

1 SAMUEL L. JACKSON (SBN 79081)
 City Attorney
 2 SHANA FABER (SBN 110910)
 Senior Deputy City Attorney
 3 CITY OF SACRAMENTO
 980 9th Street, Tenth Floor
 4 Sacramento, CA 95814
 Telephone: 916-264-5346
 5 Facsimile: 916-264-7455

6 ANDREW W. STROUD (SBN 126475)
 NANCY J. SARACINO (SBN 179273)
 7 MENNEMEIER, GLASSMAN & STROUD LLP
 980 9th Street, Suite 1700
 8 Sacramento, CA 95814-2737
 Telephone: 916-553-4000
 9 Facsimile: 916-553-4011

10 Attorneys for Defendants/Respondents
 City of Sacramento, Mayor Jimmie Yee,
 11 Sacramento City Council, Sacramento
 Police Department and Chief of Police
 12 Arturo Venegas, Jr.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 FOR THE COUNTY OF SACRAMENTO

15 Professor ROBERT B. MILLER, M.D.;)
 CALIFORNIA RIFLE AND PISTOL)
 16 ASSOCIATION INC., a California)
 corporation; NATIONAL RIFLE)
 17 ASSOCIATION a New York corporation,)
 CHRIS V. FULSTER, JR., dba)
 18 BROADWAY, BAIT, ROD & GUN; DON)
 B. LEONG, dba RIVER CITY GUN)
 19 EXCHANGE; MONTY ARPAD,)
)
 20 Plaintiffs/Petitioners,)
)
 21 v.)
)
 22 CITY OF SACRAMENTO, JOE SERNA,)
 JR., as its Mayor, SACRAMENTO CITY)
 23 COUNCIL, SACRAMENTO POLICE)
 DEPARTMENT, ARTURO VENEGAS,)
 24 JR., as Chief of Police,)
)
 25 Defendants/Respondents.)
)
 26 _____)
)
 27)
 28)

CASE NO. 98CS01422

**RESPONDENTS' MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 OPPOSITION TO MOTION FOR
 ISSUANCE OF WRIT OF MANDATE**

[Exempt from Filing Fees Pursuant to
 Government Code § 6103]

DATE: December 8, 2000
 TIME: 9:30 a.m.
 DEPT: 23
 JUDGE: James T. Ford

Action Filed: May 28, 1998

1 I.

2 **INTRODUCTION**

3 Sacramento’s Chief of Police did not act in an arbitrary or capricious manner
4 when he determined that the City of Sacramento should base the Roster of handguns banned
5 under its Saturday Night Special Ordinance on the roster adopted by other cities using an
6 identical definition of a Saturday Night Special.

7 The City of Sacramento based its Roster on the roster used by a consortium of
8 twenty Bay Area cities, but it certainly did not do so “blindly.” The Chief of Police assigned
9 three employees of the Sacramento Police Department to research and investigate the ordinance
10 under consideration by the Sacramento City Council and the rosters other cities adopted pursuant
11 to identical ordinances. Two of those employees, Christopher Hadley and Lt. Mark Sakauye,
12 spent more than 100 hours between them looking into the definition of a “junk gun” and why the
13 weapons listed on the roster Sacramento was considering qualified as “junk guns” under the
14 definition.

15 Significantly, at the end of their research and investigation, both Lt. Sakauye and
16 Mr. Hadley concluded that in adopting the roster used by twenty Bay Area cities, Sacramento
17 was not including any handguns on the Roster that should have been excluded, nor was
18 Sacramento excluding any weapons they thought should have been included. There was nothing
19 arbitrary or capricious about their decision. Rather, it was a well-researched, well-reasoned
20 decision supported by law and common sense.

21 As this Court recognized in its April 14, 2000 Ruling on Demurrer, the creation of
22 the Roster of guns banned under the Saturday Night Special Ordinance was a quasi-legislative
23 act. As such, judicial review of the Roster is limited to deciding whether the Chief of Police or
24 his agents acted in an arbitrary or capricious manner when promulgating Sacramento’s Roster.
25 Specifically, the issue that this Court must decide is whether the Roster properly carries out the
26 policies articulated by the City Council in exercising its police power to regulate the sale of
27 unsafe handguns. Under this standard of review, Sacramento’s Roster and the Chief’s actions in
28

1 adopting the Roster must be upheld against Petitioners' challenge. The Motion for Issuance of
2 Writ of Mandate should be denied, and the Third Amended Complaint dismissed in its entirety.

3 **II.**

4 **FACTUAL SUMMARY**

5 On November 4, 1997, the Sacramento City Council's Law and Legislation
6 Committee heard the Police Department's first staff report on a proposed ordinance banning the
7 sale of Saturday Night Specials in the City of Sacramento. Legislative Record of Proceedings
8 Pertaining to the Adoption of Sacramento Ordinance 97-077 and Roster, Banning the Sale of
9 Saturday Night Specials ("Legislative Record"), filed herewith, at SAC1051. A tape of the
10 November 4, 1997 hearing is included with the Notice of Lodging Legislative Record and
11 Request for Judicial Notice, filed herewith. The Saturday Night Special Ordinance considered by
12 the Committee and the City Council was "modeled after the West Hollywood ordinance which
13 has withstood local court challenge. There are 37 other jurisdictions throughout California that
14 prohibit the sales of SNS." Legislative Record at SAC0920.

15 At the Law and Legislation Committee meeting, several Councilmembers asked
16 the Police Department questions about the roster of guns that would be banned under the
17 proposed ordinance. In a December 1, 1997 report to the Sacramento City Council, the Police
18 Department responded to those questions. The first was posed by Councilman Steinberg: "How
19 will the Police Department determine a Saturday Night Special?" Legislative Record at
20 SAC0925. The report back to the City Council was as follows: "The Police Department will
21 adopt the roster utilized by the East Bay Public Safety Corridor Partnership which consists of 20
22 jurisdictions." Id.

23 The second question was posed by Councilman Kerth and Councilman Cohn:
24 "What is the cost to establish the roster?" Id. The report back to the City Council was as
25 follows: "Establishing the roster consists of the following activities: identifying and maintaining
26 a roster of weapons classified as SNS using the Chief of Police or his designee (8 hours per year
27 at \$240). The Police Department intends to adopt the East Bay Public Safety Corridor
28 Partnership list which is used by 20 Bay Area jurisdictions." Id.

1 Between November 4, 1997, when the Law and Legislation Committee met, and
2 December 16, 1997, when the City Council voted to pass the SNS Ordinance, Police Department
3 staff were busy. The Department asked Christopher Hadley, the Supervisor of the Property
4 Management Section for the Police Department and the Department Armorer for many years, to
5 study the Saturday Night Special ordinance adopted by the City of West Hollywood so that the
6 Department could report back to the City Council in connection with the City Council’s
7 consideration of adopting a similar ordinance. Declaration of Christopher Hadley in Opposition
8 to Motion for Issuance of Writ of Mandate (“Hadley Decl.”), ¶ 4.

