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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]

REPLY OF DEFENDANT TO PLAINTIFF'S
OPPOSITION TO MOTION FOR JUDGMENT
ON THE PLEADINGS

Hearing

Date: March 3, 2009

Time: 8:30 a.m.

Dept: 55

19
20 Defendant City of Los Angeles (the "City") respectfully submits this Reply to the
21 Opposition filed by Plaintiff Richard Hopp ("Hopp") to the City's Motion for Judgment on the
22 Pleadings (the "Motion").

23 **1. INTRODUCTION AND SUMMARY OF ARGUMENT**

24 By its Motion, the City has shown that Hopp may be required to obtain a secondhand
25 book dealer's permit to engage in his very public collecting activities. The 17-page Opposition,
26 which does not comply with California Rules of Court 3.1113(d) and (f), does nothing to alter
27 this fact. Nonetheless, Hopp yet claims that he is a "collector" (*i.e.*, that he does not *sell* books),
28 so he is not a "business" and is therefore not required to comply with the City's police permit

1 regulations or even apply for a permit.¹ In making his argument, Hopp ignores the plain
2 meaning, and the obvious intention, of Municipal Code section 103.310 – to curtail the
3 dissemination of stolen books.²

4 It is folly to equate “business” with “selling” in the ordinance’s context because the
5 ordinance itself does not equate a secondhand book dealer with a secondhand book seller.
6 Rather, section 103.310 defines a secondhand book dealer as “*a person engaging in ... the*
7 *business of buying ... or otherwise dealing in secondhand books.*” (Emphasis added). If the
8 ordinance was aimed at producing revenue, or only at a person’s livelihood or occupation, it
9 would have said so. Viewed as a regulation giving police the opportunity to curtail crime, the
10 ordinance, as written, makes imminent sense.

11 Moreover, Hopp’s activities as alleged in the complaint plainly fall into the definition of
12 a secondhand book dealer; because Hopp *is* in the “business” of collecting books. He actively
13 promotes and advertises his secondhand book buying “activities” within publications, websites
14 and at various locations, including flea markets, swap meets and trade shows. Accordingly, he
15 needs to apply for a secondhand book dealer’s permit.

16 Lastly, Hopp has not shown the City’s ordinance is preempted, because it is not. As
17 Hopp has failed to state facts sufficient to constitute a cause of action against the City, the
18 Motion for Judgment on the Pleadings should be granted.

19 **2. HOPP IS ENGAGED IN A BUSINESS UNDER THE ORDINANCE – THE**
20 **BUSINESS OF COLLECTING**

21 **a. The Fact That Hopp Does Not Sell Secondhand Books Is Irrelevant**

22 The Complaint alleges that Hopp “actively promotes, advertises, and campaigns his
23 collecting and hobby activities within publications, websites, and at various events and
24

25 ¹ Since filing the Motion, counsel for the City has learned that should Hopp, or any applicant, apply for a
26 permit, the Police Permit Review Panel may in fact determine that no permit is required.

27 ² It is worth noting that the permit requirement does not serve as the City’s punishment or judgment on
28 Hopp or any other applicant; rather, the permit requirement serves to prevent any party from becoming a
“legal fence.”

1 locations, including, but not limited to, exhibitions, festivals, meetings, flea markets, swap
2 meets, trade shows, garage sales, and collector meetings,” (Complaint at 2:4-8), and that he
3 “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City of Los Angeles at various
4 events” such as swap meets and flea markets. (Complaint at 2:9-11).

