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STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

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return*

**PAULA FISCAL, LARRY P. BARSETTI, REBECCA KIDDER,  
DANA K. DRENKOSKI, JOHN CANDIDO, ALAN BYARD,  
ANDREW SIRKIS, NATIONAL RIFLE ASSOCIATION, SECOND  
AMENDMENT FOUNDATION, CALIFORNIA ASSOCIATION OF  
FIREARM RETAILERS, LAW ENFORCEMENT ALLIANCE OF  
AMERICA, SAN FRANCISCO VETERAN POLICE OFFICERS  
ASSOCIATION**

**No.:A115018**

**Plaintiffs-Respondents,**

**vs.**

**THE CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO  
POLICE CHIEF HEATHER FONG in her official capacity, SAN  
FRANCISCO POLICE DEPARTMENT**

**Defendants-Appellants.**

**FILED**

MAY - 4 2007

County of San Francisco Case No.: CPF05505960  
The Honorable James Warren

Court of Appeal - First App. Dist.  
DIANA HERBERT

By \_\_\_\_\_  
DEPUTY

**RESPONDENTS' MOTION TO STRIKE OR DISREGARD  
PORTIONS OF APPELLANTS' OPENING BRIEF AND  
APPELLANTS' APPENDIX; OR IN THE ALTERNATIVE TO  
ALLOW RESPONDENTS TO SUBMIT THEIR OWN  
CRIMINOLOGICAL DISCUSSION**

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May 3, 2007

Clerk of the Court  
SAN FRANCISCO COURT OF APPEALS  
First Appellate District  
350 McAllister Street  
San Francisco, CA 94102

**VIA OVERNIGHT MAIL**

**Re: City and County of San Francisco et al., v. Fiscal et al.,**  
**Case No. A115018**


Dear Clerk:

Enclosed please find the original and four copies of the "Respondents' Motion to Strike or Disregard Portions of Appellants' Opening Brief and Appellants' Appendix" for the above referenced matter. Please file the original and conform and return the copy in the enclosed self-addressed, stamped envelope. ✓

Thank you in advance for your prompt attention to this request. Please feel free to contact me if you have any questions or concerns. You can also reach me by email at [cayala@tmllp.com](mailto:cayala@tmllp.com).

Sincerely,

**TRUTANICH • MICHEL, LLP**

  
Claudia Ayala  
Legal Secretary/Paralegal

CA/s  
Enc.

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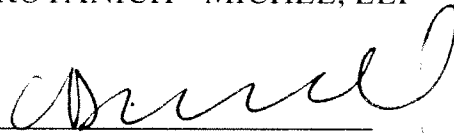
**RESPONDENTS' MOTION TO STRIKE OR DISREGARD  
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Respondents move this court to strike portions of the opening brief filed by Appellants. Respondents also move this court to strike portions of Appellants' Appendix. This motion is made on the grounds that the items that Respondents ask to be stricken are irrelevant to the issues before this court. This motion is based upon the attached memorandum of points and authorities, the record on appeal, the appellate briefs, and upon all of the pleadings and records in this case.

DATED: 5/2/07

Respectfully, submitted  
TRUTANICH • MICHEL, LLP



C. D. Michel  
Attorney for Petitioners/Appellants

## MEMORANDUM

The Supreme Court and this court have endlessly declared that the judicial branch does not review the wisdom of laws<sup>1</sup> – and specifically that discussions of the wisdom of gun control should be addressed to the Legislature not the courts.<sup>2</sup> Despite this, Appellants’ Opening Brief (“AOB”) saw fit to devote its first few pages to an emotional and highly misleading discussion of gun prohibition as public policy. (AOB at pp. 3-6, Section I of Appellants’ “Legal and Factual Background” discussion.) Respondents respectfully submit that this discussion should be stricken or disregarded as irrelevant.

The section of Appellants’ Opening Brief that Respondents ask this court to strike relies upon materials that the City submitted to the trial court in opposition to Petitioners’ writ motion. At the trial court level, Petitioners objected to and moved to strike these public policy materials. (4 AA

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<sup>1</sup> See, e.g., *Atherton v. Board of Supervisors* (1874) 48 Cal. 157, 160; *Santa Monica Beach. Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 962.

