

SAN DIEGO IP LAW GROUP LLP  
TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243,042)  
[trevorcoddington@sandiegoiplaw.com](mailto:trevorcoddington@sandiegoiplaw.com)  
CODY R. LEJEUNE (CSB NO. 249,242)  
[codylejeune@sandiegoiplaw.com](mailto:codylejeune@sandiegoiplaw.com)  
DONNY K. SAMPORNA (CSB NO. 316,456)  
[donnysamporna@sandiegoiplaw.com](mailto:donnysamporna@sandiegoiplaw.com)  
703 Palomar Airport Rd., Suite 210  
Carlsbad, CA 92011  
Telephone: (442) 325-1024  
Facsimile: (858) 408-4422

JAMES V. FAZIO, III (CSB NO. 183,353)  
[jamesfazio@sandiegoiplaw.com](mailto:jamesfazio@sandiegoiplaw.com)  
12526 High Bluff Dr., Suite 300  
San Diego, CA 92130  
Telephone: (858) 792-3446

*Attorneys for Plaintiff,*  
EVOLUTION CONCEPTS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

EVOLUTION CONCEPTS, INC.,

*Plaintiff,*

v.

CROSS ENGINEERING, LLC, a  
California limited liability corporation,  
d.b.a., Cross Armory, WES CROSS, an  
individual, and DOES 2-10, inclusive,

*Defendants.*

CASE NO.: 18-CV-0871-DMS (MSB)

**FIRST AMENDED COMPLAINT  
FOR: 1) PATENT INFRINGEMENT;  
2) DECLARATORY JUDGMENT; 3)  
BREACH OF CONTRACT; 4)  
TRADE LIBEL; 5) INTENTIONAL  
INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
ADVANTAGE; AND 6) UNFAIR  
COMPETITION.**

Judge: Hon. Dana M. Sabraw

**DEMAND FOR JURY TRIAL**

1 Plaintiff Evolusion Concepts, Inc., d.b.a., AR Maglock (hereinafter, “Evolusion” or  
2 “Plaintiff”) hereby complains of Defendants Cross Engineering, LLC, d.b.a., Cross  
3 Armory (hereinafter, “Cross Armory”) and Wes Cross, an individual, (hereinafter,  
4 “Cross”) (collectively, the “Defendants”) and alleges as follows:

### 5 **NATURE OF THE ACTION**

6 1. This is an action for patent infringement under the patent laws of the United  
7 States, 35 U.S.C. § 271, *et seq.* and related state and common law causes of action.

### 8 **THE PARTIES**

9 2. Evolution Concepts, Inc. is a California corporation with its principal place of  
10 business located at 1658 Law Street, San Diego, CA 92109.

11 3. Evolusion is informed and believes and based thereon alleges that Cross  
12 Armory is a California limited liability corporation with its principal place of business  
13 located at 2720 Loker Avenue West, Suite I, Carlsbad, CA 92010.

14 4. According to Cross Armory’s website, <https://crossarmory.com/about/>, Cross  
15 Armory’s CEO is Savannah Cross, its President is Richard Berwick, and its VP of  
16 Engineering and Principal Investor is Wes Cross.

17 5. Evolusion is informed and believes and based thereon alleges that Wes Cross  
18 is an individual residing in California.

19 6. Evolusion is ignorant of the true names and capacities of the parties sued  
20 herein as DOES 2 through 10, inclusive, whether individual, corporate, or otherwise, and  
21 therefore sues these defendants by such fictitious names. Evolusion will seek leave to  
22 amend the complaint to assert their true names and capacities when they have been  
23 ascertained. Evolusion is informed and believes and based thereon alleges that all  
24 defendants sued herein as DOES 2 through 10 are in some manner responsible for the acts  
25 and omissions alleged herein.

### 26 **JURISDICTION AND VENUE**

27 7. This Court has original and exclusive subject matter jurisdiction over this  
28

1 action under 28 U.S.C. §§ 1331 and 1338(a) because Evolusion's claims for patent  
2 infringement arise under 35 U.S.C. § 271. This Court has supplemental jurisdiction over  
3 Evolusion's state and common law claims under 28 U.S.C. § 1367(a) because the state and  
4 common law claims are so related to the federal claims that they form part of the same case  
5 or controversy and derive from a common nucleus of operative facts.

