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12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF LOS ANGELES,

14 CENTRAL DISTRICT

15 DARWOOD HANCE, M.D., et al.,)

16 Plaintiff/Petitioners)

17 v.)

18 CITY OF LOS ANGELES, et al.)

19 Defendants/Respondents)

CASE NO. BC181327

AMENDED MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDATE AND
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

DATE: November 24, 1997
TIME: 8:30 a.m.
DEPT.: 85

FILED
LOS ANGELES SUPERIOR COURT

NOV 24 1997

JOHN A. CLARKE, CLERK

Darolyn Jensen
BY DAROLYN JENSEN, DEPUTY

1 **I. PRELIMINARY STATEMENT**

2 This memorandum supercedes the Points and Authorities originally filed with the
3 petition. Plaintiffs respectfully request the Court to temporarily restrain enforcement of Los
4 Angeles Municipal Code (LAMC) § 55.13 so that its ban on certain firearm feeding devices,
5 and thus on certain firearms, does not become effective on November 23, 1997.

6 As set out in section II.A, of this memorandum, § 55.13 is vague, overbroad, violates
7 state law, and is preempted and violates the civil liberties of petitioners.

8
9 **II. THE ORDINANCE SHOULD BE PRELIMINARILY ENJOINED IN THE PUBLIC**
10 **INTEREST BECAUSE IT IS PLAINLY ILLEGAL**

11 A TRO will issue under the following circumstances: (a) there is a reasonable probability
12 of success on the merits, Robbins v. Sup. Ct.(County of Sacramento), (1985) 38 Cal.3d 199,
13 (b) issuance is necessary to maintain the status quo, Continental Baking Co. v. Katz, (1968) 68
14 Cal.2d 512, (c) plaintiffs will suffer "great or irreparable injury" unless a TRO is issued,
15 Shoemaker v. County of Los Angeles, (1995) 37 Cal.App.4th 618, and (d) there is no adequate
16 remedy at law. C.C.P. § 526 (a) and 527 (c).

17
18 A. **Plaintiffs Have a Reasonable Likelihood of Success on the Merits since the**
19 **Ordinance Is Preempted by State Law, Vague, and Overbroad**

20 1. **Section 55.13 of the City of Los Angeles Municipal Code Contradicts**
21 **State Laws Regulating Fully Automatic Weapons and the Cinematic**
22 **Use of Firearms, and Is Inimical Thereto.**

23 The authors of § 55.13 are probably so ignorant of firearms that they did not realize its
24 impact on fully automatic firearms and semi-automatic firearms designated as "assault
25 weapons." Section 55.13 forbids dealers from selling such weapons to persons whom the
26 Department of Justice ('DOJ') has licensed to possess them.¹ Whatever § 55.13 was intended

27
28 ¹ The fact that a subject, in this case firearms, involves arcane technical knowledge is a reason for
holding the area closed to regulation by local government. See, e.g., Danville Fire Protection District
v. Duffel Financial & Constr. Co. (1976) 58 Cal.App.3d 241, 249 citing as one basis for the

1 to do, the fact is that it prohibits what Pen. C. §§ 12330 et seq. authorizes and what the DOJ
2 has issued licenses for. This makes City of Los Angeles ('CITY') Municipal Code § 55.13
3 void. It is hornbook law that a "local ordinance will be invalidated if it directly conflicts with
4 state law, e.g., by prohibiting something permitted by the state law." Witkin & Epstein,
5 CALIFORNIA CRIMINAL LAW 66 (emphasis added).

6 A recent case directly in point is Water Quality Ass'n. v. County of Santa Barbara
7 (1996) 44 Cal.App.4th 732, invalidating a local ordinance that would have prohibited certain
8 water softeners which fell within a state law authorizing their use. *See also* Los Angeles Ry.
9 Corp. v. Los Angeles (1940) 16 Cal.2d 779 (municipal ordinance invalid for contradiction of
10 PUC regulation), Doe v. City & County of San Francisco (1982) 136 Cal.App.3d 509, 518
11 (local prohibition of handguns is preempted by contrary policy implicit in express state
12 preemptions of handgun licensing and registration, Sippel v. Nelder (1972) 24 Cal.App.3d 173
13 (city may not require handgun licensing) and Sherwin-Williams Co. v. City of Los Angeles
14 (1993) 4 Cal.4th 893, 898 defining when local legislation is preempted as contrary to state law:

15 ...local legislation is 'contradictory' to general law when it is inimical thereto.
16 (See Ex parte Daniels (1920) 183 Cal. 636, 641-648 [finding 'contradiction'
17 *where local legislation purported to fix a lower maximum speed limit for motor*
18 *vehicles than that which general law fixed.*) [Italics added.]

19 Section 55.13 is additionally illegal in preventing cinema prop rental companies from
20 supplying the entertainment industry with full auto weapons for use in TV shows, plays,
21 movies, etc. It is common knowledge that the movie and TV industry has for eighty years
22 been a major employer and annually generated billions of dollars of income for the state.
23 California has enacted scores, if not hundreds of laws, designed to regulate this industry and to
24 facilitate the production of movies and TV shows. Among them are Pen. C. § 12026.2 (a)(1)
25 and (8) which, in effect, exempt employees of prop-rental and movie company from virtually
26

27
28 desirability of its conclusion that the state Uniform Building Code preempts the field and bars local
regulation that "building codes are technical matters based on the opinions of experts who are not
always available to local entities."

1 all firearms laws.

2 It may be objected that the Pen. C. § 12026.2 exemptions are directed toward state law
3 and do not **expressly** apply against local ordinances. But their very existence shows that the
4 Legislature's policy is to facilitate entertainment industry productions by overriding gun control
5 laws, because it does not see any relevance of the dangers those laws address to the possession
6 of firearms in the course of cinematic productions.