<sup>2</sup> *Galvan v. Superior Court* (1968) 70 Cal.2d 851, 869 (noting that the parties “submitted materials concerning the desirability of weapons control, and the effect of weapons on crime rates” and holding that the parties arguments about the matters, “although of possible interest to the Legislature, are without merit in this court”); *Doe v. City and County of San Francisco* (1982) 136 Cal.App.3d 509, 511 (noting that although “[h]andgun control is a volatile issue of great public importance, invoking complex policy considerations . . . [the court is] only concerned with the narrow legal question of whether the state Constitution and state statutes permit San Francisco to enact [a handgun control] ordinance”).

25:0623-0629.) The trial court never ruled specifically on Petitioners' motion to strike, but it did state that it considered the public policy materials irrelevant.<sup>3</sup> Respondents now renew their request that the materials be stricken. These materials include the following:

- Declaration of Kathy Hood in Support of City's Opposition to Petition for Writ of Mandate (1 AA 12:0131-0133)
- Declaration of Diane Bradford in Support of City's Opposition to Petition for Writ of Mandate (1 AA 11:0128-0130 )
- Declaration of Cathy Tyson in Support of City's Opposition to Petition for Writ of Mandate (1 AA 10:0125-0127)
- Declaration of Colleen Fatooh in Support of City's Opposition to Petition for Writ of Mandate (1 AA 9: 0122-0124)
- Declaration of John Hennessey in Support of City's Opposition to Petition for Writ of Mandate (1 AA 8:0118-0121)
- Declaration of Vince Chhabria in Support of City's Opposition to Petition for Writ of Mandate (1 AA 7:0084-0117)
- Exhibit B to City's Request for Judicial Notice in Support of Opposition; *San Francisco Firearm Injury Reporting System, Annual Report* (2 AA 13:0144-0360)
- Exhibit C to City's Request for Judicial Notice in Support of Opposition; *Tracking Violent Injuries and Deaths in San Francisco County* (3 AA 13:0364-0444)

Only relevant evidence is admissible. (Evid. Code, § 350.) And relevant evidence is evidence "having any tendency in reason to prove or

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<sup>3</sup> See Reporter's Transcript of February 23, 2006 Hearing at p. 48, lines 17-23: "The Court's decision will be made only on relevant and admissible evidence. [¶] For example, I have got affidavits from people in the City saying this is why we like it . . . . Those things as a practical matter do not break the legal analysis on that."

disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) Section I of Appellants’ “Legal and Factual Background discussion (AOB at pp. 3-6), and the evidence upon which it relies, could only have been submitted in an attempt to convince the court that Proposition H is desirable from a public policy standpoint. But again, this is a matter for the Legislature – not the courts – to decide, and any evidence as to the desirability of Proposition H is of no consequence to the determination of this action. As an appendix must not contain any documents that are “unnecessary for proper consideration of the issues” raised on appeal (Rules of Court, rule 8.124 (b)(2)), it would be proper for this court to strike the City’s irrelevant evidence.

In the unlikely event that this court considers the City’s public policy argument and evidence helpful, Respondents’ note that they have substantial evidence of their own that contradicts the City’s position and they ask that they be permitted to submit this evidence and fully brief the matter.

DATED: 5/2/07

Respectfully, submitted  
TRUTANICH • MICHEL, LLP



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C. D. Michel  
Attorney for Petitioners/Appellants

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, 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 180 East Ocean Blvd., Suite 200 Long Beach, CA 90802.

On May 3, 2007, I served the foregoing document(s) described as

**RESPONDENTS' MOTION TO STRIKE OR DISREGARD  
OR IN THE ALTERNATIVE TO ALLOW RESPONDENTS TO  
SUBMIT THEIR OWN CRIMINOLOGICAL DISCUSSION**

on the interested parties in this action by placing

the original

a true and correct copy

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

“SEE ATTACHED SERVICE LIST”

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 Long Beach, 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 May 3, 2007, at Long Beach, California.

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

  
\_\_\_\_\_  
CLAUDIA AYALA



PAULA FISCAL et al.,  
v.  
CITY AND COUNTY OF SAN FRANCISCO et al.,  
CASE NO.: A115018

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San Francisco County Superior Court      Court Judge  
400 McAllister St.      Department 301  
San Francisco, CA 94102

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San Francisco, CA 94102

