

FILED
ENDORSED

12 DEC 12 AM 10:58

LEGAL PROCESS #6

1 Jason A. Davis (Calif. Bar No. 224250)
2 Davis & Associates
3 27201 Puerta Real, Suite 300
4 Mission Viejo, CA 92691
5 Tel 949.436-GUNS/Fax 949.288.6894
6 E-Mail: Jason@CalGunLawyers.com

7 Attorneys for Real Party in Interest,
8 California Business Environments, Inc. dba
9 Franklin Armory

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12 CALIFORNIA DEPARTMENT OF JUSTICE)
13 - BUREAU OF FIREARMS,)

14 Petitioner,)

15 v.)

16 OFFICE OF ADMINISTRATIVE LAW,)

17 Respondent,)

18 CALIFORNIA BUSINESS)
19 ENVIRONMENTS, INC. DBA FRANKLIN)
20 ARMORY)

21 Real Party in Interest,)
22
23
24
25
26
27
28

Case No.: 34-2012-80001279

VERIFIED ANSWER OF REAL PARTY
IN INTEREST TO PETITION FOR WRIT
OF MANDATE OR OTHER
APPROPRIATE RELIEF

BY FAX

DEPT: 42

JUDGE: Hon. Allen H. Sumner

1 Real Party in Interest, CALIFORNIA BUSINESS ENVIRONMENTS, INC. DBA FRANKLIN
2 ARMORY answers the Petition for Writ of Mandate or Other Appropriate Relief as follows:

3 **INTRODUCTION**

- 4 1. With respect to the allegation in paragraph 1, Real Party in Interest denies this allegation
5 generally, but admits that the Petitioner is tasked with administering and enforcing certain
6 firearms laws contained within the Penal Code. And, the Petitioner is tasked with
7 promulgating regulations pursuant to a number of provisions of the Penal Code for the
8 administration, clarification, and enforcement of the firearm laws set forth in the Penal Code.
- 9 2. With respect to the allegation in paragraph 2, Real Party in Interest objects to the allegation
10 as unintelligible and further responds by stating that this paragraph contains Petitioner's legal
11 conclusions, which do not require a response. In all other respects, Real Party in Interest
12 specifically denies the remainder of claims contained therein.
- 13 3. With respect to the allegation in paragraph 3, Real Party in Interest denies this allegation
14 generally, except that it admits that the Petitioner adheres to a policy that issues permits
15 solely to individuals and a policy that the authorized activities allowed under the permit are
16 non-transferable to other persons.
- 17 4. With respect to the allegation in paragraph 4, Real Party in Interest admits that Jason Davis,
18 on behalf of Petitioner California Business Environments, Inc., dba Franklin Armory,
19 submitted a petition to the Office of Administrative Law ("OAL") on November 17, 2011.
20 In further response, Real Party in Interest asserts that the petition speaks for itself.
- 21 5. With respect to the allegation in paragraph 5, Real Party in Interest responds by stating that
22 this paragraph contains Petitioner's legal conclusions and statements of law, which speak for
23 themselves and do not require a response. In all other respects, Real Party in Interest
24 specifically denies this allegation generally, except that it admits that the OAL published
25 2012 OAL Determination No. 8 in the Notice Register on August 31, 2012 and that said
26 determination speaks for itself.

1 6. With respect to the allegation in paragraph 6, Real Party in Interest lacks information or
2 belief sufficient to admit or deny why the Petitioner comes before this court, but specifically
3 denies that the Petitioner has interpreted the assault weapon permitting scheme in the only
4 legally tenable way, and specifically denies that the OAL's determination should be set aside.

5 **PARTIES**

6 7. With respect to the allegation in paragraph 7, Real Party in Interest admits that the California
7 Department of Justice's Bureau of Firearms is a part of the Department of Justice's Division
8 of Law Enforcement. Real Party in Interest specifically denies that the Petitioner promotes
9 legitimate and responsible firearm possession and use by California residents through
10 education, regulation, and enforcement actions regarding the manufacture, sales, ownership,
11 safety training, and transfer of firearms.

12 8. With respect to the allegation in paragraph 8, Real Party in Interest objects to the limited
13 characterization of the authority given to the OAL and in the exercise by OAL of such
14 authority and on that basis denies the allegation of paragraph 8. In further response to the
15 allegations of paragraph 8, the Administrative Procedures Act ("APA") speaks for itself.
16 OAL has discretion as to whether to accept petitions challenging action by state agencies as
17 underground regulations.

18 **JURISDICTION AND VENUE**

19 9. With respect to the allegation in paragraph 9, Real Party in Interest admits.

20 10. With respect to the allegation in paragraph 10, Real Party in Interest admits.