9 Mr. Hadley spent more than 60 hours researching issues relevant to advising the
10 Chief and City Council on the proposed Ordinance and Roster. Hadley Decl., ¶ 5. The
11 documents and research notes Mr. Hadley compiled in the course of his review and investigation
12 into the proposed Ordinance and Roster are included in the certified Quasi-Legislative Record of
13 Proceedings Pertaining to the Adoption of the Sacramento Roster Pursuant to Ordinance 97-077,
14 Banning the Sale of Saturday Night Specials (“Quasi-Legislative Record”), filed herewith, Vols.
15 I and II, documents SAC0001 - SAC0381. See Declaration of Christopher Hadley
16 Authenticating Documents, filed herewith.

17 Mr. Hadley’s research and investigation included:

- 18 • Reviewing the junk gun ordinance passed by the City of West Hollywood,
19 the roster adopted pursuant to that ordinance, and the reconsideration
20 procedure established for challenging a weapon on the roster; reviewing
21 the ruling of the Superior Court of the County of Los Angeles on the
22 California Rifle & Pistol Association’s Motion for Summary Judgment;
23 and discussing the West Hollywood ordinance with Sayre Weaver, the
24 person in the City of West Hollywood’s City Attorney’s Office principally
25 responsible for the drafting and legal defense of the Ordinance (Hadley
26 Decl., ¶ 6(a));
- 27 • Also in connection with his research into the West Hollywood ordinance
28 and roster, speaking on several occasions with Whit Collins, whom Ms.

1 Weaver identified as a firearms consultant she worked with in drafting the
2 Ordinance, discussing those sections of the Ordinance setting forth the
3 characteristics of handguns subject to the Ordinance, and reviewing
4 materials provided by Mr. Collins describing and discussing the elements
5 of the definition (*id.*, ¶ 6(b));

- 6 • Reviewing a document titled “Answers to the Most Frequently Asked
7 Questions About ‘Junk Guns’ or ‘Saturday Night Specials,’” provided to
8 Mr. Hadley by Ms. Weaver and prepared by Ms. Weaver and Mr. Collins
9 (*id.*, ¶ 6(e));
- 10 • Reviewing a document titled “Commonly Asked Questions About Local
11 Bans on Junk Gun Sales” (*id.*, ¶ 6(f));
- 12 • Reviewing study conducted by Ellen Robinson-Haynes, Garen J.
13 Wintemute and the U.C. Davis Violence Prevention Research Program,
14 titled “Gun Confiscation in the Neighborhood of Oak Park” (*id.*, ¶ 6(g));
- 15 • Along with Lt. Sakauye, meeting with a metallurgical engineer to better
16 understand the significance to the safety of a handgun that it be
17 manufactured of heat treated carbon steel or a material of equal or greater
18 tensile strength (*id.*, ¶ 6(j));
- 19 • Reviewing a document provided to him by Dr. Garen Wintemute from
20 another study he had authored, that listed the handguns that fail the federal
21 standards applied to imported firearms, including many weapons listed on
22 the rosters Mr. Hadley was evaluating, such as weapons manufactured by
23 Bryco, Davis, Lorcin, Phoenix Arms, and Sundance Industries (*id.*, ¶ 6(h));
- 24 • Reviewing a letter written to Dr. Wintemute by a representative of the
25 Bureau of Alcohol, Tobacco and Firearms confirming that a number of
26 weapons listed on the rosters Mr. Hadley was reviewing did not conform
27 to the Federal Factoring Criteria for importation into the United States.
28

1 Those weapons included weapons manufactured by Accu-Tek, Bryco,
2 Davis, Lorcin, Phoenix, Intratec, and Sundance (id., ¶ 6(i));

- 3 • Reviewing the ordinance and roster adopted by the City of San Pablo, and
4 the ordinance passed by the City of Oakland (id., ¶ 6(k) and (l));
- 5 • Speaking to a number of individuals regarding their experience defining
6 and categorizing weapons as “junk guns,” including Maria Viramontes of
7 the East Bay Public Safety Corridor Partnership, a representative from the
8 National Institute of Justice, Mark Warshaw of the Los Angeles Police
9 Department’s Gun Unit, Sergeant Gary Tolleson of the Oakland Police
10 Department, and Eric Gorovitz of the San Francisco Trauma Foundation
11 (id., ¶ 6(m));
- 12 • Reviewing a document titled “A ‘Primer’ For Handgun Terminology”
13 provided to Mr. Hadley by Ms. Weaver (id., ¶ 6(m)); and
- 14 • Reviewing materials from the East Bay Public Safety Corridor Partnership
15 related to the Partnership’s work to promote community safety through the
16 banning of Saturday Night Specials (id., ¶ 6(n)).

17 The Department also assigned Lt. Mark Sakauye to research and review the
18 ordinances passed by other cities and their rosters to understand the definition of a Saturday
19 Night Special, or “junk gun,” and what aspects of the definition applied to categorize the
20 weapons listed on other cities’ rosters as “junk guns.” Declaration of Mark Sakauye in
21 Opposition to Motion for Issuance of Writ of Mandate (“Sakauye Decl.”), ¶ 4. At the time, Lt.
22 Sakauye was the Lieutenant in charge of Economic Development, a special projects unit in the
23 Office of the Chief. Id., ¶ 2. Lt. Sakauye spent more than 40 hours conducting his research into
24 the ordinance and roster under consideration by the City of Sacramento. Id., ¶ 4. The documents
25 and research notes Lt. Sakauye compiled in the course of his review and investigation into the
26 proposed ordinance and roster are included in the Quasi-Legislative Record, Vols. II - IV,

1 documents SAC0401 - SAC0688. See Declaration of Mark Sakauye Authenticating Documents,
2 filed herewith.¹

3 Lt. Sakauye’s research and investigation included:

- 4 • Reviewing the study conducted by Ellen Robinson-Haynes and Garen J.
5 Wintemute by the U.C. Davis Violence Prevention Research Program,
6 titled “Gun Confiscation in the Neighborhood of Oak Park,” dated October
7 7, 1996 (id. at ¶ 8(b));
- 8 • With Christopher Hadley, meeting with a metallurgical engineer to better
9 understand the significance to the safety of a handgun that it be
10 manufactured of heat treated carbon steel or a material of equal or greater
11 tensile strength (id. at ¶ 8(h));
- 12 • Reviewing the City of Oakland’s ordinance and roster banning the sale of
13 Saturday Night Specials and the letters sent by the City of Oakland to
14 manufacturers and dealers of weapons found on Oaklands roster of
15 weapons banned under its Saturday Night Special Ordinance, which the
16 City of Sacramento used as models for its notification letter (id. at ¶ 8(c));
- 17 • Reviewing the federal regulations defining a handgun’s frame to better
18 understand the ordinance’s definition of a Saturday Night Special, in
19 particular Category 1, which prohibits the sale of handguns whose frames
20 are not made of heat treated carbon steel or a material of equal or greater
21 tensile strength (id. at ¶ 8(f)); and

