

1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)  
2 LAURIE RITTENBERG, Assistant City Attorney (SBN 106683)  
3 GABRIEL S. DERMER, Deputy City Attorney (SBN 229424)  
4 200 N. Main Street, City Hall East, 9<sup>th</sup> Floor, Rm. 916  
5 Los Angeles, CA 90012  
6 Telephone (213) 473-6850  
7 Facsimile (213) 473-6818

8 Attorneys for Defendant CITY OF LOS ANGELES

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

12 RICHARD HOPP, an individual

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, a Municipal  
16 Corporation

17 Defendant.

**CASE NO. BC 401 887**

[Assigned to Hon. Malcolm H. Mackey,  
Dept. 55]

**DEFENDANT'S MOTION FOR JUDGMENT  
ON THE PLEADINGS**

Hearing

Date: March 3, 2009

Time: 8:30 a.m.

Dept: 55

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22 **TO PLAINTIFF AND TO ALL INTERESTED PARTIES:**

23  
24 PLEASE TAKE NOTICE that on March 3, 2009 at 8:30 a.m. or as soon thereafter as the  
25 matter may be heard in Department 55 of this Court, located at 111 North Hill Street, Los  
26 Angeles, California 90012, Defendant City of Los Angeles (the "City") will move, and does  
27 move, pursuant to Code of Civil Procedure section 438 for judgment on the pleadings in favor of  
28 the City as to the entire complaint.

1 This motion is made on the ground that the complaint does not state facts sufficient to  
2 constitute a cause of action against the City, in that the challenged City ordinance, Los Angeles  
3 Municipal Code section 103.310, is valid and constitutional and applies to the activities of  
4 Plaintiff Richard Hopp ("Hopp") as alleged in his complaint. The motion will be based upon  
5 this notice, the attached memorandum of points and authorities, the accompanying Request for  
6 Judicial Notice, the files and records in this action, and any further evidence and argument that  
7 the Court may receive at or before the hearing.

8  
9 DATED: January 30, 2009

10 ROCKARD J. DELGADILLO, City Attorney  
11 LAURIE RITTENBERG, Assistant City Attorney  
12 GABRIEL S. DERMER, Deputy City Attorney

13 By

  
GABRIEL S. DERMER

14 Deputy City Attorney

15 Attorneys for Defendant CITY OF LOS ANGELES  
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MEMORANDUM OF POINTS AND AUTHORITIES  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **1. INTRODUCTION**

4 This case presents one simple question: Can the City of Los Angeles (the “City”) require  
5 Plaintiff Richard Hopp (“Hopp”) to obtain a secondhand book dealer’s permit to engage in his  
6 collecting activities? As will be shown, the answer is yes. Accordingly, no cause of action  
7 exists and the City is entitled to judgment on the pleadings.

8 **2. THE FACTS**

9 Hopp is an “avid collector of books, documents and ephemera.” (Complaint at 1:26). He  
10 does not sell what he collects, though he “may recycle and/or donate duplicates or unwanted  
11 items.” (Complaint at 1:27 – 2:1). Hopp “actively promotes, advertises, and campaigns his  
12 collecting and hobby activities within publications, websites, and at various events and  
13 locations, including, but not limited to, exhibitions, festivals, meetings, flea markets, swap  
14 meets, trade shows, garage sales, and collector meetings.” (Complaint at 2:4-8).

15 Hopp “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City of Los  
16 Angeles at various events” such as swap meets and flea markets. (Complaint at 2:9-11). Hopp  
17 wants this buying booth or exhibitor’s table to inform and let attendees and the public know that  
18 he is a collector and hobbyist who purchases books, documents, and ephemera. (Complaint at  
19 2:12-15). Hopp alleges he “has not engaged in any business nor [*sic*] occupation” as a  
20 secondhand book dealer, just that he “merely collects and seeks to reach a larger audience with  
21 regard to [his] collecting.” (Complaint at 2:16-22).