7 The legality of local regulation of firearm transfers from prop companies to the
8 entertainment industry should be viewed in terms of the conjunction between: the Pen. C. §
9 12026.2 exemptions; Pen. C. §§ 12330 et seq.'s provision for licensing full auto weapon
10 possession and DOJ's long and consistent practice of so licensing prop companies; and the
11 myriad other state laws facilitating movie, etc., productions and exempting them from
12 burdensome laws and rules applied to others.² When the matter is so viewed we believe that
13 this area is clearly one which state law has occupied and in which it is paramount, thereby
14 excluding local legislation. Water Quality Ass'n., *supra*, 44 Cal.App.4th at 742-43.

15 However, even if not all local legislation is wholly excluded from this area, § 55.13 is
16 void because it regulates transfers between prop and movie companies in a way that is contrary
17 and "inimical" to Pen. C. §§ 12026.2 (a)(1) and (8), 12330 et seq. and DOJ's established
18 licensing policy thereunder. Sherwin-Williams Co., *supra*, 4 Cal.4th at 898, Los Angeles Ry.
19 *supra*, 16 Cal.2d 779.

21 **2. Localities May Not Ban Guns, the Sale of Guns, or of Parts of Guns.**

22 A feeding device is a part of a firearm without which the weapon is unable to operate
23 all or unable to operate as designed and intended. By banning the sale of feeding devices that
24 exceed 10 rounds, § 55.13 effectively banned the sale of countless .22 target rifles and other
25 firearms.

26
27 ² In construing laws, courts must "take into account matters such as context, the object in view,
28 the evils to be remedied, the history of the times, and of legislation upon the same subject, public
policy, and contemporaneous construction." Harry Carian Sales vs. Agricultural Labor Relations
Board (1985) 39 Cal. 3d 209, 223, In re Walters (1995) 39 C.A. 4th 1546, 1558 and cases there cited.

1 The law is clear that cities cannot ban firearm sales and, by parity of reasoning, cannot
2 ban sale of devices that are integral to a firearm and/or required for it to work. The leading
3 case is Doe, holding that state law bars local handgun bans. 136 Cal.App.3d at 518. While the
4 ordinance in Doe happened to ban the possession of handguns rather than their sale, that is
5 irrelevant to the legal issue here. For the statute Doe construed expressly forbids bans on
6 either sale *or* possession. Pen. C. § 12026 (b).

7 We have attached as Exhibits ‘A’ and ‘B’, two Legislative Counsel opinions expressly
8 finding that cities cannot ban firearm sales. In the construction of statutes Legislative Counsel
9 opinions are entitled to great weight (it being assumed that the Legislature was aware of them)
10 and may not be departed from unless they are clearly wrong or subsequent legislation has
11 repudiated them. California Ass'n. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 17.

12 We also rely on two Attorney General opinions to the same effect. 77 A.G. Ops. 147,
13 150, 65 A.G. Op. 165 (1982). Opinions of the Attorney General construing statutes bear
14 weight equal to Legislative Counsel opinions. Both are dispositive in the absence of strong
15 counter-authority, it being “‘presumed that [they] have come to the attention of the Legislature,
16 and if [they] were contrary to the legislative intent that some corrective measure would have
17 been adopted.’”³ It bears emphasis that, far from being repudiated by the Legislature, they,
18 and the Doe opinion, have been ratified by reenactment of the legislation they construed
19 without change to disavow them.⁴

20 21 **3. Los Angeles Municipal Code § 55.13 Is Fatally Vague.**

22 For the reasons set out in detail in our Fifth Cause of Action § 55.13 is wholly unclear
23 as to what the feeding devices are that it forbids both gun stores and ordinary citizens to sell.

24
25 ³ California Ass'n. Of Psychology Providers v. Rank (1990) 51 C.3d 1, 21 quoting prior caselaw.

26 ⁴ Since Doe, § 12026 has been reenacted three times. Acts of 1988, Ch. 577, § 2, Acts of 1989,
27 Ch. 958, § 1, Acts of 1995, Ch. 322, § 1. Those reenactment have renumbered the sections in the code
28 without repudiating Doe's implied preemption holding -- while **other** § 12026 wording has been
broadened to repudiate **another** case that

1 A fundamental requirement of due process is that laws must be sufficiently clear that people
2 may know what is prohibited so that they can conform **before** being subject to punishment.
3 People v. Superior Court (Caswell) (1988) 46 Cal.3d 381, 389-90. That is also true where the
4 criminal penalties are supplemented by civil ones such as delicensure. Morrison v. State Board
5 of Education (1969) 1 Cal.3d 214.

6 The issues here are indistinguishable from those in Springfield Armory v. City of
7 Columbus (6th Cir. 1994) 29 F.3d 250 voiding an ordinance that banned certain named firearms
8 and other firearms that have the same basic design but with slight modifications. The court
9 held that such a ban was fatally vague in that firearm owners cannot be presumed to know the
10 design history of their firearm or its relation to other firearms they do not own. By the same
11 token, owners of firearms and feeding devices cannot be presumed to know that the feeding
12 devices can be "readily" altered by certain methods to add further magazine capacity. Section
13 55.13 thus violates the due process provisions of both California and federal Constitutions.

14 15 **4. Los Angeles Municipal Code § 55.13 is Unconstitutionally Overbroad**

16 While § 55.13 purports to be a rational gun control measure designed to protect society
17 from certain types of firearms whose very existence the Los Angeles City Council mistakenly
18 believes to be a threat, it sweeps into its ban weapons no one considered to be harmful or
19 threatening. Additionally, due to its sweeping prohibitions, it infringes upon the fundamental
20 right to self defense guaranteed by Article I, Section 1 of the California Constitution, and results
21 in a taking of property without just compensation as guaranteed by the California Constitution
22 and the 14th and 5th amendments of the U.S. Constitution.

23 Even if one were to agree that the City Council's adoption of §55.13 serves a substantial
24 government purpose, which it does not, "that purpose cannot be pursued by means that broadly
25 stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v.
26 Tucker, (1960) 364 U.S. 479, 488. If § 55.13 is implemented and enforced, an unintended result
27 would be criminal liability for owners of many weapons that are currently used solely for
28 sporting purposes.