24 ¹ The Quasi-Legislative Record also includes documents from the files of Tammy Jones,
25 an analyst in the Economic Development Unit in the Office of the Chief, and from the files of
26 Rhonda Matsuo, the former Administrative Services Officer in the Office of the Chief of the City
27 of Sacramento. Ms. Jones assisted with the research and collection of information related to the
28 proposed ordinance and roster. See Declaration of Tammy Jones Authenticating Documents,
filed herewith. Ms. Matsuo was one of the key staff investigating the roster and ordinance on
behalf of the Chief, but she is now deceased. Tina Lee-Vogt, who succeeded Ms. Matsuo, has
filed a Declaration Authenticating Documents for the records from Ms. Matsuo’s files. All of
these documents were produced to Petitioners during discovery.

1 This action was originally filed on May 28, 1998. After a series of demurrers, the
2 first three claims of the Third Amended Petition comprise the operative petition and complaint in
3 this challenge to the City of Sacramento’s Roster. The first cause of action for “arbitrary and
4 capricious action” alleges that if the Chief of Police had “consistently and coherently”
5 implemented the Ordinance, the ban Roster “would list almost all modern revolvers, but it
6 actually lists only an arbitrarily, irrationally, and capriciously chosen few.” Third Amended
7 Petition at 7:21-24. The second cause of action, “The Ban Roster is Ultra Vires,” alleges that the
8 Roster is “ultra vires and invalid” both because it improperly includes some handguns, and
9 because it fails to include weapons that should be included under the Ordinance’s definition of a
10 “Saturday Night Special.” Finally, the third cause of action alleges that the administrative
11 appeals process for challenging the classification of a weapon on the Roster as a “Saturday Night
12 Special” violates due process.

13 In its written Ruling on the City’s Demurrer, issued April 14, 2000, this Court
14 held that the “roster is quasi-legislative in character.” Ruling, page 2. The Court also ruled that
15 “[t]he reconsideration procedures required by the SNS ordinance, while resembling due process
16 adjudicatory procedures, serve a legislative fact-finding function that advances the accuracy of
17 the roster and are not constitutionally required for the protection of any individual firearms
18 manufacturers’ and dealers’ interests.” *Id.*

19 On May 5, 2000, the City of Sacramento moved for a protective order to limit the
20 scope of discovery in this case. Declaration of Nancy J. Saracino in Opposition to Motion for
21 Issuance of Writ of Mandate (“Saracino Decl.”), ¶ 2. This Court denied the City’s motion, and
22 invited the Petitioners to conduct discovery. Saracino Decl., ¶ 3. Petitioners subsequently served
23 a total of 488 interrogatories in three sets on Respondents. Saracino Decl., ¶ 4. Respondents
24 answered two sets and objected to the third on the basis that it was duplicative. *Id.* Petitioners
25 also noticed the depositions of three City of Sacramento witnesses: Christopher Hadley, Lt.
26 Mark Sakaue, and Captain Rich Shiraishi. The afternoon before Petitioners were to depose Lt.
27 Sakaue and Captain Shiraishi, counsel for Petitioners called and canceled all depositions. *Id.*, ¶
28 5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

ARGUMENT

A. Judicial Review Of The Chief’s Quasi-Legislative Determinations In Adopting The Roster Is Narrow In Scope And Limited To The Record Before The Chief And His Designees At Time The Decision Was Made.

1. The Standard Of Review Affords Tremendous Deference To The Quasi-Legislative Decisionmaker.

When courts review the quasi-legislative acts of administrative agencies, they are restricted to assessing whether the administrator acted in a manner that was “arbitrary, capricious, or without rational basis.” Culligan Water Conditioning v. State Bd. of Equalization, 17 Cal. 3d 86, 92 (1976). See also Robinson v. City of Yucaipa, 28 Cal. App. 4th 1506, 1515 (1994) (“When an administrative agency is charged with administering a statute or ordinance, the administrative agency’s interpretation of the applicable law is given great deference by the reviewing court. The administrative agency’s construction of the law need not be the only reasonable interpretation and its application of the law will be upheld unless it is arbitrary, capricious, or lacks any rational basis or disregards the plain meaning of the ordinance”) (internal citations omitted). As the California Supreme Court characterized the standard of review of quasi-legislative decisions in 1998,

It is a ‘black letter’ proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind – quasi-legislative rules – represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature’s lawmaking power. Because agencies granted such substantive rulemaking power are truly ‘making law,’ their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

1 Yamaha Corp. of America v. State Bd. of Equalization, 19 Cal. 4th 1, 10 - 11 (1998) (citations
2 omitted).² As the Yamaha court indicated, the importance of the restriction on judicial review of
3 quasi-legislative acts stems from the doctrine of separation of powers. “The courts exercise
4 limited review of legislative acts by administrative bodies out of deference to the separation of
5 powers between the Legislature and the judiciary, to the legislative delegation of administrative
6 authority to the agency, and to the presumed expertise of the agency within its scope of
7 authority.” California Hotel and Motel Ass’n v. Industrial Welfare Comm’n, 25 Cal. 3d 200, 211-
8 212 (1979).

9 This Court has already determined that the adoption of the Roster constituted a
10 quasi-legislative act. Therefore, the decision by the Chief of Police to adopt the roster used by 20
11 Bay Area cities, specifically the City of San Pablo’s roster, should be reviewed to determine
12 whether that decision was “arbitrary, capricious, or without rational basis.”

13 **2. The Scope Of Review of a Quasi-Legislative Decision Does Not**
14 **Include Extra-Record Evidence.**

15 This Court must restrict its evaluation of the Chief’s actions in adopting the
16 Roster to an assessment of the evidence before Chief and his designees at the time they were
17 making the decision to adopt the Roster. “[E]xtra-record evidence is generally not admissible to
18 show that an agency ‘has not proceeded in a manner required by law’ in making a quasi-
19 legislative decision.” Western States Petroleum Ass’n v. Superior Court, 9 Cal. 4th 559, 565

20
21 ² Petitioners quote from Yamaha, but they incorrectly reference the portions of the
22 opinion relating to interpretive rulemaking rather than the portions of the opinion relating to
23 quasi-legislative rules. The Yamaha court clearly notes the distinction between the two types of
24 administrative decisionmaking: “It is the other class of administrative rules, those interpreting a
25 statute, that is at issue in this case. Unlike quasi-legislative rules, an agency’s interpretation does
26 not implicate the exercise of a delegated lawmaking power; instead, it represents the agency’s
27 view of the statute’s legal meaning and effect, questions lying within the constitutional domain of
28 the courts.” Id at 11. The court again pointed out the distinction between the “narrow standard
under which quasi-legislative rules are reviewed” and the “broader standard courts apply to
interpretations” on pages 11 - 12. Petitioners citation to Yamaha on page 2 of their brief
regarding “careful consideration” references statutory interpretation, not quasi-legislative
rulemaking; similarly, the citations on pages 3, 13 and 14 relate to reviewing the “other class of
administrative rules,” not quasi-legislative determinations. As this Court recognized in its April
14, 2000 Ruling on Demurrer, the creation of the Roster of banned guns was a quasi-legislative
act; the Ordinance clearly required the Chief of Police to create a Roster. There was no statutory
interpretation required in the decision to adopt a Roster under the Ordinance.