22 Hopp alleges that the City has enacted Municipal Code sections, chiefly 103.310,<sup>1</sup> that  
23 regulate secondhand book dealers. (Complaint at 2:23-27). Based on the above allegations,  
24 Hopp seeks a judicial determination that he is “not a secondhand book dealer” (Complaint at  
25

26  
27 <sup>1</sup> The Complaint refers (at 2:27), possibly in error, to section 103.301 relating to Antique Shops.  
28 Similarly, the Complaint refers to section 21.199(h) (at 4:26), relating to selling without a permit. As  
buying (and not selling) secondhand books is the issue raised in the Complaint, the instant motion does  
not address these other ordinances.

1 7:14), that the City’s ordinance is “preempted by State law” (Complaint at 7:20-21), and that the  
2 ordinance violates Hopp’s “constitutional rights” (Complaint at 7:22-23). As will be shown,  
3 there is nothing infirm about the City’s ordinance at issue, and it does apply to Hopp and his  
4 collecting activities.

5 **3. ARGUMENT**

6 A defendant may bring a motion for judgment on the pleadings on the same grounds as a  
7 general demurrer, but the motion may be made after the time for filing the demurrer has expired.  
8 Code of Civ. Proc. § 438. Grounds for a motion for judgment on the pleadings must appear on  
9 the face of the challenged pleading and may be based on facts which the Court may judicially  
10 notice.<sup>2</sup> *Id.*

11 **A. Rules of Statutory Interpretation**

12 As with any case that looks to statutes and their effects, one should first understand the  
13 rules of statutory interpretation. “Our fundamental task in construing a statute is to ascertain the  
14 intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining  
15 the statutory language, giving the words their usual and ordinary meaning. If there is no  
16 ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the  
17 language governs. If, however, the statutory terms are ambiguous, then we may resort to  
18 extrinsic sources, including the ostensible objects to be achieved and the legislative history. In  
19 such circumstances, we select the construction that comports most closely with the apparent  
20 intent of the Legislature, with a view to promoting rather than defeating the general purpose of  
21 the statute, and avoid an interpretation that would lead to absurd consequences.” *Day v. City of*  
22 *Fontana* (2001) 25 Cal. 4th 268, 272 (citations omitted).

23 **B. Section 103.310 Applies to Hopp**

24 Hopp accurately states that the City has enacted ordinances “relating to the regulation of  
25 secondhand book dealers and secondhand dealers.” (Complaint at 2:23-24). The pertinent  
26 ordinance is Municipal Code section 103.310 (Complaint at 2:27), entitled “Secondhand Book  
27

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28 <sup>2</sup> The City has concurrently filed a request for judicial notice of the Municipal Code sections cited herein.

1 Dealers.” This section requires secondhand book dealers to have a permit from the Board of  
2 Police Commissioners or the Police Permit Review Panel, and to record and keep bills of sale  
3 available for inspection by police officers during business hours.

4 Subsection (a)(1) of said section defines who is a secondhand book dealer for purposes of  
5 this regulation: “a person engaging in, conducting, managing or carrying on the business of  
6 *buying, selling, exchanging or otherwise dealing in secondhand books.*” (emphasis added). In  
7 other words, a person in the business of buying or otherwise dealing in secondhand books is a  
8 “secondhand book dealer” under the ordinance.

9 It is necessary to understand what “business” means in this context, as this word appears  
10 to be the lynchpin underlying Hopp’s argument that *he* does not need a permit, because he “does  
11 not hold himself out as a business.” (Complaint at 2:1-2). As with many English words,  
12 business has more than one strict meaning. In fact, the word “business” is in no way limited to  
13 an “occupation” as suggested by Hopp; rather it may refer to, among other things, role, function,  
14 and mission, or a particular field of endeavor, or an affair or matter.<sup>3</sup>

15 In the context of the ordinance, an obvious place to look for assistance is in the  
16 “Definitions” of Section 103.01. There, business “means any occupation, trade, establishment  
17 or concern, regardless of form, which provides services, products or entertainment for which a  
18 permit is required.” This self-referencing definition makes clear that “business” is not used  
19 strictly in the commercial sense; rather it may refer to *any concern*, in the sense of a task or  
20 objective. This is consistent with Section 103.310’s reference to “buying ... or otherwise  
21 dealing in secondhand books” as a commercial business would buy *and* sell books, and not  
22 “otherwise” deal with them.

