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8 Attorneys for Plaintiffs,
9 SHELLY CONTE and CINDY REICHMAN,
10

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

13 SHELLY CONTE, an individual; CINDY)
14 REICHMAN, an individual,)

15 Plaintiffs,)

16 v.)

17 JAKKS PACIFIC, INC., a Delaware)
18 corporation, and Does 1 through 25,)
19 inclusive)

20 Defendant.)

Case No. 12-CV-00006-LJO-GSA

**PLAINTIFFS SHELLY CONTE AND
CINDY REICHMAN'S FIRST
AMENDED COMPLAINT**

21
22 Plaintiffs, Shelly Conte, and Cindy Reichman (collectively, "Plaintiffs"), by and
23 through their attorneys, allege as follows:

24 **THE PARTIES**

25 1. Plaintiffs are, and at all times mentioned herein were, residents of County of Fresno,
26 State of California.

27 2. Plaintiffs are informed and believe, and on that basis allege, that JAKKS PACIFIC,
28 INC. ("JAKKS") is a corporation incorporated under the laws of Delaware, with a principal

1 place of business at 22619 Pacific Coast Highway, Malibu California, 90265. **JAKKS'**
2 **registration with the State of California is currently valid. JAKKS' registered agent for**
3 **service of process in California is Michael Dwyer, 22619 Pacific Coast Highway, Malibu,**
4 **CA 90265.**

5 **NATURE OF ACTION**

6 **3. In this civil action, Plaintiffs seek damages against JAKKS for acts of**
7 **Patent Infringement in violation of the Patent Act of the United States, 35 U.S.C. §§1, et**
8 **seq.**

9 **JURISDICTION AND VENUE**

10 4. This Court has subject matter jurisdiction of such federal question claims
11 pursuant to 28 U.S.C. §§1331 and 1338(a).

12 5. **Venue is proper under 28 U.S.C. §1391 (c) and 1400(b), in that the acts and**
13 **transactions complained of herein were conceived, carried out, made effective, or had**
14 **effect within the State of California and within this district, among other places. On**
15 **information and belief, JAKKS conducts business activities in this judicial district**
16 **including regularly doing or soliciting business, engaging in conduct and/or deriving**
17 **substantial revenue from goods and services provided to consumers in the State of**
18 **California and in this district.**

19 **6. On information and belief, this Court has personal jurisdiction over each**
20 **Defendant. Each Defendant conducts continuous and systematic business in California**
21 **and in this District by offering to sell and/or selling infringing toys and dolls in this State**
22 **and in this district.**

23 **GENERAL ALLEGATIONS**

24 7. Plaintiffs are the exclusive licensees of all right, title, and interest in United
25 States Patent No. 6,494,457 ("457 Patent" or "patent-in-suit") entitled "Enhanced Hide and
26 Seek Game and Method of Playing Game" issued on December 17, 2002, which is valid and
27 subsisting. *(A true and correct copy of the '457 Patent is attached hereto as "Exhibit" 1 and*
28 *incorporated herein by reference.)*

1 8. The '457 Patent relates to providing information from a communications
2 network, such as the Internet.

3 9. **The inventors of the '457 Patent are Shelly Conte and Cindy Reichman.**
4 **The application resulting in the '457 Patent was filed on July 25, 2001, and the Patent**
5 **issued on December 17, 2002.**

6 10. **The '457 Patent is directed to an interactive doll capable of being hidden.**
7 **The interactive doll contains a series of transmitters and receivers giving the player**
8 **sufficient clues to successfully find the doll, thus completing an interactive game of “Hide**
9 **‘N Seek” between child and doll. The elements of Plaintiffs’ ‘457 Patent includes, an**
10 **enhanced hide and seek game comprised of:**

11 **(1) An object capable of being hidden;**

12 **(2) A transmitter unit associated with said object which is configured to**
13 **transmit a signal generally outward from said object; and**

14 **(3) A seeker unit associated with the game participant.**

15 **The seeker unit has a receiver therein for receiving a signal from the transmitter**
16 **unit. The seeker unit is comprised of a calculating means for determining a first distance**
17 **between said seeker unit and said object, a second distance between said seeker unit and**
18 **said object, and a relative change in distance. The seeker unit also contains a speaker for**
19 **transmitting one or more messages to the game participant.**

20 **After said object is hidden and said transmitter unit is activated, the game**
21 **participant utilizes said seeker unit to find the location of said object by receiving said**
22 **messages from said speaker.**

23 11. Plaintiffs have developed, manufactured and distributed merchandise
24 embodying the inventions of the patent-in-suit, namely the “HIDE-N-SEEK HAYLEY”
25 interactive doll. Plaintiffs have spent considerable time, effort, and resources developing and
26 promoting its products and services embodying the inventions of the patent-in-suit.