1 (1995). “On review of administrative agency findings, extra-record evidence cannot be admitted
2 merely to contradict the evidence on which the agency relied in making a quasi-legislative
3 decision or to raise a question regarding the wisdom of that decision.” Associated Builders and
4 Contractors, Inc. v. San Francisco Airports Comm’n, 21 Cal. 4th 352, 374 (1999), citing Western
5 States Petroleum. In Associated Builders, the California Supreme Court disregarded extra-record
6 declarations submitted by the party challenging the quasi-legislative decision, and denied the
7 party’s request for judicial notice of articles and reports that were not part of the quasi-legislative
8 record. Id. at 376, n.6.

9 Because administrators making quasi-legislative decisions are not required to
10 make findings of fact or establish an administrative record, courts must evaluate the quasi-
11 legislative decision by evaluating the studies, reviews and reports made by and referred to by the
12 administrator in rendering his or her decision. City of Santa Cruz v. Local Agency Formation
13 Commission, 76 Cal. App. 3d 381 (1978). In that case, the court determined that from the
14 “whole record we conclude that [LAFCO’s] determinations were neither ‘arbitrary’ nor
15 ‘capricious.’” Id. at 393.

16 Respondents have lodged a Quasi-Legislative and Legislative Record pertaining
17 to the adoption of the Roster and passage of the Ordinance. All of the documents included in
18 these records were produced to Petitioners in the course of discovery. Saracino Decl., ¶ 6. This
19 Court’s review of the Chief’s actions in advising the City Council on the Roster, and in adopting
20 the Roster pursuant to the Ordinance, should be restricted to the evidence contained in these
21 records and the declarations of the Police Department staff who conducted the research and
22 investigation at the request of the Chief. Therefore, this Court should disregard all extra-record
23 evidence submitted by Petitioners with their Motion for Issuance of Writ of Mandate.³ There is
24 no authority to suggest that the inquiry need go any further in evaluating whether the Chief’s
25 quasi-legislative authority was properly carried out.

28 ³ Respondents have filed Objections to Evidence and Motion to Strike herewith.

1 As was the case in Associated Builders, nothing in Sacramento’s Quasi-
2 Legislative record indicates that the Chief or his designees made an arbitrary or capricious
3 decision in adopting Sacramento’s Roster. Instead, the record shows that the Police Department
4 spent over 100 hours researching the definition of a “junk gun,” the rosters adopted pursuant to
5 that definition by other cities, and why the weapons were properly included on those rosters. The
6 record also shows that the Police Department reported to the City Council that it intended to
7 adopt the roster used by 20 Bay Area cities as its own. Petitioners’ challenge to the manner in
8 which the Roster was created and to the Roster itself must fail.

9 **3. Petitioners’ Administrative Law Cases are Inapplicable.**

10 Despite the clear standards of review for the Chief’s quasi-legislative act in
11 adopting the Roster, throughout their brief Petitioners rely upon cases interpreting the State
12 Administrative Procedures Act (“APA”), and cases concerning appeals from administrative
13 hearings in which the law establishing the process required special findings. Petitioners’ reliance
14 on these cases is entirely misplaced. By its terms, the APA does not apply to the Ordinance, and
15 nothing in the Ordinance, nor any other law, required that the Chief hold administrative hearings
16 or make any findings prior to establishing the Roster. Petitioners are reading requirements into
17 the Ordinance which simply do not exist.

18 The Chief’s first job was to develop the Roster, which he did. The Chief was also
19 required to hold administrative hearings should a manufacturer contest the placement of its
20 weapon(s) on the Roster. This they did not do. Therefore, no administrative hearings were held.
21 Petitioners cannot now complain about the lack of any administrative findings when they never
22 invoked the administrative process in the first instance.

23 The vast majority of the cases upon which Petitioners rely for the proposition that
24 the Chief violated “fundamental principles of administrative law” in adopting the Roster have
25 absolutely no relevance to this action. Many of the cases concern compliance with the APA or
26 other administrative laws applicable to the adoption of state regulations. See, e.g., Pulaski v. Cal.
27 OSHA Bd., 75 Cal. App. 4th 1315 (1999) (reviewing state regulations regarding ergonomic
28 standards in the workplace); Cardo Oil Co. v. State Water Resources Control Bd., 44 Cal. App.

1 4th 1821 (1996) (reviewing state regulation of underground storage tanks); Environmental
2 Protection Information Center v. Dept. of Forestry and Fire Protection, 43 Cal. App. 4th 1011
3 (1996) (reviewing state regulations regarding timber operations). The APA establishes many
4 standards for the adoption of regulations by state administrative agencies. However, the APA
5 has no application to this City Ordinance. See Gov't Code sections 11346 and 11346.1. (APA
6 applies only to regulations adopted pursuant to state statutes). As the Ordinance was not passed
7 pursuant to a state statute, and as the Roster was not adopted pursuant to the APA, the provisions
8 of the APA simply do not apply.⁴

9 Many other cases upon which Petitioners rely concern administrative proceedings
10 in which the enabling legislation establishes not only the proceedings themselves, but the
11 standards for the regulatory findings as well. See, e.g., McBail & Co. v. Solano Cnty. Local
12 Agency Formation Commission (LAFCO), 62 Cal. App. 4th 1223 (1998) (review of LAFCO
13 decision pursuant to section 56107 of the Government Code); California Hotel and Motel Assoc.
14 v. Industrial Welfare Comm'n., 25 Cal. 3d 200 (1979) (review of commission regulation adopted
15 in compliance with Labor Code section 1177, which requires “a statement as to the basis upon
16 which the order is predicated. . . .”); Topanga Assoc. For a Scientific Community v. City of Los
17 Angeles, 11 Cal. 3d 506 (1974) (CCP section 1094.5 requires statement of findings in
18 adjudicatory decisions rendered by administrative agencies.)

