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11 Attorneys for Defendant and Counterclaimant
YVES SAINT LAURENT AMERICA, INC.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 LEVI STRAUSS & CO., a Delaware
corporation,

16
17 Plaintiff,

18 v.

19 YVES SAINT LAURENT AMERICA, INC., a
New York corporation,

20
21 Defendant.

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23 YVES SAINT LAURENT AMERICA, INC., a
New York corporation,

24 Counterclaimant,

25 v.

26 LEVI STRAUSS & CO., a Delaware
corporation,

27
28 Counterdefendant.

Case No.: 3:18-cv-06977-JSC

**DEFENDANT'S FIRST AMENDED
COUNTERCLAIMS**

JURY TRIAL DEMANDED

Assigned to the Hon. Jacqueline Scott Corley

1 Defendant and Counterclaimant Yves Saint Laurent America, Inc. (“YSL America”), for
2 its first amended counterclaims states as follows:

3
4 **COUNTERCLAIMS**

5 **FACTS COMMON TO YSL AMERICA’S COUNTERCLAIMS**

6 1. YSL America hereby asserts the following Counterclaims against Levi Strauss &
7 Co. (“Levi Strauss”).

8 2. YSL America incorporates by reference Paragraphs 1-53 of its Answer and its
9 Affirmative Defenses [Dkt. 12] into these Amended Counterclaims.

10 3. These Counterclaims arise out of the same series of transactions and events as set
11 forth in Levi Strauss’ Complaint [Dkt. 1].

12
13 **PARTIES**

14 4. Defendant and Counterclaim Plaintiff YSL America is a New York corporation
15 headquartered at 3 East 57th Street, New York, New York 10022.

16 5. Upon information and belief, Plaintiff and Counterclaim Defendant Levi Strauss
17 is a Delaware corporation with its principal place of business at Levi’s Plaza, 1155 Battery
18 Street, San Francisco, California 94111.

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20 **JURISDICTION AND VENUE**

21 6. This is an action for declaratory relief brought pursuant to 28 U.S.C. §§ 2201 and
22 2022 and the Lanham Act, 15 U.S.C. §§ 1114(1)(a), 1125(a) and 1125(c) and for cancellation of
23 registrations. This Court has jurisdiction over these counterclaims pursuant to 15 U.S.C. §§ 1119
24 and 1121, 28 U.S.C. §§ 1331 and 1338 as an actual and justiciable controversy exists between
25 the parties.

26 7. This Court has personal jurisdiction over Levi Strauss by virtue of its filing of the
27 Complaint and appearing in this Action, and because it is a resident of this district and sells and
28 advertises its products in this judicial district.

1 8. Venue is proper under 28 U.S.C. § 1391 because Levi Strauss does business in
2 this district and a substantial part of the conduct complained of herein occurred in this district.

3
4 **BACKGROUND**

5 9. YSL America offers for sale and distributes clothing and related goods bearing
6 the SAINT LAURENT and SAINT LAURENT PARIS trademarks, among others (collectively,
7 the “SAINT LAURENT Trademarks”), in the United States, on behalf of the Saint Laurent
8 Fashion House (“Saint Laurent”).

9 10. All of the SAINT LAURENT Trademarks are federally registered in the United
10 States, and are famous, valid, subsisting, and un-cancelled trademark registrations.

11 11. Saint Laurent was founded in 1961 by designer Yves Saint Laurent and his patron
12 Pierre Bergé. Saint Laurent is a luxury fashion house known for designing men’s and women’s
13 ready-to-wear clothing and shoes, as well as accessories such as handbags, jewelry, and eyewear,
14 among other goods and services.

15 12. Saint Laurent is among the world’s leading fashion houses and is known
16 throughout the world for innovative and trend-setting ready-to-wear clothing, shoes and fashion
17 accessories. Saint Laurent’s designs are among the most sought-after in the fashion industry. For
18 over fifty years, Saint Laurent has pioneered fashion with groundbreaking and iconic designs,
19 which are routinely showcased by top celebrities and style icons. This tradition continues
20 strongly into the present day with Saint Laurent’s association with celebrities such as Kate Moss,
21 Zoe Kravitz, Charlotte Gainsbourg, Travis Scott, Timothée Chalamet, and many others.

22 13. The clothing and related goods sold by YSL America all prominently feature one
23 or more of the SAINT LAURENT Trademarks.

24 14. All products bearing the SAINT LAURENT Trademarks are identified and
25 recognized as originating exclusively from Saint Laurent by virtue of the use of these marks.

26 15. The SAINT LAURENT Trademarks are featured prominently in advertisements
27 that regularly appear in nationally-circulating magazines and seen by hundreds of millions of
28 people.

