from February 9, 2012 through March 26, 2012. It received only three comment letters
16 from members of the public during this time: The first, from the Native American Heritage
17 Commission, requested that the City consult with local tribes about potential impacts to Native
18 American cultural resources. The other two letters, received from Coastkeeper and the City of
19 Huntington Beach Environmental Board, both spoke in support of the Bag Ban Ordinance
20 generally. A Final EIR was prepared by Rincon in January 2013, incorporating some minor
21 changes and responding to comments received in the letters.

22 38. On March 18, 2013, the City Council voted to certify the Final EIR as “adequate
23 and complete in accordance with CEQA requirements.” At its next meeting on April 1, 2013,
24 the Council voted to adopt the Bag Ban Ordinance, Ordinance No. 3975. The Bag Ban
25 Ordinance became operative on November 1, 2013.

26 **The Repeal Ordinance**

27 39. On January 20, 2015—almost two years after the Bag Ban Ordinance was
28 adopted, and more than fourteen months after it had gone into effect—the City Council voted

1 to “take the necessary steps to repeal” the Bag Ban Ordinance. The proposed repeal was
2 brought forward by Councilmember Mike Posey, who claimed that the City had “not seen any
3 evidence as to the effectiveness of the bag ban.” Councilmember Posey offered no evidence
4 and cited no data in support of this claim.

5 40. In April 2015, Rincon completed a draft Addendum to the Final EIR (the
6 “Addendum”). No public comment period was provided for the Addendum. Instead, it was
7 disclosed to the public for the first time shortly before April 20, 2015, when the Council voted
8 to introduce Ordinance No. 4053 (the “Repeal Ordinance”), repealing the Bag Ban Ordinance
9 based on the findings set forth in the Addendum.

10 41. The Addendum itself is only ten pages long. It includes a brief introductory
11 analysis justifying the use of an addendum to the Final EIR to analyze the environmental
12 impacts of the Repeal Ordinance, stating that an addendum is appropriate “in instances when
13 ‘only minor technical changes or additions are necessary’ and when the new information does
14 not involve new significant environmental effects beyond those identified in an adopted Final
15 EIR.” According to the Addendum, because “[t]he action being contemplated involves
16 repealing the Bag Ordinance and adopting a project similar to the No Project Alternative
17 analyzed in the Final EIR,” the proposed Repeal Ordinance “would have no new significant
18 environmental effects.” It then goes on to conclude that, “[s]ince the proposed repeal of the
19 Bag Ordinance does not require substantial changes to the No Project Alternative, major
20 revisions of the EIR analysis are not warranted.”

21 42. Despite the Addendum’s initial claim that the Repeal Ordinance would cause
22 “no new significant effects,” on the very next page, it admits that, as a result of the Repeal
23 Ordinance, “plastic bag use would increase by approximately 99.39 million bags per year.”

24 43. The Addendum also addresses the effect of the Repeal Ordinance on the Draft
25 EIR’s original objectives (*see* paragraph 33, *supra*). After reciting those same five objectives,
26 the Addendum declares, “With the repeal of the Bag Ordinance, these objectives of the Bag
27 Ordinance would also be removed.”

28 44. The Addendum then analyzes the specific categories of environmental impacts

1 of the Repeal Ordinance. As discussed above, the Draft EIR concluded that the Bag Ban
2 Ordinance would have beneficial effects in the areas of air quality, biological resources, and
3 hydrology and water quality. Specifically, the Draft EIR found that the Bag Ban Ordinance
4 would reduce air pollution emissions related to bag production; reduce the amount of litter
5 entering coastal and marine habitats; and reduce the amount of litter and waste entering storm
6 drains, waterways, and receiving waters. The Addendum acknowledges that each of these
7 beneficial effects would now be *reversed* as a result of the Repeal Ordinance. However, it
8 nevertheless goes on to summarily conclude that each of these new, harmful effects—
9 increased air pollution emissions, litter, and waste—“would not be significant.” The
10 Addendum reaches these findings based solely on the fact that the sources of these new
11 pollutants would be subject to certain regulations and/or permitting requirements, and by
12 conclusorily stating that adherence to these regulations and requirements will necessarily
13 reduce the magnitude of these impacts below the threshold of significance (which is nowhere
14 defined).