1 Additionally, § 55.13 would unintentionally criminalize possession of firearms whose
2 sole reason for being purchased and possessed lies in their historical value to non-profit public
3 service entities such as museums and historical societies, as well as to private collectors. The
4 unintended result of the inability for these public interest entities to add to, or loan out, their
5 collections, or to exhibit such weapons on loan from another museum, would be the deprivation
6 to the public at large of the educational experience and value of studying and viewing firearms
7 that are a large part of our national heritage.

8 Furthermore, it would result in the ban of weapons that are currently used solely for
9 movie production purposes and are licensed for that purpose by the Department of Justice.
10 Surely, the Los Angeles City Council did not intend to ban the renting of these weapons to the
11 movie industry, nor to ban filming of movies using these firearms in the City of Los Angeles.

12 Therefore, § 55.13 violates the U.S. and California Constitutions in that it is overbroad in
13 its reach.

14
15 **III. THE COURT SHOULD PRESERVE THE STATUS QUO PENDING THE**
16 **OUTCOME OF A TRIAL ON THE MERITS**

17 Until November 23, 1997 the business petitioners are free to sell, rent, or lease, feeding
18 devices, and firearms to which they are affixed. Professors Hance, Huff, etc., are free to
19 either buy or sell feeding devices/firearms as they wish. But they will be prohibited from
20 doing so after that date (the date LAMC § 55.13 becomes effective) unless the TRO issues. It
21 is, therefore, to maintain this status quo that we are seeking the TRO.

22
23 **IV. THE ORDINANCE'S ENFORCEMENT WILL RESULT IN THE**
24 **PLAINTIFFS AND THE PUBLIC INTEREST SUFFERING**
25 **IRREPARABLE INJURY FOR WHICH THERE IS NO ADEQUATE**
26 **REMEDY AT LAW**

27 As to great or irreparable injury, Barajas v. City of Anaheim (1993) 15 Cal.App.4th
28 1808, 1813 and McCammon v. City of Redwood City (1957) 149 Cal.App.2d 421, 424 are
directly on point. LAMC § 55.13 would deprive all the business petitioners of a substantial

1 part of their businesses.⁵ McCammon held irreparable injury was shown by proof that a new
2 ordinance prevented a quarry company's use of a route through the City which many of its
3 trucks formerly took to connect to a state highway:

4 Under these facts it is clear that the closing of the usual route to trucks from the
5 quarry made necessary a long and more expensive haul to reach [the state
6 highway which the trucks then used to go to their various destinations] . . . Such
7 a curtailment of appellants' business operations is manifestly an irreparable
8 injury.

9 McCammon, 149 Cal.App.2d at 424; emphasis added.

10 In Barajas, street vendors sued to enjoin an ordinance that would bar them selling goods
11 out of their cars, but only in residential areas, leaving them free to sell anywhere else in the
12 city apparently. Even so limited a prohibition was deemed to constitute irreparable injury,
13 Barajas, 15 Cal.App.4th at 1813, and one for which "plaintiffs have no adequate remedy at law
14 in our view; loss of their livelihoods, in whole or in part, would be extremely difficult to
15 evaluate in terms of damages." Id. at 1813, n.2 emphasis added.

16 Dated: November 14, 1997

MICHEL & ASSOCIATES:

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C.D. MICHEL
Attorney for Plaintiffs

⁵ Petitioner MONTEFUSCO will be barred from conducting his work as a weapons master for the film/entertainment industry in the City of Los Angeles — and the film/entertainment industry itself will be barred from making many pictures in the City.

The B&B petitioners will be barred from selling all or almost all feeding devices and, indeed, a large number of firearms that are unsalable without those feeding devices.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Haydee Villegas, am employed in the City of Los Angeles, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
business address is 5757 W. Century Blvd, Suite 700, Los Angeles, California 90045-6408.

6 On November __, 1997, I served the foregoing document(s) described as

7 **AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**
8 **FOR WRIT OF MANDATE AND FOR TEMPORARY RESTRAINING ORDER AND**
9 **PRELIMINARY INJUNCTION**

10 on the interested parties in this action by placing

11 ☐ the original

12 ☒ a true and correct copy

13 thereof enclosed in sealed envelope(s) addressed as follows:

14 **Mr. Byron Boeckman**
15 **Los Angeles City Attorney's Office**
16 **1800 City Hall East**
17 **200 N. Main Street**
18 **Los Angeles, CA 90012**

19 X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of
20 collection and processing correspondence for mailing. Under the practice it would be
21 deposited with the U.S. Postal Service on that same day with postage thereon fully
22 prepaid at Los Angeles, California, in the ordinary course of business. I am aware that
23 on motion of the party served, service is presumed invalid if postal cancellation date is
24 more than one day after date of deposit for mailing an affidavit.

25 Executed on November __, 1997, at Los Angeles, California.

26 — (PERSONAL SERVICE) I caused such envelope to delivered by hand to the
27 offices of the addressee.

28 Executed on November __, 1997, at Los Angeles, California.

29 X (STATE) I declare under penalty of perjury under the laws of the State of
30 California that the foregoing is true and correct.

31 — (FEDERAL) I declare that I am employed in the office of the member of the bar of
32 this of this court at whose direction the service was made.

33 HAYDEE VILLEGAS

EXHIBIT A

Jack J. Harte
Chief Clerk
James L. Anthony
Kathryn J. Foster
John E. Muehlenberg
Daniel A. Winkler
David O. Allen
John A. Corning
C. David Cookson
Robert O. Oury
Robert O. Corning
Michael J. Korman
Lynn A. Marshall
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Diane P. Boyer-Voss
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Eileen J. Blanton
Dorothy L. Byrd
Eugene C. Cumberston
Erika O. O'Neil
Burt E. Dale
J. Christopher O'Neil
Jeffrey A. Garland
Clifton J. de Hra
Frances B. Doran
Maureen B. Dunn
Charles R. Fisher
Clay Fisher
Francis R. Galt
Debra Z. Galt
Sara K. Galt
Sergey Anne O'Neil
Alvin D. O'Neil
Scott H. O'Neil
Mark H. O'Neil
Jane T. Humpston
Edward J. Humpston
Thomas R. Humpston
Lynn Ann Joseph