5 It is of no moment that Hopp does not sell what he collects. Despite this, Hopp attempts
6 to make much of Municipal Code section 103.01’s definition of “business,” *i.e.*, “any
7 occupation, trade, establishment or concern, regardless of form, which provides services,
8 products or entertainment for which a permit is required.” (Opp. at 5:21 – 6:28) This definition,
9 obviously broader than occupation or livelihood, supports the view that *regardless of form*,
10 Hopp’s provision of services, *i.e.*, his book buying at flea markets, swap meets and trade shows
11 and advertised elsewhere, can very well be a business for the purpose of requiring a police
12 permit. Again, this is consistent with section 103.310’s reference to “buying ... or otherwise
13 dealing in secondhand books” as a person operating a business for their livelihood would
14 certainly sell books, and not only buy or otherwise deal with them.³

15 The City is cognizant of the fact that the word “business” *may* refer to one’s occupation
16 or employment (Opp. at 7:1 - 8:3); however, such a limiting definition is not found in the
17 ordinance and makes no sense in its context. *See Day v. City of Fontana* (2001) 25 Cal. 4th 268,
18 272.⁴ And given that section 103.01 states that a business may be *any* “concern, *regardless of*
19 *form*,” it is most implausible to state it must be referring to for profit commercial activity.

20 Similarly, Hopp disingenuously states that the City seeks to define “business” in the
21 broadest possible sense. (Opp. at 8:7-8). The Motion only assumes the truth of facts alleged in
22 the Complaint, and is simply based thereon and limited thereto. Hopp presents various
23

24 ³ Similarly, Hopp suggests an inconsistency with Section 103.02 (Opp. at 7:8-13). That section, read in
25 the context of the previous section’s definition of business, simply means that no person may operate a
26 business for which a permit is required without first obtaining a permit. There is absolutely no
inconsistency.

27 ⁴ *Day* also states that words should be given their “usual and ordinary meaning.” For this reason,
28 Hopp’s discussion of Black’s Law Dictionary is inapposite. Yet even Black’s contains a definition of
business consistent with the City’s position: “Enterprise in which person engaged shows willingness to
invest time and capital on future outcome.” *Black’s Law Dictionary* (6th ed. 1990).

1 hypothetical scenarios in his Opposition to ostensibly undermine the ordinance’s application to
2 him. However, because the Motion is one for judgment on the pleadings, the only factual
3 scenario at issue is the one set forth in Hopp’s complaint. Put another way, *Hopp’s* secondhand
4 book buying activities, actively promoted and advertised within publications, websites and at
5 various locations, including flea markets, swap meets and trade shows, fall within the definition
6 of secondhand book dealer in section 103.310.

7 **b. The City’s Ordinance Does Not Purport To Apply To *All* People Who**
8 **Buy Books – There Is No Slippery Slope**

9 The Complaint, Motion (and ordinance) *do not* address all “those who collect books as a
10 hobby” and no absurd circumstances⁵ would result should the motion be granted. (Opp. at
11 10:18-23). If a person wants to buy one book, or even 1,000 books, or exchange books with a
12 friend, such isolated (and private) incidents are not indicative of a person carrying on the
13 business of buying secondhand books. In addition, a very good chance exists that the City
14 would never become aware of such a person’s activities. But Hopp, who publicly and “actively
15 promotes, advertises, and campaigns his collecting and hobby activities within publications,
16 websites, and at various events and locations, including, but not limited to, exhibitions, festivals,
17 meetings, flea markets, swap meets, trade shows, garage sales, and collector meetings,” is in the
18 business of collecting and has obviously come to the City’s attention, or vice versa.

19 Moreover, Hopp’s publicity, promotion and advertisement illustrate the rationale and
20 need that underlie the police permit regulation, as the book thief for whom the ordinance is
21 designed to curtail may see Hopp’s advertisements and elect to dispose of his stolen books by
22 selling them to Hopp. *See In re Holmes* (1921) 187 Cal. 640, 645 (secondhand book dealings
23 are proper subject of regulation under the police powers of a municipality). Indeed, prohibiting
24 the police from so regulating may well serve to insulate the thieves by making Hopp a “legal
25 fence.” Again, the fact that Hopp collects secondhand books, but does not sell them, is a non
26 sequitur.

27
28 ⁵ In fact, as will be shown, the opposite is true, at least as concerns the carte blanche that would be
given to book thieves looking to unload their stolen books.