15 45. In spite of the fact that the Repeal Ordinance directly reverses all of the effects
16 created by the Bag Ban Ordinance, the Addendum nevertheless concludes that the Repeal
17 Ordinance would “have similar impacts as the Final EIR” that analyzed the Bag Ban
18 Ordinance, and that the Repeal Ordinance “would have no new significant environmental
19 effects.”

20 46. On April 20, 2015, the City Council conducted a first reading of the Repeal
21 Ordinance, voting 6-1 to adopt the measure. On May 4, 2015, after a second reading, the City
22 Council voted 6-1 to adopt the Repeal Ordinance. Mayor Jill Hardy was the dissenting vote
23 on this issue at each meeting.

24 47. The City filed a Notice of Determination (“NOD”) regarding the passage of the
25 Repeal Ordinance two days later on May 6, 2015.

26 48. In conjunction with the NOD, the City also filed a 2015 Environmental Filing
27 Fee Cash Receipt form with the California Department of Fish and Wildlife (“CDFW”). The
28 form indicated that the Repeal Ordinance project was exempt from filing fees, pursuant to a

1 determination by the CDFW that the project would have no effect on fish, wildlife, or their
2 habitat. Attached to the form was a copy of a CEQA Filing Fee No Effect Determination
3 (“NED”) issued by the CDFW on April 3, 2013. However, that NED was issued in response to
4 the original Bag Ban Ordinance and no new CDFW analysis was conducted for the Repeal
5 Ordinance. A copy of the City’s May 6, 2015 NOD, along with the accompanying forms, is
6 attached hereto as Exhibit C.

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Environmental Quality Act** 9 **(Pub. Res. Code, § 21168.5)**

10 49. Petitioners incorporate by reference all the allegations contained in the previous
11 paragraphs as though fully set forth herein.

12 50. The California Legislature has declared it to be “the policy of the state to . . .
13 take all action necessary to protect, rehabilitate, and enhance the environmental quality of the
14 state.” (Pub. Resources Code, § 21001, subd. (a).) This policy includes taking action to protect
15 air and water quality, fish and wildlife species, and to otherwise “[e]nsure . . . the long-term
16 protection of the environment.” (*Id.*, § 21001, subds. (b)-(d).) CEQA was therefore enacted for
17 the purpose of ensuring that activities undertaken or regulated by state agencies be conducted
18 in a manner such that “major consideration is given to preventing environmental damage,
19 while providing a decent home and satisfying living environment for every Californian.” (*Id.*,
20 § 21000, subd. (g).)

21 51. Where an activity directly undertaken by a public agency “may cause either a
22 direct physical change in the environment, or a reasonably foreseeable indirect physical
23 change in the environment,” CEQA requires that agency to undertake a review that would
24 “identify[] both the significant effects of proposed projects and the feasible alternatives or
25 feasible mitigation measures which will avoid or substantially lessen such significant effects.”
26 (*Id.*, §§ 21065 & 21002.) This is accomplished through the preparation of an EIR. An EIR is a
27 “detailed statement” whose purpose “is to provide public agencies and the public in general
28 with detailed information about the effect which a proposed project is likely to have on the

1 environment; to list ways in which the significant effects of such a project might be
2 minimized; and to indicate alternatives to such a project.” (*Id.*, § 21061.) “The EIR
3 requirement is the heart of CEQA,” and “serves not only to protect the environment but also to
4 demonstrate to the public that it is being protected.” (Cal. Code Regs., tit. 14, § 15003,
5 subds. (a) & (b).)