23 It is clear, therefore, that the ordinance’s insertion of the word “business” is not a limiting  
24 reference to “occupation.” A person carrying on *the function of buying* secondhand books is a  
25 secondhand book dealer under the ordinance. *Hopp* is a secondhand book dealer under the  
26 ordinance. Further to Municipal Code section 103.310, Hopp is required to obtain a permit and

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27  
28 <sup>3</sup>See, for example, “business” at Merriam-Webster’s Online Dictionary (at [www.merriam-webster.com/dictionary/business](http://www.merriam-webster.com/dictionary/business)).

1 to keep a bill of sale, containing the seller's name and a description of the book, open to police  
2 inspection. In addition to conforming to the words themselves, this makes imminent sense in  
3 terms of the policy underlying such regulations.

4 More than 80 years ago, our Supreme Court recognized the propriety of a city requiring a  
5 secondhand book dealer to have a permit in *In re Holmes* (1921) 187 Cal. 640. In dismissing  
6 Holmes' contention that "the business of dealing in second-hand books is not such a business as  
7 requires or should be subjected to regulation under the police powers of the municipality," 187  
8 Cal. at 645, the Court stated as follows:

9 Second-hand goods, wares, and merchandise have always been deemed the proper  
10 subjects of police regulation by municipalities; and the grant by the constitution in  
11 article XI, section 11 thereof, to municipalities 'to make and enforce all such local,  
12 police, sanitary and other regulations as are not in conflict with general laws,' is  
13 very broad and liberal. The business of buying and selling second-hand books  
14 cannot be differentiated from the business of buying and selling other forms of  
15 second-hand personal property which, being movable, valuable, and passing easily  
16 from hand to hand, are often made the subject of purloining and petit larceny and  
17 of disposal in second-hand places of business. Such places of business have,  
18 therefore, been made the proper subjects of police inspection and regulation. It is  
19 a matter of common knowledge that public libraries all over the country are  
20 continually subjected to the depletion of their shelves through loss of books which  
21 find their destination in second-hand stores, and that precautions against such loss  
22 may be observed in the equipment and administration of every well-appointed  
23 public library in the land.

24 *In re Holmes*, 187 Cal. at 645 (citations omitted).

25  
26 As discussed, it is of no moment that Hopp collects, but does not sell, secondhand books.  
27 The ordinance does not contain a "sell requirement" because the thief the ordinance is designed  
28 to curtail does not care who ultimately purchases the books. It is sufficient that he sees Hopp at

1 his “buying booth” at the flea market and can dispose of the stolen items there. There is no  
2 reason to believe that, in the years since the Court decided *In re Holmes*, police regulation of  
3 Hopp’s secondhand book buying “business” is any less necessary and proper.

### 4 C. Preemption

5 Assuming the City’s ordinance does indeed apply to Hopp, he argues that the City’s  
6 regulations are preempted by the state’s statutory system. (Complaint at 4:12-15).

7 “State preemption of local legislation is established by article XI, section 7 of the  
8 California Constitution, which provides that ‘[a] county or city may make and enforce within its  
9 limits all local, police, sanitary, and other ordinances and regulations not in conflict with general  
10 laws.’ In *Sherwin-Williams*, this court identified three types of conflict that cause preemption:  
11 ‘A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied  
12 by general law, either expressly or by legislative implication. Local legislation is contradictory  
13 to general law when it is inimical thereto.’ A local ordinance is preempted by a state statute  
14 only to the extent that the two conflict.” *Action Apartment Assn., Inc. v. City of Santa Monica*  
15 (2007) 41 Cal. 4th 1232, 1242-43 (citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4  
16 Cal.4th 893, 898; other citations omitted).

17 It is clear, then, that local legislation can be valid even where it may address the same  
18 issues as state legislation. The issue here is what state laws, if any, govern secondhand books  
19 and to what extent.

