LAW OFFICE OF
[redacted]

October 18, 2012

Courtney Harris
Evolusion Concepts, LLC
1658 Law St.
San Diego, 92109

Re: *Proposed alternative to "Bullet Button"*

Dear Courtney:
You have asked me to issue an opinion regarding the question of whether the product you have developed (the "Mag Lock")[1] will be lawful for use in guns that would otherwise be classified as Category 3 assault weapons under current California law.

As you are aware, the Roberti-Roos Assault Weapons Control Act of 1989 (Penal Code §12276) regulates specific assault weapons by make and model, which may be referred to as Category 1 and Category 2 models. Since manufacturers continued to make models that were not listed in Penal Code Penal §12276, Penal Code section 12276.1 was created to define additional assault weapons by generic characteristics, which are often referred to as "Category 3" assault weapons.

Category 3 weapons are defined as any semiautomatic, centerfire rifle, that *has the capacity to accept a detachable magazine*, and has one or more of the characteristics described in subsections (A)-(F) of Penal Code Section 12276.1(a)(1) (e.g., a telescoping stock, grenade or flare launcher, flash suppressor, etc ... (collectively, "evil features")). As you are further aware, Cal Code of Regulations, Title 11, Section 5469(a) defines a "detachable magazine" to mean "any ammunition feeding device that can be removed readily from the firearm *with neither disassembly of the firearm action* nor use of a tool being required. ...". In short, if a rifle does not have a magazine which is "readily detachable," it is not a Category 3 controlled weapon, even if it has one or more of the evil features.

In response to the language of Penal Code §12276.1 and 11 CCR §5469(a), certain gun part manufacturers have been able to produce a kit which modifies the way the rifle

[1] Note, I am calling your product a "Mag-Lock" because that was the name you had given it in some of the original materials you sent me. I have since learned that there are one or more other products on the market that are using this name or a close variation of it, some claiming ™ and some claiming ®. For these reasons, I strongly advise that you do some careful research before choosing a final name for your proposed product. Nevertheless, for purposes of this letter, I will refer to it as a "Mag-Lock."

operates, requiring the use of a tool for the magazine to be detached from the receiver of a rifle, so that the magazine is no longer "readily detachable." The practical effect of installing this kit (known as the "Bullet Button") is that a rifle that would otherwise qualify as a Category 3 assault weapon can be lawful to own and use in California, assuming it is otherwise compliant with applicable laws.

The Mag-Lock product you have developed is a kit similar in concept to the Bullet Button, in that it is intended to render a rifle magazine fixed,[2] as opposed to detachable. The difference is that the Bullet Button relies on the "use of a tool" exception to the definition of detachable created by 11 CCR §5469(a), and your product relies on the other exception, which exempts rifles with magazines that can be removed only through "disassembly of the firearm action."

My understanding is that the Mag-Lock product is a magazine catch release button which will not allow the magazine to detach from the receiver, unless the upper receiver is separated from the lower receiver. This separation would be accomplished by pushing the rear "takedown pin" through the body of the lower receiver, which allows the action of the rifle to separate, and hinge open around the front takedown pin. Only when the rifle is in this separated position could the magazine catch button operate to allow the magazine to be removed. The rifle could not fire a round until the upper and lower portions of the receiver are returned to the fully assembled position.

Based upon the plain language of the regulation, it certainly appears that the Mag-Lock product would render the magazine fixed, rather than "detachable." How can we be sure? Unless and until it gets tested in the courts, I don't think we can be sure, but I do think your Mag-Lock product has every bit as much of a right to be in use as the Bullet Button[3], as they both rely on alternate clauses of the same regulation.

How do courts decide if something is or is not legal, under a statute? The starting point is to rely on the plain language chosen by the legislature, and if that language is clear and unambiguous, and doesn't result in internal inconsistencies within the statute, the court will try to follow what the statute appears to say without trying to derive a more obscure meaning from the words. In this case, the legislation is Penal Code Section 12276.1(a)(1). The DOJ then promulgated regulations, trying to implement that legislation, and this is where we get 11 CCR §5469(a), defining terms such as

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[2] For purposes of this letter, I will refer to any magazine which is not "detachable," as "fixed." A "fixed" magazine does not appear to be a defined term in the legislation or regulations, but is frequently referenced as the alternative to "detachable."

[3] Technically, the Bullet Button has not been upheld by the courts. Rather, in the case of Haynie v. Pleasanton, the DOJ went on record as making one or more statements in which they admit that Bullet Buttons are legal (*see*, http://www.calguns.net/calgunforum/showthread.php?t=429902). The Haynie case has been consolidated with another case, and is still pending. But, both the Sacramento PD and the Orange County Sherriff's Department have issued training materials to their personnel, instructing them that firearms equipped with the Bullet Button are legal, assuming they meet other requirements (*See*, http://www.allsafedefense.com/Articles/AWPolice%20Bulletin2008-11-18.pdf, and http://www.hoffmang.com/firearms/Orange-County-AW-Training-Bulletin-2010-01-12.pdf).

