Ira M. Schwartz, (SBN 010448) 1 Michael A. Cordier, (SBN 014378) DeCONCINI McDONALD YETWIN & LACY, P.C. 7310 N. 16th Street, Suite 330 Phoenix, Arizona 85020 Telephone: (602) 282-0500 Facsimile: (602) 282-0520 4 ischwartz@dmylphx.com 5 mcordier@dmylphx.com 6 Attorneys for Plaintiff 7 8 UNITED STATES DISTRICT COURT 9 DISTRICT OF ARIZONA 10 GameTruck Licensing, LLC, 11 an Arizona limited liability company Case No.: 12 Plaintiff, **COMPLAINT** 13 VS. Mobile Game Cave, LLC, an Arizona (Patent Infringement) limited liability company; Ross Weems and Jennifer Weems, husband and wife, 15 16 Defendants. 17 18 19 GameTruck Licensing, LLC for its complaint against Defendant Mobile 20 Game Cave, LLC complains and alleges as set forth below. 21 Parties, Jurisdiction and Venue Plaintiff GameTruck Licensing, LLC ("GameTruck") is an Arizona 22 1. limited liability company with its principal place of business in Tempe, Maricopa County, 24 Arizona. 25

	2.	Defendant Mol	bile Game Cave, LLC ("Mobile Game Cave") is an
Arizona	limited	liability company.	Upon information and belief, the principal office of
Mobile (Game Ca	eve is located in Pho	penix, Maricopa County, Arizona.

- 3. Upon information and belief, Defendants Ross Weems and Jennifer Weems are husband and wife. Defendant Ross Weems ("Weems") is the sole member of Mobile Game Cave. Upon information and belief, all actions taken by Ross Weems were undertaken for the benefit of his marital community.
- 4. This complaint states a cause of action for patent infringement. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §1338.
- 5. Defendant has engaged in acts of infringement which have occurred within this District.
 - 6. Venue is proper in this district pursuant to 28 U.S.C. §1400.

Background Factual Allegations

- 7. GameTruck is a leader in the business of providing mobile entertainment systems for parties and corporate events. GameTruck is a franchisor who franchises and promotes the GameTruck business to its franchisees.
- 8. GameTruck is the owner of U.S. Patent No. 8,029,368 (the "368 Patent") issued October 4, 2011 for an invention entitled *Method of Entertaining Using A Mobile Entertainment Environment*. A true and correct copy of the '368 Patent is attached as Exhibit A to this Complaint.
- 9. Mobile Game Cave is also engaged in providing mobile entertainment services in the greater Phoenix, Arizona area. Mobile Game Cave offers its services in competition with GameTruck franchisees.
- 10. Upon information and belief, Mobile Game Cave's services include allowing multiple players to play multiple games on multiple game screens.

	11.	On or about	October	19, 201	1, GameT	ruck gave	notice t	o Mobile
Game Cave	of the	issuance of	the '368	Patent	and offer	ed Mobile	e Game	Cave the
opportunity to	o becoi	me a GameTru	ick franch	isee. Su	ch notice	was direct	ed to Ros	ss Weems
as the membe	er of M	obile Game Ca	ave.					

Count 1

(Patent Infringement)

- 12. GameTruck realleges the allegations set forth in paragraphs 12-18 above, which are incorporated by this reference.
- 13. The services offered by Mobile Game Cave infringe upon the claims of the '368 Patent.
- 14. Despite having knowledge of the '368 Patent, Mobile Game Cave has continued its actions in violation of the '368 Patent.
- 15. Mobile Game Cave does not have permission or authority to practice the invention covered by the '368 Patent.
- 16. Mobile Game Cave's acts of infringement have caused harm and damage to GameTruck in an amount to be proven at trial; but in no event less than a reasonable royalty.
- 17. Mobile Game Cave's actions have caused and, unless restrained, will continue to cause immediate and irreparable injury to GameTruck. GameTruck is entitled to the issuance of a preliminary and permanent injunction to prevent such irreparable injury.
- 18. This is an exceptional case. GameTruck is entitled to recover its attorneys' fees pursuant to 35 U.S.C. §285.

Phoenix, Arizona 85020

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Count	
Count	4

(Contributory Infringement/Inducing Infringement)

- 19. GameTruck realleges the allegations set forth in paragraphs 1-11 above, which are incorporated by this reference.
 - Weems is the sole member of Mobile Game Cave. 20.
- 21. Upon information and belief, Weems is responsible for directing the activities of Mobile Game Cave.
- 22. As of approximately October 19, 2011, Weems had actual knowledge of the '368 Patent.
- 23. Despite such knowledge, Weems directed Mobile Game Cave to engage in activities which infringe upon the '368 Patent.
 - 24. Such actions constitute inducing infringement of the '368 Patent.
- 25. In the alternative, Weems is a contributory infringer of the '368 Patent.
- 26. Such actions by Weems have caused harm and damage to GameTruck in an amount to be proven at trial; but in no event less than a reasonable royalty.
- 27. Weem's actions have caused and, unless restrained, will continue to cause immediate and irreparable injury to GameTruck. GameTruck is entitled to the issuance of a preliminary and permanent injunction to prevent such irreparable injury.
- 28. This is an exceptional case. GameTruck is entitled to recover its attorneys' fees pursuant to 35 U.S.C. §285.

Wherefore, GameTruck requests relief as follows:

- A. GameTruck be awarded damages in the amount to be proven at trial, but in no event less than a reasonable royalty;
- В. The Court award GameTruck enhanced damages, up to treble damages pursuant to 35 U.S.C. §285;

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C. The Court issue a preliminary and permanent injunction restraining
and enjoining Mobile Game Cave, Weems, and their respective officers, directors, owners
members, managers, employees, agents, representatives and all persons in active concer
with them from infringing the '368 Patent, or assisting anyone else to do so.

- D. GameTruck be awarded its court costs incurred in this action;
- E. The Court determine this is an exceptional case, and award GameTruck its attorneys' fees incurred in this matter;
- F. GameTruck be awarded such further relief as the Court deems just and proper.

DATED: December 22, 2011.

DECONCINI MCDONALD YETWIN & LACY, P.C.

By <u>s/Ira M. Schwartz</u> Ira M. Schwartz

Michael A. Cordier 7310 North 16th Street Suite 330 Phoenix, Arizona 85020 Attorneys for Plaintiff

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