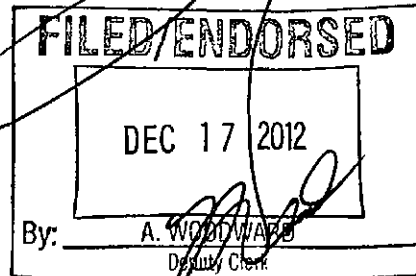


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to Government Code section 6103



10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12
13 CALIFORNIA DEPARTMENT OF
14 JUSTICE – BUREAU OF FIREARMS,

15 Petitioner

16 v.

17 OFFICE OF ADMINISTRATIVE LAW,

18 Respondent,

19
20 CALIFORNIA BUSINESS
ENVIRONMENTS INC., DBA
21 FRANKLIN ARMORY,

22 Real Party in Interest.

Case No. 34-2012-80001279

ANSWER OF RESPONDENT OFFICE OF
ADMINISTRATIVE LAW TO PETITION
FOR WRIT OF MANDATE AND OTHER
RELIEF

Department 42

Hon. Allen H. Sumner

23
24 Respondent, Office of Administrative Law (hereinafter "OAL"), answers the Petition for
25 ~~Writ of Mandate filed by Petitioner California Department of Justice – Bureau of Firearms~~

26 (hereinafter "Petitioner" or "Bureau") as follows:

27 ///

INTRODUCTION

1. Answering paragraph 1, OAL lacks sufficient knowledge or information to form a belief as to the truth of any material allegations contained in paragraph 1 and on that basis denies each and every material allegation contained in paragraph 1.

2. Answering paragraph 2, OAL objects to the allegations contained in paragraph 2 as vague, unintelligible, calling for conclusions of law, and failing to state any material allegations. Furthermore, OAL is without sufficient knowledge or information to form a belief as to the truth of any remaining material allegations contained in paragraph 2 and on that basis denies each and every remaining material allegation.

3. Answering paragraph 3, OAL lacks sufficient information or belief as to answer why the Petitioner takes "policy" actions as articulated in this paragraph. In further response to the allegations of paragraph 3, the allegations contain statements of law or legal conclusions, and require no response. OAL is without sufficient knowledge or information to form a belief as to the truth of the remaining material allegations contained in paragraph 3, and on that basis denies each and every remaining material allegation contained in paragraph 3.

4. Answering paragraph 4, OAL denies the allegations of paragraph 4. In further answer, OAL alleges that Jason Davis, on behalf of California Business Environments, Inc., dba Franklin Armory, submitted a petition to the Office of Administrative Law on November 17, 2011. OAL denies the remainder of the allegations of paragraph 4.

5. Answering paragraph 5, OAL admits that on August 15, 2012, it issued a determination, which was published in the California Regulatory Notice Register on August 31, 2012. In further response, OAL alleges that the determination speaks for itself. Except as expressly admitted, the allegations contained in paragraph 5 call for legal conclusions and on that basis, OAL denies each and every remaining allegation contained in paragraph 5.

6. Answering paragraph 6, OAL admits that Petitioner is challenging OAL's determination. OAL admits that Government Code section 11340.5, subdivision (d), states, in part: "Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside." OAL admits that said written petition must be filed within thirty days of the date the determination is published in the California Regulatory Notice Register. OAL denies that Petitioner "has interpreted the assault weapon permitting scheme in the only legally tenable way" and that "OAL's determination should be set aside." OAL denies any remaining allegations contained in paragraph 6.

PARTIES

7. Answering paragraph 7, OAL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7 and on that basis denies each and every allegation contained in paragraph 7.

8. OAL objects to the limited characterization of the authority given to OAL and in the exercise by OAL of such authority and on that basis denies the allegations of paragraph 8. In further response to the allegations of paragraph 8, the allegations contain statements and conclusions of law and the law speaks for itself.

9. Answering paragraph 9, OAL is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9 and on that basis denies each and every allegation contained in paragraph 9.

JURISDICTION AND VENUE

10. Answering paragraph 10, on the basis of information and belief, OAL admits the material allegations in paragraph 10.

1 11. Answering paragraph 11, on the basis of information and belief, OAL admits the
2 material allegations in paragraph 11.