6 8. This Court has personal jurisdiction over the Defendants because they reside,  
7 have their principal place of business, and are incorporated in this District and have a  
8 continuous, systematic, and substantial presence in this District, because they entered into  
9 the disputed contract in this district, which was to be carried out within this district, because  
10 they regularly conduct business and/or solicit business within this District, because they  
11 have committed and continue to commit patent infringement in this District, including,  
12 without limitation, by selling and offering for sale infringing products to consumers in this  
13 District and by purposefully directing activities at residents of this District, and by placing  
14 infringing products into the stream of commerce with the knowledge that such products  
15 would be sold in California and this District, which acts form a substantial part of the events  
16 giving rise to Evolusion's claims.

17 9. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because  
18 the Defendants reside in this District and Defendant Cross Armory has committed acts of  
19 infringement, and Defendants have a regular and established place of business in this  
20 District. Additionally, venue is proper in this District because Evolusion has suffered harm  
21 in this District and all pertinent witnesses are also believed to be located in this District.

### 22 **GENERAL ALLEGATIONS**

23 10. Evolusion designs and sells, among other innovative products, the patented  
24 AR Maglock device. The AR Maglock device allows firearm enthusiasts to use and enjoy  
25 Armalite Rifle-style rifles without the rifle falling within California's definition of an  
26 "assault weapon." Armalite Rifle-style rifles are commonly referred to as Modern Sporting  
27 Rifles ("MSRs"). MSRs include the ubiquitous AR-15- and AR-10-type rifles. Some  
28

estimates predict there are approximately 10 million MSRs owned by Californians and as many as 50 million owned nation-wide. Courtney Harris (“Harris”), President of Evolusion, co-invented the AR Maglock device in 2013. The AR Maglock device prevents the MSR on which it is installed from becoming an “assault weapon” under California law by forcing the user to disassemble the rifle’s action prior to removing the magazine (pictured right). Otherwise, under California Penal Code section 12280, possession of an MSR that falls within California’s definition of “assault weapon” is a felony.



11. In 2016, California voters passed legislation changing California’s definition of an “assault weapon.” Under current California law, an “assault weapon” is defined as a semiautomatic, centerfire rifle that does not have a fixed magazine, and has any one of the following: a pistol grip that protrudes conspicuously beneath the action of the weapon, a thumbhole stock, a folding or telescoping stock, a grenade launcher or flare launcher, a flash suppressor, or a forward pistol grip. Cal. Penal Code § 30515(a). As pertinent here, California recently expanded the Penal Code to specifically define how a magazine is to be fixed to the firearm such that it does not qualify as an “assault weapon.” Under California’s new law, a “fixed magazine” is an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action. Cal. Penal Code § 30515(b). Conceptually, the AR Maglock device legally fixes a magazine to a rifle, thereby keeping the rifle out of the purview of “assault weapons.”

12. Evolusion manufactures and sells its patented AR Maglock device directly to consumers through its website, <https://armaglock.com>, to various distributors, various retail outlets, and to original equipment manufacturers. Currently, Evolusion sells its AR

1 Maglock device in five (5) different variants: the AR Maglock Gen 1, the AR Maglock  
2 Gen 2, the AR Maglock Gen 3, the AR Maglock AR-10, and the AR Maglock AR-15 - .22  
3 Caliber.

4 13. In addition to the AR Maglock product, Evolusion designs and sells pin  
5 devices that work in conjunction with the AR Maglock devices. For example, Evolusion  
6 sells its KingPin product, its Hyperswitch product, and its Patriot Pin product. These pin  
7 devices allow the user of an MSR to easily scissor open an MSR while using an AR  
8 Maglock device. Because of their complimentary nature, Evolusion's customers who  
9 purchase an AR Maglock device often also purchase one of Evolusion's pin devices.

10 14. Over the past three years, Evolusion has generated significant revenue from  
11 marketing and selling its patented AR Maglock device and is able to meet all demand in  
12 the United States for sales usurped by Defendant's infringing products. Because  
13 California's recent change to its "assault weapon" law, Evolusion initially targeted  
14 consumers in California. However, because other states such as Connecticut, Hawaii,  
15 Maryland, Massachusetts, New Jersey, and New York have passed, or are in the process of  
16 passing, laws similar to California's "assault weapon" law, Evolusion also targets and sells  
17 to consumers in those states. Additionally, Evolusion sells its products to citizens and  
18 residents in other states so that the MSRs can be converted and taken to states having laws  
19 similar to those of California. Given the legislative climate in other states, the demand for  
20 the AR Maglock device will dramatically increase.

