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	8	Smith & Wesson Corp.,	Case No.:
	9	Plaintiff,	
	10	v.	COMPLAINT
	11	Brookshire Tool and Manufacturing Co., Inc. d/b/a ProMag Industries,	
	12	Defendant.	(Jury Trial Demanded)
	14	Plaintiff Smith & Wesson Corp. ("Plaintiff" or "Smith & Wesson"), through its	
	15	attorneys, for its Complaint for Patent Infringement against Defendant Brookshire Tool	
	16	and Manufacturing Company, Inc. d/b/a ProMag Industries ("Defendant" or "ProMag"),	
	17	alleges as follows:	
	18	THE PARTIES	
	19	1. Plaintiff Smith & Wesson Corp. is a Delaware corporation having its	
	20	principal place of business at 2100 Roosevelt Avenue, Springfield, MA 01104.	
	21		
	22		

2. On information and belief, ProMag is a corporation organized under the
 laws of California with its principal place of business at 10654 S. Garfield Avenue,
 South Gate, CA 90280.

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JURISDICTION AND VENUE

5 3. This is an action for patent infringement arising under the patent laws of
6 the United States, Title 35, United States Code.

7 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
8 and 1338(a).

9 5. On information and belief, Defendant is subject to personal jurisdiction in
10 the District of Arizona (the "District"), consistent with the principles of due process and
11 the Arizona Long Arm Statute, at least because Defendants offer their products for sale
12 in this District, have transacted business in this District, have committed and/or induced
13 acts of patent infringement in this District, and/or have placed infringing products into
14 the stream of commerce through established distribution channels with the expectation
15 that such products will be purchased by residents of this District.

16 6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c),
17 1391(d), and 1400(b).

18

INFRINGEMENT OF U.S. PATENT NO. 8,356,439

7. The allegations stated in paragraphs 1 through 6 of this Complaint areincorporated by reference as if fully set forth herein.

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1 8. On January 22, 2013, United States Patent No. 8,356,439 ("the '439 2 patent," attached as Exhibit A) was duly and legally issued for an invention in a 3 lightweight, low-cost semi-automatic rifle magazine. 4 9. Smith & Wesson is the owner of all right, title and interest in the '439 5 patent. 6 The Accused Products 7 10. On information and belief, ProMag offers for sale and sells in the United 8 States magazines designed for use in firearms such as the Smith & Wesson M&P15-22 9 rifle ("the M&P15-22"). Such magazines are sold by ProMag as identified by product 10 code nos. SMI-19 and SMI-A6 (the "Accused Product(s)"). 11 11. There are no material differences between the Accused Products sold in 12 the United States. The SMI-19 Accused Product is a 10 round magazine and the SMI-13 A6 Accused Product is a 32 round magazine. 14 12. The Accused Product is a magazine for a firearm having a magazine well. 15 (See Exhibit B, Infringement Chart for the '439 patent at 1, 8.) 16 13. The Accused Product has an elongate case defining a hollow extending 17 lengthwise along the case, where one end of the case has a narrowed portion forming a 18 neck, the hollow extending through the neck, one end being insertable into the 19 magazine. (See Exhibit B at 2, 8–9.) 20 14. The Accused Product has a follower positioned within the hollow and is 21slidably movable therealong, the follower is biased toward one end of the case, the 22 3

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Ballard Spahr LLP 1 East Washington Street, Suite 2300 Phoenix, AZ 85004-2555 Telephone: 602.798.5400 follower being sized so as to fit within the narrowed portion of the case forming the
 neck. (*See* Exhibit B at 2–3, 9–10.)

The Accused Product has a slot positioned in the neck, the slot extending
lengthwise along the neck toward the one end of the case. (*See* Exhibit B at 3–4,
10–11.)

6 16. The Accused Product has a hook mounted on the follower, the hook being
7 positioned to extend outwardly from the slot when the follower moves slidably through
8 the hollow at the neck. (*See* Exhibit B at 4–5, 11–12.)

