

1 Michael Mancini (State Bar No. 263799)  
2 mmancini@lathropgage.com  
3 LATHROP & GAGE LLP  
4 1888 Century Park East, Suite 1000  
5 Los Angeles, CA 90067  
6 Tel: (310) 789-4600  
7 Fax: (310) 789-4601

8 R. Cameron Garrison (Admitted *pro hac vice*)  
9 cgarrison@lathropgage.com  
10 LATHROP & GAGE LLP  
11 Kansas City, MO 64108  
12 Tel: (816) 292-2000  
13 Fax: (816) 292-2001

14 Attorneys for Plaintiff THE ERGO BABY CARRIER, INC.

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 THE ERGO BABY CARRIER, INC.,

18 Plaintiff,

19 vs.

20 BOBA INC.,

21 Defendant.

Case No. 2:15-cv-08946-GW-AJW

**THIRD AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff The ERGO Baby Carrier, Inc. (“Plaintiff” or “Ergobaby”) hereby  
2 alleges against Defendant Boba Inc. (“Defendant” or “Boba”) as follows:

3 **THE PARTIES**

4 1. Ergobaby is a Hawaii corporation with its principal place of business  
5 at 617 West 7<sup>th</sup> Street, Suite 1000, Los Angeles, California 90017, which is within  
6 the Central District of California. Ergobaby is, and at all times mentioned herein  
7 has been, qualified to do business in the State of California.

8 2. Ergobaby is informed, and on that basis alleges, that Defendant Boba  
9 is a corporation duly organized and existing under the laws of the State of  
10 Wyoming with its principal place of business at 1712 Pioneer Avenue, Suite 5580,  
11 Cheyenne, Wyoming 82001.

12 **JURISDICTION AND VENUE**

13 3. This action arises under the patent laws of the United States, 35 U.S.C.  
14 §§ 271, 281, 283–285. This Court has jurisdiction over the subject matter of this  
15 action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16 4. Boba is subject to personal jurisdiction in this District and subject to  
17 this Court’s specific and general jurisdiction, pursuant to due process and/or the  
18 California Long-Arm Statute, Cal. Civ. Proc. Code § 410.10, on the grounds that  
19 Boba has committed acts of patent infringement in this District and the State of  
20 California, and regularly conducts and/or solicits business, engages in other  
21 persistent courses of conduct, and/or derives substantial revenue from the sale of  
22 goods to persons or entities in this District. These contacts include providing a  
23 website with advertisements and information regarding the accused baby carriers,  
24 as well as an extensive list of, and links to, its retail partners where consumers may  
25 purchase such products. Many of these retailers are located in this District.

26 5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and  
27 (c) and 1400 because a substantial part of the events or omissions giving rise to the  
28 claims asserted herein occurred in this District, including the commission by Boba

1 of acts of patent infringement in this District, and because Boba is subject to  
2 personal jurisdiction in this District.

### 3 **FACTUAL BACKGROUND**

4 6. Ergobaby is a leading, premium baby consumer products company that  
5 is headquartered in Los Angeles, California, and specializes in creating innovative  
6 and ergonomic baby carrier products, as well as carrier accessories, swaddlers and  
7 other baby products, designed to meet the needs of today's parents. Ergobaby's  
8 products are sold in more than 700 retailers throughout the United States and in  
9 over 50 countries worldwide.

10 7. Ergobaby is the legal owner of U.S. Patents 8,590,757 (the "'757  
11 Patent") and 9,022,260 (the "'260 Patent") (collectively, the "Ergobaby Patents"),  
12 which are directed to, among other things, a lightweight child carrier that can be  
13 mounted upon the front or back of a wearer's torso.

14 8. Boba also is a baby consumer products company that makes, uses,  
15 offers to sell, sells, and/or imports various baby carrier products and accessories,  
16 including lines of baby carriers advertised under the names "Boba 4G" and "Boba  
17 Air" (collectively, the "Boba Carriers").

18 9. This lawsuit arises out of Boba's manufacture, use, offer to sell, sale,  
19 and/or importation of the Boba Carriers, which infringe one or more claims of each  
20 of the Ergobaby Patents.

### 21 **COUNT I**

#### 22 **(INFRINGEMENT OF U.S. PATENT NO. 8,590,757)**

23 10. Ergobaby incorporates by reference all previous allegations as though  
24 fully set forth herein.

25 11. On November 26, 2013, the United States Patent and Trademark  
26 Office (the "PTO") duly and legally issued the '757 Patent, titled BABY  
27 CARRIER, to Karin A. Frost. The '757 Patent is directed to, among other things, a  
28

1 lightweight child carrier that can be mounted upon the front or back of a wearer's  
2 torso.