6 52. In certain situations, where a previous EIR already exists, an agency undertaking
7 a project may instead prepare a subsequent EIR, a supplement to the previous EIR, or an
8 addendum to the previous EIR. The conditions under which these lesser forms of
9 environmental review may be employed are outlined under the guidelines adopted for the
10 implementation of CEQA, California Code of Regulations, title 14, sections 15000 et seq.
11 (“CEQA Guidelines” or the “Guidelines”).

12 53. CEQA Guidelines § 15162, subdivision (a), directs a subsequent EIR to be
13 prepared where:

14 (1) Substantial changes are proposed in the project which require major
15 revisions of the previous EIR . . . due to the involvement of new significant
16 environmental effects or a substantial increase in the severity of previously
17 identified significant effects;

18 (2) Substantial changes occur with respect to the circumstances under
19 which the project is undertaken which will require major revisions of the
20 previous EIR . . . due to the involvement of new significant environmental
21 effects or a substantial increase in the severity of previously identified significant
22 effects; or

23 (3) New information of substantial importance, which was not known and
24 could not have been known with the exercise of reasonable diligence at the time
25 the previous EIR was certified as complete . . . shows any of the following:

26 (A) The project will have one or more significant effects not
27 discussed in the previous EIR . . . ;

28 (B) Significant effects previously examined will be substantially
more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be

feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines, § 15162, subd. (a).) Importantly, a subsequent EIR must be given the same notice and opportunity for public review that is afforded to a full EIR, including the opportunity to receive public comments and for the lead agency to respond to those comments. (*Id.*, at subd. (d).) As with a full project EIR, a subsequent EIR must also identify potential mitigating measures and evaluate alternatives to the proposed action.

54. The Guidelines further state that a supplement to an EIR rather than a subsequent EIR may be prepared if one or more of the same conditions listed in § 15162, subdivision (a) are met, but “[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.” (*Id.*, § 15163, subd. (a).) As with a subsequent EIR, however, a supplement to an EIR must also undergo the same notice and public review process as a full EIR. (*Id.*, at subd. (c).)

55. In contrast to a subsequent EIR and a supplement to an EIR, an addendum to an EIR is appropriate only where “some changes or additions are necessary but *none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.*” (*Id.*, § 15164, subd. (a) [emphasis added].) Importantly, unlike a subsequent EIR or a supplement to an EIR, an addendum to an EIR need not be circulated for public review or comment. (*Id.*, at subd. (c).) If an addendum to an EIR is prepared, the agency must include an explanation of the decision not to prepare a subsequent EIR, supported by substantial evidence. (*Id.*, at subd. (e).)

56. The Addendum relied upon by Respondents here in order to pass the Repeal Ordinance fails to meet the most basic requirements for environmental review under CEQA.

1 An addendum to a prior EIR cannot and should not be used where the new project is designed
2 to achieve fundamentally different objectives from the original project, and is undertaken
3 under conditions that are fundamentally changed from those in existence at the time the earlier
4 EIR's analysis was conducted. Moreover, what little analysis exists in the Addendum itself is
5 woefully insufficient—failing to acknowledge the significant impacts the Repeal Ordinance
6 will have on the environment, giving an unstable and inaccurate description of the project
7 itself, failing to acknowledge the appropriate baseline from which environmental impacts must
8 be assessed, and failing to offer mitigation measures or analyze alternatives.

9 57. Far from making minor changes or additions to the original Bag Ban Ordinance
10 project, the Repeal Ordinance is a *complete reversal* of all of the earlier project's goals and
11 effects. Indeed, as the Addendum itself states, the objectives of the original Bag Ban
12 Ordinance are invalidated by the new project, rendering the analyses in the Final EIR
13 inapplicable to the Repeal Ordinance. There has been no analysis of alternatives that would
14 avoid or lessen the Repeal Ordinance's impacts and still meet the City's as-yet-unidentified
15 objectives.