David B. Johnson
Michael R. Kelly
Ely S. Kohn
Shirley A. Kohn
Avery L. Kohn
L. D. Kohn
Patricia A. Kohn
Michael K. Kohn
Diane G. Kohn
Jennifer Kohn
Forrest L. Kohn
Kurt S. Kohn
Michael K. Kohn
Francisco A. Kohn
Peter Kohn
John A. Kohn
Alvin Kohn
Doris L. Kohn
Michael J. Kohn
Michael J. Kohn
Kurt T. Kohn
Michael K. Kohn
James L. Kohn
Ellen S. Kohn
Mark Francis Tary
Jed Tary
Richard Tary
Susan C. Tary
Elizabeth Tary
Richard Tary
Thomas J. Tary
Jack C. Tary

Deputy

Honorable Bill Hoge
4177 State Capitol

Firearms: Local Ordinances - #33428

Dear Mr. Hoge:

QUESTION

Would an ordinance enacted by the City of West Hollywood that prohibits the sale of handguns known as "Saturday night specials" be valid?

OPINION

An ordinance enacted by the City of West Hollywood that prohibits the sale of handguns known as "Saturday night specials" would not be valid.

ANALYSIS

The Dangerous Weapons' Control Law contained in Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of the Penal Code¹ regulates all aspects of firearms including the sale, transfer, possession, and use of pistols, revolvers, or other firearms capable of being concealed upon the person in this state.

¹ All further section references are to the Penal Code, unless stated otherwise.

Honorable Bill Hoge - p. 2 - #33428

Saturday night specials are handguns that are generally characterized by, among other things, "short barrels, light weight, [and] easy concealability, ..." (Kelley v. R.G. Industries, Inc. (Md.), 497 A. 2d 1143, 1153). Federal law prohibits the importation into the United States of Saturday night specials by banning the importation of any firearm or ammunition not specifically excepted (see 18 U.S.C.A. Sec. 922(1) and Kelley v. R.G. Industries, Inc., *supra*, at p. 1154).

As a general law city, the power of the City of West Hollywood to enact an ordinance that would prohibit the sale of Saturday night specials may proceed from Section 7 of Article XI of the California Constitution, which reads as follows:

"SEC. 7. A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

This police power conferred by the Constitution upon a county or city is as broad as the power of the Legislature itself subject to two exceptions: (1) that it can be applied only within its own territory; and (2) it must not conflict with general laws of the state (Mirkenfeld v. City of Berkeley, 17 Cal. 3d 129, 140). Conflicts exist if the local ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication (Lancaster v. Municipal Court, 6 Cal. 3d 805, 808).

Whether any particular local ordinance conflicts with a state criminal statute would depend upon the ordinance. Conflicts exist if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication (Lancaster v. Municipal Court, *supra*, at pp. 807-808). There is obviously a conflict if a local ordinance authorizes what state law expressly prohibits or prohibits what state law expressly authorizes. Also, although not perhaps so obvious, there is a conflict, sometimes described as a conflict of jurisdiction, within the meaning of this provision when a local ordinance prohibits the same act that is prohibited by state law (see Cohen v. Board of Supervisors, 40 Cal. 3d 277, 290). Where any of the three forms of conflict exists, the local ordinance is rendered invalid. Hence, the first issue to resolve is whether a local prohibition on the sale of Saturday night specials would be in direct conflict with state law.

There are several areas in which the state has expressly occupied the whole field of regulation with respect to firearms. Section 53071 of the Government Code, which expressly preempts the

Honorable Bill Hoge - p. 3 - #33428

field of registration or licensing of commercially manufactured firearms, provides as follows:

"53071. It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code."

63471

Thus, the Legislature has provided that it intends to occupy the whole field of the regulation of registration or licensing of commercially manufactured firearms, and the courts have held that the Legislature has, as a result of Section 53071 of the Government Code, occupied or preempted that field to the exclusion of local regulation (Sippel v. Nelder, 24 Cal. App. 3d 173).

Section 53071.5 of the Government Code preempts local regulation of the manufacture, sale, or possession of imitation firearms. Courts have also prohibited the enforcement of local ordinances that require permits or licensing to possess or purchase a handgun on the grounds that these ordinances are in direct conflict with Section 12026 which, among other things, authorizes persons generally to possess concealable firearms without a license at the person's residence, place of business, or other private property (Doe v. City and County of San Francisco, supra; Sippel v. Nelder, supra, at p. 177). State law also extensively regulates the sale or transfer of concealable firearms (see Secs. 12070, 12071, 12072, and 12082). However, there is no prohibition on, nor any express authorization for, the sale of Saturday night specials or other concealable firearms. Hence, we do not find a direct conflict between any state law and a local ordinance prohibiting the sale of Saturday night specials.

However, even in the absence of a direct conflict with state law, local ordinances may not be enacted in a field that has been "preempted" by implication. The rules applicable in making the determination that there is a preemption by implication are whether: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in terms that clearly indicate a paramount state concern that will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such

Honorable Bill Hoge - p. 4 - #33428

a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality (Olsen v. McGillicuddy, 15 Cal. App. 3d 897, 901, citing In re Hubbard, 62 Cal. 2d 119, 128).

In determining whether general state law has covered a subject so as to make that subject exclusively a matter of state concern, the fact that there are numerous statutes dealing with the subject may be considered as a factor tending to show that the Legislature intended to make the subject a matter of exclusive state concern (Galvan v. Superior Court, 70 Cal. 2d 851, 861; In re Lane, 58 Cal. 2d 99, 110 (concurring opinion)). While the state has not expressly preempted all local regulation involving firearms, there are extensive state regulations governing the sale and transfer of all types of firearms (Secs. 12070, 12072, 12073, and 12082, and Art. 8 (commencing with Sec. 12800), Ch. 6, Title 1, Pt. 4; Olsen v. McGillicuddy, supra, at p. 902). The Legislature has required that a person obtain a license to engage in the business of selling, leasing, or transferring firearms (Sec. 12070). To qualify as a licensee, a person must meet the specific requirements of subdivision (a) of Section 12071.² There are specific requirements as to the manner in which the licensee may transfer or sell the firearm, including a 15-day waiting period (subpara. (A), para. (3), subd. (b), Sec. 12071).