27 12. **The basic design of Hayley was two fold. One, someone would hide the**
28 **doll; and two the child, using a specially designed hand held remote control would**

1 receive clues transmitted electronically from the doll to the remote control. Based on the
2 child's proximity to the doll, certain sets of clues would be transmitted to the remote
3 control. Once the child found the doll, the child would have the option of playing another
4 game or the doll and remote control would simply go into a sleep mode.

5 13. As part of its marketing scheme, on or about September 23, 2003, Plaintiffs
6 contacted PLAY ALONG TOYS via telephone at their place of business in Florida to
7 market the Hayley concept. Plaintiffs identified themselves as the owners of the "Hayley"
8 invention and concept. Website information containing demonstrations of the Hayley
9 concept were submitted to PLAY ALONG TOYS. No other contact was initially made
10 with Larry Pook or any other officer, director, or agent of PLAY ALONG TOYS.

11 14. On or about June 2006, Plaintiffs became aware that JAKKS had just
12 released two Hide 'N Seek Care Bear toys, the Hide 'N Seek Surprise Bear and the Hide
13 'N Seek Secret Bear (hereafter "Care Bears.") Soon after learning of the release of the
14 Care Bears, Plaintiffs began receiving comments from prospective buyers claiming that
15 they had inadvertently purchased the Care Bear dolls instead of the Hayley doll and
16 informing Plaintiffs that the Care Bears were a "knock off" of Plaintiffs' Hayley doll.

17 15. In 2006, after discovering the existence of the Care Bear dolls, Plaintiffs
18 contacted PLAY ALONG TOYS, left a message identifying themselves as the owner of
19 the "Hayley" invention and requesting to speak to someone concerning the Care Bear
20 dolls. Shortly after that phone message, Larry Pook contacted Plaintiffs. Plaintiffs
21 informed Mr. Pook that PLAY ALONG TOYS was selling Plaintiffs' concept and
22 invention. Larry Pook asked, "What do you want me to do Shelly?" Plaintiffs insisted
23 that Larry Pook "do the right thing." Larry Pook indicated he would speak to his
24 partner about the situation. Larry Pook never got in touch with Plaintiffs regarding
25 settling this dispute.

26 16. The design and functionality of the Care Bears to the untrained and
27 unsophisticated lay person, who has no engineering or mechanical training, are similar
28 enough to that of Hayley so as to cause Plaintiffs to become concerned that consumers

1 would become confused and purchase the Care Bear dolls marketed by JAKKS instead
2 of the Hayley dolls owned and manufactured by Plaintiffs. Also, the notoriety and
3 popularity of the Care Bear line of toys gave JAKKS an obvious advantage in the sales
4 market.

5 16. Claim No. 9 of Plaintiffs' '457 Patent is an independent device having the
6 following elements: (1) an object capable of being hidden; (2) a transmitter unit
7 associated with element #1; and (3) a seeker unit having (a) a receiver; (b) a calculating
8 means for determining a first distance between said seeker unit and said object, a second
9 distance between said seeker unit and said object and a relative change in distance and a
10 speaker.

11 17. Claim No. 13 of Plaintiffs' '457 Patent is a dependent claim consisting of
12 the elements of Claim No. 9, but with an additional input means of inputting a request
13 for a position request.

14 **FIRST CLAIM FOR RELIEF AGAINST JAKKS FOR DIRECT INFRINGEMENT OF**
15 **U.S. PATENT NO. '457**

16 18. Plaintiffs hereby incorporate paragraphs 1 through 17 inclusive herein by
17 reference.

18 19. On or about December 2010, Plaintiffs became aware that JAKKS was
19 marketing the Care Bear dolls through various distributors, including, but not limited
20 to, Toys 'R Us, Walmart, Target, and Kmart. Plaintiffs, through their counsel of record,
21 sent cease and desist letters to those distributors putting them on notice that they were
22 selling products that infringed upon the '457 Patent owned by Plaintiffs.

23 20. Plaintiffs' herein allege, on information and belief, that JAKKS' Care
24 Bear dolls infringe upon Plaintiffs' '457 Patent on two claims, Claim No. 9 and Claim
25 No. 13.