16 58. Similarly, because the Repeal Ordinance reverses the effects of the Bag Ban
17 Ordinance, every one of the environmental impacts assessed in the Final EIR is now
18 significantly different, and must be reanalyzed in the Addendum. The incongruity between the
19 goals and effects analyzed in the Final EIR and the goals and effects analyzed in the
20 Addendum makes clear that the Repeal Ordinance cannot be said to be merely applying minor
21 "changes or additions" to the Bag Ban Ordinance. Rather, the Repeal Ordinance is an entirely
22 different project from the original bag ban ordinance, because it is literally the opposite
23 project, with the explicit goal, objective, and effect of undoing the project that was the subject
24 of the prior EIR. Thus, it requires a new EIR.

25 59. Even if it were not viewed as a new project, it clearly constitutes a "[s]ubstantial
26 change[]" to the original project that will "require major revisions of the previous EIR . . . due
27 to the involvement of new significant environmental effects or a substantial increase in the
28 severity of previously identified significant effects" (CEQA Guidelines, § 15162,

1 subd. (a)(1)), necessitating the preparation of a subsequent EIR, if not a new project EIR
2 entirely.

3 60. Moreover, the use of the Addendum ignores the fact that the Repeal Ordinance
4 is being enacted in a fundamentally different environmental setting from the one that was
5 analyzed in the Final EIR. The Final EIR's "Existing Characteristics" section described the
6 proposed project setting as it existed in 2011, and estimated that approximately 102.2 million
7 single-use plastic bags were then being used annually in Huntington Beach. Subsequent to that
8 estimate, however, the Bag Ban Ordinance was enacted, and, as of the date of the Addendum,
9 had already been in effect for *over seventeen months*. As the Addendum acknowledges, once
10 the ban on single-use plastic bags had taken effect, the number of plastic bags in use in the
11 City dropped precipitously, by an estimated 95 percent. The Repeal Ordinance will thus be
12 introduced into an environment where there are currently roughly 5.1 million single-use
13 plastic bags in use per year, and will result in an increase of approximately 99.4 million bags
14 annually. This dramatic change of circumstances is plainly a "[s]ubstantial change[] . . . with
15 respect to the circumstances under which the project is undertaken which will require major
16 revisions of the previous EIR . . . due to the involvement of new significant environmental
17 effects or a substantial increase in the severity of previously identified significant effects." (*Id.*
18 at subd. (a)(2).) Alternatively, this updated estimate of plastic bag usage in the City is "[n]ew
19 information of substantial importance, which was not known and could not have been known
20 with the exercise of reasonable diligence at the time the previous EIR was certified as
21 complete," that shows that the Repeal Ordinance "will have one or more significant effects not
22 discussed in the previous EIR," or that "[s]ignificant effects previously examined will be
23 substantially more severe than shown in the previous EIR." (*Id.* at subds. (a)(3)(A) &
24 (a)(3)(B).) Yet Respondents failed to draft a subsequent or new EIR to take this change into
25 account, in direct violation of the requirements of CEQA.

26 61. The minimal analysis that the Addendum does provide is also clearly deficient.
27 Despite acknowledging that the Repeal Ordinance would result in the injection of *99.4 million*
28 additional single-use plastic bags into the City, the Addendum nevertheless concludes that the

1 Repeal Ordinance would have *no significant impact* on the environment. This conclusion is
2 based on the demonstrably false assertion that the effects of the Repeal Ordinance are the
3 same as the effects described in the “No Project Alternative” of the Final EIR. As stated in the
4 Final EIR, the No Project Alternative “assumes that the proposed Single-Use Carryout Bag
5 Ordinance *would not be adopted*” (emphasis added), and that environmental conditions would
6 be maintained in the state then-current in 2011. The Addendum fails to acknowledge that,
7 while the No Project Alternative described in the Draft EIR analyzed the effects of *failing to*
8 *implement the Bag Ban Ordinance in 2011*, the project proposed by the Addendum instead
9 looks at *repealing the Bag Ban Ordinance in 2015*, under very different conditions from those
10 that existed at the time the Draft EIR was written.

