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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

HACHIGIAN INDUSTRIES, INC., a
California corporation,

Plaintiff,

v.

EVOLVE USA LLC, a California
Limited Liability Company; and DOES 1
through 50, inclusive

Defendants.

CASE NO. '18CV0653 BTM JLB

COMPLAINT FOR:

1. **Patent Infringement; and**
2. **Unfair Competition**

DEMAND FOR JURY TRIAL

Plaintiff HACHIGIAN INDUSTRIES, INC. brings this action against the Defendant EVOLVE USA LLC for injunctive relief and damages under the laws of the United States of America and the State of California as follows:

SUBJECT MATTER JURISDICTION AND VENUE

1. This action involves claims for patent infringement that arise under the Federal Patent Act, 35 U.S.C. §§ 101 *et seq.* This Court has exclusive subject matter jurisdiction over the claims in this action under 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and/or (c). The infringing products which are the subject of this litigation were advertised, distributed, sold, and/or offered for distribution and sale in the Southern District of California and the claims alleged in this action arose in the Southern District of

1 California. Additionally, the majority of the witnesses and documents related to this
2 action are located in California.

3 **PARTIES AND PERSONAL JURISDICTION**

4 3. Plaintiff HACHIGIAN INDUSTRIES, INC. (hereinafter “HACHIGIAN”) is
5 and at all relevant times was a California corporation, with its principal place of business
6 in Encinitas, California.

7 4. Upon information and belief, Defendant EVOLVE USA LLC (hereinafter
8 “EVOLVE”), is a California limited liability company with its principal place of business
9 in San Francisco, California. Upon information and belief, EVOLVE transacts business
10 in California, including, but not limited to importing, distributing, advertising, selling
11 and/or offering for sale the goods at issue in this Complaint. The acts of infringement and
12 other wrongful acts alleged in this Complaint occurred in the Southern District of
13 California.

14 5. HACHIGIAN is ignorant of the true names and capacities of defendants
15 DOES 1 through 50, inclusive, and by reason thereof sues said Defendants by their
16 fictitious names. HACHIGIAN will obtain leave of court, if necessary, to amend this
17 Complaint to allege the true names and capacities of these fictitiously named Defendants
18 when their identities are fully and finally ascertained.

19 **NATURE OF THE DISPUTE**

20 6. HACHIGIAN is widely recognized for its diving and spearfishing products,
21 including flotation devices and other flotation related products, which HACHIGIAN has
22 created, manufactured and/or distributed throughout the United States under the name
23 GANNET and/or GANNET DIVE COMPANY USA (hereinafter collectively
24 “GANNET”). HACHIGIAN has expended substantial resources in developing and
25 protecting the inflatable device primarily for flotation identified in United States Patent
26 No. D783,205 S (hereinafter “Subject Patent”). See, Exhibit A attached hereto and
27 incorporated herein by reference. Accordingly, HACHIGIAN has developed a significant
28 amount of goodwill related to the Subject Patent.

1 7. HACHIGIAN is the owner of the Subject Patent. On or about March 19,
2 2018, Garo Jack Hachigian transferred all right, title and interest in the Subject Patent to
3 HACHIGIAN.

4 8. The Subject Patent discloses an ornamental design of an inflatable device
5 primarily for flotation, and was filed on or about April 14, 2015 and issued on or about
6 April 4, 2017.

7 9. HACHIGIAN owns all rights, title and interest in the Subject Patent,
8 including the right to protect and enforce the intellectual property rights and interests
9 arising from the Subject Patent.

10 10. The Subject Patent is valid and subsisting.

11 11. On information and belief, Defendants, EVOLVE and DOES 1 through 50,
12 inclusive, and each of them, without the consent of HACHIGIAN, have infringed and are
13 still infringing the Subject Patent by designing, manufacturing, licensing, distributing,
14 importing and/or selling inflatable devices primarily for flotation and/or other flotation
15 products that encompass the design of and/or are substantially the same to the Subject
16 Patent. In particular, Defendants, and each of them, are at a minimum designing,
17 manufacturing, licensing, distributing, importing and/or selling certain inflatable devices
18 primarily for flotation referred to as “Evolve Carbon Hybrid 3ATM” floats, which include
19 designs that encompass the design of and/or are substantially the same to the Subject
20 Patent. See, Exhibit B attached hereto and incorporated herein by reference.

21 12. On information and belief, Defendants, and each of them, will continue to
22 design, manufacture, license, distribute, import and/or sell “Evolve Carbon Hybrid
23 3ATM” floats and/or other similar flotation products which encompass the design of
24 and/or are substantially the same to the Subject Patent unless enjoined by this Court.

25 13. At all relevant times herein, upon information and belief, one or more
26 principals and/or officers of EVOLVE, had direct knowledge of the existence and scope
27 of coverage of the Subject Patent.