21 15. On June 24, 2014, the United States Patent & Trademark Office ("PTO") duly  
22 and lawfully issued United States Patent No. 8,756,845, entitled "Method and Device for  
23 Converting Firearm with Detachable Magazine to a Firearm with Fixed Magazine" ("the  
24 '845 patent"). A copy of the '845 patent is attached hereto as Exhibit A. The '845 patent  
25 issued from United States Patent Application No. 13/803,966 (hereinafter, the "Maglock  
26 patent application"), which was filed on March 14, 2013. The Maglock patent application  
27 was published on October 17, 2013, as United States Patent Application Publication No.  
28 2013/0269232 (the "Maglock published patent application"), a copy of which is attached



hereto as Exhibit B. Evolusion owns all rights to the '845 patent via an Assignment, which was recorded at the PTO on December 11, 2017, at Reel 044357, Frame 0383. A Notice of Recordation is attached hereto as Exhibit C.

16. Cross Armory is and has been infringing the '845 patent by making, using, selling, offering for sale, and/or importing a number of magazine release products that are covered by one or more claims of the '845 patent, including, without limitation, Cross Armory's Safe Mag .308/AR-10 magazine release product ("Safe Mag AR-10"), Safe Mag – MIL-SPEC AR-15/M4 magazine release product ("Safe Mag 1"), and the Safe Mag 2 – ALL AR-15/M4 magazine release product ("Safe Mag 2") (pictured left) (collectively, the "Accused Products"). The Accused Products may be purchased directly from Cross Armory online through its respective website, [www.crossarmory.com](http://www.crossarmory.com) and third-party websites, and from various retailers in this District.



17. On July 22, 2015, or shortly thereafter, Defendants received actual notice of the Maglock published patent application and Evolusion's pending patent rights.

18. On February 7, 2017, via electronic and First Class United States Mail, Evolusion informed Cross Armory of the Maglock patent, Evolusion's patent rights, and Cross Armory's infringement liability. A copy of the letter is attached as Exhibit D.

19. On June 22, 2018, Cross Armory published an online article on its website entitled, "Some AR-15 Rear Takedown Pins Not Compliant"<sup>1</sup> (the "Article"). A true and correct copy of the Article is attached hereto as Exhibit E. The Article pictures and specifically names Evolusion's AR Maglock Gen 2 and adds "ILLEGAL" in bold face font to the displayed picture. *See* Exhibit E. Additionally, the article states, "in addition to being dangerous to the user or others, a law enforcement officer, prosecutor, and/or jury will

<sup>1</sup> <https://crossarmory.com/some-ar-15-rear-takedown-pins-not-compliant/>, last retrieved on August 3, 2018.

determine that the action of the firearm is not sufficiently disassembled to place the firearm outside of the scope of ‘assault weapon.’ Misinformed consumers who have these rear takedown pins installed will be subject to the terms of the AWCA (Assault Weapon Control Act) including, but not limited to, penalties of forfeiture, fine, and/or jail or prison, according to the legal experts.” *Id.* The Article concludes, “[p]ut simply, the installation of these separation limiting, rear takedown pins will place your AR-15 or AR-10 in the category of an assault weapon, which is **illegal to possess** without registering the weapon with the State of California.” *Id.* (bold in original). Notably, the Article depicts and discusses not only Evolusion’s AR Maglock device, but also its pin products.

20. Evolusion’s AR Maglock device has never been found to be illegal nor has an MSR having an AR Maglock device installed thereon been found illegal to possess, under California’s new or “old” “assault weapons” law.

21. On June 23, 2018, the day after the Article was published, a customer who previously purchased Evolusion’s AR Maglock Gen 2 product contacted Evolusion though email and demanded that his purchase be refunded. A true and correct copy of the email is attached hereto as Exhibit F (the customer’s name has been redacted). In his email, the disgruntled customer states, “I am writing to you because I have recently learned so [*sic.*] disturbing news about your product I recently purchased from your company.” *Id.* That customer “attached some screenshots of what [he] read about [Evolusion’s] products.” *Id.* The attached screenshots were of the Article attached as Exhibit E. To appease its customers and to remedy the Article’s harm to Evolusion’s good will, Evolusion was forced to give a full refund to that customer, thereby causing Evolusion to lose the revenue already generated. A true and correct copy of the refund receipt is attached to Exhibit F. At least by virtue of this refund, Evolusion suffered specific pecuniary loss as a direct and proximate result of the Article’s publication.

