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of Los Angeles")

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 LEE SCHMEER, SALIM BANA, JEFF
12 WHEELER, CHRIS KUCMA, and HILEX
POLY CO. LLC,

CASE NO. BC 470705

13 Petitioners / Plaintiffs,

**OPPOSITION MEMORANDUM OF
COUNTY OF LOS ANGELES TO
PETITIONERS' MOTION FOR WRIT OF
MANDATE**

14 v.

15 COUNTY OF LOS ANGELES,
16 CALIFORNIA; GAIL FARBER in her official
capacity as Los Angeles Co. Director of Public
17 Works; KURT FLOREN in his official
capacity as Los Angeles Co. Director of the
18 Dept. of Agricultural Commission/Weights
and measures; DR. JONATHAN FIELDING
19 in his official capacity as Los Angeles Co.
Director of Public Health; AND DOES 1
20 THROUGH 10, inclusive,

Date of Writ Hearing: March 15, 2012
Time of Writ Hearing: 9:30 AM
Dept: 85
Judge: Honorable James C. Chalfant

21 Respondents / Defendants.

22 Respondents, COUNTY OF LOS ANGELES, GAIL FARBER in her official capacity as
23 Director of the Los Angeles County Public Works Department, KURT FLOREN in his official
24 capacity as Agricultural Commissioner / Director of Weights and Measures, and DR.
25 JONATHAN FIELDING in his official capacity as the Los Angeles County Director of Public
26 Health (hereinafter collectively referred to as "COUNTY"), submit the following Memorandum of
27 Points and Authorities in Opposition to Petitioners' Motion for Writ of Mandate:
28

03/02/12

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1 **I. INTRODUCTION.**

2 This lawsuit is a last ditch effort by the plastic bag industry to invalidate a Los Angeles
3 County ordinance banning plastic bags¹ from the unincorporated areas. Orchestrated by Hilex
4 Poly, a large plastic bag manufacturer in South Carolina,² Petitioners' contend that the subject
5 ordinance is an unconstitutional tax measure under Proposition 26, premised upon the County's
6 "deputizing" of retail stores as the County's tax collector. Petitioners hope to persuade the Court
7 that one provision in the ordinance is an illegal tax on paper bags³ and as a result, the entire
8 ordinance should be stricken. Ironically, Petitioners do not manufacture paper bags; rather, their
9 motivation in the lawsuit is the hope that this Court will take the extraordinary step of invalidating
10 the entire ordinance including its provision banning plastic bags. If that happens, Petitioners return
11 to selling plastic bags in the County's unincorporated areas, while the County, its taxpayers, and the
12 environment, shoulder the burden resulting from the negative impacts of plastic bag litter.

13 The County Board of Supervisors enacted a Carryout Bag Ordinance on November 23,
14 2010 ("Ordinance"), forbidding the use of plastic bags by certain retailers in the unincorporated
15 areas of the County of Los Angeles. In the same Ordinance, the County requires retailers to
16 charge a ten cents cost pass-through for each paper bag purchased by a consumer. The ten cents
17 paid by the consumer is retained by the retailer and **none** of the revenue flows to the County. The
18 Ordinance does not contain an invalid tax under Proposition 26, but is a valid exercise of the
19 County's police powers to control the problems that plastic and paper bags present.

20 **II. THE NATURE OF THE DISPUTE.**

21 At bottom, this dispute concerns whether requiring certain retailers to sell paper bags to
22 consumers at ten cents a bag (the "paper bag charge") is in fact a tax requiring voter approval under
23 Proposition 26 ("Prop 26"). Petitioners filed a Complaint for Writ of Mandate, Declaratory Relief
24

25 ¹ "Plastic bag" as used in this brief refers to a "plastic carryout bag". (Cf. LA County
Ordinance 12.85.010(D).)

26 ² The Complaint for Writ of Mandate also names four "taxpayers", most of whom appear to
make, sell or distribute plastic bags. Lee Schmeer and Salim Bana are employees of Hilex Poly.

27 ³ "Paper bag" as used in this brief refers to a "recyclable paper carryout bag". (Cf. LA
28 County Ordinance 12.85.010(H).)

1 and Injunctive Relief maintaining that the Ordinance is illegal because it imposes a "special tax"
2 that has not been voter approved by two-thirds of the electorate. (Verified Complaint for Writ of
3 Mandate, Injunctive Relief, and Declaratory Relief, pgs. 7:6 – 9.) Interestingly, Petitioners' current
4 Motion for Writ of Mandate discusses "taxes" generally and makes no mention of this special tax
5 argument, though it is plead in their Petition and was briefed in their prior writ motion. Yet, the
6 California Constitution requires that all taxes imposed by a local government be deemed either a
7 general or special tax, of which the ten cent pricing provision in the Ordinance is neither.

8 The County maintains that Petitioners are not entitled to a writ of mandate advancing both
9 substantive and procedural arguments. On substantive grounds, the challenged charge is not a tax
10 measure, but rather a good faith exercise of the police power. The bag charge is not a special or
11 general tax because the revenue raised by the charge does not inure to the County for any purpose,
12 including to pay for any County program or project (the County, in fact, collects no revenue from
13 the bag charge.) Instead, certain retailers within the unincorporated areas of the County are
14 required to charge for and separately state a prescribed cost for paper bags that are sold to
15 consumers. The Ordinance is in effect a "pricing law" requiring that a consumer be informed of the
16 cost of his or her choice when it comes to carryout media. Petitioners' motion also raises an
17 important issue of constitutional policy, regarding as a matter of policy whether it is proper for a
18 local government's good faith exercise of the police power to be preconditioned upon a plebiscite.

19 Regarding procedure, Petitioners do not meet a required element for mandate relief. They
20 do not show that the County has a "clear, present and ministerial duty" to act in a particular way.
21 The challenged Ordinance is not a tax measure, but a good faith exercise of the police power
22 grounded in the Board of Supervisors' good faith exercise of legislative discretion.

23 **III. LEGISLATIVE HISTORY AND FACTUAL BACKGROUND.**

24 **A. Voter Tax Initiatives and the Passing of Propositions 218 and 26.**

25 Under California law, locally imposed taxes are subject to a voter approval requirement.
26 Proposition 13 was the genesis of voter approval requirements for locally-imposed special taxes.
27 (Cal Const, Art. XIII A, § 4.) Proposition 62 was subsequently enacted by statutory initiative at the
28 1986 General Election "requiring all new local taxes to be approved by a vote of the local

1 electorate." (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th
2 220, 231 [*Guardino*].) The California Supreme Court in *Guardino* affirmed the constitutionality
3 of Proposition 62, finding that a local government's enactment of a tax could be lawfully
4 conditioned upon an electorate first approving the tax measure. (*Id.*, p. 247-248.)