1 **c. This Is A Police Permit Issue, Not A Business Tax Issue**

2 Similarly, Hopp alleges that the City’s “entire statutory scheme is clearly intended to
3 provide for regulation of various business operations ...” (Opp. at 8:14-17). He cites to
4 businesses such as dance halls, escort halls, massage parlors and pawnbrokers in support of his
5 position that he, a person who only collects, is not a business. One has nothing to do with the
6 other, of course, because if any of those “businesses” actively promoted and advertised their
7 activities but did not accept a penny for the services furnished, they would be akin to Hopp and
8 likely still require the appropriate permit.

9 This is also the reason that Hopp’s discussion of the City’s business tax is inapposite.
10 The City’s business taxes are based upon revenue, *see, e.g.*, LAMC § 21.00(a) (defining “gross
11 receipts”). Admittedly, there is no revenue to, or money made by, the buyer of secondhand
12 books. In fact, one would think that business tax and police permit issues are often interrelated,
13 as most dance halls, escort halls, massage parlors, pawnbrokers and secondhand book dealers
14 are operated for profit. But the fact that Hopp would not owe any business tax has nothing to do
15 with his maintaining of a police permit designed to curtail the dissemination of stolen property.

16 **d. Hopp Is A Secondhand Book Dealer**

17 Likewise, it is not necessary or proper to define “dealer,” alone, as Hopp attempts to do
18 (Opp. at 9:17- 10:11). The ordinance defines the phrase “secondhand book dealer” as “a person
19 engaging in, conducting, managing or *carrying on the business of buying*, selling, exchanging
20 or otherwise dealing in secondhand books.” (LAMC § 103.310(a), emphasis added). The
21 definition of the word dealer cannot be excised from the entirety of the definition of secondhand
22 book dealer.

23 Finally, Hopp’s discussion of secondhand dealers (Opp. at 11:4-12:2) is also inapposite
24 and contradicted by the ordinance itself. Section 103.311(a) contains the definition of
25 “secondhand dealer” and states *inter alia*: “The term [*i.e., secondhand dealer*] **does not include**
26 secondhand dealer-jewelry, or persons holding permits as auto wreckers or used car dealers or
27 **secondhand book dealers**” (emphasis added). Though again, the City does not seek to punish
28 secondhand book dealers or secondhand dealers or regulate them for the sake of regulation; the

1 City's police seek to curtail the dissemination of stolen property by monitoring the people to
2 whom the thief sells. *See, e.g., Holmes*, 187 Cal. at 645 (regulating secondhand books); *see also*
3 *Bus. & Prof. Code* § 21625 (regulating tangible personal property).

4 In sum, Hopp actively and publicly carries on the business of buying secondhand books;
5 accordingly, he is a secondhand book dealer.

6 3. THE ORDINANCE IS NOT PREEMPTED

7 a. State Law Does Not Address Secondhand Books

8 Hopp argues that the City's ordinance has been "expressly preempted" by state law.⁶
9 (*Opp.* at 13:24). The City's Motion explained that there is no preemption issue because state
10 law only concerns "tangible personal property," defined in Business and Professions Code
11 section 21627(a) as property that "includes, but is not limited to, all secondhand tangible
12 personal property which bears a serial number or personalized initials or inscription or which ...
13 bears evidence of having had a serial number or personalized initials or inscription." Tangible
14 personal property may also include "tangible personal property, new or used, including motor
15 vehicles, received in pledge as security for a loan by a pawnbroker." *Bus. & Prof. Code* §
16 21627(b)(1).

17 As explained, the secondhand books addressed by the City's ordinance, do not bear
18 individual serial numbers or personalized initials or secure loans by pawnbrokers. And there is
19 *no* reference to secondhand books or non personalized property anywhere in the state's statutory
20 scheme. Secondhand books, therefore, are *non-tangible* personal property, and are not regulated
21 by state law. Accordingly, there is absolutely no express (or implied) preemption.

22 b. The Ordinance Does Not Conflict With State Law Does And It Is Not 23 Preempted

24 Yet even if secondhand books were regulated by the state, there is nothing in state law
25 that would preempt the subject ordinance. *See Malish v. City of San Diego* (2000) 84 Cal. App.