22. On July 8, 2018, a second and unrelated customer contacted Evolusion via email. A true and correct copy of that email is attached hereto as Exhibit G (the customer’s

name has been redacted). In his email, the customer states, “I recently received my AR maglock gen 2 with kingpin but I noticed this article from cross armory. <https://crossarmory.com/tag/fixed-magazine/>. How do you feel about these statements? I’m kind of bummed out myself since I’m out \$120 and may not even be California complaint according the [*sic.*] cross armory.” *Id.* Again, this second customer refers to the Article attached as Exhibit E. Again, to cure the damage caused by the Cross Article to Evolusion’s good will, Evolusion was forced to give this customer a full refund, thereby causing Evolusion to lose the revenue already generated. A true and correct copy of the refund receipt is attached to Exhibit G. At least by virtue of this refund, Evolusion suffered specific pecuniary loss as a direct and proximate result of the Article’s publication.

### **FIRST CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 8,756,845 Against Cross Armory)**

23. Evolusion repeats, realleges, and incorporates by reference the preceding allegations above as though set forth fully herein.

24. Since June of 2014, Evolusion has and continues to mark the AR Maglock device to include “U.S. Patent 8,756,845 B2” or the like on its packaging and on its website. Since its inception, “patent pending” has appeared on Evolusion’s website and packaging up until around the issue date of the ‘845 patent when the website was revised to note “US Patent #: 8,756,845” in connection with the AR Maglock device. *See, e.g.,* <https://www.armaglock.com>.

25. Cross Armory, by and through its agents, officers, directors, resellers, retailers, employees and servants, have been and are currently infringing the ‘845 patent by making, using, offering to sell, selling, exporting, and/or importing into the United States the Accused Products, which embody one or more claims set forth in the ‘845 patent.

26. For example, the accused Safe Mag 2 product meets all the limitations set forth in claim 8 of the ‘845 patent. A chart identifying specifically where each limitation of claim 8 is found in the Safe Mag 2 is attached hereto as Exhibit H. This infringement



1 chart is based on Evolusion's current understanding of the Safe Mag 2, which only  
2 considers publicly available information. The chart does not set forth all of Evolusion's  
3 infringement theories – the Safe Mag 2 embodies other claims set forth in the '845 patent.  
4 Furthermore, the Safe Mag 2 has similar, if not identical, qualities to the Safe Mag and is  
5 therefore representative of the Safe Mag.

6 27. Furthermore, when the Accused Products are installed on an AR-10 or AR-  
7 15-type rifle (their intended uses), they meet all the limitations set forth in claim 1 of the  
8 '845 patent. A chart identifying specifically where each limitation of claim 1 is found in  
9 Cross Armory's Safe Mag 2 as installed on an AR-15-type rifle is attached hereto as Exhibit  
10 I. The chart does not set forth all of Evolusion's infringement theories – the AR-15 Safe  
11 Mag 2 embodies other claims set forth in the '845 patent.

12 28. Cross Armory and its customers directly infringe claim 1 of the '845 patent  
13 after installing an Accused Product on a respective firearm. The Accused Products have no  
14 substantial, non-infringing use and constitutes a material part of the firearm defined in  
15 claim 1 of the '845 patent. Cross Armory was and is aware that the combination of an  
16 Accused Product with a respective firearm infringes claim 1 of the '845 patent.

17 29. In addition, Cross Armory, its distributors, and its customers who purchase an  
18 Accused Product infringe claim 15 of the '845 patent by performing the claimed method.  
19 Defendant publishes installation instructions for the Accused Products.<sup>2</sup> A chart identifying  
20 specifically where each limitation of claim 15 is found in Cross Armory's publications and  
21 products is attached hereto as Exhibit J. The chart does not set forth all of Evolusion's  
22 infringement theories – the AR-15 CA Compliance Kit embodies other claims set forth in  
23 the '845 patent.

24 30. By way of their installation instructions, Cross Armory induces its customers  
25 to infringe the '845 patent.  
26

27  
28  
<sup>2</sup> See <https://crossarmory.com/shop/cross-armory-safe-mag-2/>; retrieved on April 8, 2018.

1           31. Evolusion reserves the right to amend or supplement its infringement theories  
 2 upon more information becoming available through formal discovery and/or this Court  
 3 completing its claim construction proceedings. Pursuant to Patent Local Rule 3.1,  
 4 Evolusion will serve a Disclosure of Asserted Claims and Infringement Contentions (that  
 5 may alter and/or supplement the infringement charts submitted herewith).