5 Proposition 218 was enacted by the electorate in 1996, and in effect extended the voter
6 approval requirements for the enactment of a local tax to cities operating under a "home rule"
7 charter, and also imposed voter approval requirements for property-related fees, charges, and
8 assessments. (*Howard Jarvis Taxpayers' Assn. v. City of L.A.* (2000) 85 Cal.App.4th 79, 82-83.)

9 In *Sinclair Paints v. SBE* (1997) 15 Cal.4th 866, the Legislature enacted a mitigation fee
10 requiring paint manufacturers to pay a regulatory charge to both deter and offset the impact of their
11 activity upon the environment. The Court found that if regulation is the primary purpose of a fee,
12 the mere fact that revenue is also obtained does not transform the imposition into a tax. The
13 *Sinclair* opinion had the effect of making it significantly easier for state and local government to
14 impose a fee for the regulation of a service which may result in incidental revenue to the
15 government, and not a direct benefit to the fee payor.

16 Proposition 26 ("Prop 26") was enacted by initiative in November 2010 to amend the
17 California Constitution, Articles XIII C, and XIII D to address "hidden taxes" and to overturn the
18 *Sinclair* case. According to the initiative's proponents, the measure bars "state and local politicians
19 from raising Hidden Taxes on goods like food and gas, by disguising taxes as 'fees' and
20 circumventing constitutional requirements for passing higher taxes." (Respondents' Request for
21 Judicial Notice ["RRJN"], Ex. A, California Secretary of State, Voter's Pamphlet for the General
22 Election, November 2, 2010, p. 8, "Quick-Reference Guide".) The Quick Reference Guide, stated
23 purpose of Prop 26 and the accompanying Legislative Analysis by the Attorney General, all
24 indicate that Prop 26 was intended to curb revenue generation by the Legislature and local
25 governments. (*Id.*; Request for Judicial Notice by Petitioners ["RJN"], Ex. 3, pgs. 56-61, 114.)

26 Prop 26 also overturned the *Sinclair* case, and requires with respect to fees imposed by the
27 Legislature, that any change in state statute which results "in any taxpayer paying a higher tax"
28 must be enacted with two-thirds approval of the Legislature. (*Id.* at 59.) With regard to fees

1 imposed by local government, Prop 26 amends Article XIII C of the California Constitution
2 (Proposition 218) to broaden the definition of "tax" as "used in this article", as any charge imposed
3 by a local government, unless the charge qualifies for one of seven exceptions. (Cal Const, Art.
4 XIII C § 1(e).) Prop 26 did not, however, eliminate the constitutional requirement that "All taxes
5 imposed by any local government shall be deemed to be either general taxes or special taxes." (Cal
6 Const, Art. XIII C § 2(a).) Nor did it change or eliminate the California Constitution's definition of
7 a general tax—"any tax imposed for general governmental purposes", or a special tax—"any tax
8 imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a
9 general fund". (RJN, Ex. 3, pg. 115; Cal Const, Art. XIII C § 1(a) & (d).) The Prop 26 definition
10 of tax must still be read in combination with the definitions of general and special tax.

11 **B. The Board of Supervisors' Valid Exercise of Its Police Power.**

12 The crux of the dispute at hand concerns the County's exercise of its police power. (Cal
13 Const, Art. XI, § 7 ["A county or city may make and enforce within its limits all local, police,
14 sanitary, and other ordinances and regulations not in conflict with general laws."])

15 On January 22, 2008, the Los Angeles County Board of Supervisors ("Board") approved a
16 motion directing County staff to return with a draft ordinance banning plastic bags and to complete
17 any environmental review required under the California Environmental Quality Act ("CEQA").
18 The County prepared, certified and adopted on November 16, 2010, a 1400+ page Environmental
19 Impact Report ("EIR") and Findings of Fact & Statement of Overriding Considerations ("Findings
20 of Fact") titled "Ordinances to Ban Plastic Carryout Bags In Los Angeles County", that studied the
21 litter problem plastic bags pose and the environmental impacts resulting from adopting an
22 ordinance banning plastic bags, if any (the "Project"). (Certified Record, ["Record"] at [Doc#] 3
23 :[Bate #] 0045, 0063-0065; 9:1588-1589; *See also generally* 3-6:0026-1493.)

24 The EIR also studied five Project Alternatives, each of which always consisted of the Board
25 adopting an ordinance to ban plastic bags. (Record at 3:0065; 3:0212-0268; 6:1451-1452.) The No
26 Project Alternative was also studied as required by CEQA, which would not have banned plastic
27 bags. (Record at 3:0212-0213, 0215-0217.) The Board expressly rejected this alternative when it
28 adopted its Findings of Facts for a number of reasons, including continuing negative impacts to the

1 marine environment and failure to meet Project objectives. (Record at 6:1451-1452, 1456-1457.)

2 While the plastic bag industry threatened repeatedly to file a CEQA lawsuit challenging the
3 EIR, no lawsuit was ever filed within the applicable statute of limitations period.

4 Approximately 6 billion plastic bags are consumed in Los Angeles County each year.
5 (Record at 6:1420.) This, coupled with the fact that Los Angeles County has approximately 75
6 miles of shoreline along the Pacific Ocean into which the County's storm drain and flood control
7 system empties, the impacts from plastic bag litter are significant. (Record 6:1474.) As
8 documented in the EIR and the Findings of Fact, plastic bags do not biodegrade, contribute to the
9 litter stream, increase litter clean-up costs, cause urban blight, and have adverse effects on marine
10 wildlife. (Record at 6:1419-1420, 1427-1429; *See also generally* 3-6:0026-1493.) Paper bags
11 however, are less likely to be littered, are biodegradable and compostable, have a larger volume for
12 carrying items than their plastic counterpart, and are recycled at a higher rate of 36.8 percent.
13 (Record at 6:1430.) However, to avoid a wholesale switch by customers to paper bags, the Board
14 required stores as part of this Ordinance to charge ten cents for each paper bag sold to customers.
15 Based on analysis completed by County staff as summarized in the November 16, 2010 Staff Board
16 letter that accompanied the introduction of the Ordinance, it was determined that ten cents covers
17 the reasonable cost to a store of providing paper bags to its customers. (Record at 1:0006.)