11 62. Despite its initial insistence that enacting the Repeal Ordinance would be
12 identical to implementing the Final EIR’s 2011 No Project Alternative, the Addendum later
13 acknowledges that the repeal would in fact reverse all of the environmental effects created by
14 the original Bag Ban Ordinance, including, most notably, the multiple beneficial effects of
15 eliminating single-use plastic bags that were identified in the Final EIR.

16 63. For example, the Final EIR found that the Bag Ban Ordinance would have a
17 beneficial impact on biological resources by reducing the amount of litter entering coastal and
18 marine habitats. The Addendum does not analyze whether repealing the Bag Ban Ordinance
19 will result in additional litter in coastal and marine habitats. The Addendum relies on
20 unspecified “best management practices” and “control techniques” that the City would
21 implement over its storm water discharges to conclude that the environmental impact of
22 reintroducing 99 million plastic bags “would be less than significant.” The Addendum reaches
23 this conclusion without any analysis of, *inter alia*: how many of the additional 99.4 million
24 single-use plastic bags are likely to become litter; the extent of the environmental harms that
25 would result from that increase in plastic litter; the proportion of the new litter that would
26 enter the environment specifically through storm water, as opposed to other channels; what
27 specific “best management practices” and “control techniques” would mitigate those effects;
28 and the degree of that expected mitigation.

1 64. Read together, the Addendum and the Final EIR also fail to provide an accurate
2 and stable project description, as is required by CEQA. While the Final EIR describes a
3 project aimed at reducing the number of single-use plastic bags and their associated impacts
4 and promoting the use of reusable bags, the Addendum purports to amend this EIR by
5 describing a project with precisely the opposite objectives and effect. Instead of merely
6 making technical or minor “changes or additions” to the Final EIR, the Repeal Ordinance and
7 Addendum counteract everything that the Final EIR proposed to implement.

8 65. The Addendum further fails to provide an appropriate or consistent baseline
9 against which potential environmental effects should be measured. As described above, the
10 Addendum falsely compares enacting the Repeal Ordinance today to implementation of the
11 No Project Alternative in 2011. In its subsequent analysis of the anticipated impacts of the
12 Repeal Ordinance, however, the Addendum continually shifts between comparing the
13 expected changes to baseline conditions as they existed in 2011—i.e., when approximately
14 102.2 million single-use plastic bags were being used in the City annually—and comparing
15 the changes to baseline conditions as they exist today—i.e., with the 95 percent reduction in
16 single-use plastic bags in effect. By employing a shifting basis for comparison, the Addendum
17 fails to accurately describe and adequately analyze the actual effects of the Repeal Ordinance
18 as required by CEQA.

19 66. Nor does the Addendum discuss any feasible mitigation measures that might
20 minimize its significant environmental impacts, as CEQA requires. (Pub. Resources Code,
21 §§ 21001 & 21002.1; CEQA Guidelines, § 15126.4.) Part of CEQA’s mandate is that public
22 agencies not only identify the significant harmful environmental effects of proposed projects,
23 but that they identify “the manner in which those significant effects can be mitigated or
24 avoided,” and “mitigate or avoid [those] significant effects . . . whenever it is feasible to do
25 so.” (Pub. Resources Code, § 21002.1, subs. (a) & (b).) The Addendum makes no attempt to
26 meet this obligation. Because the Addendum dismisses all potential impacts as insignificant, it
27 fails to reach the question of what, if anything, might be done to avoid some of these impacts.
28 Because the Final EIR correctly concluded that any significant impacts from the Bag Ban

1 Ordinance were *beneficial* to the environment, it did not explore mitigating actions; however,
2 by going back and undoing all of those same benefits, the Repeal Ordinance clearly creates
3 new harmful environmental effects for which CEQA now requires consideration of potential
4 mitigating measures.