In a related area, state law regulates the qualifications that a purchaser must satisfy by, among other things, prohibiting the sale or transfer of concealable firearms to persons who are under the age of 21 years (Sec. 12072, and see also Secs. 12021, 12021.1, and 12071). Purchasers of firearms are also required to present a firearm safety certificate to the licensee performing any sale or transfer (see Art. 8 (commencing with Sec. 12800), Ch. 6, Title 1, Pt. 4). The sale or transfer of any firearm must be completed through a licensed dealer or a law enforcement agency (subd. (d), Sec. 12072, and Secs. 12082 and 12084). Upon any sale or transfer of a firearm, a person engaged in the business of selling, leasing, or transferring a firearm is required to keep specified detailed information in a register and to collect a specified fee (Secs. 12073 to 12077, incl.). State law also contains specific and detailed exemptions from the licensing and registration requirements (see Sec. 12078). Moreover, Section 12026 provides that there shall be no permit or

² A person must have a valid federal firearms license, any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, and a certificate of eligibility issued by the Department of Justice (subd. (a), Sec. 12071).

Honorable Bill Hoge : p. 5 - #33428.

license required to, among other things, purchase a concealable firearm.

The Legislature has also prohibited, except as authorized pursuant to strict regulations, the sale or possession of automatic firearms and specified semiautomatic pistols (see Ch. 2 (commencing with Sec. 12200), Title 2, Pt. 4; subd. (b), Sec. 12276), wallet guns, zip guns, unconventional pistols, and short-barreled rifles and shotguns (Sec. 12020, and Art. 6 (commencing with Sec. 12095), Ch. 1, Title 2, Pt. 4), and all types of firearms with regard to minors (Art. 7 (commencing with Sec. 12100), Ch. 1, Title 2, Pt. 4; and Ch. 6 (commencing with Sec. 12551), Title 2, Pt. 4) and the mentally ill (Ch. 3 (commencing with Sec. 8100), Div. 8, W. & I.C.).

We think that the multiplicity of closely related statutes in the area of sales of concealable firearms taken together shows a sufficiently patterned approach to the subject matter to indicate that the Legislature intended to make the subject one of statewide concern (Galvan v. Superior Court, supra, at p. 851; and In re Lana, supra, at p. 110 (concurring opinion)). Although it may be contended that by authorizing local governments to issue licenses to sell firearms at retail and by permitting local government to restrict and regulate the sale of firearms at retail, the state has not preempted the subject of sales and transfers of concealable firearms no matter how extensive the regulation at the state level. This argument has some merit. However, in our view, the authority granted to local government to restrict and regulate licenses with respect to the retail sale of firearms does not include the authority to prohibit the sale of Saturday night specials or any other type of concealable firearms. To the contrary, we think implicit in the language of subdivision (a) of Section 12071 allowing local government to restrict and regulate the sale of firearms is the intent of the Legislature that the sale of firearms that are not expressly prohibited by state law is lawful under state law. Thus, although the state regulatory framework includes an aspect of local regulation and a degree of deference to local concerns with respect to the regulation of licenses in the sale of firearms under Section 12071, the state framework indicates an intent by the Legislature that sales of firearms that are not expressly prohibited by state law are lawful and shall not be prohibited at a local level.

In our view, a factor that is even more important in the analysis of whether state law has impliedly preempted local government from prohibiting the sale of Saturday night specials is whether there is a qualified statutory right or privilege in Section 12026 to purchase a concealable firearm and whether this qualified statutory right or privilege to purchase a concealable

Honorable Bill Hoge - p. 6 - #33428

firearm implies that the sale and transfer of concealable firearms that are not expressly prohibited by state law is authorized and lawful under state law.

In Doe v. City and County of San Francisco, supra, at page 518, the California Court of Appeal struck down as preempted by state law an ordinance that banned the possession of handguns except by persons who were either licensed to sell concealable weapons or who had been issued a permit to carry concealed weapons under applicable state law. Although the court appeared to believe that the local ordinance was within the preemptive language of Section 53071 of the Government Code or was in direct conflict with Section 12026, the court found that even if the ordinance was not directly preempted, it was impliedly preempted because the restriction on requiring permits and licenses to possess a concealable firearm necessarily implies that possession is lawful without a permit or license (Doe v. City and County of San Francisco, supra, at p. 518). In fact, the court declared that "[i]t strains reason to suggest that the state Legislature would prohibit licenses and permits but allow a ban on possession" (Ibid.).

Just as the requirement in Section 12026 that no permit or license shall be required for possession of a concealable firearm has been interpreted as implying that possession is lawful under state law, we think that a court would similarly interpret the requirement in Section 12026 that no permit or license shall be required to purchase a concealable firearm as implying that purchasing a Saturday night special or any other type of concealable firearm not expressly prohibited by state law is lawful under state law. In Doe v. City and County of San Francisco, supra, at page 518, the court used this rationale to declare that the Legislature did not intend to allow local governments to ban the possession of concealable firearms. We think the same rationale is applicable here to conclude that the Legislature did not intend to allow local governments to ban the purchase of Saturday night specials. Although it may be contended that at least in form the ability to purchase a firearm as provided by Section 12026 does not involve the ability to sell a firearm and thus is not affected by a prohibition on sales and transfers, we think in substance one may not purchase a Saturday night special if all sales of Saturday night specials have been prohibited. Similarly, we think it would "strain reason" to suggest that the Legislature would prohibit the imposition of a permit or license requirement to purchase Saturday night specials and other concealable firearms yet allow a complete ban on the purchase of Saturday night specials which is what a ban on the sale of Saturday night specials would in substance accomplish.

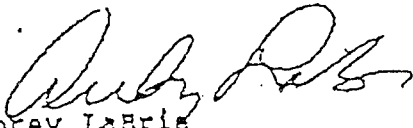
Honorable Bill Hoge - p. 7 - #33428.

Thus, we conclude that a general law city may not prohibit the sale of Saturday night specials or any other type of concealable firearms within the jurisdiction of the city.