18 The Board of Supervisors exercised its police powers by way of the Ordinance to restrict the
19 use of plastic and paper bags in the unincorporated areas of the County for bona fide purposes.
20 These purposes mirror the Project objectives that are identified in the certified EIR, Findings of
21 Fact, and the Staff letter to the Board, which include:

- 22 • Reduce the Countywide consumption of plastic carryout bags from the current estimate
23 of 1,600 plastic carryout bags per household in 2007 to fewer than 800 plastic bags per
24 household in 2013;
- 25 • Reduce by 50 percent by 2013 the Countywide contribution of plastic carryout bags to
26 litter that blights the County's public spaces;
- 27 • Reduce by \$4 million the County's, cities', and Los Angeles County Flood Control
28 District's costs for prevention, cleanup, and enforcement efforts to reduce litter in the
County; and
- Reduce Countywide disposal of plastic carryout bags in landfills by 50 percent from
2007 annual amounts.

(Record at 1:0003; 3:0062-0063; 6:1419.)

1 **C. The County's Ordinance Passed With Significant Public Support.**

2 The Ordinance's introduction and adoption passed with great support from the public,
3 Assembly Member Julia Brownley, environmental groups like Heal the Bay, and the California
4 Grocers Association (who represents many of the stores affected by the Ordinance). (Record at
5 10:1616-1631, 1647-1649, 1664-1667.) Over 1800 signed petitions were received by the County
6 urging a ban on plastic bags (Record at 5:0900-1205), and numerous members of the public spoke
7 before the Board in support of a ban. The Ordinance was adopted on November 23, 2010 (Record
8 at 11:1681-1683) and bans the use of plastic bags at affected stores. (Record at 2:0015, 0019;
9 Ord. §12.85.020.) The Ordinance also requires stores to charge ten cents if it chooses to make
10 paper bags available for its customers. (*Id.* at 2:0019; Ord. §12.85.040.)

11 **IV. STANDARD OF REVIEW.**

12 The burden is on Petitioners to state a prima facie case entitling them to mandamus relief.
13 (*Cal. Correctional Peace Officers Assn. v. State Personnel Bd.* (1981) 10 Cal.4th 1133, 1155, citing
14 *Sipper v. Urban* (1943) 22 Cal. 138, 141; *Khan v. Los Angeles City Employees' Retirement System*
15 (2010) 187 Cal.App.4th 98, 105-106.) The normal burden of proof applies in a mandamus
16 proceeding under Code of Civil Procedure section 1885. (*Cal. Correctional Peace Officers Assn.*,
17 10 Cal.4th 1133, 1155.) In addition, the Petitioner has the burden of establishing a "clear, present
18 and beneficial right" to the performance of the duty allegedly owed by the Respondent.

19 The standard of review applicable to legislative actions is particularly demanding.

20 "Review of local entities' legislative determinations is by ordinary mandamus
21 under Code of Civil Procedure section 1085. Such review is limited to an
22 inquiry into whether the action was arbitrary, capricious or entirely lacking in
23 evidentiary support. (*Las Virgenes Homeowners Federation, Inc. v. County of*
24 *Los Angeles* (1986) 177 Cal.App.3d 300, 305 [¶] Legislative enactments are
25 presumed to be valid, and to overcome the presumption of validity, the
26 petitioner must produce evidence "compelling the conclusion that the
27 ordinance is, as a matter of law, unreasonable and invalid. [Citations.] There is
28 also a presumption that the board ascertained the existence of necessary facts
to support its action, and that the 'necessary facts' are those required by the
applicable standards which guided the board." (*Orinda Homeowners*
Committee v. Board of Supervisors (1970) 11 Cal.App.3d 768, 775.)

(*Corona-Norco Unif. Schl. Dist. v. City of Corona* (1993) 17 Cal. App. 4th 985, 992-993.)

 Only after Petitioners establish that it is entitled to mandamus relief, does the burden shift to

1 the County to establish that a charge is not a tax under Prop 26. (Cal Const, Art. XIII C §1(f).)

2 **V. ARGUMENT.**

3 **A. The County's Ordinance Does Not Impose A Tax Covered By Proposition 26.**

4 While Petitioners maintain that nothing in Prop 26 requires that the ten cents be received
5 and spent by the government to be a tax, a review of Prop 26's stated purpose, ballot language and
6 analysis, as well as existing constitutional requirements and case law, indicates otherwise.

7 **1. The Ten Cent Charge Does Not Meet the Purpose or Intent of Prop 26.**

8 Propositions 62 and 218 require that local tax measures be approved by the electorate as a
9 condition of enactment. Prop 26 broadened this requirement to encompass fees imposed by a local
10 government. Implicit in Prop 26 is that the fees encompassed by the measure are those fees
11 actually collected by the government. This is confirmed by the stated purpose of Prop 26, which
12 was aimed at curbing revenue generating measures by the Legislature and local governments:

13 "This escalation in taxation does not account for the recent phenomenon
14 whereby the Legislature and local governments have disguised new taxes as
15 "fees" **in order to extract even more revenue from California taxpayers**
16 without having to abide by these constitutional voting requirements. Fees
17 couched as "regulatory" but which exceed the reasonable costs of actual
18 regulation or **are simply imposed to raise revenue for a new program** and
are not part of any licensing or permitting program are actually taxes and
should be subject to the limitations applicable to the imposition of taxes."
[Emphasis Added.]

19 (RJN, Ex. 3, pg. 114.) The initiative's own proponents also envisioned that Prop 26 would apply to
20 curbing revenue generation, stating that politicians want "more taxpayer money for the politicians
21 to waste, including on lavish public pensions" and that Prop 26 "simply stops the runaway fees
22 politicians pass to fund ineffective programs." (*Id.* at pg. 61.)

23 The Legislative Analysis prepared by the Attorney General also notes Prop 26's impact on
24 revenue generation, where there will be "decreased state and local government revenues and
25 spending due to the higher approval requirements for new revenues", and "the measure would have
26 the effect of increasing the number of revenue proposals subject to the higher approval
27 requirements ..." and "make it more difficult for state and local governments to pass new laws that
28 raise revenues." (*Id.* at pg. 58-59.) Figure 3 in the Legislative Analysis also illustrates the types of

1 fees that would be impacted by Prop 26, all of which generate revenue for the government and is
2 spent directly by the government for programs. (*Id.* at 58). This is also suggested by the text of the
3 exceptions to Prop 26, which address fees imposed and collected by local government, as a quid
4 pro quo for a government-provided benefit. (Cal. Const, Art. XIIC § 1(e).)