3 12. Ergobaby owns by assignment all right, title, and interest in and to the  
4 '757 Patent, including full rights to recover for past and future damages thereunder  
5 and to seek injunctive relief against infringing parties. A copy of the '757 Patent is  
6 attached hereto as Exhibit A.

7 13. Ergobaby has complied with the marking requirements of 35 U.S.C. §  
8 287 with respect to the '757 Patent, to the extent necessary and applicable.

9 14. Boba is infringing and has infringed one or more claims of the '757  
10 Patent under 35 U.S.C. § 271, literally and/or under the doctrine of equivalents.

11 15. Boba's infringing acts include, without limitation: making, using,  
12 offering to sell, selling, and/or importing the Boba Carriers that embody at least one  
13 claim of the '757 Patent. Boba's infringement may include additional products or  
14 carriers that incorporate aspects and/or features of the Boba Carriers, which will be  
15 determined through discovery in this matter.

16 16. Boba also has knowingly, intentionally, and actively aided, abetted,  
17 and/or induced others to infringe the '757 Patent through its customers, users,  
18 business partners, and retail partners in this judicial District and throughout the  
19 United States. Boba's indirect infringement of the '757 Patent by inducement  
20 began on or after November 17, 2015, the date of the filing of Plaintiff's Complaint  
21 for Patent Infringement in this action.

22 17. Boba's infringing acts are without license or authorization from  
23 Ergobaby.

24 18. As a direct and proximate result of Boba's infringement of the '757  
25 Patent, Ergobaby has suffered and will continue to suffer injury for which it is  
26 entitled to damages under 35 U.S.C. § 284 adequate to compensate it for such  
27 infringement in an amount to be proven at trial, but in no event less than a  
28 reasonable royalty.



1 began on or after November 17, 2015, the date of the filing of Plaintiff's Complaint  
2 for Patent Infringement in this action.

3 27. Boba's infringing acts are without license or authorization from  
4 Ergobaby.

5 28. As a direct and proximate result of Boba's infringement of the '260  
6 Patent, Ergobaby has suffered and will continue to suffer injury for which it is  
7 entitled to damages under 35 U.S.C. § 284 adequate to compensate it for such  
8 infringement in an amount to be proven at trial, but in no event less than a  
9 reasonable royalty.

10 29. Unless Boba is permanently enjoined from further infringement of the  
11 '260 Patent, Ergobaby will continue to suffer irreparable harm and impairment of  
12 the value of its patent rights for which there is no adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff The ERGO Baby Carrier, Inc. respectfully prays for  
15 entry of judgment against Defendant Boba Inc. as follows:

16 A. A judgment that Boba has infringed one or more of the claims of each  
17 of the Ergobaby Patents directly (either literally or under the doctrine of  
18 equivalents) or indirectly (on or after November 17, 2015, the date of the filing of  
19 Plaintiff's Complaint for Patent Infringement in this action);

20 B. A preliminary and permanent injunction restraining Boba, its officers,  
21 directors, employees, agents, representatives, parent companies, subsidiaries, and  
22 affiliates, and all persons acting in active concert or participation therewith, from  
23 engaging in any continued infringement of the Ergobaby Patents;

24 C. An award of all damages to which Ergobaby is entitled under 35  
25 U.S.C. § 284 for all past and continuing infringement, including but not limited to  
26 all lost profits and/or reasonable royalties, and an order requiring a full accounting  
27 of the same;  
28

1 D. A finding that this case is exceptional under 35 U.S.C. § 285 and an  
2 award of all attorney fees incurred by Ergobaby in this action;

3 E. An assessment of interest, both pre- and post-judgment, on the  
4 damages awarded;

5 F. An accounting of all goods in the possession, custody, or control of  
6 Boba that infringe either of the Ergobaby Patents and an Order directing that all  
7 such goods be delivered up and destroyed within forty-five (45) days from the entry  
8 of final judgment;

9 G. An award of costs incurred by Ergobaby in bringing and prosecuting  
10 this action; and

11 H. Any such other and further relief as the Court deems just and proper.  
12

13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Fed. R. Civ. P. 38(b), Ergobaby hereby demands a jury trial on  
15 all issues so triable.  
16

17 DATED: April 5, 2016 LATHROP & GAGE LLP

18  
19 By: /s/ R. Cameron Garrison

20 R. Cameron Garrison  
21 Attorney for Plaintiff  
22 THE ERGO BABY CARRIER, INC.  
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