Accordingly, it is our opinion that an ordinance enacted by the City of West Hollywood that prohibits the sale of Saturday night specials would not be valid.

Very truly yours,

Bion M. Gregory
Legislative Counsel

BY 
Aubrey LaBrie
Deputy Legislative Counsel

ALB:enb

EXHIBIT B

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
KENT L. DECHAMBEAU
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

JOHN CORZINE
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
TRACY O. POWELL, II
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PRINCIPAL DEPUTIES

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107 SOUTH BROADWAY
LOS ANGELES 90012
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Legislative Counsel of California

BION M. GREGORY

Sacramento, California

March 2, 1982

Honorable H. L. Richardson
Senate Chamber

San Francisco Handgun Ordinance - #4978

Dear Senator Richardson:

QUESTION

May the City and County of San Francisco enact an ordinance to prohibit the sale or possession of handguns?

OPINION

The City and County of San Francisco may not enact an ordinance to prohibit the sale or possession of handguns.

ANALYSIS

¹ In general, we think that the power to enact a handgun¹ regulation ordinance, if any, would proceed from Section 7 of Article XI of the California Constitution,

¹

"Handgun" is not a term used in the Penal Code. For the purposes of this analysis we shall use the term "concealable firearm" instead of "handgun." Section 12001 of the Penal Code states that a "firearm capable of being concealed upon the person" applies to and includes "any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 12 inches in length."

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
SHARON G. BIRENBAUM
AMELIA I. BUDD
EILEEN J. BUXTON
LINDA A. CABATIC
HENRY J. CONTRERAS
BEN E. DALE
CLINTON J. DEWITT
C. DAVID DICKERSON
FRANCES S. DORBIN
LAWRENCE H. FEIN
SHARON R. FISHER
JOHN FOSSETTE
HARVEY J. FOSTER
CLAY FULLER
ALVIN D. GRESS
JOYCE E. HEE
THOMAS R. HEUER
JACK I. HORTON
SANDRA HUGHES
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
ROMULO I. LOPEZ
JAMES A. MARSALA
PETER F. MELNICOE
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
MARGUERITE ROTH
JERRY J. RUIZ
MARY SHAW
WILLIAM K. STARK
JEFF THOM
MICHAEL H. UPSON
RICHARD B. WEISBERG
DANIEL A. WEITZMAN
THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

referred to as the "police power" (see Long Beach Police Officers Assn. v. City of Long Beach, 61 Cal. App. 3d 364, 372).

Section 7 of Article XI of the California Constitution provides:

"Sec. 7. A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."

Whether any particular local ordinance conflicts with a state law in an area of firearm regulation would depend upon the provisions of the ordinance. In determining whether a conflict exists, the following rules would apply.

There is obviously a conflict within the meaning of Section 7 of Article XI if a local ordinance authorizes what state law expressly prohibits or prohibits what state law expressly authorizes. Also, although not perhaps so obvious, there is a conflict (sometimes described as a conflict of jurisdiction) within the meaning of this provision when a local ordinance prohibits the same act that is prohibited by state law. (See, generally, 35 Cal. Jur. 2d, "Municipal Corporations," Sec. 234, page 55.) Where any of the three forms of conflict exists, the local ordinance is rendered invalid.

Also, even in the absence of one of these forms of conflict, local ordinances may not be enacted in a field which has been "preempted" by the state. The rules which are applicable in making such a determination are that the subject is of statewide concern and preempted if: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality (Olsen v. McGillicuddy, 15 Cal. App. 3d 897, 901).

In Galvan v. Superior Court, 70 Cal. 2d 851, decided in 1969, the California Supreme Court considered the validity of an ordinance of the City of San Francisco which made it unlawful to own, possess, or control an unregistered firearm. In response to the plaintiff's contention that the ordinance was invalid because it conflicted with Section 12026 of the Penal Code² which provides that no permit or license may be required for a person to purchase, own, possess, or keep any concealable weapon at his place of residence or business, the court stated that Section 12026 prohibited licenses or permits, not registration requirements. The court then proceeded to distinguish between licensing and registration as follows:

"Any requirement that an item be registered before it can be lawfully used involves, of course, 'permission to do a particular thing,' and to that extent 'registration' is the same as 'licensing.' But the basic, and commonly held, distinction between licensing and registration is that licensing regulates activity based on a determination of the personal qualifications of the licensee, while registration catalogs all persons with respect to an activity, or all things that fall within certain classifications." (Emphasis added.) (Galvan, supra, p. 856)

The court, in seeking to determine whether there was implied legislative intent to preempt arising out of a comprehensive scheme of state legislation, stated, at page 860:

"The subject matter of the ordinance, as we have seen, is gun registration. The only statutory provisions for registering guns--that is, for maintaining a list of firearms and their owners--are directed towards the registration of firearms sold by gun dealers (Pen. Code. Secs. 12073-12078; 12350, 12351) and mail orders (Pen. Code, Sec. 12079). The only other provisions even relating to gun registration concern the obliteration of weapons identification marks (e.g., Pen. Code, Secs. 12090-12094).

"These statutes cannot reasonably be said to show a general scheme for the regulation of the subject of gun registration, and there is no basis for a conclusion that these statutes show a legislative intent to make the subject of gun registration immune from local regulation."

Thus, as indicated in the Galvan case, there are state statutes regulating the subject of registration of firearms, and, as mentioned above, there are state statutes regulating the licensing of firearms.

However, in 1969 the Legislature enacted Section 9619 of the Government Code, now Section 53071 of the Government Code, which provides as follows:

"53071. It is the intention of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the provisions of the Penal Code, and such provisions shall be exclusive of all local regulations, relating to registration or licensing of commercially manufactured firearms, by any political subdivision as defined in Section 1721 of the Labor Code." (Emphasis added.)

Thus, the Legislature has provided that it intends to occupy the whole field of the regulation of registration or licensing of commercially manufactured firearms, and the courts have held that the Legislature has, as a result of Section 53071, occupied or preempted that field to the exclusion of local regulation (Sippel v. Nelder, 24 Cal. App. 3d 173).