5 To apply Prop 26 to this ten cent paper bag charge would be inconsistent with the Voters
6 purpose of curbing revenue generating measures. Regardless of whether the Prop 26 definition of
7 "tax" is unambiguous or not, Prop 26 should be construed in a manner that is consistent with its
8 manifest purpose. "Despite the general rule that ambiguity is a condition precedent to
9 interpretation, the literal meaning of the words of a statute may be disregarded to avoid absurd
10 results or to give effect to manifest purposes that, in the light of the statute's legislative history,
11 appear from its provisions considered as a whole." (*Calif. Insur. Guarantee Assoc. v. Workers'*
12 *Compen. Appeals Board, et al.*, (2003) 112 Cal. App. 4th 358, 363. [Court looked to "wise policy"
13 and consistency with legislative intent in construing statutes in Petitioner's favor, despite literal
14 meaning of certain provisions.]) In construing a statute, "The intent prevails over the letter, and the
15 letter will, if possible, be so read as to conform to the spirit of the act." (*Id.* at 366-367.)

16 2. The Ten Cent Charge is Not a Special or General Tax.

17 While Prop 26 defines any non-excluded "levy, charge, or exaction of any kind imposed by
18 a local government" as a tax, the inquiry does not end here as Petitioners' suggest. The Prop 26
19 definition of tax must still be read in the entire context of Article XIII C of the California
20 Constitution. In enacting this measure, the electorate should be deemed to be aware of the
21 legislative and judicial context of the enacted measure. (*Amador Valley Joint Union High Sch.*
22 *Dist. v. SBE* (1978) 22 Cal.3d 208, 243-244.) California law recognizes locally enacted taxes as
23 consisting of either general taxes or special taxes. (*Howard Jarvis Taxpayers Assn. v. City of*
24 *Roseville* (2003) 106 Cal.App.4th 1178, 1187 ["Prop 218 does not permit a local tax to be
25 considered some kind of hybrid. Rather it requires that local taxes be deemed either general taxes
26 or special taxes." (*citing* Cal Const., Art. XIII C, § 2(a).)] Prop 26 did not eliminate this
27 constitutional requirement that a tax must be one or the other.

28 Prop 26 also did not change or eliminate the constitutional definition of a general tax—"any

1 tax imposed for general governmental purposes", or a special tax—"any tax imposed for specific
2 purposes, including a tax imposed for specific purposes, which is placed into a general fund."
3 (RJN, Ex. 3, pg. 115; Cal Const, Art. XIII C § 1(a) & (d).) The new definition of "tax" under Prop
4 26 must still be read in conjunction with the current definitions of general or special tax as
5 contained in the California Constitution, and is not an independent or new category of "tax".

6 The ten cents paid is not a tax, and certainly is not a general or special tax. The essential
7 nature of a tax is to raise revenue for the government, whileas "the primary purpose of a fee is to
8 cover the expense of providing a service or of the regulation and supervision of certain activities."
9 (84 CJS, Taxation, § 3, p. 36.) Implicit in this definition is that a tax or fee produces revenue to the
10 government, and in the case of a fee, that the government in turn provides a benefit to the payor of
11 the fee. This is consistent with the California Constitution's definition for a special tax, which
12 contemplates that moneys will be placed into a general fund, some government fund earmarked for
13 a special purpose, or "that its proceeds are earmarked or dedicated in some manner to a specific
14 project or projects." (*Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946, 956.) This revenue
15 generation concept is also consistent with the definition of a general tax, where funds are deposited
16 into a general fund and are available for use for any of the jurisdiction's legitimate functions and are
17 allocated during the general budgeting process in light of changing priorities and conditions.
18 (*Howard Jarvis Taxpayers' Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1183; cf *City of*
19 *Long Beach v. Morse* (1947) 31 Cal.2d 254, 255-256.)

20 Here, the Ordinance does not yield any revenue to the County, nor does the County in turn
21 provide a benefit to a person subject to the paper bag charge. Petitioners are unable to show that
22 any money is returned to the County, or that such moneys are deposited into the County general
23 fund, or any other County fund to pay for any County program or project. While Petitioners' claim
24 that the County program is to "modify consumer behavior to discourage the use of paper carryout
25 bags" and promote reusable bags, it is uncontroverted that the County receives no money from the
26 ten cent charge to fund or pay for this alleged "program". Merely asserting that some regulation
27 has the effect of furthering a policy goal of the County does not in of itself, transform this
28 regulation into a tax measure if there is no revenue generation for the County.

1 Furthermore, the County does not ask or audit how stores spend their monies. The stores,
2 in their discretion, determine how they will spend the monies collected towards cost for
3 compliance with the Ordinance, recovery of actual costs for providing paper bags, or for costs
4 associated with any educational materials or campaign encouraging the use of reusable bags, *if*
5 *any*. (Record at 2:0020; Ord. §12.85.040D). Significantly, stores are not required to have
6 educational materials or a campaign encouraging the use of reusable bags—any efforts undertaken
7 are voluntary and at the discretion of the stores. While Petitioners claim that the County allows
8 private parties to use the revenues according to the County's directions, the stores determine how
9 the revenues are spent and do not account to the County in any way how those revenues are spent.
10 If stores choose to reimburse themselves for the actual cost of the paper bags, they may do so.
11 Stores may also use any remaining funds on whatever it determines is its costs of compliance with
12 the Ordinance, whether it be to pay for the store salaries of its employees, operating costs, material
13 costs, or whatever else the stores determines is appropriate.

14 This Court should deny Petitioners request to apply Prop 26 to the Ordinance because it
15 does not effectuate the Voters' intent (even when liberally construed) in reigning in "hidden fees"
16 and revenue generation measures "to fund ineffective programs." "A construction or conclusion
17 plainly not contemplated by the legislature should not be given to a statute if it can be avoided.
18 When a statute is fairly susceptible of two constructions, one leading inevitably to mischief or
19 absurdity and the other consisting of sound sense and wise policy, the former should be rejected
20 and the latter adopted." (*Cal. Insur. Guarantee Association v. Workers' Compensation Appeals*
21 *Board, et al.*, (2003) 112 Cal. App. 4th 358, 367.) This is particularly true when one considers the
22 sound sense and wise policy here is the County's enactment of the Ordinance under its police power
23 to set a pricing protocol for public policy reasons to decrease litter and protect the environment.

24 3. The County Is Not Imposing the Charge.