19 None of these cases, nor any other case cited by Petitioners, requires that the Chief
20 adopt a statement of findings in developing the Roster, or that the Chief identify the basis for his
21 decision. All that was required was that the Chief publish the Roster itself. By relying on
22 administrative law cases which have no bearing on either the quasi-legislative action undertaken
23 by the Chief, or the standards to be utilized by this Court in reviewing the Roster, Petitioners
24 seek to have this Court adopt requirements that have no basis in fact or law. The sole question
25
26

27 ⁴ Indeed, the Roster is not even a regulation as defined by the APA. See Gov't
28 Code section 11342(g) (defining regulation as “every rule, regulation, or any revision of any rule,
regulation, order, or standard of general application. . . .adopted by any state agency. . . .”).

1 presented in this action is whether the Chief’s adoption of the Roster was arbitrary and capricious
2 or without reason. On these grounds all of Petitioners’ claims fail.

3 **C. The Roster Was Not Adopted Arbitrarily Or Capriciously.**

4 Petitioners’ contention that the Chief acted arbitrarily and capriciously in
5 “blindly” adopting the City of San Pablo’s Roster fails for two distinct reasons. First, relying on
6 the work done by other cities in developing an ordinance or making administrative
7 determinations is not in itself arbitrary and capricious as Petitioners contend. Public entities can
8 and do regularly rely on the experience and evidence of other public agencies and such reliance is
9 neither arbitrary nor capricious as a matter of law. See, e.g., Kugler v. Yocum, 69 Cal. 2d 371
10 (1968) (upholding ordinance setting salaries of city workers by relying on salaries of workers
11 from other cities). Next, the Chief did not “blindly” adopt San Pablo’s Roster. In fact, several
12 Police Department employees researched the reasons why the guns should be included on the
13 Roster before determining that San Pablo’s roster was satisfactory and should be adopted by
14 Sacramento as well. Under such circumstances, the Roster is valid as adopted.

15 **1. It Was Not Arbitrary Or Capricious For The Chief To Rely On The**
16 **Efforts And Experience Of Other Cities In Adopting Sacramento’s**
17 **Roster.**

18 In creating laws, public entities regularly rely on the efforts and experience of
19 other public agencies and outside authorities to support their conclusions. Indeed, to require
20 cities to conduct their own independent research before adopting laws relating to pollution
21 standards, housing codes, traffic safety, disease prevention or zoning requirements would bring
22 public decision making to a complete stand-still. The California Supreme Court has long
23 recognized that “legislative bodies have neither the resources nor the expertise to deal adequately
24 with every minor question potentially within their jurisdiction.” Kugler, 69 Cal. 2d at 384. No
25 city can afford to operate laboratories to independently investigate the myriad of issues they
26 regulate on a daily basis, and nothing in the law requires them to do so.

27 Reliance on the experience and expertise of other cities is well established in law.
28 “Lawmakers in one locale should not be denied the benefit of the wisdom and experience of
lawmakers in another community.” Strand Property Corp. v. San Diego Muni. Ct., 148 Cal. App.

1 3d. 882, 887 (1983), rev'd. on other grounds, People v. Sup. Ct. (Lucero), 49 Cal. 3d 14, 28
2 (1989). It would be “folly for any city not to look at experiences of other cities. And in drawing
3 conclusions from these experiences, legislatures are not obligated to insist on scientific
4 methodology.” Hutchings v. Dist. of Columbia, 188 F. 3d. 531, 544 (D.C. Cir. 1999)(upholding
5 curfew law).

6 Even under the heightened scrutiny standards of the First Amendment, the United
7 States Supreme Court has rejected the proposition that a city must conduct its own independent
8 research into the factual basis of an ordinance potentially restricting activities protected under the
9 First Amendment.

10 The First Amendment does not require a city, before enacting such
11 an ordinance, to conduct new studies or produce evidence
12 independent of that already generated by other cities, so long as
13 whatever evidence the city relies upon is reasonably believed to be
14 relevant to the problem that the city addresses.

15 City of Renton v. Playtime Theaters, Inc., 475 U. S. 41, 51 (1986) (upholding zoning regulation
16 for adult entertainment); see also City of Vallejo v. Adult Books, 167 Cal. App. 3d 1169 (1985)
17 (same).

18 In Aviation West Corp. v. Wash. St. Dept. of Labor, 980 P.2d 701 (1999), the
19 Washington Supreme Court recently rejected the same arguments as those made by Petitioners
20 here in denying a challenge made by cigarette manufacturers and others to state regulation of
21 smoking in private workplaces. The purpose of the regulations was to eliminate environmental
22 tobacco smoke (“ETS”) in private workplaces due to the detrimental health effects of tobacco
23 smoke on co-workers. Because the agency promulgating the regulations relied entirely upon
24 outside sources for support, and did not conduct its own independent investigation of the harmful
25 effects, the cigarette manufacturers contended that the agency had improperly relied “blindly on
26 the reports from other government entities” in adopting the regulations. Aviation West, 980 P.2d
27 at 714. The Washington Supreme Court was not troubled by the lack of independent
28 investigation because reliance on the outside sources was both reasonable and relevant:

Choosing to not “reinvent the wheel” and instead relying upon
existing ETS studies that are directly on point appears to us to be a
reasonable decision, and the Companies cannot point to a case

1 explaining why the Department should not be able to make it.
2 After all, to use an example, assuming that ETS is deleterious to
3 the healthy workers in one state it would defy logic to argue that it
4 does not have the same effect in other.

5 Aviation West Corp., 980 P. 2d at 714.

6 Petitioners' attempts to distinguish County of Sacramento v. Sup. Ct., 137 Cal.
7 App. 3d 448 (1982) (Goldie's Bookstore), which also holds that local governments are not
8 required to "reinvent the wheel" every time they pass laws based upon similar laws enacted in
9 other jurisdictions is unavailing. Just as in Goldie's, Sacramento's SNS Ordinance has already
10 been judicially approved in West Hollywood, 66 Cal. App. 4th 1302 (1998), and just as in
11 Goldie's and Aviation West, the regulated activity does not differ in nature due to locality. Junk
12 guns present the same dangers in all cities. Therefore, common sense dictates that junk gun
13 ordinances and rosters would be substantially the same in other cities as well. Adopting an
14 ordinance and roster developed by and used in another jurisdiction is not arbitrary or capricious
15 at all, especially when the regulated activity is exactly the same.

16 Neither the Ordinance itself, nor any other standard of law, required the Chief to
17 independently investigate each and every gun before it was placed upon the Roster. The only
18 requirement was that the Chief adopt a Roster in a manner that was neither arbitrary, capricious,
19 nor lacking in reason. Adopting another city's regulation designed to address the exact same
20 conduct is a rational and reasoned approach to developing the Roster, even if no independent
21 investigation had ever been done by the Chief or his staff. Thus, Petitioners' claims of arbitrary
22 and capricious action by the Chief in adopting San Pablo's Roster for Sacramento's Ordinance
23 fail as a matter of law.

