



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, )  
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Case No.: 34-2012-80001279

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

DEPT: 42

JUDGE: Hon. Allen H. Sumner



VERIFIED ANSWER OF REAL PARTY IN INTEREST TO PETITION FOR WRIT OF MANDATE

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

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

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

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

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

The department issues assault weapons permits to corporations and other business entities. However, such permits are issued to individuals 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.

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

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

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

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

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

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

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

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

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

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

19 JASON DAVIS  
20 Attorneys for Real Parties In Interest  
21 California Business Environments, Inc.  
22 DBA Franklin Armory  
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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  
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California Department of Justice – Bureau of Firearms, v. Office of Administrative Law, et al.  
Sacramento Superior Court Case No. 34-2012-80001279

**PROOF OF SERVICE**

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

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

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

On the parties listed below as follows:

Counsel for Petitioner CALIFORNIA DEPARTMENT OF JUSTICE – BUREAU OF FIREARMS

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

Kamala D. Harris  
Attorney General of California  
Peter Krause  
Supervising Deputy Attorney General  
Kari Krogseng  
Deputy Attorney General  
1300 I Street, Suite 125  
PO Box 944255  
Sacramento, CA 94244-2550  
F: 916-322-8835  
Kari.Krogseng@doj.ca.gov

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

Deborah Cornez  
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

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

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

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

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

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

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

  
JASON ANDREW DAVIS