3 ISSUES PRESENTED

4 I. THE LAW GOVERNING UNDERGROUND REGULATIONS

5 12. Answering paragraph 12, the allegations of paragraph 12 contain statements of law
6 to which no response is required. To the extent paragraph 12 contains any material
7 allegations, OAL denies any remaining allegations contained in paragraph 12.
8

9 13. Answering paragraph 13, the allegations of paragraph 13 contain statements of law to
10 which no response is required.

11 14. Answering paragraph 14, the allegations of paragraph 14 contain statements of law to
12 which no response is required. To the extent paragraph 14 contains any material allegations,
13 OAL denies any remaining allegations contained in paragraph 14.
14

15 15. Answering paragraph 15, the allegations of paragraph 15 contain statements of law to
16 which no response is required.

17 16. Answering paragraph 16, the allegations of paragraph 16 contain statements of law to
18 which no response is required.
19

20 II. THE LAW GOVERNING ASSAULT WEAPON PERMITS

21 17. Answering paragraph 17, to the extent that this paragraph describes the Roberti
22 Roos Assault Weapons Act, this is a statement of law and no response is required. OAL
23 denies each and every remaining allegation contained in paragraph 17 because they call for
24 legal conclusions or are statements of law to which no response is required.
25

26 18. Answering paragraph 18, to the extent that this paragraph describes the Roberti
27 Roos Assault Weapons Act, this is a statement of law and no response is required. To the
28 extent that paragraph 18 calls for legal conclusions, no response is required.

1 19. Answering paragraph 19, to the extent that this paragraph describes the regulations of
2 the California Code of Regulations, this is a statement of law and no response is required.

3 20. Answering paragraph 20, to the extent that this paragraph describes Penal Code
4 section 29050, this is a statement of law and no response is required. The remainder of
5 paragraph 20 calls for legal conclusions or are statements of law and require no response.
6

7 21. Answering paragraph 21, to the extent that this paragraph describes Penal Code
8 section 26710, this is a statement of law and no response is required. The remainder of
9 paragraph 21 calls for legal conclusions or are statements of law and require no response.
10

11 22. Answering paragraph 22, OAL is without sufficient knowledge or information to
12 form a belief as to the truth of the allegations contained in paragraph 22 and on that basis
13 denies each and every allegation contained in paragraph 22.

14 23. Answering paragraph 23, to the extent that this paragraph describes the law, this is a
15 statement of law and no response is required. OAL denies each and every remaining
16 allegation contained in paragraph 23 because they call for legal conclusions or are statements
17 of law to which no response is required.
18

19 24. Answering paragraph 24, to the extent that this paragraph describes the law, this is a
20 statement of law and no response is required. OAL denies each and every remaining
21 allegation contained in paragraph 24 because they call for legal conclusions or are statements
22 of law to which no response is required.
23

24 25. Answering paragraph 25, to the extent that this paragraph describes the Roberti
25 Roos Assault Weapons Control Act, Penal Code section 16970 specifically, and Part 6 of the
26 Penal Code generally, this is a statement of law and no response is required. The remaining
27 allegations contained in paragraph 25 call for legal conclusions or are statements of law and
28 on that basis OAL denies each and every remaining allegation contained in paragraph 25.

1 **III. THE BUREAU'S INTERPRETATION OF THE LAW GOVERNING**
2 **ASSAULT WEAPON PERMITS**

3 26. Answering paragraph 26, OAL admits that the California Business Environments
4 Inc., DBA Franklin Armory (hereinafter "Franklin Armory") attached a letter from the
5 Department of Justice, Firearms Division, dated May 5, 2006, to a Petition submitted to
6 OAL. OAL denies that Petitioner has harmonized sections 26710, 29050, 31000, 31005, and
7 32650 in the only legally tenable way. OAL is without sufficient knowledge or information
8 to form a belief as to the truth of the other allegations contained in paragraph 26 because they
9 call for legal conclusions or are statements of law and on that basis denies each and every
10 remaining allegation contained in paragraph 26.
11

12 27. Answering paragraph 27, OAL is without sufficient knowledge or information to
13 form a belief as to the truth of the allegations contained in paragraph 27 because they call for
14 legal conclusions or are statements of law and on that basis denies each and every remaining
15 allegation contained in paragraph 27.
16