In Sippel v. Nelder, supra, decided in 1972, a San Francisco city ordinance purported to require a permit to purchase a concealable firearm, although Section 12026 authorizes the possession of such a firearm in a business or residence without a license. Relying on the legislative intent in Section 53071 of the Government Code to occupy the field of firearm control, both in terms of registration and licensing, the court held the ordinance invalid.

The court in Sippel noted that under Section 12026 the defendant was entitled to possess a concealed firearm at his residence without obtaining a license or permit of any kind and that under the reasoning of Galvan the ordinances requiring a permit would have been invalid even prior to the enactment of Section 9619 [now 53071] of the Government Code. The court concluded "With the enactment of Government Code, Section 9619, the Legislature resolved without any possible doubt as to its intent to fully occupy the field of firearm control, both in terms of registration and licensing." (Sippel, supra, 177).

However, there are aspects of the regulation of firearms that the state has not preempted and these aspects local public entities may regulate.

In Olsen v. McGillicuddy, supra, at page 902, the court stated:

"Following Galvan, the Legislature in 1969 enacted Government Code section 9619 and made clear its intent 'to occupy the whole field of regulation of the registration or licensing of ... firearms. . . .'
(Italics added.) Despite the opportunity to include an expression of intent to occupy the entire field of firearms, the legislative intent was limited to registration and licensing. We infer from this limitation that the Legislature did not intend to exclude municipalities from enacting further legislation concerning the use of firearms."

We note that this case was decided in 1971, prior to Sippel. We further note that the ordinance which the court upheld in Olsen was an ordinance dealing with the possession and discharge of BB guns. Thus, the court was concluding that BB guns were not within the preemptive language of Section 53071 of the Government Code on firearms. Although the sale of an air gun to a minor and the furnishing of an air gun to a minor without parental permission were prohibited by state law (Secs. 12551 and 12552), no state law regulated the use or possession of BB guns. The court also pointed out that Section 25840 of the Government Code specifically authorizes counties to prohibit and prevent the unnecessary discharge of firearms.

Also, local regulations governing and restricting the display and discharge of firearms by peace officers were found not invalid as being in conflict with or invading a field preempted by state law (Long Beach Peace Officers Assn. v. City of Long Beach, 61 Cal. App. 3d 364).

Thus, the exceptions to state control noted above relating to possession and use of BB guns or the display and discharge of firearms by peace officers arise because either there is no conflicting state law on the subject or state law expressly permits local regulation.

With respect to an ordinance prohibiting the sale or possession of concealable firearms the situation is different.

The Legislature has regulated the licensing of retail sellers of concealable firearms (Sec. 12070) and requires licensing authorities of the city or county to accept applications for licenses which may be granted (Sec. 12071). The registration of the sales of concealable firearms by retail sellers is required by law (Secs. 12073 to 12078, inclusive). Private party transactions are regulated also (Sec. 12072), and private party mail order purchases are required to be recorded with the local law enforcement officials (Sec. 12079).

The licensing of those persons authorized to carry concealable firearms is provided for in Sections 12050 to 12054, inclusive. Although this licensing is conducted by local law enforcement authorities, it is clear that they may not refuse to exercise their discretion so as to deny permits to all applicants (Salute v. Pitchess, 61 Cal. App. 3d 557).

Therefore, the Legislature, through these provisions, has established the rights to sell, purchase, and be licensed to carry concealable firearms, subject to certain conditions. Unlike the ordinance in Galvan, which the court determined was a gun registration law requiring only the compiling of information by weapons dealers, an ordinance banning the sale of concealable firearms would prohibit what state law permits and thus would conflict with state law in violation of Section 7 of Article XI of the California Constitution.

Further, since an express statement of legislative intent has been enacted (Sec. 53071, Gov. C.), in our opinion the combination of Section 53071 of the Government Code and existing Penal Code sections on the sale and registration of firearms causes the field of registration or licensing of firearms, including the sale of concealable firearms, to be preempted by the state.

The possession of concealable firearms is prohibited to felons and narcotic addicts (Sec. 12021) and to minors without parental permission (Sec. 12021.5). The concealed carrying of a concealable firearm without having a license (see Secs. 12050-12054) is prohibited (Sec. 12025). However no permit or license may be required of a person to purchase, own, possess, or keep a concealable firearm at his place of residence or place of business (Sec. 12026). The carrying of loaded firearms in public places, with exceptions for specified persons, is prohibited (Sec. 12031). By authorizing the possession and carrying of these weapons under conditions set by state statute, the Legislature has, in our opinion, placed it beyond the power of a city to prohibit the possession of concealable firearms (see Salute v. Pitchess, supra), because an ordinance banning possession of concealable firearms would conflict with state laws which permit possession of concealable firearms. Thus, even if possession of concealable firearms is considered not to be within the preemption of the registration and licensing of firearms, it is our opinion that a local ordinance prohibiting possession of concealable firearms would be in conflict with state law and thus invalid.

Therefore, we conclude that a city may not enact an ordinance prohibiting the sale or possession of concealable firearms.

In reaching this conclusion, we have considered the status of San Francisco as a chartered city and county. Section 6 of Article XI of the California Constitution provides that a chartered city and county is a charter city and a charter county and that its charter city powers supersede conflicting charter county powers.

With regard to chartered cities, Section 5 of Article XI of the California Constitution empowers these cities to exercise full control over their municipal affairs. Thus,

where an ordinance of such a city is involved, state law would prevail in an area which has been preempted, or, if not preempted, as to which there is a conflict, only if the subject matter is also of statewide concern rather than being a municipal affair (Bishop v. City of San Jose, 1 Cal. 3d 56).

The court in Long Beach Police Officers Assn. v. City of Long Beach, supra, upheld local regulations on the display and discharge of firearms by peace officers as not in conflict with state law as discussed previously.