24 **2. Police Department Staff Were Thorough And Deliberate In Their**
25 **Review Of The Roster Under Consideration.**

26 Contrary to the Petitioners' assertions, the Chief of Police did not "blindly" adopt
27 the City of San Pablo's roster; rather, he assigned his staff to research and evaluate the roster in
28 light of the Ordinance's definition of a "Saturday Night Special." At the request of the Chief of
Police and the Department, Christopher Hadley and Lt. Mark Sakauye spent many hours

1 researching and evaluating the Ordinance’s definition of a “junk gun” and assessing the roster of
2 guns banned under the ordinance.

3 Mr. Hadley drafted notes summarizing what he had learned from his research and
4 investigation into the ordinance and roster. Hadley Decl., ¶ 6(p) and Exhibit 1. Included in his
5 notes are the following statements:

- 6 1. “Some of the Rostered SNS still use the same 60's core designs,
7 with inexpensive zinc castings for their main assembly parts. The
8 result is lethal weapons produced today, with 1940s toymaker
9 technology.” (SAC0021)
- 10 2. “The junk guns (semi-automatic) listed on the roster were
11 originally designed for lower pressure ammunition, but have been
12 chambered for higher levels. . . . Manufacturers have installed
13 metal casings or inserts into the firearms that may contain the
14 higher pressures, however, the metal composition of the
15 breechblock and other components are not strong enough to
16 contain these pressures safely or for extended firings.” (SAC0022)
- 17 3. “[M]any semi-automatic pistols constitute SNS because they are
18 chambered to fire high pressure ammunition without containing the
19 safety mechanism necessary to contain the peak pressure generated
20 by such ballistic power.” (SAC0023)
- 21 4. “The action mechanism contained in many currently produced derringers and
22 single-action revolvers is derived from century old designs which were not
23 intended for the ammunitions that they are being chambered for by modern
24 manufacturers. These firearms should all be considered S.S. because the design
25 and ballistic power renders them unreliable.” (SAC0023).

18 Id. at ¶ 6(p). During the course of his investigation, Mr. Hadley pulled the weapons logged in at
19 the Property Section and evaluated them. Mr. Hadley states that “[e]ach weapon listed on the
20 Roster had characteristics which I agreed qualified the weapon as a “junk gun,” as defined by the
21 Ordinance. At the time the City of Sacramento enacted its Roster, I was not aware of any
22 weapons sold in the City of Sacramento that would have qualified as a Saturday Night Special
23 under the Ordinance’s definition, and that were not already listed on the Roster. In other words, I
24 did not intentionally exclude any weapon from the Roster that I knew should have been included
25 under the definition.” Id. at ¶ 7.

26 Clearly, Mr. Hadley had gathered enough information about the roster of gun
27 banned under the Ordinance Sacramento to make a reasoned, rational decision to adopt the roster
28

1 used by the East Bay Public Safety Corridor Partnership, specifically the City of San Pablo’s
2 Roster, as Sacramento’s own.

3 Similarly, Lt. Sakauye spent sufficient time evaluating the proposed ordinance and
4 roster to reach a well-reasoned conclusion based on the facts and evidence he had collected and
5 reviewed. He stated that “[i]n the course of my research and review, Captain Shiraishi,
6 Christopher Hadley and I concluded that it made most sense for the City of Sacramento to adopt
7 the roster used by the East Bay Public Safety Corridor Partnership cities, a consortium of 20
8 cities that had passed the same ordinance and relied on the same roster. We chose the City of
9 San Pablo’s roster to use as the model for Sacramento’s roster. We advised the Chief of Police
10 that using the roster adopted by 20 bay area cities made good economic and policy sense for the
11 City of Sacramento. He agreed.” Sakauye Decl., ¶ 5. Like Mr. Hadley, Lt. Sakauye did not
12 believe that the City of Sacramento was excluding any weapons from its Roster that should have
13 been included, nor was Sacramento including any weapons that should have been excluded. *Id.*,
14 ¶ 7.

15 **D. Even If It Were Underinclusive, The Roster Does Not Fail As A Matter of**
16 **Law.**

17 Petitioners next contend that the Roster fails because it is underinclusive. That is,
18 it purportedly fails to include weapons which fit within the definition of a junk gun established
19 by the Ordinance. Petitioners’ claims fail as a matter of law. Even if the Roster does not include
20 each and every weapon that could possibly be defined as a junk gun, the Roster is still valid as a
21 rational remedial step in banning SNS in order to promote the health, safety and general welfare
22 of the Sacramento community. Perfection in the identification of junk guns is not required.

23 In asserting that the Roster fails because it is underinclusive, Petitioners
24 completely ignore the most recent California Supreme Court precedent on point with their
25 claims, Kasler v. Lockyer, 23 Cal. 4th 472 (2000). In Kasler, many of these same Petitioners
26 challenged the Roberti-Roos Assault Weapons Control Act (“AWCA”) on the grounds that,
27 among other things, AWCA violated equal protection because it was underinclusive in the
28 weapons it banned as assault weapons. After reviewing the legislative history and purposes of

1 AWCA, the Supreme Court upheld the list of banned assault weapons even though it found that
2 the Legislature knew the list “was not and could not be, complete.” Kasler, 23 Cal. 4th 472 at
3 488. In so doing, the Supreme Court acknowledged that the Legislature had made “rough
4 accommodations” for the inability to list every single assault weapon and, therefore, provided a
5 mechanism for the Attorney General to add on new weapons as well. The Kasler court
6 concluded that banning some weapons initially and allowing the Attorney General to ban others
7 in the future was not an irrational approach to achieving AWCA’s legislative goals of making
8 “California a safer place, even if only marginally and incrementally.” Kasler, 23 Cal. 4th at 491.

9 Sacramento’s Ordinance operates exactly like AWCA. A roster of banned guns
10 was created. Ordinance, 48.02.102.⁵ And, recognizing that the initial Roster may not be
11 complete, the City Council provided a means for the Chief to add to the Roster as well.
12 Ordinance 48.02.102(f). As established in Kasler such incremental legislation is neither an
13 irrational nor arbitrary and capricious approach to law making.

14 No principle of law requires that the Roster be perfect. “The perfect can be the
15 enemy of good.” Kasler, 23 Cal. 4th at 487. All that is required is that the Roster not be arbitrary
16 and capricious or adopted without reason.

17 Nothing in the Ordinance requires the Chief to list each and every weapon ever
18 manufactured which fits the definition of the Ordinance as an SNS as well. Instead, the
19 Ordinance only requires the Chief to list “those firearms” which he determines fit the definition
20 of an SNS. Ordinance § 48.02.102. The Ordinance was “designed to protect the health, safety
21 and general welfare of the [Sacramento] community.” 1 Finding (p). Thus, the Ordinance did
22 not require the Chief to list all SNS, especially if listing the firearm did not serve the legislative
23 purposes of the Ordinance.⁶ The weapons listed on the San Pablo Roster not only fit the

24
25 ⁵ Although in Sacramento’s Ordinance the Roster was developed by the Chief in a
26 quasi-legislative action while the AWCA list was initially passed by the Legislature, this
27 distinction is irrelevant in considering whether the law fails because the banned weapons were
28 underinclusive.