25 The Legislative Analysts' analysis and ballot arguments for and against the initiative, are
26 relevant because it is clear that the parties dispute who is "imposing" the tax, and what type of tax it
27 is. Prop 26 requires that the tax be "imposed by a local government". (Cal Const, Art. XIII C §
28 1(e).) Here, the stores who choose to provide paper bags to their customers are imposing the

1 charge. The Ordinance does not require stores to give out paper bags. If a store wants to eliminate
2 paper bags as a choice for customers, it may do so. Likewise, the Ordinance does not require a
3 customer to use a paper bag—the Ordinance provides that a customer may use bags of any type that
4 they bring to the store, including a reusable bag, or no bag at all. (Record at 2:0019; Ord.
5 §12.85.030.) If a store chooses to make paper bags available, and a customer chooses to purchase a
6 paper bag, the store will charge the customer ten cents for each bag provided.⁴ (*Id.*; Ord.
7 §12.85.040.) In this context, the County is not "imposing"⁵ the charge at all, given the stores are
8 charging their customers for the cost of these paper bags and retaining all the revenues. There is
9 nothing in Prop 26 that contradicts this, and when the definition of tax is read in line with the rest
10 of Article XIII C of the California Constitution, the County's position is further confirmed.

11 **B. The County's Prescription of a Pricing Protocol for Carryout Paper Bags is a**
12 **Proper Use of the Police Power.**

13 Embedded in the price of consumer goods is a component for the cost of packaging and
14 carryout media. Carryout media is typically perceived to be a "free" good, when this media is in
15 fact not free at all. Its cost is typically embedded in the cost of goods, moreover its gigantic
16 environmental cost is becoming better known. With respect to plastic bags, the Legislature, which
17 passed AB 2449 (2006) requiring recycling of plastic bags (codified at Public Resources Code
18 §§42250 – 42257), declared the following:

19 ⁴ The ten cents paid for paper bags is nothing like a sales, cigarette, or alcoholic beverage
20 tax. In each instance where these types of taxes are applied, there is always an underlying
21 base charge that is initially charged, with the tax applied on top. Here, Petitioners' are alleging that
22 a ten cent tax is applied on paper bags, meaning there is no underlying base charge. This is not
23 typical of any scenario for a tax or "hidden fee", and supports the County's position that the ten
24 cents is really a pricing measure for the cost of the paper bag, and is not a tax. In addition, unlike a
25 sales, cigarette, or alcoholic beverage tax, no revenues from the ten cent charge flows to the
26 government. Petitioners also claim that the ten cent charge is like an insurance copayment.
27 Respondents note that an insurance copayment stays with the medical provider and does not flow to
28 the government, and hence, is not a tax.

⁵ While Petitioners accord great weight to the State Board of Equalization's June 2011
statement about local per bag charges, the statement is irrelevant to the discussion of whether the
ten cent charge is a tax covered by Prop 26. The statement was issued after Prop 26 passed, and by
its own wording, only pertains to how sales or use tax will be calculated under the State Board of
Equalization's rules and regulations.

1 (1) On a global level, the production of plastic bags has significant
2 environmental impacts each year, including the use of over 12 million barrels
3 of oil, and the deaths of thousands of marine animals through ingestion and
4 entanglement.

5 (2) Each year, an estimated 500 billion to 1 trillion plastic bags are used
6 worldwide, which is over one million bags per minute, and of which billions
7 of bags end up as litter each year.

8 (3) Most plastic carryout bags do not biodegrade which means that the bags
9 break down into smaller and smaller toxic bits that contaminate soil and
10 waterways and enter into the food web when animals accidentally ingest those
11 materials.

12 The Supreme Court, in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52
13 Cal.4th 155, 163, noted similar, if not identical findings by Manhattan Beach's City Council when it
14 upheld Manhattan Beach's ordinance banning plastic bags against a CEQA challenge. These
15 findings are not inconsistent with the Board's findings on why it chose to ban plastic bags.

16 The ten cents charge is a regulation imposed under the County's police power that governs
17 the pricing and manner in which the cost of paper bags is communicated to the public. With a ban
18 of plastic bags in place, stores will not absorb the cost of providing paper bags to all customers
19 without passing on that cost as a hidden cost in the products they sell. That was certainly the case
20 when plastic bags were perceived to be "freely" given before the ban, when in actuality it was
21 costing customers anywhere from \$3.25 to \$18.00 per person annually (separate and apart from the
22 gigantic environmental cost associated with their use). (Record at 7:1511, 8:1570.)

23 With a ban on plastic bags in place and paper bags being more expensive at an average cost
24 of ten cents a bag, without the County's pricing protocol in place, consumers could expect to see an
25 increase in the prices of the products they purchase due to this hidden cost. The County's pricing
26 protocol allows the consumer the choice to incur this cost or instead to not use a bag or to bring
27 their own bag, including a reusable bag. If the customer makes the monetary decision not to
28 purchase a paper bag, there are environmental benefits that are associated with that decision as
well. Like the sale of any other product, the moneys generated by this "pricing protocol" is retained
entirely by the stores for cost reimbursement, and would only be charged if the stores chose to offer
paper bags to its customers, and its customers chose to buy such bags. Ten cents also appears to be

1 the average reasonable cost of the paper bag, as supported by the record. (Record at 1:0006.)

2 The County's power to legislate pricing is well established:

3 ". . . It is now settled California law that legislation regulating prices or
4 otherwise restricting contractual or property rights is within the police power
5 if its operative provisions are reasonably related to the accomplishment of a
6 legitimate governmental purpose ([citations omitted] and that the existence of
7 an emergency is not a prerequisite to such legislation ([citations omitted]."

8 (*Birkenfeld v. Berkeley* (1976) 17 Cal.3d. 129, 158.) The County has the power to legislate and
9 regulate pricing of paper bags, so long as the policy has a "reasonable relation to a proper
10 legislative purpose...." (*Id.* at 158 citing *Nebbia v. New York* (1934) 291 U.S. 502, 537 [U.S.
11 Supreme Court upholds legislature's power to fix minimum and maximum pricing for milk in the
12 public interest.]) As the U.S. Supreme Court held in *Nebbia v. New York* (which is still good law):

13 "[There] can be no doubt that upon proper occasion and by appropriate
14 measures the state may regulate a business in any of its aspects, including the
15 prices to be charged for the products or commodities it sells. So far as the
16 requirement of due process is concerned, and in the absence of other
17 constitutional restriction, a state is free to adopt whatever economic policy may
18 reasonably be deemed to promote public welfare, and to enforce that policy by
19 legislation adapted to its purpose. The courts are without authority either to
20 declare such policy, or, when it is declared by the legislature, to override it. If
21 the laws passed are seen to have a reasonable relation to a proper legislative
22 purpose, and are neither arbitrary nor discriminatory, the requirements of due
23 process are satisfied, and judicial determination to that effect renders a court
24 functus officio."