9 17. The magazine is characterized in that the case further comprises a
10 centerline positioned equidistant between the first and second sides of the case, wherein
11 the neck is positioned offset from the centerline. (*See* Exhibit B at 6, 15.)

12 18. The magazine is characterized in that the hollow is sized to receive .22
13 caliber long rifle rounds. (*See* Exhibit B at 7, 14.)

14 19. The Accused Product is a magazine for a firearm having a magazine well
15 (*i.e.* the M&P15-22). (*See e.g.* Exhibit B at 8–15.)

20. On information and belief, ProMag has offered for sale and sold, and
offers for sale and sells the Accused Product on the internet, including on its website
www.promagindustries.com ("the ProMag Website"). (Exhibit C, Screenshots taken

19 from the Promag Website.)

20 21. On the ProMag Website, Promag states that the Accused Products are "for
21 Smith & Wesson M&P15-22 rifles." (Exhibit C.)

22 . .

22. ProMag provides an insert in the packaging for the Accused Product
 stating that the Accused Product is for use with "S&W M&P15-22" and for use with
 ".22 LR" ammunition. (Exhibit D, Accused Product Packaging.)

23. On information and belief, ProMag has offered for sale and sold, and/or
offers for sale and sells the Accused Products to retail stores in the United States,
including for example, at Bass Pro Shops, Sportsman's Warehouse and the Palmetto
State Armory retail stores, which retail stores sell the Accused Products to end user
customers for use in firearms such as the M&P15-22.

9 24. On information and belief, ProMag has offered for sale and sold, and/or
10 offers for sale and sells the Accused Products to online retailers in the United States,
11 which online retailers sell the Accused Products to end user customers for use in
12 firearms such as the M&P15-22.

13 25. The Accused Products have been, and/or are, offered for sale in the United
14 States on the internet, including on, for example, the following websites:

15 <u>www.code3tactical.com</u> and <u>www.tacticalvantage.com</u>. (Exhibit E, Screenshots taken

16 from Online Retailer Websites.)

17 26. On information and belief, the Accused Products have arrived in the state
18 of Arizona through ProMag's purposeful shipment of the products to customers from the
19 ProMag Website, and/or through an established distribution channel, through Promag's
20 sale of the Accused Products to retailers and/or online retailers.

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U.S. Patent No. 8,356,439: Claims 1-3

2 27. ProMag has infringed and is still infringing at least claims 1–3 of the '439
3 patent directly under 35 U.S.C. § 271(a) by making, importing, offering for sale, using
4 and/or selling the Accused Products, and will continue to do so unless enjoined by this
5 Court.

6 28. On information and belief, retail stores have and are still infringing at least
7 claims 1–3 of the '439 patent directly under 35 U.S.C. § 271(a) by selling and/or
8 offering for sale in the United States the Accused Products.

9 29. Online retailers have and are still infringing at least claims 1–3 of the '439
10 patent directly under 35 U.S.C. § 271(a) by selling and/or offering for sale in the United
11 States the Accused Product.

30. End users have and are still infringing at least claims 1–3 of the '439
patent directly under 35 U.S.C. § 271(a) by using in the United States the Accused
Product.

15 31. ProMag has had knowledge that the Accused Product infringes the '439
16 patent since at least as early as April 2013. (Exhibit F, April 4, 2013 Letter.)

32. ProMag therefore is a contributory infringer of at least claims 1–3 of the
'439 patent under 35 U.S.C. § 271(c) with respect to retailers, online retailers and end
users' direct infringement of the '439 patent, and will continue to infringe unless

20 enjoined by this Court.