⁶ Thus, for example, the Chief would not be required to list as SNS’s weapons that
were manufactured in foreign countries because it is illegal to import such weapons and they
would not be sold in Sacramento.

1 definition of an SNS, but the legislative purpose of the Ordinance as well. As Christopher
2 Hadley states in his Declaration, “[o]ne of the reasons we selected San Pablo’s roster was
3 because I knew that many of the guns listed on that roster had been sold in Sacramento, and I
4 believed that if others were being sold in California it was likely they might be sold in
5 Sacramento at some point.” Hadley Decl., ¶ 8. Thus, it was not arbitrary or irrational for the
6 Chief to list just “those firearms” on the initial Roster, with the knowledge that other firearms
7 fitting the definition of an SNS and posing a danger to the health, safety and general welfare of
8 the Sacramento community could be added at a later date.

9
10 **E. The Administrative Procedures Do Not And Cannot Invalidate The**
11 **Ordinance.**

12 Petitioners devote a substantial portion of their brief to assailing the
13 administrative procedures adopted by the Chief for appeals and reconsiderations. Petitioners’
14 fixation on the appeals procedure is puzzling as they never attempted to utilize it, nor has this
15 Court required them to do so. As Petitioners are challenging the entire Roster and not just the
16 placement of certain weapons on the Roster, the issue of the sufficiency of the administrative
17 procedures is effectively moot.

18 Petitioners’ contentions concerning the administrative procedures are also
19 puzzling because this Court has already determined that the City was not required to adopt any
20 administrative appeals procedures in the first instance. See April 14, 2000, Order (“...the roster
21 is quasi-legislative in character, and the inclusion of particular firearms on the roster by the Chief
22 of Police need not be accompanied by due process adjudicatory procedures.”) Moreover, even if
23 the administrative procedures were somehow unfair, the unfairness would not invalidate the
24 entire Ordinance. As this Court has also already held, questions regarding the propriety of the
25 Roster and the fairness of the appeal procedures are separate and distinct from questions
26 concerning the validity of the Roster. Id. (“Thus, neither the language nor the structure of the
27 ordinance either expressly or implicitly conditions the legality, effective date or enforceability of
28 the SNS roster on the adoption of reconsideration procedures.”)

1 Nor are the administrative procedures inherently unfair as Petitioners contend.
2 Petitioners have presented no competent evidence that gun manufacturers or dealers could not
3 comply with the procedures as drafted, and the Chief is the most appropriate person to hear
4 appeals. As the Chief of Police made the initial decision to place certain weapons on the Roster,
5 it only makes sense that he or his designees would handle reconsiderations and appeals as well.
6 Although the City Manager could participate in the appeals process, if he chose to use designees
7 selected by the Chief, this still would not invalidate the procedures or the Ordinance.

8 Finally, Petitioners' contention that the procedures are unfair because they do not
9 allow for a hearing before the City Council ignores the fact that the City Council delegated this
10 fact-finding duty to the Chief. Little, if any, purpose would be served by having reconsideration
11 hearings before the Council and nothing in law requires that the City Council play such a role.
12 The City Council made the fundamental policy decision to ban junk gun sales. It then gave the
13 Chief express guidelines to follow in identifying junk guns by providing definitions in the
14 Ordinance. By making the fundamental policy decision to ban junk guns and providing the Chief
15 with express guidelines for implementing the decision, the City Council satisfied any delegation
16 requirements as a matter of law. See, e.g., Kugler v. Yocum, 69 Cal. 2d 371 (1968) (upholding
17 delegation of city salary decisions). This delegation is still valid even though the City Council
18 had no further role in determining which guns should be placed on the Roster. Id.

19 As the administrative procedures were not inherently unfair and have no bearing
20 on the propriety of the Roster, Petitioners' attacks on the procedures fail.⁷

21 **F. Respondents' Expert Confirms That All Weapons On The Sacramento**
22 **Roster Were Properly Included At The Time The Roster Was Adopted.**

23 If this Court decides to look beyond the record before the Chief in assessing
24 whether the Roster was adopted in an arbitrary or capricious manner, the Court should evaluate
25

26 ⁷ Petitioners' concerns regarding the purported lack of specificity of findings also
27 misses the mark. Petitioners' requested that this Court waive the administrative appeal process.
28 Therefore, no administrative findings regarding particular weapons have ever been made.
Petitioners cannot ask to be excused from an administrative hearing on the one hand, and then
complain about a lack of administrative hearing or findings as to weapons on the other.

1 the opinions of Petitioners’ experts in light of the opinion of the City’s expert. Robert R.
2 Hawkins is a firearm and tool mark examiner and firearm evidence consultant who has been
3 qualified and have testified as a firearm expert 471 times in court. Declaration of Robert R.
4 Hawkins in Opposition to Motion for Issuance of Writ of Mandate (“Hawkins Decl.”), ¶ 1. Mr.
5 Hawkins has direct experience evaluating an ordinance and roster like Sacramento’s; Los
6 Angeles County hired him in March 1999 to assist with the implementation of the Los Angeles
7 County Ordinance 99-0012, known as the “junk gun ordinance.” Id., ¶ 3. The definition of a
8 “junk gun” in the Los Angeles County and Sacramento ordinances is substantially the same. Id.,
9 ¶ 7.

10 Based on his experience as a firearms expert and his experience in evaluating the
11 Los Angeles County Ordinance and roster adopted pursuant to that ordinance, Mr. Hawkins
12 evaluated Sacramento’s Roster and Ordinance and have formed an opinion about whether the
13 weapons listed on Sacramento’s Roster can be considered junk guns under the definitions
14 provided in the Ordinance. Id., ¶ 8. He concluded that all of the weapons listed on Sacramento’s
15 Roster at the time it was adopted could reasonably be considered junk guns under the
16 Ordinance’s definition. Id., ¶¶ 9, 10.⁸

17 The declarations submitted by Petitioners’ experts do not refute Mr. Hawkins’
18 findings. While Mr. Van Horn argues that certain models should be listed on Sacramento’s
19 Roster, he does not contend that any weapons were improperly included on the Roster. Randall
20 Williams’ declaration seems to attack the definition of a Saturday Night Special. He concludes
21

22 ⁸ After Los Angeles County adopted its initial roster, Accu-Tek used the reconsideration
23 process to challenge the listing of three of its weapons. Hawkins Decl., ¶ 10. After reviewing
24 the material submitted by the President of Excel Corporation, Larry Gilliam, Mr. Hawkins
25 recommended that L.A. County remove the three Accu-Tek models from the Roster. Two points
26 are relevant here: First, Mr. Hawkins acknowledges that the decision by Sacramento to list the
27 Accu-Tek models was supported given the evidence available at the time. Id., ¶ 10. Second,
28 even if the Accu-Tek models should be removed from Sacramento’s Roster now, the entire
Roster and the process by which it was created is not rendered arbitrary and capricious. The
Ordinance establishes a process by which the Chief periodically reviews the Roster, and if he
determines it should be revised, a process for revising it. Given that this lawsuit was filed two
months after Chief adopted the initial Roster, it makes sense that the Chief has not taken any
action to revise the Roster until this litigation was completed. Once it is resolved, however, the
Chief can certainly act to remove the Accu-Tek models from the list, if he determines that action
is warranted.