5 67. Similarly, the Addendum neglects to include any discussion of reasonable
6 alternatives to the Repeal Ordinance, which is also required by CEQA. (Pub. Resources Code,
7 §§ 21001 & 21002.1; CEQA Guidelines, § 15126.6.) According to the CEQA Guidelines, an
8 EIR must “describe a range of reasonable alternatives to the project . . . which would feasibly
9 attain most of the basic objectives of the project but would avoid or substantially lessen any of
10 the significant effects of the project, and evaluate the comparative merits of the alternatives.”
11 (CEQA Guidelines, § 15126.6.) Because the Addendum *deleted* all of the project objectives
12 outlined in the Final EIR, the Final EIR’s alternatives no longer function as “reasonable
13 alternatives” to the new project, the Repeal Ordinance. Yet the Addendum failed to propose
14 new alternatives, or to include an amended “no project” alternative incorporating the new
15 baseline conditions under which the Repeal Ordinance was to take place. (*Id.*, at subd. (e).)

16 68. “Public participation is an essential part of the CEQA process.” (*Id.*, § 15201.)
17 By improperly relying on an addendum to an EIR to pass the Repeal Ordinance rather than
18 undertaking the more comprehensive review of a new EIR, or subsequent EIR that the law
19 required, Respondents have evaded the principles of full and informed public participation that
20 CEQA is built upon. By issuing the Addendum, Respondents limited the opportunity for
21 public review and comment on the environmental analysis of the Repeal Ordinance. The
22 public was thereby deprived of its right to understand the environmental consequences of its
23 government’s proposed actions and to respond to those proposals before they are enacted.

24 69. Public agencies may not undertake actions that would have a significant adverse
25 effect on the environment without first complying with CEQA. (*Id.*, § 15004, subd. (b)(2).) In
26 adopting and relying on the Addendum to the Final EIR to pass the Repeal Ordinance,
27 Respondents have failed to comply with CEQA’s requirements.

28 70. Petitioners have a direct and beneficial interest in the action herein and have

1 exhausted all other available remedies.

2 71. Petitioners have a beneficial right to Respondents' performance of their
3 respective duties based on Petitioners' interest in preventing environmental harm to the natural
4 resources in and around Huntington Beach.

5 72. This action is timely filed within the 30-day window for commencement of such
6 actions established by Public Resources Code section 21167. Pursuant to that section, actions
7 "alleging that an environmental impact report does not comply with [CEQA] shall be
8 commenced within 30 days from the date of the filing of the notice required by ...
9 subdivision (a) of Section 21152." (Pub. Resources Code, § 21167, subd. (c).) The
10 aforementioned notice was filed on May 6, 2015. (*See* paragraph 47, *supra*.)

11 **SECOND CAUSE OF ACTION**

12 **Violation of Fish and Game Code section 711.4** 13 **(Writ of Mandate, Code of Civil Procedure § 1085)**

14 73. Petitioners incorporate by reference all the allegations contained in the previous
15 paragraphs as though fully set forth herein.

16 74. In their haste to adopt the Addendum and the Repeal Ordinance, Respondents
17 failed to abide by the requirements of the Fish and Game Code governing required filing fees
18 for public agency projects.

19 75. Fish & Game Code section 711.4 requires public agencies subject to CEQA to
20 pay a filing fee for each proposed project they undertake. (Fish & G. Code, § 711.4,
21 subd. (c)(1).) However, agencies need not pay a fee if the CDFW determines that the project
22 will have no effect on fish and wildlife, and issues a NED to that effect. (*Id.* at subd. (c)(2)(A);
23 *see also* Cal. Code Regs., tit. 14, §§ 753.5, subd. (a)(3), & 753.5, subd. (c).) Only CDFW is
24 authorized to determine whether a project is exempt from filing fees because it has no effect
25 on fish and wildlife.