21 33. On information and belief, ProMag has purposefully caused, encouraged,
 22 and urged retailers and online retailers to sell and/or offer for sale, and end users to use,
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the Accused Products in the United States with the knowledge and intent that such
 activities would directly infringe at least claims 1–3 of the '439 patent, and intended
 retailers, online retailers and end users to carry out such activities. ProMag has had
 such knowledge and intent since at least as early as April 2013. (Exhibit F.)
 34. ProMag therefore induces under 35 U.S.C. § 271(b) retailers, online

34. ProMag therefore induces under 35 U.S.C. § 271(b) retailers, online
retailers and/or end users' direct infringement of at least claims 1–3 of the '439 patent,
and will continue to do so unless enjoined by this Court.

U.S. Patent No. 8,356,439, Claims 4-7

9 35. End users have purchased and/or otherwise obtained the Accused Product
10 and, in the United States, combined the Accused Product with a firearm having a
11 magazine well (*i.e.* the M&P15-22). By doing so, the end users have infringed and are
12 still infringing at least claims 4–7 of the '439 patent directly under 35 U.S.C. § 271(a)
13 by using the invention claimed therein.

14 36. ProMag makes, imports, offers for sale, uses and/or sells in the United
15 States the Accused Product.

37. Retail stores sell and/or offer for sale to end users in the United States the
Accused Product. On information and belief, ProMag ships the Accused Products,

18 directly or indirectly, to retail stores.

38. Online retailers sell and/or offer for sale to end users in the United States
the Accused Product. On information and belief, ProMag ships the Accused Products,
directly or indirectly, to online retailers.

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39. The Accused Products are intended, designed, made, and configured to be
 used with the M&P15-22.

40. ProMag has had knowledge that combining the Accused Products with the
M&P15-22, infringe at least claims 4–7 of the '439 patent since at least as early as April
2013. (Exhibit F.)

6 41. On information and belief, at least by advertising the infringing use in its 7 promotional materials and/or by including an insert in the packaging for the Accused 8 Products which direct end users to use the Accused Product with a firearm with a 9 magazine well (*i.e.* the M&P15-22), ProMag has purposefully caused, encouraged, and 10 urged end users to use the Accused Product, with the knowledge and intent that such 11 activities would directly infringe at least claims 4–7 of the '439 patent, and intend end 12 users to carry out such activities. ProMag knows or should know that end users use, in 13 the United States, the Accused Products because ProMag distributes the products to 14 retailers and online retailers for resale to end users for this purpose and also because 15 ProMag distributes the products directly to end users for this purpose.

42. ProMag therefore induces under 35 U.S.C. § 271(b) direct infringement of
at least claims 4–7 of the '439 patent by end users of the Accused Products, and will
continue to infringe unless enjoined by this Court. ProMag also therefore is a
contributory infringer of at least claims 4–7 of the '439 patent under 35 U.S.C. § 271(c)
with respect to direct infringement of at least claims 4–7 of the '439 patent by end users
of the Accused Products, and will continue to infringe unless enjoined by this Court.

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43. Plaintiff has no adequate remedy at law against Defendant's infringement
 of the '439 patent and, unless the Defendant is enjoined from its infringement, Plaintiff
 will suffer irreparable harm.

4 44. As a result of Defendant's infringement, Plaintiff has suffered and will
5 continue to suffer damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following relief:

8 A. A judgment in favor of Plaintiff that the Defendant has infringed,
9 directly and indirectly, by way of inducement and/or contributory infringement, the '439
10 patent;

Β. A permanent injunction, enjoining the Defendant and its officers, 11 12 directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, 13 parents, and all others acting in concert or privity with Defendant from infringing, 14 inducing the infringement of, or contributing to the infringement of the '439 patent; 15 C. An award to Plaintiff of the damages to which it is entitled under at 16 least 35 U.S.C. § 284 for Defendant's past infringement and any continuing or future 17 infringement, including compensatory damages; 18 D. A judgment and order requiring the Defendant to pay the costs of 19 this action (including all disbursements), as well as attorneys' fees as provided by 35 U.S.C. § 285; 2021 E. An award to Plaintiff of pre-judgment and post-judgment interest 22 on its damages; and 9 DMWEST #9715419 v1