26 21. JAKKS' Care Bears further infringe on Plaintiffs' '457 Patent in that each
27 of the Care Bears includes the same elements for the same uses as Plaintiffs' Hayley
28 concept. Each of JAKKS' Care Bears includes (1) one plush toy, capable of being

1 **hidden; (2) a transmitter device attached to the plush toy; (3) a hand held device that**
2 **includes a speaker, an input device for activating the speaker, and a receiver.**

3 **22. In play, JAKKS' Care Bears react to the "seeker" in exactly the same**
4 **manner as Plaintiffs' Hayley doll. Each "Hide 'N Seek" doll contains a hand held remote**
5 **control transmitter which enables the "seeker" to obtain clues as to the hiding place of**
6 **the doll through a series of clues transmitted from the receiver, which is imbedded into**
7 **the hidden doll. The clues vary depending on how close or far away the transmitter is to**
8 **the hidden doll. Further, JAKKS' Care Bear dolls give clues to the "seeker" which are**
9 **similar in nature to those given by Plaintiffs' Hayley doll.**

10 **23. Upon information and belief, JAKKS has willfully engaged in the**
11 **manufacture, use, distribution, and offer for sale of its Care Bear merchandise in this**
12 **judicial district and other localities throughout the United States.**

13 **24. Upon information and belief, JAKKS' Care Bear dolls embody, in both**
14 **style and functionality, the inventions of Plaintiffs' Hayley concept as set forth in**
15 **Plaintiffs' '457 Patent.**

16 **25. Upon information and belief, JAKKS has ongoing and systematic contacts with**
17 **this Judicial District and the United States. JAKKS has developed, manufactured and**
18 **distributed infringing merchandise including, but not limited to, "HIDE 'N SEEK SECRET**
19 **BEAR" and "HIDE 'N SEEK SURPRISE BEAR" knowing and expecting that such products**
20 **would end up in this Judicial District.**

21 **26. By virtue of their exclusive license to the patent-in-issue, Plaintiffs have acquired**
22 **and continue to maintain the right to sue thereon and the right to recover for infringement**
23 **thereof.**

24 **27. Upon information and belief, JAKKS has infringed, induced infringement of, and**
25 **contributorily infringed the patent-in-suit, and is still doing so by making, selling, offering for**
26 **sale, merchandise embodying the patented inventions of the patent-in-suit, and will continue to**
27 **do so unless enjoined by this Court.**

28 **28. As a direct and proximate result of JAKKS' infringement of the '457 Patent,**

1 Plaintiffs have been damaged in an amount to be proven at trial.

2 **29.** Upon information and belief, JAKKS' infringement is willful and deliberate.

3 **30.** Plaintiffs have placed the required statutory notice on all of its products
4 manufactured and sold by Plaintiffs under the patent-in-suit.

5 **SECOND CLAIM FOR RELIEF AGAINST JAKKS FOR DIRECT INFRINGEMENT**
6 **OF U.S. PATENT NO. '457 IN VIOLATION OF THE DOCTRINE OF**
7 **EQUIVALENTS**

8 **31.** Plaintiffs hereby incorporate paragraphs 1 through 30 inclusive herein by
9 reference.

10 **32.** Plaintiffs invented and conceived a hide 'n seek doll whereby the seeker
11 would hide the doll and by a series of clues transmitted to the seeker through use of a
12 hand held remote control would successfully find the hidden doll.

13 **33.** The elements and functions of Plaintiffs doll included

14 (1) a doll to be hidden;

15 (2) a transmitter unit contained in the doll;

16 (3) a hand held remote control receiver by which to receive clues
17 transmitted from the doll; and

18 (4) a series of clues to be given to the seeker allowing seeker to successfully
19 locate the hidden doll.

20 **34.** Based on information and belief, Plaintiffs' allege that JAKKS has
21 invented, conceived and marketed for sale a hide and seek type doll which is a direct
22 copy of Plaintiffs' invention and conception.

23 **35.** JAKKS' Care Bear line of hide and seek dolls is identical to Plaintiffs in
24 that it consists of:

25 (1) a doll to be hidden;

26 (2) a transmitter unit contained in the doll;

27 (3) a hand held remote control receiver by which to receive clues
28 transmitted from the doll; and

1 (4) a series of clues to be transmitted to the seeker, allowing the seeker to
2 successfully locate the hidden doll.

3 36. Based on information and belief Plaintiffs allege that JAKKS product is a
4 direct infringement by being a copy of the concept and invention of Plaintiffs' doll under
5 the Doctrine of Equivalents.

6 37. As a result of JAKKS infringement, Plaintiffs have been damaged in an
7 amount to be proven at trial.

8 38. Upon information and belief, JAKKS' infringement is willful and
9 deliberate.

10 ///

11 39. Plaintiffs have placed the required statutory notice on all of its products
12 manufactured and sold by Plaintiffs under the patent-in-suit.

13 **THIRD CLAIM FOR RELIEF AGAINST JAKKS FOR DIRECT INFRINGEMENT**
14 **OF U.S. PATENT NO. '457**

15 40. Plaintiffs hereby incorporate paragraphs 1 through 39 inclusive herein by
16 reference.