26 76. Along with the NOD regarding the passage of the Repeal Ordinance on May 6,
27 2015, Respondents attached a copy of the NED previously issued by the CDFW in 2013 in
28 order to excuse them from paying the filing fee. However, as that NED makes clear, that

1 earlier determination by the CDFW was based on a review of the original project, i.e., the
2 *implementation* of the Bag Ban Ordinance. Respondents did not obtain a determination from
3 CDFW whether the Repeal Ordinance was exempt from CEQA as having no effect on fish or
4 wildlife.

5 77. “[A] project shall not be operative, vested, or final, and local government
6 permits for the project shall not be valid, until the filing fees required pursuant to this section
7 are paid.” (*Id.*, at subd. (c)(3).) The Repeal Ordinance is prohibited by law from becoming
8 operative, because Respondents have failed to pay the necessary filing fee required under Fish
9 & Game Code section 711.4. Because the NED filed by Respondents in conjunction with the
10 NOD of the passage of the Repeal Ordinance is not valid as applied to this project,
11 Respondents have failed to perform a mandatory duty to either pay the appropriate filing fee
12 or obtain an NED from the CDFW for the Repeal Ordinance.

13 78. Petitioners have a direct and beneficial interest in the action herein and have
14 exhausted all other available remedies. Petitioners have a beneficial right to Respondents’
15 performance of their respective duties based on Petitioners’ interest in preventing
16 environmental harm to the natural resources in and around Huntington Beach.

17 **THIRD CAUSE OF ACTION**

18 **Injunctive Relief** 19 **(Code Civ. Proc., § 525)**

20 79. Petitioners incorporate by reference all the allegations contained in the previous
21 paragraphs as though fully set forth herein.

22 80. Respondents’ actions in approving the Repeal Ordinance and certifying the
23 Addendum to the Final EIR have caused and threaten to cause Petitioners irreparable and
24 substantial harm.

25 81. Respondents’ failure to abide by the requirements of Fish and Game Code
26 section 711.4 have caused and threaten to cause Petitioners irreparable and substantial harm.

27 82. Petitioners have no plain, speedy, and adequate remedy at law, in that unless the
28 Court enjoins the Repeal Ordinance from going into effect, significant harm will be caused by

1 the introduction of millions of single-use plastic bags into the environment. No amount of
2 monetary damages or other legal remedy can adequately compensate Petitioners for the
3 irreparable harm that Petitioners, their members, the residents of Huntington Beach, and the
4 general public who values the health and wellbeing of the environment, including its public
5 waterways, plants, and wildlife, will suffer from the violations of law described herein.

6 **FOURTH CAUSE OF ACTION**

7 **Declaratory Relief** 8 **(Code Civ. Proc., § 1060)**

9 83. Petitioners incorporate by reference all the allegations contained in the previous
10 paragraphs as though fully set forth herein.

11 84. A dispute has arisen between Petitioners and Respondents, in that Petitioners
12 believe and contend, for the reasons set forth above, that Respondents' actions were unlawful
13 and invalid. Petitioners are informed and believe, and on that basis contend, that Respondents
14 contend in all respects to the contrary.

15 85. In particular, Petitioners contend that CEQA prohibits the use of the Addendum
16 to the Final EIR as a basis for determining whether to proceed with the Repeal Ordinance; that
17 the Addendum to the Final EIR fails to properly describe and analyze the Repeal Ordinance as
18 required by CEQA, fails to inform both the public and the relevant decision-makers about the
19 true effects of the Repeal Ordinance, and deprives the public of the right to comment on and
20 participate in the decision to adopt the Repeal Ordinance; that Respondents improperly and
21 unlawfully exercised their discretion to adopt the Addendum and rely on its findings in
22 adopting the Repeal Ordinance; and that implementation of the Repeal Ordinance will have a
23 significant harmful effect on the environment. Petitioners are informed and believe, and on
24 that basis contend, that Respondents consider the Addendum to be accurate, complete, and
25 proper, and that Respondents do not believe their actions taken in reliance on the Addendum
26 to be unlawful or improper.