25 (*Nebbia*, 291 U.S. at 537). The record before the Board evidences the impacts from plastic bags,
26 impacts if a wholesale change from plastic to paper bags occurred (including on greenhouse gas
27 emissions) and the environmental benefits of reusable bags. (Record at 3-6:0026-1493.) As the
28 record demonstrates, this is a proper legislative purpose that is neither arbitrary nor discriminatory,
but was fashioned to address litter and environmental concerns.

29 **C. Petitioners' Theory Undermines The Structure Of Local Government.**

30 Petitioners assert California's voter approval requirements for a tax statute as a basis for
31 scuttling the County's exercise of its police power. Were Petitioners successful in this effort, every
32 legislative action or regulation of a local body potentially having an economic impact on a third
33 party could be said under Petitioners' theory to implicate a tax subject to a voter approval

1 requirement. "The inevitable effect" of such a rule would be "greatly to impair or wholly destroy
2 the efficacy of some other governmental power [here, the police power], the practical application of
3 which is essential." (*Simpson v. Hite* (1950) 36 Cal.2d 125, 134.) Likewise, the embrace of such a
4 process inevitably calls into question the continued vitality of representative government. (*Cf.*
5 *Amador Valley Joint Union High Sch. Dist. v. SBE* (1978) 22 Cal.3d. 208, 227.)

6 Policy considerations and case law suggest that Prop 26 should be given an interpretation
7 that is true to its purpose, yet consistent with the ability of local government to govern effectively.
8 Viewed from this perspective, taxes or fees for purposes of Prop 26 should be interpreted as
9 impositions yielding a revenue stream received by a public body. The Ordinance did not yield such
10 revenue, and is not a tax measure but a good faith exercise of the police power.

11 **D. If Proposition 26 Applies, The Ordinance Falls Within Two Exemptions.**

12 If Petitioners' allegation is true that the County has "deputiz[ed] retail stores as both the
13 County's tax collector and the administrator of its program", then it follows that the County has
14 conferred a specific privilege and product to the ultimate payor —the right to buy and use paper
15 bags. Seen from this perspective and assuming for the sake of argument that Prop 26 applies, the
16 Ordinance is excluded from a voter approval requirement under Sections 1(e)(1) [the "benefit or
17 privilege" exclusion] and 1(e)(2) [the "service or product" exclusion] of Art. XIIC of the
18 California Constitution.

19 **1. The Ten Cents Charge for Paper Bags Is Exempt.**

20 Section 1(e)(1) excludes from the new definition of "tax":

21 A charge imposed for a **specific benefit conferred or privilege granted** directly to
22 the payor that is not provided to those not charged, and which does not exceed the
23 reasonable costs to be the local government of conferring the benefit or granting the
privilege. [Emphasis Added.]

24 Section 1(e)(2) also excludes from the new definition of "tax":

25 A charge imposed for a specific government **service or product** provided directly
26 to the payor that is not provided to those not charged, and which does not exceed
27 the reasonable costs to be the local government of conferring the benefit or granting
the privilege. [Emphasis Added.]

28 Petitioners cannot have it both ways—it cannot argue on the one hand that the County has

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1 "deputized" the stores, and then argue on the other that the County is conferring no benefit,
2 privilege, or product in return for the ten cents. If Petitioner's deputization argument is true, then
3 the store and the County should be seen as one and the same, like principal and agent. The benefit
4 conferred, privilege granted, and product being made available by the County to the payor is the
5 right to purchase and use paper bags to carry home items purchased at the point of sale. This is
6 particularly true if one considers that an option available to the County at any time, is to ban paper
7 bags outright rather than to allow for their purchase at the point of sale.

8 **2. The Ten Cents Charged Is the Reasonable Cost of Paper Bags.**

9 The ten cents charged by the store is the actual reasonable cost of providing the paper bag.
10 Based on the record, it was determined that a ten cent charge on paper bags allowed affected stores
11 to recover the reasonable cost of providing a paper bag. Research conducted by Public Works in
12 the staff report "An Overview of Carryout Bags in Los Angeles County," as cited in the EIR,
13 indicates that the average cost per bag of paper carryout bags is ten cents, with a reasonable range
14 being between 5 and 23 cents, depending on whether the bags have handles, the minimum
15 percentage of recycled content, the quality of the bag, whether advertising is printed on the bag,
16 and other factors. (Record at 1: 0006, 8:1550, 1570.) The Master Environmental Assessment
17 (MEA) on Single-Use and Reusable Bags (March 2010) prepared by Green Cities California,
18 estimates a similar range of costs for paper carryout bags of 15 to 25 cents per bag. (RRJN, Ex. B,
19 pg. 18.) The County's "Economic Impact Analysis Report ---Proposed Ban on Plastic Carryout
20 Bags in Los Angeles County" prepared by AECOM, found that paper bags sold for between 5 and
21 15 cents per bag. (Record at 7:1505.) These ranges are also consistent with prior proposed state
22 law, AB 87 (2009), which would have placed a 25 cent charge on plastic carryout bags and allowed
23 retailers to retain five to seven cents of the charge to recover their own costs of implementation.
24 (RRJN, Ex. C., Section 42252.5(c)(3)). In addition, proposed AB 68 (2010) would have allowed
25 stores to keep ten cents for paper bags. (RRJN, Ex. D, Section 42281(d)(2).)

26 **E. The Ordinance Is Severable And The Ban On Plastic Bags Should Continue.**

27 Petitioner's request to invalidate the entire Ordinance, which most importantly bans plastic
28 bags, should be summarily denied. While Petitioners dispute whether the ten cents is an improper

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1 tax under Proposition 26, they cannot dispute that the County has the power to ban plastic bags
2 pursuant to its police powers.

3 **1. Case Law Allows for Severance of the Ordinance and Independent**
4 **Enforcement of the Plastic Bag Ban.**

5 As a matter of law, a court:

6 **...must uphold ordinances if possible, construing them in a manner preserving**
7 **their validity.** To this end, [the court] will invalidate, strike down, or find
8 preempted only those portions that are clearly unconstitutional or preempted by
9 statute, and save the portions that are not, as long as they can accomplish one or all
10 of the legitimate material purposes of the law. [Emphasis Added.]