"detachable magazine" (as well as all those evil features). The courts do not need to automatically accept an agency's interpretation of the legislation as being correct, but they start with a presumption of giving great weight to the agency's interpretation of the statute, in determining if the regulations promulgated by the agency are consistent with that legislation.

For the exception you rely on in 11 CCR §5469(a) to apply, we would need to demonstrate that your Mag-Lock product is compliant with the applicable regulation, meaning that the magazine can only be detached, if there is "disassembly" of the firearm "action." Does removal of the rear takedown pin, and hinging the upper and lower receivers apart constitute "disassembly," even though the two parts remain attached by the front takedown pin? The prevailing definition of "disassemble" on numerous dictionary websites is simply "to take apart," -the opposite of assembly. The Mag-Lock does involve separating parts of the rifle, but perhaps we need to anticipate if *partial* disassembly will suffice? In my research, I could not find anything to suggest that the upper and lower receivers had to be completely, physically separated to qualify under the exception to 11 CCR §5469(a). In fact, in the DOJ "Final Statement of Reasons" for the definitions put forward in §5469(a), they state that they support the notion that partial disassembly is all that is required (comment A1.25). Also, in comment B1.42, someone complained the definition of detachable magazine lacked clarity for failing to define "disassembly of the action," and in response, the DOJ replied they thought it was "sufficiently clear without defining the extent of the disassembly of the action" required.[4] Given all of the above, I don't think DOJ could now argue that complete disassembly of the action is required.

"Action" of a gun, in this context, is described variously as the "all of a gun's moving parts," and "the part[s] of a firearm that loads, fires, and ejects a cartridge." Action is also defined as the "mechanically-operable portion of the gun, ... where the loading and firing mechanisms come together to form a working firearm."[5] For purposes of this analyses, the upper receiver of an AR style rifle houses the moving parts which operate to pick up and load each successive cartridge from the magazine, which is housed in the lower portion of the receiver. The trigger mechanism which initiates the firing action is also housed in the lower portion of the receiver. When the upper portion of the receiver is separated from the lower portion, neither the loading function nor the firing mechanism of the rifle will function. In light of these facts, I think it is safe to say that the upper and lower portion of the receiver together comprise the "action" of the rifle.

If there were any confusion about the meaning of the language used in a statute, the courts will often try to discern the legislative intent behind the statute, by looking at whatever information is available to better understand what the legislature was trying to accomplish. In our case, the legislature generated a statement of their intent, codified as Penal Code section 12275.5(a), in which they stated "[i]t is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a

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[4] See comments and responses as attachments to the PDF file available at http://oag.ca.gov/sites/all/files/pdfs/firearms/regs/fsor.pdf

[5] http://hunting.about.com/od/guns/g/definition-of-gun-firearm-action.htm

registration and permit procedure for their lawful sale and possession. *It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities*." (Penal Code section 12275.5(a) (emphasis added)). There is also a reference to the legislative intent that is made by DOJ in the afore-mentioned "Final Statement of Reasons" that I think is helpful to you. In this document, the DOJ states that they added the language concerning "disassembly of the firearm action," precisely because some rifles could be field-stripped for loading, and stated that to ban these guns simply on the basis that a tool was not required "would have been inconsistent with the legislative intent of the statute.[6]"

Finally, I note that one of the earliest products that was put on the market to make rifles with "off-list lowers" compliant with 11 CCR §5469(a) relied on the same "disassembly of the firearm action" exception that you rely upon.[7] This product was known as the "Range-Safe Mag-Lok," and to my knowledge, rifles that were equipped with this modification (and were otherwise compliant) have never been accused of being unlawful to use or possess.

In short, I have been unable to find any authority to suggest that the use of your Mag-Lock product could result in a rifle being considered an "assault weapon" as that term is used in California's Assault Weapons Control Act. I have found information to suggest the use of your product should cause a rifle that would otherwise qualify as a Category 3 assault weapon, to fall within an exception to the regulation that defines Category 3 assault weapons. In light of the foregoing, I am of the opinion that the use of your Mag-Lock product should be "legal" for use in California, unless and until the legislation changes, or a judge decides differently.

Respectfully submitted,

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[6] Supra, note 4, at page 1

[7] *See* http://gunwiki.net/Gunwiki/RefMagLockSportingConversion ("Unlike in a bullet button design, the magazine remains locked in place for as long the magazine lock is installed. The only common way to reload the rifle was to push the rear pivot pin and then "scissor" the firearm's action open."