17 41. Plaintiffs are the sole owners of the entire right, title and interest in the
18 '457 patent, including all rights necessary to prosecute this case and collect damages,
19 past, present and future, resulting from JAKKS infringement.

20 42. JAKKS has infringed and continues to infringe one or more claims of the
21 '457 patent, directly, contributorily, and/or by inducement, by making, using, inducing
22 others to use, importing, offering for sale, and/or selling, without license, certain
23 products that consist of and/or incorporate infringing material related to Plaintiffs'
24 patent, invention and concept.

25 43. JAKKS contribute and induce infringement through supplying infringing
26 systems and components to customers. JAKKS customers who purchase systems and
27 components thereof and operate such systems and components thereof in accordance
28 with JAKKS' instructions directly infringe one or more claims of the '457 Patent in

1 violation of 35 U.S.C. §271.

2 44. The acts of infringement of the '457 Patent by JAKKS have caused
3 damage to Plaintiffs, and Plaintiffs are entitled to recover from JAKKS damages
4 sustained as a result of their wrongful acts in an amount subject to proof at trial.

5 45. JAKKS have had actual or constructive knowledge of the '457 Patent, yet
6 JAKKS continued to infringe on Plaintiffs' Patent. JAKKS' infringement of the '457
7 Patent is willful and deliberate, entitling Plaintiffs to increased damages under 35 U.S.C.
8 §284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C.
9 §285.

10
11 **FOURTH CLAIM FOR RELIEF AGAINST JAKKS FOR INDIRECT**
12 **INFRINGEMENT OF U.S. PATENT NO. '457**

13 46. Plaintiffs hereby incorporate paragraphs 1 through 45 inclusive herein by
14 reference.

15 47. Plaintiffs allege on information and belief that JAKKS has indirectly
16 infringed one or more elements of Plaintiffs invention and concept identified in Patent
17 No. '457 by copying said Patent No. '457 for their own use and benefit in developing its
18 hide and seek toy.

19 48. The elements and functions of Plaintiffs doll included

20 (1) a doll to be hidden;

21 (2) a transmitter unit contained in the doll;

22 (3) a hand held remote control receiver by which to receive clues
23 transmitted from the doll; and

24 (4) a series of clues to be given to the seeker allowing seeker to successfully
25 locate the hidden doll.

26 49. Based on information and belief, Plaintiffs' allege that JAKKS has
27 invented, conceived and marketed for sale a hide and seek type doll which is a direct
28 copy of Plaintiffs' invention and conception.

1 agents, servants, employees, attorneys, and all persons acting in concert or in participation
2 with them, or any of them, be temporarily and preliminarily enjoined during the pendency of
3 this action, and permanently enjoined thereafter from infringing, contributing to the
4 infringement of, and inducing infringement of the patent-in-suit, and specifically from directly
5 or indirectly making, using, selling, or offering for sale, any products or services embodying
6 the inventions of the patent-in-suit during the life of the claims of the patents-in-suit, without
7 the express written authority of Plaintiffs.

8 3. That JAKKS be directed to fully compensate Plaintiffs for all damages attributable
9 to JAKKS' infringement of the patent-in-suit in an amount according to proof at trial.

10 4. That this case be deemed exceptional.

11 5. That all damages awarded be trebled.

12 6. That JAKKS be ordered to deliver to Plaintiffs, for destruction at Plaintiffs' option,
13 all products that infringe the patent-in-suit.

14 7. That JAKKS be required to account for all gains, profits, advantages, and unjust
15 enrichment derived from its violations of law.

16 8. That Plaintiffs be awarded reasonable attorney's fees.

17 9. That Plaintiffs be awarded the costs of suit, and an assessment of **prejudgment**
18 interest.

19 10. That Plaintiffs have such other, further, and different relief, as the court deems just
20 and proper under the circumstances.

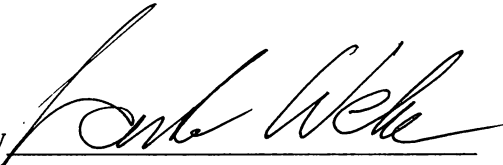
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1 Dated: March 30, 2012

WEBB & BORDSON, APC

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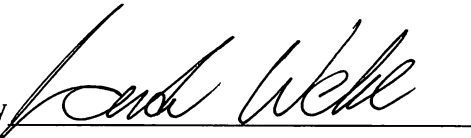
5 LENDEN F. WEBB
6 Attorney for Plaintiffs, SHELLY
7 CONTE and CINDY REICHMAN

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demand a trial by jury of all issues triable by a jury.

10
11 Dated: March 30, 2012

WEBB & BORDSON, APC

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14 By 

15 LENDEN F. WEBB
16 Attorney for Plaintiffs, SHELLY
17 CONTE and CINDY REICHMAN

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