21 11. With respect to the allegation in paragraph 11, Real Party in Interest admits.

22 **ISSUES PRESENTED**

23 **I. The Law Governing Underground Regulations**

24 12. With respect to the allegation in paragraph 12, Real Party in Interest responds by stating that
25 this paragraph describes Government Code 11342.600, 11340.5, and 11346, which speak for
26 themselves, and no response is required.

1 13. With respect to the allegation in paragraph 13, Real Party in Interest responds by stating that
2 this paragraph describes Government Code section 11340.5, subdivision (a), which speaks
3 for itself, and no response is required.

4 14. With respect to the allegation in paragraph 14, Real Party in Interest responds by stating
5 that this paragraph describes Government Code section 11340.5 and California Code
6 of Regulations, title 1, section 250, which speak for themselves, and no response is
7 required.

8 15. With respect to the allegation in paragraph 15, Real Party in Interest responds by stating that
9 this paragraph describes Government Code sections 11340.5 and 11340.9 subdivision (f),
10 which speak for themselves, and no response is required. Moreover, this paragraph contains
11 Petitioner's legal conclusion, which does not require a response.

12 16. With respect to the allegation in paragraph 16, Real Party in Interest responds by stating that
13 this paragraph describes Government Code sections 11340.5 subdivision (b), which speaks
14 for itself, and no response is required. Moreover, this paragraph contains Petitioner's legal
15 conclusion, which does not require a response.

16 **II. The Law Governing Assault Weapon Permits**

17 17. With respect to the allegation in paragraph 17, Real Party in Interest responds by stating that
18 this paragraph describes the Roberti Roos Assault Weapons Act, which speaks for itself, and
19 no response is required. Real Party in Interest also specifically denies the interpretation of
20 the Petitioner contained in this paragraph, except to the extent that a permit is required under
21 the Act for the manufacture of "assault weapons."

22 18. With respect to the allegation in paragraph 18, Real Party in Interest responds by stating that
23 this paragraph describes the Roberti Roos Assault Weapons Act, which speaks for itself, and
24 no response is required. Real Party in Interest also specifically denies the interpretation of
25 the Petitioner contained in this paragraph, except to the extent that Real Party in Interest
26 admits that "good cause" is not required for a permit to acquire and possess "assault
27 weapons" pursuant to Penal Code section 31000 – which mandates that the applicant shall
28

1 first obtain a permit from the Department of Justice in the same *manner* as specified in
2 Article 3 (commencing with Section 32650) of Chapter 6. Moreover, the Petitioner admits
3 that, with "good cause" being mandated, applications for the permits to sell and manufacture
4 "assault weapons," the keeping and inspection thereof, and the revocation of such permits
5 shall be undertaken in the same *manner* as specified in Article 3 (commencing with Section
6 32650) of Chapter 6.

7 19. With respect to the allegation in paragraph 19, Real Party in Interest responds by stating that
8 this paragraph describes the Roberti Roos Assault Weapons Act and the regulations issued
9 thereunder, which speaks for itself, and no response is required.

10 20. With respect to the allegation in paragraph 20, Real Party in Interest responds by stating that
11 this paragraph describes Penal Code section 29050, which speaks for itself, and no response
12 is required. To the extent that this paragraphs attempts to describe the Legislature's intent in
13 creating this section, that legislative history speaks for itself. Real Party in Interest
14 specifically denies that the section details the permitting requirements for the manufacture of
15 all firearms within the state, but admits that the section does detail the permitting
16 requirements for certain firearms manufactured for sale within the state, including certain
17 "assault weapons."

18 21. With respect to the allegation in paragraph 21, Real Party in Interest responds by stating that
19 this paragraph contains statements of law and describes Penal Code section 26710, which
20 speaks for itself, and no response is required.

21 22. With respect to the allegation in paragraph 22, Real Party in Interest denies.

22 23. With respect to the allegation in paragraph 23, Real Party in Interest responds by stating that
23 this paragraph describes Penal Code section 16970, which speaks for itself, and no response
24 is required. To the extent that this paragraphs attempts to describe the Legislature's intent in
25 creating this section, that legislative history speaks for itself.

26 24. With respect to the allegation in paragraph 24, Real Party in Interest responds by stating that
27 this paragraph describes Penal Code section 16970 specifically, and Part 6 of the Penal Code
28

1 generally, which speak for themselves, and no response is required. To the extent that this
2 paragraph attempts to describe the Legislature's intent in creating this section, that legislative
3 history speaks for itself. This paragraph also contains Petitioner's legal conclusions, which
4 do not require a response. In all other aspects, if any, Real Party in Interest denies the
5 allegations contained therein.