#### 20 a) As State Law Does Not Regulate Secondhand Books, the City’s 21 Ordinance is Not Preempted

22 The state laws concerning secondhand goods generally are found in Chapter 9, Division  
23 8, Article 4 (section 21625 *et seq.*) of the Business and Professions Code.<sup>4</sup> A “secondhand  
24 dealer” means any person, copartnership, firm, or corporation whose business includes buying,  
25 selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or  
26

27 <sup>4</sup> Similar provisions regulating pawnbrokers may be found in Financial Code sections 21200 *et seq.* As  
28 an interesting aside, Business and Professions Code section 21625 states that it is the “intent of the  
Legislature in enacting the article to curtail the dissemination of stolen property.”

1 auctioning secondhand tangible personal property. Bus. & Prof. Code § 21626(a). “Tangible  
2 Personal Property” is defined in Business and Professions Code section 21627(a) as property  
3 that “includes, but is not limited to, all secondhand tangible personal property which bears a  
4 serial number or personalized initials or inscription or which ... bears evidence of having had a  
5 serial number or personalized initials or inscription.” Tangible personal property may also  
6 include “tangible personal property, new or used, including motor vehicles, received in pledge  
7 as security for a loan by a pawnbroker.” Bus. & Prof. Code § 21627(b)(1).

8 Books, certainly for the most part, do not bear individual serial numbers or personalized  
9 initials or secure loans by pawnbrokers. In fact, there is *no* reference to secondhand books or  
10 non personalized property anywhere in the state’s statutory scheme. Secondhand books,  
11 therefore, which are really *non-tangible* personal property, are not covered by the state statute.  
12 Accordingly, there can be no conflict with state law and the City’s ordinance is proper and not  
13 preempted.

14 Yet even if books *were* covered by the state statutory scheme, there is nothing in state  
15 law that would preempt the subject ordinance. In fact, the issues that would be relevant to the  
16 instant matter have previously been addressed in the City’s favor in the case *Malish v. City of*  
17 *San Diego* (2000) 84 Cal. App. 4th 725.

18 **b) The City’s Ordinance is Valid Under the *Malish* Analysis**

19 In *Malish*, the plaintiff (Malish), a licensed pawnbroker, filed an action against the City  
20 of San Diego seeking a declaratory judgment that certain city ordinances regulating  
21 pawnbrokers were preempted by state law. The court relied upon sections 21636, 21637 and  
22 21638 of the Business and Professions Code that expressly recognize and authorize local  
23 regulation of pawnbrokers and other secondhand dealers (which Hopp would be if secondhand  
24 books were covered under state law) in holding that the challenged ordinances were preempted  
25 by state law *only* to the extent they exceeded the scope of local regulation permitted by those  
26 statutory provisions. *Malish, supra*, 84 Cal. App. 4th at 729. Accordingly, the court held that  
27 ordinances providing for local permits, reasonable police inspection during normal business  
28

1 hours, grounds for denial of a local permit, and recording regulations did not conflict with state  
2 law and were not preempted.

3 **1) The City May Require Secondhand Book Dealers to Have a**  
4 **Permit**

5 The first challenged ordinance *Malish* addressed was San Diego Municipal Code section  
6 33.0101, an introductory section entitled “Certain Businesses and Occupations Police Regulated;  
7 Police Permit Required.” *Malish* contended “section 33.0101 is inconsistent with the legislative  
8 intent to establish uniform, statewide, state-administered regulations because it conflicts with the  
9 provisions of the Business and Professions Code and the Financial Code governing the terms  
10 and conditions under which local authorities must issue a state license to engage in pawnbroker  
11 business at a particular address in the City.” *Malish, supra*, 84 Cal. App. 4th at 729-730.  
12 Noting that local governments are authorized under Business and Professions Code section  
13 21638 to enact as well as enforce ordinances regulating pawnbrokers, the *Malish* Court  
14 concluded “the City’s local permit system is a proper means of enforcing local regulatory  
15 ordinances that are not inconsistent with state regulatory statutes.” *Id.* at 730.