27 86. A dispute has also arisen with respect to Respondents' compliance with Fish and
28 Game Code section 711.4. Petitioners contend that Respondents were obligated to either pay

1 the appropriate filing fee or obtain an NED from the CDFW for the Repeal Ordinance.
2 Petitioners are informed and believe, and on that basis contend, that Respondents consider the
3 NED obtained for the 2013 Bag Ban Ordinance to be sufficient to apply to the Repeal
4 Ordinance, and that Respondents do not believe that reliance upon the 2013 NED was
5 unlawful or improper.

6 87. A judicial declaration as to the legality of Respondents' actions, as set forth
7 above, is therefore necessary and appropriate to determine the respective rights and duties of
8 the parties.

9 PRAYER FOR RELIEF

10 WHEREFORE, the Petitioners and Plaintiffs pray for judgment as follows:

11 1. That this Court issue a peremptory writ of mandate commanding Respondents
12 and Defendants:

- 13 a. To rescind or repeal the Repeal Ordinance;
- 14 b. To rescind approval of the Addendum to the Final EIR;
- 15 c. To order those retail locations specified in the Bag Ban Ordinance to
16 immediately cease distribution of single-use plastic bags, and to instead
17 reinstate the use of single-use recyclable paper bags, distributed for a \$0.10
18 charge, or reusable bags;
- 19 d. To refrain from reliance upon the Repeal Ordinance, or any similar
20 enactment, until Respondents have complied with the mandates of the
21 California Environmental Quality Act, Public Resources Code section 21000
22 et seq.; and
- 23 e. To refrain from reliance upon the Repeal Ordinance, or any similar
24 enactment, until Respondents have complied with Fish and Game Code
25 section 711.4;

26 2. That this Court issue a permanent injunction enjoining Respondents and
27 Defendants to refrain from any reliance upon the Repeal Ordinance, or any similar enactment,
28 and from taking any action to implement the Repeal Ordinance, or any similar enactment,

1 until such time as the City Council has complied with CEQA and with the Fish and Game
2 Code; and to rescind or repeal the Repeal Ordinance;

3 3. That this Court issue declaratory relief, finding that the Repeal Ordinance is
4 invalid because Respondents violated the California Environmental Quality Act by relying
5 upon the Addendum to adopt the Repeal Ordinance; and that the Repeal Ordinance is invalid
6 because Respondents did not comply with Fish and Game Code section 711.4. .

7 4. That this Court award Petitioners and Plaintiffs costs and attorneys' fees
8 pursuant to Code of Civil Procedure section 1021.5 or other applicable law; and

9 5. That this Court grant Petitioners such other, different, or further relief as the
10 Court may deem just and proper.

11 DATED: June 3, 2015

Respectfully submitted,

12 STRUMWASSER & WOOCHEER LLP

13 Fredric D. Woocher

14 Beverly Grossman Palmer

Patricia T. Pei

15 Attorneys for Petitioners/Plaintiffs

16 *Surfrider Foundation, Californians Against*
17 *Waste, and Orange County Coastkeeper*

18 SURFRIDER FOUNDATION

19 Angela T. Howe

20 Attorney for Petitioner/Plaintiff

21 *Surfrider Foundation*

22 By: 

23 Beverly Grossman Palmer
24
25
26
27
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1 VERIFICATION

2 I, Chad Nelsen, declare:

3 I am Chief Executive Officer of the Surfrider Foundation. I am authorized to make this
4 verification for Petitioner Surfrider Foundation.

5 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND
6 COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know the contents
7 thereof. Said contents are known to me to be true except those matters alleged on information
8 and belief, and as to those matters I believe them to be true.

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

11 Executed this 2nd day of June 2015, at San Clemente, California.

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15 Chad Nelsen
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