6 25. With respect to the allegation in paragraph 25, Real Party in Interest responds by stating that
7 this paragraph describes the Roberti Roos Assault Weapons Control Act and Penal Code
8 section 16970 specifically, and Part 6 of the Penal Code generally, which speak for
9 themselves, and no response is required. To the extent that this paragraphs attempts to
10 describe the Legislature's intent in creating this section, that legislative history speaks for
11 itself. This paragraph also contains Petitioner's legal conclusions, which do not require a
12 response. In all other aspects, if any, Real Party in Interest denies the allegations contained
13 therein.

14 **III. The Bureau's Interpretation of the Law Governing Assault Weapon Permits**

15 26. With respect to the allegation in paragraph 26, Real Party in Interest denies that the Petitioner
16 has harmonized sections 26710, 29050, 31000, 31005, and 32650 in the only legally tenable
17 way. Real Party in Interest admits that the Petitioner has determined that the statutory
18 scheme requires that assault weapon permits may be issued only to individuals. Real Party in
19 Interest admits that the Bureau's self-contradicting interpretation was submitted to the OAL
20 by Franklin Armory on November 17, 2011, in an attachment exhibit letter sent by the
21 Bureau dated May 5, 2006, stating:

22
23 The department issues assault weapons permits to corporations and other
24 business entities. However, such permits are issued to individuals
25 authorized to act on behalf of the corporations or other business entities.
The authorization is not transferrable to other persons, or to activities that
are not undertaken on behalf of the corporation.

26 In every other respect, Real Party in Interest denies this allegation.

27 27. With respect to the allegation in paragraph 27, Real Party in Interest admits that the "assault
28

1 weapon” application requirements are set forth in Penal Codes within the Roberti Roos
2 Assault Weapons Control Act – which speak for themselves and no response is required. To
3 the extent that this paragraphs attempts to describe the Legislature’s intent in creating this
4 section, that legislative history speaks for itself. This paragraph also contains Petitioner’s
5 legal conclusions, which do not require a response. In all other aspects, if any, Real Party in
6 Interest denies the allegations contained therein.

7 28. With respect to the allegation in paragraph 28, Real Party in Interest denies.

8 29. With respect to the allegation in paragraph 29, Real Party in Interest denies.

9 **IV. OAL’s Determination**

10 30. With respect to the allegation in paragraph 30, Real Party in Interest admits.

11 31. With respect to the allegation in paragraph 31, Real Party in Interest admits.

12 32. With respect to the allegation in paragraph 32, Real Party in Interest admits.

13 33. With respect to the allegation in paragraph 33, Real Party in Interest admits.

14 34. With respect to the allegation in paragraph 34, Real Party in Interest admits that OAL
15 received a reply from Jason Davis, on behalf Real Party in Interest.

16 35. With respect to the allegation in paragraph 35, Real Party in Interest admits.

17 36. With respect to the allegation in paragraph 36, Real Party in Interest admits.

18 37. With respect to the allegation in paragraph 37, Real Party in Interest admits.

19 38. With respect to the allegation in paragraph 38, Real Party in Interest objects to the allegations
20 as unintelligible. Real Party in Interest admits that Respondent considered and rejected the
21 argument that that Petitioner’s policy is the only legally tenable interpretation of the law. In
22 further response, Real Party in Interest denies the allegations of paragraph 38 and asserts that
23 the determination speaks for itself.

24 **CAUSE OF ACTION**

25 **Petitioner’s Allegation That OAL’s Determination was Correct**

26 39. With respect to the allegation in paragraph 39, Real Party in Interest responds by stating that
27 this paragraph cites Government Code section 11340.5, subdivision (d), which speaks for
28

itself and no response is required. This paragraph also contains Petitioner's legal conclusions, which do not require a response.

40. With respect to the allegation in paragraph 40, Real Party in Interest responds by stating that this paragraph cites Code of Civil Procedure section 1085, which speaks for itself and no response is required. This paragraph also contains Petitioner's legal conclusions, which do not require a response.

41. With respect to the allegation in paragraph 41, Real Party in Interest responds by stating that this paragraph cites Code of Civil Procedure section 1086, which speaks for itself and no response is required. This paragraph also contains Petitioner's legal conclusions, which do not require a response. In all other respects, Real Party in Interest specifically denies the remainder of claims contained therein.

42. With respect to the allegation in paragraph 42, Real Party in Interest responds by stating that this paragraph contains Petitioner's legal conclusions, which do not require a response. In all other respects, Real Party in Interest specifically denies the remainder of claims contained therein.

43. With respect to the allegation in paragraph 43, Real Party in Interest responds by stating that this paragraph contains Petitioner's legal conclusions, which do not require a response. Further, Real Party in Interest responds by admitting that "the Bureau's interpretation does 'implement, interpret or, make specific' the Penal Code provisions and regulations governing assault weapon permits." In all other respects, Real Party in Interest specifically denies the remainder of claims contained therein.