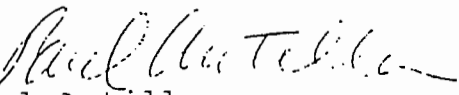
However, in that case the court rejected the argument that the ordinance of a charter city relating to the display and discharge of firearms by city police officers is exclusively a "municipal affair" within the meaning of Section 5 of Article XI of the California Constitution and thus beyond the power of the Legislature to affect. The court found that the subject matter affected not only the municipality's citizens but also transients and was thus a matter of state-wide concern. Thus, the Legislature could regulate the matter if it chose to, even as to chartered cities (Long Beach Police Officers Assn., supra, p. 371).

Thus, since an area of firearms control so closely related to internal city affairs as was the case in the Long Beach situation is not exclusively a municipal affair, it is our opinion that an ordinance relating to the broader area of the sale and possession of concealable firearms by inhabitants of the city would not be considered a municipal affair. Also, in Galvan v. Superior Court, supra, the court, without any discussion of "municipal affairs," held that a gun registration law of the chartered City and County of San Francisco was enacted pursuant to the police power (Galvan, p. 856).

Therefore, we conclude that the City and County of San Francisco may not enact an ordinance to prohibit the sale or possession of handguns (concealable firearms).

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Paul Antilla
Deputy Legislative Counsel

1 I, Vincent Montefusco, declare and say:

2 1. I am one of the petitioners in this suit and am the
3 president of petitioner EFX FILM & TV, INC. which is a California
4 corporation whose principal place of business is in the City of Los
5 Angeles. Hereinafter wherever I use the personal pronoun I shall be
6 referring to both my own situation and that of petitioner EFX FILM
7 & TV, INC. in working for the entertainment industry on a special
8 contract basis.

9
10 2. This work for the entertainment industry includes acquiring
11 firearms, including fully automatic weapons, on a rental basis for
12 use in live theatrical productions and the making of television
13 shows, movies, videos and commercials. I perform contract services
14 as a Special Effects Supervisor and Weapons Master on productions
15 by entertainment industry firms. As Special Effects Supervisor I am
16 in charge of the use and actual or simulated effects of explosives
17 and weapons of various types, including explosives and weapons that
18 I custom design and build specially for particular productions. As
19 Weapons Master my duties include supplying or procuring so-called
20 assault weapons, fully automatic firearms, and other firearms for
21 such productions, and I receive, secure and store such weapons
22 while the production is on-going and until they are returned to the
23 firm from which they have been rented (which in some cases is or
24 has been my own EFX). For instance, during the week starting Nov.
25 2, 1997, acting as Weapons Master for Walt Disney Productions, I
26 rented 15 Uzi submachine guns for Disney and secured and stored
27 them in the City of Los Angeles for a show that was shot in that

1 governing both fully automatic weapons and "assault weapons." My
2 licenses were issued entirely on the basis that I rent such weapons
3 to the entertainment industry movie and TV productions. DOJ writes
4 them with the admonition "ISSUED FOR USE IN COMMERCIAL MOTION
5 PICTURE AND TELEVISION PRODUCTIONS", and both my full auto and
6 assault weapon licenses bear that admonition.


7
8 5. In my experience in this field over 20+ years I have become
9 aware of the kinds of firearms, including fully automatic firearms
10 and "assault weapons", normally used and required in the production
11 for the entertainment industry. They include none that come with a
12 feeding device of 10 or less rounds. (With the possible exception
13 of some obscure variants of the 1898 "Broomhandle" Mauser pistol,
14 there are no fully automatic weapons -- certainly no modern ones --
15 that come with a feeding device of 10 or less rounds.) Moreover,
16 even if it were possible to get special 10 or less round magazines,
17 the entertainment industry could not use them since they would
18 obviously not represent the kinds of weapons that are used in real
19 life.

20
21 6. The effect of the CITY's feeding device enactment will be
22 to bar the filming in the City of Los Angeles of any TV or movie or
23 other production involving fully automatic weaponry (or, indeed,
24 modern semi-automatic firearms, including "assault weapons"). Even
25 if I possessed such a firearm that was appropriate or necessary to
26 a particular production, I could not rent it to the producers. So
27 doing would constitute a "transfer" forbidden by the CITY's law. By

1 the same token when working in my capacity of Weapons Master, if I
2 needed to rent 100 M-16 and/or AK-47 rifles for a Vietnam War
3 movie, I could not receive those rifles from one of the larger
4 rental companies -- because to do so would constitute multiple
5 "transfers" forbidden by the CITY's law. And, if I did receive and
6 secure those rifles, I could not thereafter give them to members of
7 the cast to use in a day's filming. Again, doing so would involve
8 multiple "transfers", all forbidden by the CITY's law.

9
10 VERIFICATION

11 I declare under penalty of perjury under the laws of the State
12 of California that the foregoing is true and correct. Executed this
13 15 day of November, 1997, at Los Angeles, California.

14
15
16 
17 Vincent Montefusco
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Eugene Woldberg's declaration will be filed on November 24, 1997

VERIFICATION

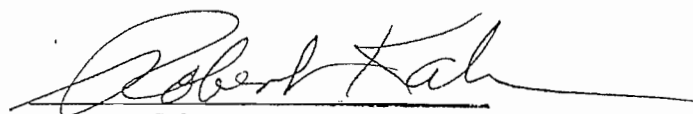
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing Complaint, the Amended Memorandum of Points and Authorities and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on November 15, 1997, at Los Angeles, California.

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



ROBERT KAHN

dba B & B SALES/GROUP Inc.
dba BUMBLE BEE WHOLESALE

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COUNTY OF LOS ANGELES

I, Haydee Villegas, am employed in the City of Los Angeles, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 5757 W. Century Blvd, Suite 700, Los Angeles, California 90045-6408.

On November 20, 1997, I served the foregoing document(s) described as

**AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION
FOR WRIT OF MANDATE AND FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

[] the original.

[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

**Mr. Byron Boeckman
Los Angeles City Attorney's Office
1800 City Hall East
200 N. Main Street
Los Angeles, CA 90012**

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on November 20, 1997, at Los Angeles, California.

(PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

Executed on November 11, 1997, at Los Angeles, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

— (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this court at whose direction the service was made.

Haydee Villegas
HAYDEE VILLEGAS