11 (*First Presbyterian Church of Berkeley v. City of Berkeley*, (1997) 59 Cal. App. 4th 1241, as
12 modified on denial of reh'g, (Jan. 7, 1998)).

13 The Ordinance contains a severability cause, where the Board expressly declared the
14 following when it enacted the Ordinance:

15 "If any section, subsection, sentence, clause or phrase of this ordinance is for any
16 reason held to be invalid by a decision of any court of competent jurisdiction, that
17 decision will not affect the validity of the remaining portions of the ordinance. The
18 Board of Supervisors hereby declares that it would have passed this ordinance and
19 each and every section, subsection, sentence, clause, or phrase not declared invalid
20 or unconstitutional without regard to whether any portion of this ordinance would
21 be subsequently declared invalid."

22 (Ord. §12.85.09.) The presence of a severability clause establishes a presumption in favor of
23 severance. (*California Redevelopment Association v. Ana Matosanto*, (2011) 53 Cal.4th 231, 270-
24 271 citing *Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 331 ["Although not
25 conclusive, a severability clause normally calls for sustaining the valid part of the enactment"].)

26 When an ordinance contains a severability clause, an invalid provision is severable if it is
27 grammatically, functionally, and volitionally separable. (*Gerken v. Fair Political Practices Com.*
28 (1993) 6 Cal.4th 707, 714-716.) The California Supreme Court recently applied this criteria in
California Redevelopment Association when determining that a recent Assembly Bill may be
severed and enforced independently:

"[T]he invalid provision must be grammatically, functionally, and volitionally
separable... Grammatical separability, also known as mechanical separability,
depends on whether the invalid parts 'can be removed as a whole without
affecting the wording' or coherence of what remains. Functional separability

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1 depends on whether 'the remainder of the statute 'is complete in itself ...
2 Volitional separability depends on whether the remainder 'would have been
3 adopted by the legislative body had the latter foreseen the partial invalidation
4 of the statute.' ”

5 (Id. at 271 [Internal Citations omitted.])

6 It is not disputed that the ten cent provision on paper bags can easily be grammatically
7 separated from the remaining Ordinance to preserve the ban on plastic bags. Section 12.85.040 of
8 the Ordinance would be the only section that would need to be stricken if the ten cents is found to
9 be an invalid tax under Proposition 26.⁶

10 As for functional severability, the Ordinance is "complete in of itself" and capable of
11 enforcement even if Section 12.85.040 is removed. The remaining ordinance provisions banning
12 plastic bags from the unincorporated areas is unaffected by the removal of the ten cent charge, and
13 its enforcement provisions are not materially altered, rendered meaningless or hindered in any way.

14 As for volitional severability, the legislative record of the Board conclusively establishes
15 that the Board would have still acted to ban plastic bags regardless of whether it had the authority
16 to require stores to charge the ten cents on paper bags, in lieu of doing nothing. The issue for
17 volitional severability "is whether a legislative body, knowing that only part of its enactment would
18 be valid, **would have preferred that part to nothing, or would instead have declined to enact
19 the valid without the invalid.** [Emphasis Added]." *California Redevelopment Assn. v. Matosanto*,
20 53 Cal. 4th at 273. Significantly, the CEQA record evidences that the Board expressly rejected the
21 No Project Alternative in the EIR, which was to not ban plastic bags. (Record at 6:1451-1452,
22 1456-1457.) The Board has already established that it will refuse to do nothing. Further, in all five
23 Project Alternatives studied in the EIR, banning plastic bags was always considered an option by
24 the Board. (Record at 3:0065; 3:0212-0268; 6:1451-1452.)

25 The CEQA record also reflects the Board's objectives in banning plastic bags :

- 26 • Reduce the Countywide consumption of plastic carryout bags from the estimated

27 ⁶ Sections 12.85.040 (E) and (F) would not need to be stricken. Section 12.85.060 would
28 also remain unchanged, given a store could voluntarily choose to charge for paper bags, and the
Ordinance would exempt low income households.

1 1,600 plastic carryout bags per household in 2007, to fewer than 800 plastic bags
2 per household in 2013.

- 3 • Reduce the Countywide contribution of plastic carryout bags to litter that blights
4 public spaces Countywide by 50 percent by 2013.
- 5 • Reduce the County's, Cities', and Flood Control District's costs for prevention,
6 clean-up, and enforcement efforts to reduce litter in the County by \$4 million.
- 7 • Substantially increase awareness of the negative impacts of plastic carryout bags
8 and the benefits of reusable bags, and reach at least 50,000 residents (5 percent of
9 the population) with an environmental awareness message.
- 10 • Reduce Countywide disposal of plastic carryout bags in landfills by 50 percent
11 from 2007 annual amounts.

12 (Record at 1:0003; 3:0062-0063; 6:1419.) Every one of these objectives would be furthered by a
13 ban on plastic bags alone.

14 The legislative record also reveals that the Board was most concerned with the negative
15 impacts resulting from plastic bag litter. Given the lightweight nature of plastic bags and its
16 tendency to become air-borne, it is easily littered throughout the County causing urban blight and
17 clogging systems designed to channel storm water runoff. (Record at 6:1419-1420, 1427-1429; see
18 also generally 3-6:0026-1493.) Plastic bag litter contributes to increased overall litter cleanup costs
19 for the County, Caltrans, and other public agencies. (*Id.*) California public agencies spend more
20 than \$375 million each year for litter prevention, cleanup, and disposal. The Los Angeles County
21 Flood Control District alone exhausted \$24 million in 2008–2009. (*Id.*) Littered plastic bags also
22 make their way into the marine environment, where they pose a threat to seabirds, sea turtles, and
23 marine mammals that feed at or near the ocean surface. (Record at 3:0101-0123; 6:1427-1428,
24 1474-1476.) The ingestion of plastics, including plastic bags, is a threat to the endangered
25 leatherback, green, loggerhead and olive ridley turtles, and numerous other animals, which have the
26 potential to be found off the Southern California coasts. (Record at 3:0109-0115; 6:1475-1476.)

27 Petitioners desire to pick bits and pieces from the Board's 1400+ page record and out of
28 context testimony from County employees, in an attempt to show that paper bags were of equal
concern to the Board as plastic bags, and that the Board would not have acted on one without the
other—is misplaced. If paper bags had posed the same litter problem as plastic bags did, the Board
would have considered banning them as well. Petitioners further attempt to say that the Board
would not have otherwise acted due to greenhouse gas concerns from increased use of paper bags,

1 is also misplaced. The CEQA record indicates that the Board over-road this concern based on
2 economic, environmental, and public policy considerations when it adopted its Findings of Fact and
3 Statement of Overriding Considerations, due to the negative impacts of plastic bag litter being so
4 much more significant.⁷ (Record at 6:1470-1478). The weight of the record indicates that the
5 Board would have acted to ban plastic bags regardless of its ultimate decision regarding paper bags.