16 In the instant matter, section 103.310 requires secondhand book dealers to have a permit.  
17 As in *Malish*, there is nothing inconsistent with the state regulatory statutes. The City may  
18 require secondhand book dealers to have a permit.

19 **2) Police Inspections are Constitutional and Permitted**

20 San Diego Municipal Code Section 33.0102,<sup>5</sup> relating to police inspection rights, was the  
21 next challenged ordinance. *Malish* contended this section effectively conditioned the issuance  
22 of his local permit on unrestricted police access to his business and that the ordinance conflicted  
23 with the legislative goal of uniform statewide regulation. *Malish, supra*, 84 Cal. App. 4th at  
24 731. In reply, the Court held that section 33.0102 “does not give the police unrestricted access  
25 to *Malish*’s business...but rather restricts the police to *reasonable* inspection during normal  
26 business hours. The ordinance does not conflict with state law.” *Id.* (emphasis in original).

27 \_\_\_\_\_  
28 <sup>5</sup> Renumbered to 33.0103.

1 The *Malish* Court also noted that “section 33.0102’s inspection provision is consistent  
2 with Business and Professions Code section 21636, which requires secondhand dealers to hold  
3 and produce personal property ‘for inspection by any peace officer or employee designated by  
4 the chief of police or sheriff.’” *Malish, supra*, 84 Cal. App. 4th at 731 (citing Bus. & Prof. Code  
5 § 21636(a) and (b)).

6 Malish additionally contended that section 33.0102 violated “the law governing  
7 warrantless searches i.e., the Fourth Amendment.” *Malish, supra*, 84 Cal. App. 4th at 732. The  
8 Court flatly rejected this contention based upon the decisions of state and federal courts that  
9 considered and upheld similar warrantless inspection provisions based upon the “closely  
10 regulated business” exception and/or because the authorizing statute or ordinance imposes time,  
11 place, and scope restrictions. *Id.* (citing cases).

12 The City’s ordinance is equally valid to that of San Diego’s. It requires that bills of sale  
13 “be kept on file and open during business hours to the inspection of any police officer or  
14 representative of the Board.” It is a reasonable regulation that limits police inspections to  
15 business hours. As with the ordinance *Malish* addressed, section 103.310 is not preempted by  
16 state law, and it does not violate the Fourth Amendment’s proscription against warrantless  
17 searches.

18 **3) The City May Have Regulations for the Denial of Permits in**  
19 **Addition to the State**

20 The *Malish* Court also addressed the San Diego ordinances relating to the denial,  
21 suspension and revocation of a local permit. Malish again contended “these ordinances conflict  
22 with the legislative objective of uniform statewide regulation because they impose different  
23 standards for denial, suspension or revocation of the local permit than the standards under state  
24 law for denial, suspension or revocation of the state license.” *Malish, supra*, 84 Cal. App. 4th at  
25 733. In sum, the Court found that the *denial* ordinance (San Diego Municipal Code section  
26 33.0305) was consistent with state licensing statutes and not preempted. *Id.*

27 Hopp has neither applied for, nor been refused, a permit. His complaint appears to  
28 challenge section 103.310 generally. Said section does not contain any reference to the denial of

1 a permit, as the City's grounds for denial are found in Municipal Code section 103.31. This  
2 section contains many of the same grounds for denial as its San Diego counterpart, *e.g.*,  
3 applicant made a false or misleading statement or is under eighteen years of age. Accordingly,  
4 even if the City's denial ordinance were at issue, it would "constitute supplemental regulations  
5 that fall within the reasonable exercise of the City's police power and do not offend the spirit of  
6 the state licensing statute." *Malish, supra*, 84 Cal. App. 4th at 733.