6           32. Cross Armory's acts of infringement were undertaken without permission or  
 7 license from Evolusion. After receiving actual notice of the Maglock patent and/or the  
 8 Maglock published patent application, Cross Armory continued its commercialization of  
 9 the Accused Products despite an objectively high likelihood that its actions constituted  
 10 infringement of a valid patent (or soon-to-be-issued patent) and/or Evolusion's provisional  
 11 patent rights under the Maglock published patent application. Accordingly, Cross  
 12 Armory's acts constitute willful infringement in violation of 35 U.S.C. § 271.

13           33. Evolusion is informed and believes and based thereon alleges that Cross  
 14 Armory's infringement of the '845 patent will continue unless enjoined by this Court.

15           34. Sales of the Accused Products drive sales of other products of Cross Armory  
 16 including, but not limited to Cross Armory's "AR15/M4 Cross Armory Quick Pins," "Cross  
 17 Armory Flop Stop," "Cross Armory Quick Pins .308/AR-10," "Cross Armory Pin Pal  
 18 .308/AR-10," "Cross Armory Pin Pal," and "Cross Armory Flop Stop – without Pin Pal"  
 19 (collectively, the "Collateral Products"). The Collateral Products are sold and marketed  
 20 together with the Accused Products. Many, if not all, of the Collateral Products form a  
 21 single assembly, functional unit, or operate in conjunction with one or more of the Accused  
 22 Products. For example, the "Cross Armory Quick Pins" cannot function as intended  
 23 without one of the Accused Devices, or an equivalent thereof. On its website, Cross  
 24 Armory states, "[the Cross Armory Quick Pins] pairs with Cross Armory's SAFE MAG or  
 25 SAFE MAG 2." The Collateral Products also have a marketing and financial dependence  
 26 on the Accused Products.  
 27

28           35. But for Cross Armory's infringement, Evolusion would have sold its AR

1 Maglock device and other unpatented, collateral products, *e.g.*, Patriot Pin, KingPin,  
 2 Hyperswitch and AR Tether, to all of Cross Armory's customers, and Evolusion is entitled  
 3 to its lost profits.

4 36. Evolusion is entitled to its lost profits for its own collateral products or a  
 5 reasonable royalty on the Cross Armory's sales of the Collateral Products.

6 37. By reason of the foregoing infringing acts, Evolusion has been damaged,  
 7 continues to be damaged, and is entitled to no less than a reasonable royalty in accordance  
 8 with 35 U.S.C. § 284 in an amount to be determined at trial. Additionally, pursuant to 35  
 9 U.S.C. § 284, Evolusion is entitled to enhanced and treble damages against Cross Armory  
 10 together with interest at the maximum legal rate and costs as fixed by the Court.

11 38. Additionally, Evolusion is entitled to reasonable attorneys' fees incurred in  
 12 this action under 35 U.S.C. § 285.

13 39. Because of the aforesaid infringing acts, Evolusion has suffered and continues  
 14 to suffer great and irreparable injury for which there is no adequate remedy at law.

## 15 **SECOND CLAIM FOR RELIEF**

### 16 **(Declaratory Relief Against Cross Armory)**

17 40. Evolusion realleges and incorporates by reference the foregoing allegations as  
 18 though set forth fully herein.

19 41. A dispute exists as to the infringement of the '845 patent.

20 42. Evolusion is entitled to a declaration that Cross Armory infringes the '845  
 21 patent.