28 14. Specifically, on or about February 13, 2018, counsel for HACHIGIAN sent a

1 notification letter to EVOLVE, explicitly notifying EVOLVE of the existence and/or
2 potential relevance of the Subject Patent to EVOLVE’s “Evolve Carbon Hybrid 3ATM”
3 floats and/or other similar floatation products. See, Exhibit C attached hereto and
4 incorporated herein by reference.

5 15. EVOLVE did not respond to HACHIGIAN’s February 13, 2018 letter.
6 Instead, Defendants, and each of them, have continued to design, manufacture, license,
7 distribute, import and/or sell “Evolve Carbon Hybrid 3ATM” floats and/or other similar
8 floatation products which encompass the design of and/or are substantially the same to the
9 Subject Patent despite the direct knowledge of one or more officers as to the existence and
10 scope of coverage of the Subject Patent.

11 **FIRST CLAIM FOR RELIEF**

12 (Patent Infringement under 35 U.S.C. § 271 against all Defendants –
13 U.S. Patent No. D783, 205 S)

14 16. HACHIGIAN realleges, and incorporates herein by this reference, each and
15 every allegation set forth in paragraphs 1 through 15, inclusive.

16 17. Defendants, and each of them, have been and are directly infringing the
17 Subject Patent under 35 U.S.C. § 271(a) by making, using, offering to sell, and selling,
18 the “Evolve Carbon Hybrid 3ATM” floats and/or other similar floatation products within
19 the United States.

20 18. Upon information and belief, Defendants’ customers and other users of
21 Defendants’ “Evolve Carbon Hybrid 3ATM” floats and/or other similar floatation products
22 have been and are directly infringing the design in the Subject Patent under 35 U.S.C. §
23 271(a).

24 19. Defendants, and each of them, have been and are actively inducing
25 infringement of the design in the Subject Patent under 35 U.S.C. § 271(b) by providing to
26 customers, including customers in this judicial district, its “Evolve Carbon Hybrid 3ATM”
27 floats and/or other similar floatation products. On information and belief, Defendants, and
28 each of them, knew, or should have known, that its customers and other users of its

1 products would use Defendants' products to infringe the Subject Patent and intended such
2 infringement.

3 20. Defendants' infringement, and inducement to infringe the Subject Patent
4 have been willful and have deliberately injured and will continue to injure HACHIGIAN
5 unless and until this Court enters a preliminary or permanent injunction prohibiting
6 further infringement and, specifically, enjoining further manufacture, use, importation,
7 sale, and/or offer for sale of products that fall within the scope of the design in the Subject
8 Patent.

9 21. Defendants' infringement, and inducement to infringe the Subject Patent
10 have been willful and have deliberately injured and/or damaged HACHIGIAN in an
11 amount to be determined at trial.

12 **SECOND CLAIM FOR RELIEF**

13 (Unfair Competition against All Defendants)

14 22. HACHIGIAN realleges, and incorporates by this reference, each and every
15 allegation set forth in paragraphs 1 through 21, inclusive.

16 23. The acts and conduct of Defendants, and each of them, alleged in this
17 Complaint (i) constitute an unfair competition at common law; (ii) violate Sections 17200
18 *et seq.* and 17500 *et seq.* of the California Business and Professions Code; and/or (iii)
19 constitute an infringement of HACHIGIAN's statutory rights in its Subject Patent and
20 improper and unfair competition with HACHIGIAN.

21 24. Defendants have been engaged in trade and commerce in California through
22 advertising, selling and distributing goods.

23 25. Defendants have employed unlawful, unfair and/or fraudulent business
24 methods, acts and practices within the meaning of Sections 17200 *et seq.* and 17500 *et*
25 *seq.* of the California Business and Professions Code. These acts or practices include, but
26 are not limited to, infringement of products that fall within the scope of the design in the
27 Subject Patent.

28 26. Defendants' conduct as alleged above has caused HACHIGIAN

1 HACHIGIAN by their acts and conduct set forth in the Complaint.

2 2. That the Court issue a permanent injunction prohibiting further infringement,
3 and inducement to infringe of the Subject Patent;

4 3. That the Court enter a judgment, order, or award of damages adequate to
5 compensate HACHIGIAN for Defendants' infringement of the Subject Patent, based on
6 lost sales, lost profits, price erosion, loss of market share, or any other applicable theory,
7 together with prejudgment interest from the date infringement of the Subject Patent
8 began;

9 4. That the Court find that this case is exceptional and an award to
10 HACHIGIAN of its attorneys' fees and costs as provided by 35 U.S.C. § 285;

11 5. That the Court enter a judgement, order or award of increased damages as
12 permitted by 35 U.S.C. § 284, together with prejudgment interest; and

13 6. Such other and further relief as this court or a jury may deem proper and just.

14 **DEMAND FOR JURY TRIAL**

15 HACHIGIAN hereby demands a trial by jury on its claims herein and all issues and
16 claims so triable in this action.

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19 Dated: March 30, 2018

MORRIS, SULLIVAN & LEMKUL, LLP

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21 By: s/ Will Lemkul
22 Will Lemkul
23 Attorney for HACHIGIAN
24 INDUSTRIES, INC.
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