17 28. Answering paragraph 28, OAL denies the allegations in paragraph 28.
18

19 29. Answering paragraph 29, OAL denies the allegations in paragraph 29.
20

21 **IV. OAL's DETERMINATION**

22 30. Answering paragraph 30, OAL admits the allegations of paragraph 30, except for
23 identifying the petition submitted by Franklin Armory as the "OAL Petition."
24

25 31. Answering paragraph 31, OAL denies the material allegations of paragraph 31. In
26 further answer, OAL alleges that OAL received a second petition on February 7, 2012, from

27 Franklin Armory which was accepted for consideration and which is the subject of 2012
28 OAL Determination No.8.

1 32. Answering paragraph 32, OAL denies the material allegations of paragraph 32. In
2 further answer, OAL alleges that it received two comments from the public on the accepted
3 petition dated February 7, 2012; one from Clinton B. Monfort of Michel & Associates, P.C.,
4 on behalf of FFL Guard and one from Brandon Combs, President of California Association
5 of Federal Firearms Licensees, Inc.

6
7 33. Answering paragraph 33, OAL denies the material allegations of paragraph 33. In
8 further answer, OAL alleges it received a response dated June 1, 2012 to the February 7,
9 2012 petition from the Office of Attorney General on behalf of the Bureau.

10 34. Answering paragraph 34, OAL denies the material allegations of paragraph 34. In
11 further answer, OAL alleges it received a reply dated June 12, 2012 to the February 7, 2012
12 petition from Jason Davis, on behalf of Real Party in Interest.

13
14 35. Answering paragraph 35, OAL denies the material allegations of paragraph 35. In
15 further answer, OAL alleges it issued 2012 OAL Determination No. 8 on August 15, 2012.

16 36. Answering paragraph 36, OAL alleges that 2012 OAL Determination No. 8 speaks
17 for itself.

18
19 37. Answering paragraph 37, OAL alleges that 2012 OAL Determination No. 8 speaks
20 for itself.

21 38. Answering paragraph 38, OAL objects to the allegations in paragraph 38 as vague
22 and unintelligible. In further answer, OAL denies the material allegations of paragraph 38
23 and alleges that 2012 OAL Determination No. 8 speaks for itself.

24
25 **CAUSE OF ACTION**

26 39. Answering paragraph 39, to the extent that this paragraph describes the
27 Government Code section 11340.5, subdivision (d), this is a statement of law and no
28

1 response is required. In further answer, OAL denies any remaining material allegations of
2 paragraph 39.

3 40. Answering paragraph 40, to the extent that this paragraph describes the Code of
4 Civil Procedure section 1085 or contains conclusions of law, no response is required. In
5 further answer, OAL denies any remaining material allegations of paragraph 40.

6 41. Answering paragraph 41, OAL denies the allegations in paragraph 41.

7 42. Answering paragraph 42, OAL denies the allegations in paragraph 42.

8 43. Answering paragraph 43, OAL denies the allegations of paragraph 43.

9 44. Answering paragraph 44, OAL denies the allegations in paragraph 44.

10 45. Answering paragraph 45, OAL objects to the allegations of paragraph 45 as vague
11 and unintelligible. In further answer, OAL denies that the determination issued is incorrect.

12 13 14 **FIRST AFFIRMATIVE DEFENSE**

15 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, OAL alleges that the
16 Petition fails to state facts sufficient to constitute a cause of action.

17 18 **SECOND AFFIRMATIVE DEFENSE**

19 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, OAL alleges that the
20 Petitioner has an adequate remedy at law, and thus mandate is not proper.

21 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Respondent, the Office of Administrative Law, prays that this Court
24 deny the petition for writ of mandate, and, further:

25 1. That 2012 OAL Determination No. 8 be upheld;

26 2. That OAL recovers its costs in this matter and Petitioner take nothing; and,

27 ///

1 3. That such other and further relief be granted to OAL as the Court deems just and
2 proper.

3
4 Dated: December 17, 2012

Respectfully submitted,

5 DEBRA M. CORNEZ, Director
6 KATHLEEN EDDY, Senior Counsel
7 ELIZABETH HEIDIG, Senior Counsel
8 Office of Administrative Law

9 
10 ELIZABETH HEIDIG, Senior Counsel

11 (Verification Omitted Pursuant to CCP section 446)
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