#### 7 **4) The City May Duplicate State Law**

8 *Malish* also addressed San Diego's ordinance requiring pawnbrokers to keep certain  
9 records (section 33.1101). The ordinance was deemed invalid to the extent that it required  
10 *Malish* to keep more records than provided for in the state laws. However, the Court rejected  
11 *Malish's* "contention that section 33.1101 is preempted to the extent it *duplicates* state law  
12 requiring pawnbrokers to keep records of loans and property transactions and subjecting those  
13 records and property to police inspection. Although as a general rule duplicative ordinances are  
14 preempted, that rule does not apply here because the Legislature has expressly authorized  
15 duplicative ordinances regulating pawnbrokers by allowing the enactment and enforcement of  
16 ordinances that are not inconsistent with state law, and prohibiting the adoption of local  
17 identification, holding or reporting requirements only if they are 'other than' as set forth in the  
18 relevant state statutes." *Malish, supra*, 84 Cal. App. 4th at 736 (citing *Sherwin-Williams, supra*,  
19 4 Cal. 4th at 897 and Bus. & Prof. Code §§ 21637 and 21638).

20 Similarly, San Diego Municipal Code section 33.1103 merely duplicated the state's  
21 recordkeeping requirement. As such, the *Malish* Court found it was consistent with the state  
22 scheme and valid. *Malish, supra*, 84 Cal. App. 4th at 736

23 Here, section 103.310 obligates secondhand book dealers to ascertain the person selling  
24 has the right to do so, and to record the name of the seller and a description of the book.  
25 Assuming, *arguendo*, that Business and Professions Code section 21628 applies, secondhand  
26 book dealers would have to do everything the City requires *plus* obtain a certification and  
27 legible fingerprint from the seller. Because the City requires *less* than the state, the ordinance  
28

1 cannot be deemed invalid. *Malish, supra*, 84 Cal. App. 4th at 736; Bus. & Prof. Code §§ 21637  
2 and 21638.

3 **D. In Sum, the City's Ordinance is Proper and Valid**

4 The City's secondhand book ordinance cannot be preempted by the state as the state  
5 statutes address serialized and personalized property, and do not address non-tangible  
6 secondhand books. However, as shown, there is nothing material in Municipal Code section  
7 103.310 that would be preempted *even if* secondhand books were covered by the state's  
8 statutory scheme.

9 The City may require Hopp to obtain a permit, ascertain that sellers have the right to sell,  
10 keep bills of sale containing the name of the seller and a description of the book, and permit  
11 police officers to inspect the bills of sale during normal business hours. As *Malish* makes clear,  
12 these requirements in no way conflict with the state's statutory scheme, and are valid. Similarly,  
13 there can be no meaningful dispute that the City's ordinance is a proper and reasonable  
14 regulation. *See, e.g., Malish, supra*, 84 Cal. App. 4th at 732.


15 **4. CONCLUSION**

16 For all of the foregoing reasons, the City of Los Angeles respectfully requests that this  
17 Court find the Los Angeles Municipal Code section 103.310 to be valid and enforceable, and  
18 applicable to Mr. Hopp's book buying activities. Accordingly, the complaint does not state facts  
19 sufficient to constitute a cause of action and the City's motion for judgment on the pleadings  
20 should be granted.

21  
22 Respectfully submitted,

23 DATED: January 30, 2009

24 ROCKARD J. DELGADILLO, City Attorney  
25 LAURIE RITTENBERG, Assistant City Attorney  
26 GABRIEL S. DERMER, Deputy City Attorney

27 By  \_\_\_\_\_  
28 GABRIEL S. DERMER

Deputy City Attorney

Attorneys for Defendant CITY OF LOS ANGELES

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**PROOF OF SERVICE**  
Hopp v. City of Los Angeles  
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - CHE, 9<sup>th</sup> Floor, Room 916, California 90012.

On January 30, 2009, I served the foregoing documents described as:

**DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp  
POB 3601  
Van Nuys, CA 91407  
Tel: 818/ 902-0532  
Fax 670-7841

[X] **MAIL** - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **BY PERSONAL SERVICE** - ( ) I delivered by hand, or ( ) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

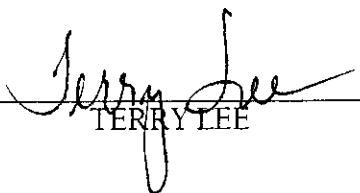
[ ] **BY OVERNIGHT COURIER** - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

[ ] **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

[ ] **Federal** - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[X] **State** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2009, at Los Angeles, California.

  
TERRY LEE