6 **2. Equity Favors Severability of the Ordinance .**

7 The law on severability does not require that the remaining Ordinance be stricken, and the
8 equities certainly do not favor it. The County should not be left in a position to reaffirm or reenact
9 the plastic bag ban. This Ordinance was adopted by the Board well over a year ago on November
10 23, 2010, and has been implemented at 67 large stores and in approximately 870 small stores in the
11 unincorporated area. The Ordinance is hugely successful in reducing single bag use by almost 94%
12 in the large stores affected by the first phase of the Ordinance. (Declaration of Coby Skye, ¶5.)
13 Staff has spent significant efforts and resources in educating the public about the Ordinance and
14 working with stores in implementation, of which none of these efforts were paid for by the ten cent
15 charge on paper bags (*Id.* at ¶¶ 2-4, 6.) This entire time, the plastic bag company that is funding
16 this lawsuit had full knowledge of the County's actions and sat on the sidelines waiting almost a
17 year to file a lawsuit. Philip Rozenski, Hilex Poly's Director of Marketing and Sustainability,
18 acknowledges that Hilex Poly closely monitored the County's proceedings related to the Ordinance,
19 was "very familiar with the history and background of the Ordinance", and knew it passed by a 4-1
20 vote at the Board. (Rozenski Declaration, ¶¶ 2-3.) When the suit was filed, at no time did
21 Petitioners seek a temporary restraining order or a preliminary injunction. To strike down the
22 remaining portion of the Ordinance so the County can vote again on banning plastic bags when it
23 has already done, would lead to mass confusion of the public and needlessly undo the work

24 _____
25 ⁷ The Board in its deliberations actually weighed the relative impacts of both paper and
26 plastic carryout bags, applying conservative assumptions to both. The EIR and Findings of Facts
27 used very conservative numbers to maximize impacts, including for stores that would be affected
28 by the Ordinance. Since implementation of the Ordinance, it appears that only approximately 870
smaller stores have actually been affected. Accordingly, Petitioners calculation of a bag tax
exceeding \$21.5 million is incorrect. More so, consumers have reduced usage of single use bags
by almost 94% at larger stores. (Skye Dec., ¶5.)

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1 expended to date on educating the public and stores.

2 **F. Petitioners' Do Not Meet A Required Element For Mandate, As the Board's**
3 **Adoption of the Ordinance was an Exercise of Legislative Discretion.**

4 An essential element of mandate is that a Petitioner must show that Respondent has a
5 "clear, present and ministerial duty to act in a particular way." Petitioners cannot satisfy this
6 element as the Ordinance was enacted as an exercise of legislative discretion:

7 The general rule is that "[w]hen a writ of mandate is sought with respect to a
8 governmental body," the court must "determine whether the act the writ seeks
9 to compel is a legislative act, involving the exercise of discretion, or purely
10 ministerial." (*United Assn. of Journeymen v. City and County of San*
11 *Francisco* (1995) 32 Cal.App.4th 751, 759 [38 Cal.Rptr.2d 280].) This is
12 because "[A] court is without power to interfere with purely legislative
13 action, in the sense that it may not command or prohibit legislative acts...."
14 [Citations.] If the underlying act involves the exercise of discretionary
15 legislative power, the courts will interfere by mandamus only if the action
16 taken 'is "so palpably unreasonable and arbitrary as to indicate an abuse of
17 discretion as a matter of law."' [Citation.]" [Citations omitted.]"

18 (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1244.)

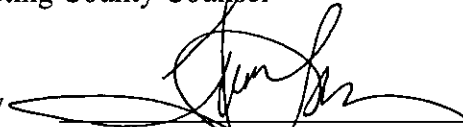
19 Petitioners do not have a clear legal right to a writ of mandate, as their motion does not demonstrate
20 that the County Board of Supervisors' exercise of discretionary legislative power was "so palpably
21 unreasonable and arbitrary" as to constitute an abuse of discretion as a matter of law. (*Coachella*
22 *Valley Unified School Dist. v. State of California* (2009) 176 Cal.App.4th 93, 113; citing *Carrancho*
23 *v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1264-1265.)

24 **VI. CONCLUSION.**

25 Petitioners' motion is unmeritorious and should be denied.

26 DATED: March 2, 2012

27 Respectfully submitted,
28 JOHN F. KRATTLI
Acting County Counsel

By 
ALBERT RAMSEYER
Principal Deputy County Counsel
TRUC L. MOORE
Deputy County Counsel

Attorneys for Respondents County of Los Angeles,
et al.

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1 **PROOF OF SERVICE**

2 Case No. BC470705

3 STATE OF CALIFORNIA, County of Los Angeles:

4 **Irma Alvarado** states: I am employed in the County of Los Angeles, State of California,
5 over the age of eighteen years and not a party to the within action. My business address is 648
6 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-
7 2713

8 That on **March 2, 2012** I served the attached

9 **OPPOSITION MEMORANDUM OF COUNTY OF LOS ANGELES TO PETITIONERS'**
10 **MOTION FOR WRIT OF MANDATE**

11 upon Interested Party(ies) by placing the original a true copy thereof enclosed in a sealed
12 envelope addressed as follows as stated

13 James R. Parrinello, Esq.
14 Sean P. Welch, Esq.
15 NIELSEN MERKSAMER PARRINELLO GROSS & LEONI, LLP
16 2350 Kerner Boulevard, Suite 250
17 San Rafael, California 94901

18 **By overnight delivery.** I enclosed the documents in an envelope or package provided
19 by an overnight delivery carrier and addressed to the persons on the service list. I placed
20 the envelope or package for collection and overnight delivery at an office or a regularly
21 utilized drop box of the overnight delivery carrier.

22 **By electronic service.** Based on a court order or an agreement of the parties to accept
23 service by electronic transmission, I caused the documents to be sent to the persons at the
24 electronic notification addresses listed on the service listed below:

25 Email: Jparrinello@nmgovlaw.com
26 Email: swelch@nmgovlaw.com

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

Executed on **March 2, 2012**, at Los Angeles, California.

29 _____
30 **Irma Alvarado**
31 (NAME OF DECLARANT)

32 
33 _____

(SIGNATURE OF DECLARANT)