1 that based on the definition in the ordinance, there is “no rational manner to apply [the tensile
2 strength] standard,” and later that “there is simply no rational manner to apply the standards set
3 forth in section 9.32.190(1) as they are currently written.” Declaration of Randall L. Williams in
4 Support of Plaintiffs’ Memorandum of Points and Authorities in Support of Issuance of Writ of
5 Mandate, ¶¶ 6. The question whether the definition of a “junk gun” can be rationally applied has
6 already been decided by the court in California Rifle and Pistol Association v. City of West
7 Hollywood, 66 Cal. App. 4th 1302 (1998), rev. denied December 22, 1998.

8 Petitioners place much significance in their argument that weapons manufactured
9 by Glock have been improperly excluded from Sacramento’s Roster. However, their expert’s
10 declaration does not refute the understanding of Christopher Hadley that the material in Glock’s
11 has an equal or greater tensile strength as heat treated carbon steel. Mr. Hadley states that

12 With respect to the Glock, my understanding at the time
13 Sacramento adopted its Roster was that the Glock did not qualify
14 as a junk gun under any of the categories of the Ordinance’s
15 definition. My belief was that handguns manufactured by Glock
 have steel frames, as defined by the Code of Federal Regulations,
 and that the polymer material of the Glock is of equal or greater
 tensile strength to heat treated carbon steel.

16 Hadley Decl., ¶ 6(r). The notes he made in 1997 confirm Mr. Hadley’s understanding of why the
17 Glock is properly excluded from the ban Roster. *Id.* Lt. Sakauye reviewed Mr. Hadley’s notes in
18 developing his recommendations for the Chief and City Council on Sacramento’s Roster.
19 Sakauye Decl., ¶ 8(k).

20 In addition to the research compiled by the City of Sacramento, the record before
21 the court in West Hollywood, which upheld West Hollywood’s ordinance and the roster
22 developed thereunder in all respects, is replete with factual and evidentiary support for banning
23 the weapons found on Sacramento’s Roster.⁹ The evidence in the record before the West
24

25 ⁹ The City requested judicial notice of the Joint Appendix in Lieu of Clerk’s Transcript
26 lodged in the *West Hollywood* case, in connection with its demurrer to the First Amended
27 Petition, heard on May 14, 1999. That request for judicial notice (“RJN 1”) included the Joint
28 Appendix in Lieu of Clerk’s Transcript, lodged with the Court of Appeal for the Second
Appellate District in the *West Hollywood* case. A copy of the index to the Joint Appendix was
attached to RJN 1 as Exhibit B, and the Joint Appendix itself, labeled Exhibit B, consisted of
five binders of material enclosing the eight volumes of the Joint Appendix.

1 Hollywood court provides additional support for the conclusion that the City of Sacramento’s
2 Roster was not arbitrary, capricious, or completely lacking in factual support. For example, the
3 State of Maryland has specifically disapproved for sale, after review by the Maryland Handgun
4 Roster Board, a number of weapons which also appear on Sacramento’s Roster, including
5 American Derringer Models 1, 2, 3, 4, 6, 7, 10 and 11, and American Derringer Lady and Alaska
6 Survival Models, Lorcin Model LT-25, Bryco Model 59, and Sundance Industries Model Point
7 Blank Derringer, among others.¹⁰ RJN 1, Exhibit B, Vol. IV, pp. 938-944.

8 In addition, the Bureau of Alcohol, Tobacco and Firearms has concluded that a
9 number of weapons found on Sacramento’s Roster do not meet minimum qualifications for
10 importation into the United States (e.g., Bryco Models 48 and 59; Lorcin Models L-9mmm L-32,
11 and L-380; all Sundance Models; all Phoenix Models; Intratec Models Protec-22 and Protec-25;
12 etc.).¹¹ See RJN 1, Exhibit B, Vol. IV, pp. 965-967. Many of the guns banned in Sacramento are
13 also banned for sale in South Carolina on grounds that they are unsafe, including the Davis “D-
14 series” Derringers and the Davis P-380, and the Jennings Models J-22 and J-25. RJN 1, Exhibit
15 B, Vol IV, pp. 946-964.

16 Given Robert Hawkins’ conclusions, the failure of Petitioners’ own experts to
17 demonstrate that the Roster lists weapons it should not, and the record of the West Hollywood
18 proceedings which contains further support for the listing of the guns on Sacramento’s Roster,
19 Petitioners’ claims against the Roster must fail.

20 V.

21 CONCLUSION

22 _____
23 ¹⁰ Maryland restricts the sale of weapons that, among other things, do not have a
24 legitimate sporting, self protection, or law enforcement purpose. The City of Sacramento stated
25 in one of its findings in support of the Ordinance that “[a]s a result of their inferior
26 craftsmanship, “Saturday Night Specials” are not suitably accurate or reliable to be useful for
sport or hunting purposes. Although “Saturday Night Specials” are marketed by manufacturers
as a reliable means of personal protection, objective expert evaluations suggest that they are not
well suited for this purpose.” Sacramento City Ordinance No. 97-077, RJN 3, Exhibit 1.

27 ¹¹ One of the policy concerns articulated by the City of Sacramento in the Ordinance’s
28 findings was that the “Federal Gun Control Act of 1968 prohibits the importation of poorly made
handguns, but does not ban their manufacture and sale in the United States.” Sacramento City
Ordinance No. 97-077, RJN 3, Exhibit 1.

1 For all of the reasons discussed above, the City of Sacramento respectfully
2 requests that this Court deny Petitioners' Motion for Issuance of Writ of Mandate and dismiss
3 their Third Amended Petition and Complaint.

4 Date: November 14, 2000

ANDREW W. STROUD
NANCY J. SARACINO
MENNEMEIER, GLASSMAN & STROUD LLP

5
6
7 _____
Nancy J. Saracino
8 Attorneys for Defendants/Respondents City of
Sacramento, Mayor Jimmie Yee, Sacramento
9 City Council, Sacramento Police Department, and
Chief of Police Arturo Venegas, Jr.