## 22 **THIRD CLAIM FOR RELIEF**

### 23 **(Breach of Contract Against All Defendants)**

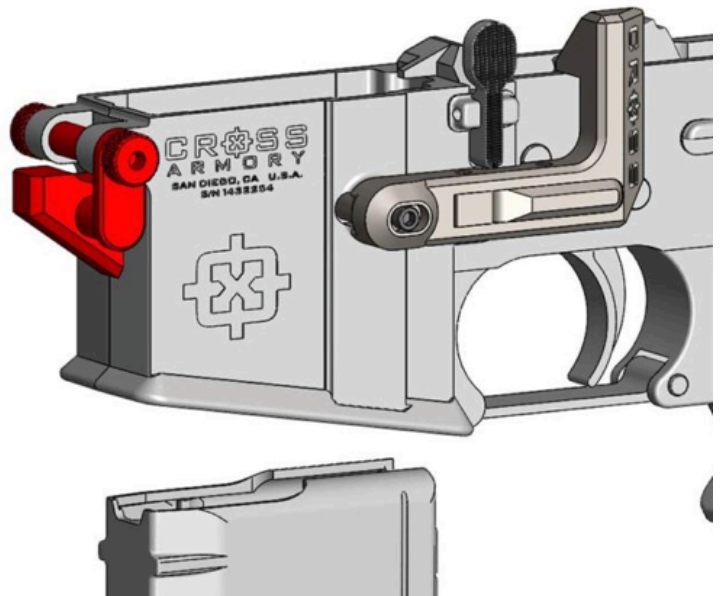
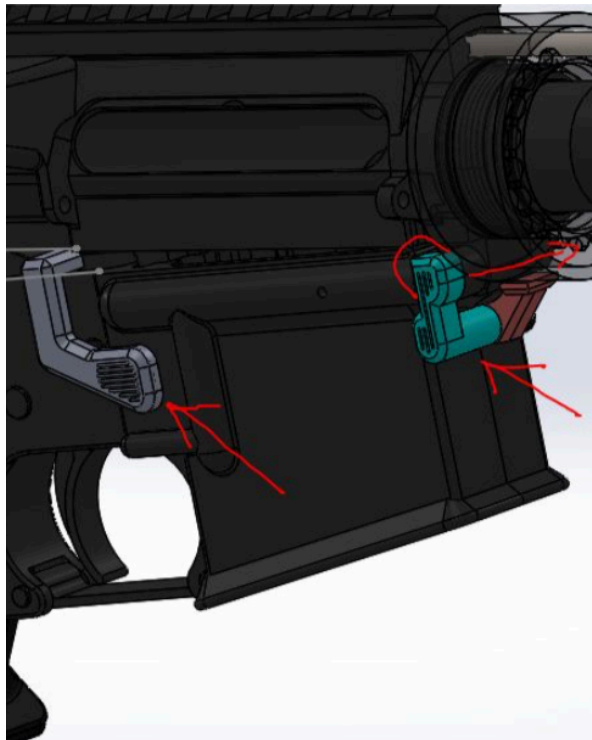
24 43. Evolusion realleges and incorporates by reference the foregoing allegations as  
 25 though set forth fully herein.

26 44. On June 20, 2016, in exchange for good and valuable consideration,  
 27 Evolusion and Defendants entered into a non-disclosure agreement ("NDA"). A true and  
 28

1 correct copy of the NDA is attached hereto as Exhibit K.

2 45. Evolusion conveyed confidential, novel, and commercially valuable  
3 information to Defendants regarding a forward wedge type device that mounts to the front  
4 takedown pin of an MSR. Harris solicited a “forward (forend) [*sic.*] adjustable wedge type  
5 device that mounts to the front takedown pin. This solution would have to account for the  
6 many different types of forend [*sic.*] handguards on the market.” *See* Exhibit K at 2. In  
7 exchanging communications with Defendants, Evolusion, through Harris, conveyed  
8 confidential, novel, and commercially valuable information pertaining to the forward  
9 wedge-type device to Defendants.

10 46. In the communications between Evolusion and Defendants, the forward  
11 wedge-type device was referred to as the “Tilt Lock.” Exemplary schematic drawings of  
12 the confidential information conveyed to and drafted by Defendants for Evolusion are  
13 attached hereto as Exhibit M. Cross Armory’s Flop Stop device (pictured below, right) is  
14 strikingly similar to Evolusion’s confidentially-conveyed Tilt Lock (pictured below, left)





1           56. At least by virtue of Cross Armory's published Article labeling at least one of  
2 Evolution's product as "ILLEGAL," Cross Armory made a statement that would be clearly  
3 or necessarily understood to have disparaged the quality of Evolution's products, for  
4 example, by leading the reader to believe they would be subject to legal action should they  
5 use Evolution's products.

6           57. At least by virtue of Article's publication, Cross Armory made its false and  
7 defamatory statements to individuals other than Evolution.

8           58. Cross Armory's false and defamatory publications were made with the intent  
9 to disparage the quality, reliability, legality, and durability of one or more of Evolution's  
10 products. These false and defamatory statements played, and continue to play, a material  
11 and substantial role in inducing current Evolution customers and potential Evolution  
12 customers not to purchase Evolution's products, including the AR Maglock Gen 2. At least  
13 by virtue of including a picture of Evolution's AR Maglock Gen 2 product and/or its pin  
14 product, Cross Armory specifically referred to Evolution's products and/or business. At  
15 least by virtue of Cross Armory's false and/or misleading statements in the Article claiming  
16 that Evolution's customers would be subject to fines and jailtime, Cross Armory clearly  
17 derogated Evolution's AR Maglock Gen 2, its pin product, and Evolution's business and  
18 overall good will.