26
27 ⁶ Though Hopp argues the City's ordinance is preempted, the City is not aware, and Hopp has not
28 alleged, that he has applied for a permit with the police commission as required by Business and
Professions Code section 21641(a).

1 4th 725. Somewhat surprisingly, Hopp attempts to dismiss the entirety of the Motion’s analysis
2 of *Malish* by stating the City’s reliance is “misplaced” because *Malish* “invalidated the local
3 ordinance to the extent such was inconsistent with state law.” (Opp. at 16:1-6). A truism, to be
4 sure, but Hopp does not address, because he cannot, the fact that the aspects of San Diego’s
5 permit system consistent with state law (and analogous to the City’s requirements) were upheld
6 and not deemed preempted. As the *Malish* Court stated: “the City’s local permit system is a
7 proper means of enforcing local regulatory ordinances that are not inconsistent with state
8 regulatory statutes.” *Id.* at 730.

9 Specifically, Hopp argues that the City’s identification requirement is preempted. (Opp.
10 at 15:7 – 16). Section 103.310 (g) simply requires that the purchased secondhand book refer to
11 the bill of sale for said book. There is nothing in the state’s statutes that conflict with this
12 requirement (likely because state laws refer to items already with serial numbers). Accordingly,
13 it is not preempted.

14 Similarly, Hopp argues that the City’s exemption contained in section 103.310(i) is
15 preempted. In reality this subsection states that the section shall not apply to the receipt of
16 secondhand books from any other person where such person “has made required reports as fixed
17 by rule or regulation of the Board...” If anything, this is duplicative of Business and
18 Professions Code section 21629 that exempts tangible personal property acquired from another
19 secondhand dealer provided he states in writing a description of the property and other
20 requirements. As explained in *Malish*, the City may duplicate state law because the Legislature
21 expressly authorized such local legislation. *Malish, supra*, 84 Cal. App. 4th at 736 (citing Bus.
22 & Prof. Code §§ 21637 and 21638).

23 **c. The City Neither Regulates, Nor Purports To Regulate, Individuals Or**
24 **Entities Outside Of The City**

25 Somewhat ignoring the fact that the Motion is one for judgment on the pleadings, Hopp
26 suggests that the ordinance is invalid as it may affect “transient citizens.” (Opp. at 16:10-24).
27 As explained, the City’s ordinance does not purport to regulate all people, transient or otherwise.
28 By its terms, it only regulates secondhand book dealers. In addition, there is no Constitutional

1 issue as the City's entire Municipal Code, including the ordinance at issue, only deals with acts
2 or omissions "within the territorial limits of the City of Los Angeles and that territory outside of
3 this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or
4 any law, or by reason of ownership or control of property." LAMC § 11.00(g).

5 In sum, state law does not regulate secondhand books, yet even if it did, the City's
6 ordinance is valid and not preempted.

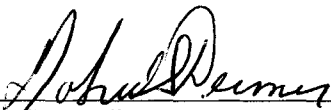
7 **4. CONCLUSION**

8 The City of Los Angeles again respectfully requests that this Court find Los Angeles
9 Municipal Code section 103.310 to be valid and enforceable, and applicable to Mr. Hopp's
10 actively and publicly advertised and promoted secondhand book buying activities, and grant the
11 City's Motion for Judgment on the Pleadings.

12
13 Respectfully submitted,

14 DATED: February 20, 2009

15 ROCKARD J. DELGADILLO, City Attorney
16 LAURIE RITTENBERG, Assistant City Attorney
17 GABRIEL S. DERMER, Deputy City Attorney

18 By  _____
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PROOF OF SERVICE via E-MAIL & REGULAR MAIL

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 - Room 916, CHE, Los Angeles, California 90012.

On February 20, 2009, I served the foregoing documents described as:

REPLY OF DEFENDANT TO PLAINTIFF'S OPPOSITION TO MOTION
FOR JUDGMENT ON THE PLEADINGS

[X] BY E-MAIL to: mail@BC401887.info and also 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 February 20, 2009, at Los Angeles, California.


GABRIEL S. DERNER