44. With respect to the allegation in paragraph 44, Real Party in Interest responds by stating that this paragraph contains Petitioner's legal conclusions, which do not require a response. In all other respects, Real Party in Interest specifically denies the remainder of claims contained therein.

45. With respect to the allegation in paragraph 45, Real Party in Interest objects to the allegations as unintelligible. Real Party in Interest further responds by stating that this paragraph

1 contains Petitioner's legal conclusions, which do not require a response. In all other respects,
2 Real Party in Interest specifically denies the remainder of claims contained therein.
3 AS A SEPARATE AND AFFRIMATIVE DEFENSE, Respondent alleges that the Petition fails
4 to state facts sufficient to constitute a cause of action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Real Parties in Interest pray:

- 7 1. That the petition for mandate or other appropriate relief be denied for the one cause of
8 action alleged and that the CALIFORNIA DEPARTMENT OF JUSTICE – BUREAU
9 OF FIREARMS take nothing by this action.
10 2. That 2012 OAL Determination No. 8 be upheld;
11 3. That the Real Parties in Interest be awarded their costs in this matter, including attorney's
12 fees.
13 4. For such other relief as may be just.

14
15 DATED: December 11, 2012

DAVIS & ASSOCIATES

16
17
18 By: 

19 JASON DAVIS
20 Attorneys for Real Parties In Interest
21 California Business Environments, Inc.
22 DBA Franklin Armory
23
24
25
26
27
28

1 *California Department of Justice – Bureau of Firearms, v. Office of Administrative Law, et al.*
2 Sacramento Superior Court Case No. 34-2012-80001279

3 **VERIFICATION**

4 I, Jay Jacobson, am President of California Business Environments, Inc. DBA Franklin Armory,
5 a party to this action, and am authorized to make this verification on its behalf. I have read the
6 foregoing Answer to Petition for Writ of Mandate or Alternative Relief and know its contents. I am
7 informed and believe and on that ground allege that the matters stated therein are true. The same is true
8 of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I
9 believe them to be true.

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

12 Executed this Eleventh day of December, 2012, in Morgan Hill, California.

13 By: 

14 Jay Jacobson, President for
15 Real Parties In Interest
16 California Business Environments, Inc.
17 DBA Franklin Armory
18
19
20
21
22
23
24
25
26
27
28

1 *California Department of Justice – Bureau of Firearms, v. Office of Administrative Law, et al.*
2 Sacramento Superior Court Case No. 34-2012-80001279

3
4 **PROOF OF SERVICE**

5 I am employed in the County of Orange, State of California, I am over the age of 18 years and not a
6 party to the within action; my business address is 27201 Puerta Real, Suite 300, Mission Viejo,
7 California, 92688.

8 On this date, I served the foregoing document described as:

9 **ANSWER TO PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF**

10 On the parties listed below as follows:

11 Counsel for Petitioner CALIFORNIA DEPARTMENT OF JUSTICE – BUREAU OF FIREARMS

12 **Attorneys for Petitioner, California Department**
13 **of Justice – Bureau of Firearms**

14 Kamala D. Harris
15 Attorney General of California
16 Peter Krause
17 Supervising Deputy Attorney General
18 Kari Krogseng
19 Deputy Attorney General
20 1300 I Street, Suite 125
21 PO Box 944255
22 Sacramento, CA 94244-2550
23 F: 916-322-8835
24 Kari.Krogseng@doj.ca.gov

25 **Attorneys for Respondent, Office of**
26 **Administrative Law**

27 Deborah Cornez
28 Kathleen Eddy
Elizabeth Heidig
OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
T: 916-323-6800
F: 916-323-6826
DCornez@oal.ca.gov
KEddy@oal.ca.gov
EHeidig@oal.ca.gov

29 X (By Mail) I deposited such envelope in the mail at Mission Viejo, California. The envelope was
30 mailed with postage thereon fully prepaid.

31 (By Facsimile) In addition to regular mail, I sent this document via facsimile, number(s) as listed
32 on the attached mailing list.

33 (By Personal Service) Such envelope was delivered by hand to the below addressee.

34 (By Overnight Mail) I arranged for such envelope to be delivered to the following addresses by
35 overnight mail.

36 X (By E-Mail) to the address(es) listed above.

37 Executed on December 11, 2012, at Mission Viejo, California.

38 I declare under penalty of perjury under the laws of the State of California that the above is true and
39 correct. I further declare that I am employed in the office of a member of the bar of this court at whose
40 direction the service was made.

41
42 
43 JASON ANDREW DAVIS