19           59. Cross Armory published its false, defamatory, and unprivileged statements  
20 with actual knowledge of their falsity or with some serious doubts as to their truth, so as to  
21 have acted with actual malice. Cross Armory intended for publication of its statements to  
22 result in harm to the interests of Evolution, and either recognized or should have  
23 recognized that the statements were likely to result in such harm. Cross Armory knew or  
24 should have recognized that someone might act in reliance on the Cross Article, causing  
25 Evolution Financial loss, at least by virtue of Evolution being forced to give refunds to  
26 disgruntled customers believing that Evolution's products would subject them to legal  
27 action and/or by dissuading customers from purchasing Evolution's products.  
28



60. Evolusion suffered specific pecuniary loss as evidenced by the refunds Evolusion was forced to give to customers who were misled by Cross Armory's Article. *See, e.g.*, Exhibits F, G. Upon information and belief, many more of Cross Armory's customers were drawn away from Evolusion to Cross Armory as a result of the Article's publication.

61. The false and defamatory statements alleged herein caused both general and special damages to Evolusion. At least by virtue of having to cure the Article's damage by being forced to give its customers refunds, Evolusion suffered a direct financial harm. Cross Armory's conduct of publishing the Article was at least a substantial factor in causing Evolusion's harm.

62. Cross Armory's actions are wanton, willful, oppressive, malicious, and fraudulent. As a consequence, Cross Armory should be assessed exemplary damages so as to punish and make an example of Cross Armory in an effort to deter Cross Armory from engaging in similar misconduct in the future.

### **FIFTH CLAIM FOR RELIEF**

#### **(Intentional Interference with Prospective Economic Advantage Against Cross Armory)**

63. Evolusion realleges and incorporates by reference the foregoing allegations as though set forth fully herein.

64. There exists and existed at all times relevant herein, actual and prospective economic relationships between Evolusion and its customers and contacts in the industry, evidenced in part by prospective or actual contractual agreements between Evolusion and its customers and contacts. Said economic relationships contain an economic benefit as well as future economic benefits to Evolusion.

65. Evolusion is informed and believes and thereon alleges, that Cross Armory knew and know of the economic relationships described herein and future economic relationships that existed, exist, and will exist between Evolusion and its customers and

1 contacts. Evolusion is further informed and believes and thereon alleges that Cross Armory  
 2 knowingly, fraudulently, intentionally, and tortiously interfered with Evolusion's  
 3 economic relationships with its customers and contacts by, as set forth herein, engaging in  
 4 false, defamatory, and misleading advertising and by engaging in unfair and deceptive sales  
 5 practices to gain an unfair competitive advantage and to persuade Evolusion's customers  
 6 and contacts in the industry to do business with Cross Armory and to divert sales and  
 7 service opportunities away from Evolusion. Defendants' actions fall outside the privilege  
 8 of fair competition.

9 66. By engaging in the acts and conduct set forth there, Evolusion is informed and  
 10 believes and thereon alleges that Cross Armory disrupted existing and prospective business  
 11 relationships between Evolusion and its customers and contacts in the magazine locking  
 12 and firearms industry. As a legal and proximate result of Cross Armory's wrongful actions,  
 13 Evolusion has been damaged in an amount to be established according to proof at trial.

14 67. Evolusion is informed and believes and thereon alleges that Cross Armory's  
 15 wrongful conduct will continue to cause injury to Evolusion unless enjoined and restrained  
 16 by this Court.

17 68. Evolusion is informed and believes and thereon alleges that Cross Armory's  
 18 actions are willful, oppressive, fraudulent, despicable, and in conscious disregard of the  
 19 rights of Evolusion and the resulting harm to Evolusion. As a result, Cross Armory should  
 20 be assessed punitive and exemplary damages in an amount to punish and deter such  
 21 conduct in the future.

### 22 **SIXTH CLAIM FOR RELIEF**

#### 23 **(Violation of California Business & Professions Code § 17200 *et seq.* Against Cross** 24 **Armory)**

25 69. Evolusion realleges and incorporates by reference the foregoing allegations as  
 26 though set forth fully herein.

27 70. By engaging in the actions set forth herein including, but not limited to, trade  
 28

libel and the dissemination of false, misleading, and deceptive advertising, Cross Armory is engaging in unlawful, unfair, and fraudulent business acts and practices in violations of California Business and Profession Code § 17200 *et seq.*

71. As a direct and proximate result of Cross Armory's wrongful actions, Evolusion has been harmed and seeks both restitution as well as injunctive relief to remedy the harm caused by Cross Armory. Evolusion seeks a prohibitory injunction to enjoin Cross Armory's continued acts of unfair competition including trade libel and its continued publication of false and misleading advertising, as well as a mandatory injunction requiring affirmative actions by Cross Armory to remedy or correct their unlawful, unfair, and fraudulent practices.

### **PRAYER FOR RELIEF**

WHEREFORE, Evolusion prays for judgment against Defendant as follows:

(a) an Order adjudging Cross Armory to have infringed the '845 patent under 35 U.S.C. § 271;

(b) an Order adjudging Cross Armory to have willfully infringed the '845 patent under 35 U.S.C. § 271;

(c) a permanent injunction under 35 U.S.C. § 283 enjoining Cross Armory, its officers, directors, agents, servants, resellers, retailers, employees and attorneys, and those persons acting in concert or participation with it, from infringing the '845 patent in violation of 35 U.S.C. § 271;

(d) an accounting of all gains, profits, and advantages Cross Armory derived by their infringement of the '845 patent, and for damages adequate to compensate Evolusion for such infringement of the '845 patent;

(e) an award to Evolusion of its lost profits or a reasonable royalty for Cross Armory's sales of the Accused Products and Collateral Products;

(f) an order for a trebling of damages and/or enhanced damages due to the Cross Armory's willful infringement under 35 U.S.C. § 284;

- (g) compensatory, punitive, and exemplary damages against Defendants;
- (h) an Order adjudicating that this is an exceptional case;
- (i) an award to Evolusion of all attorneys' fees and costs incurred by Evolusion in connection with this action under 35 U.S.C. § 285;
- (j) an Order adjudging the Defendants to have breached the non-disclosure agreement;
- (k) an award to Evolusion of all attorneys' fees and costs incurred by Evolusion in connection with enforcing the non-disclosure agreement;
- (l) an award of pre-judgment and post-judgment interest and costs of this action against Defendants; and
- (m) for such other and further relief as the Court deems just and proper.

Respectfully submitted,  
SAN DIEGO IP LAW GROUP LLP

Dated: December 7, 2018

By: /s/ Donny Samporna  
James V. Fazio, III  
Trevor Q. Coddington, Ph.D.  
Donny K. Samporna  
703 Palomar Airport Rd., Suite 210  
Carlsbad, CA 92011  
Phone: (442) 325-1024  
Fax: (858) 405-4422  
*Attorneys for Plaintiff,*  
EVOLUSION CONCEPTS, INC.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Evolusion Concepts, Inc. hereby demands a trial by jury of all issues so triable.

Respectfully submitted,  
SAN DIEGO IP LAW GROUP LLP

Dated: December 7, 2018

By: /s/ Donny Samporna  
James V. Fazio, III  
Trevor Q. Coddington, Ph.D.  
Donny K. Samporna  
703 Palomar Airport Rd., Suite 210  
Carlsbad, CA 92011  
Phone: (442) 325-1024  
Fax: (858) 405-4422  
*Attorneys for Plaintiff,*  
EVOLUSION CONCEPTS, INC.

SAN DIEGO IP LAW GROUP LLP  
SAN DIEGO – CARLSBAD  
SANDIEGOIPLAW.COM

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2018, I caused a copy of the foregoing  
**FIRST AMENDED COMPLAINT FOR: 1) PATENT INFRINGEMENT; 2)  
DECLARATORY JUDGMENT; 3) BREACH OF CONTRACT; 4) TRADE  
LIBEL; 5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE; AND 6) UNFAIR COMPETITION.**  
and attachments thereto to be served *via* electronic mail to counsel for all parties and their  
counsel of record, who are deemed to have consented to electronic service using the Court's  
CM/ECF system.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Respectfully submitted,  
SAN DIEGO IP LAW GROUP LLP

Dated: December 7, 2018

By: /s/ Donny Samporna

James V. Fazio, III  
Trevor Q. Coddington, Ph.D.  
Donny K. Samporna  
703 Palomar Airport Rd., Suite 210  
Carlsbad, CA 92011  
Phone: (442) 325-1024  
Fax: (858) 405-4422  
*Attorneys for Plaintiff,*  
EVOLUTION CONCEPTS, INC.

SAN DIEGO IP LAW GROUP LLP  
SAN DIEGO – CARLSBAD  
SANDIEGOIPLAW.COM