1 16. In addition to Saint Laurent’s own advertising bearing the SAINT LAURENT
2 Trademarks, the SAINT LAURENT Trademarks have garnered and continue to reap significant
3 unsolicited media coverage in the United States. Products bearing the SAINT LAURENT
4 Trademarks have been featured in various U.S. publications, including Vogue, Vanity Fair, Elle,
5 Women’s Wear Daily, GQ Magazine, the New York Times, T Magazine, WSJ Magazine,
6 Interview, New York Magazine, Harper’s BAZAAR, V, V Man, and W Magazine, among
7 others.

8 17. Clothing designs bearing the SAINT LAURENT Trademarks are featured in
9 fashion editorials and are often credited with forecasting the upcoming seasons for women’s
10 ready-to-wear apparel.

The Parties’ Dispute

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13 18. On or about July 2018, Saint Laurent began selling denim products (the “Saint
14 Laurent Jeans”) bearing a decorative, leather-like strip located on the *right* side of the right rear
15 pocket, as depicted below:



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26 19. Pocket ornaments, such as the decorative, leather-like strip found on the Saint
27 Laurent Jeans, as well as many other types of tabs, flags, labels, markers and patches, are
28 ubiquitous, including in the clothing industry and within the realm of denim; absent other source

1 indicia, are nothing more than common or basic design elements generally not viewed by
2 relevant consumers as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather are only
3 seen as purely ornamental decorative elements incapable of trademark significance.

4 20. YSL America sells the Saint Laurent Jeans through Saint Laurent's e-commerce
5 website, www.ysl.com and at its own luxury boutique stores. They are also available for sale at
6 high-end department stores, such as Nordstrom's, Bergdorf Goodman, and Barney's, and at
7 luxury boutiques and specialty retailers, often in a separate section of the store prominently
8 branded with the SAINT LAURENT Trademarks.

9 21. The Saint Laurent Jeans retail for between \$550 and \$2,590 per pair.

10 22. The Saint Laurent Jeans also prominently feature the SAINT LAURENT
11 Trademarks, both on the actual products, and on hangtags attached to the Saint Laurent Jeans at
12 the point-of-sale, causing customers to immediately understand that the Saint Laurent Jeans
13 originate exclusively from Saint Laurent by virtue of the use of these marks.

14 15 **The Scope of Levi Strauss' Rights; Third Party Uses**

16 23. In their complaint [Dkt. 1], Levi Strauss provides a broad identification of its
17 "Tab" trademark (the "Tab trademark"), saying that it consists of "a textile marker or other
18 material sewn into one of the regular structural seams of the garment." [Dkt. 1, ¶ 9].

19 24. Levi Strauss also identifies eight different federal trademark registrations, and one
20 state registration, which allegedly show the Tab trademark. [Dkt. 1, ¶ 11]. These registrations are
21 all identified as representing "a textile marker or other material sewn into one of the regular
22 structural seams of the garment."

23 25. These registrations show designs containing the LEVI'S trademark (*e.g.* Reg. No.
24 516,561); designs with no markings (*e.g.* Reg. No. 356,701); designs featuring a pocket
25 ornament located on the seam of a plain pants pocket (*e.g.* Reg. No. 1,157,769); and designs
26 featuring a pocket ornament on the seam of pants pockets containing decorative stitching (*e.g.*
27 Reg. No. 2,791,156). Levi Strauss also identifies the Tab trademark as representing a design
28 featuring a pocket ornament on a *shirt* pocket as well (Reg. No. 2,726,253).

1 26. This Court has previously ruled that the scope of the Levi Strauss registrations
2 allegedly directed toward the Tab trademark are “limited by material, location, type of garment,
3 and relative size.” See Levi Strauss & Co. v. GTFM, Inc., 196 F. Supp. 2d 971, 981 (N.D. Cal.
4 2002). This Court also found that the Levi Strauss registrations for the Tab trademark were
5 specific as to color, or the “location of the tab on a left structural seam of a right rear patch
6 pocket” and that “the words of the registrations, taken in conjunction with the drawings, provide
7 clear notice of the scope of the [Tab trademark].” Id.

8 27. One consistency between these varied and wide-ranging registrations, on
9 information and belief, is that when the Tab trademark is represented as a pocket ornament, such
10 pocket ornament is always affixed to the *left* structural seam of said pocket.

11 28. On information and belief, virtually all of Levi Strauss’ uses of the Tab trademark
12 consist of a pocket ornament affixed to the left structural seam of a pocket.

13 29. On information and belief, most of Levi Strauss’ uses of the Tab trademark, by a
14 considerable margin, consist of a red pocket ornament affixed to the left structural seam of a
15 pocket.

16 30. Levi Strauss is not the exclusive user of flag-type ornaments on products,
17 including flag-type pocket ornaments on clothing.

18 31. Even in the garment industry, consumers regularly encounter decorative pocket
19 ornaments sold by a large number of third party users, which coexist with Levi Strauss’ Tab
20 trademark in the marketplace.

21 32. For example, Levi Strauss is currently involved in a dispute with the large
22 clothing brand Barbour, whereby Barbour is claiming to have been using the below pocket
23 ornament without objection from Levi Strauss for at least 18 years, without experiencing
24 consumer confusion:

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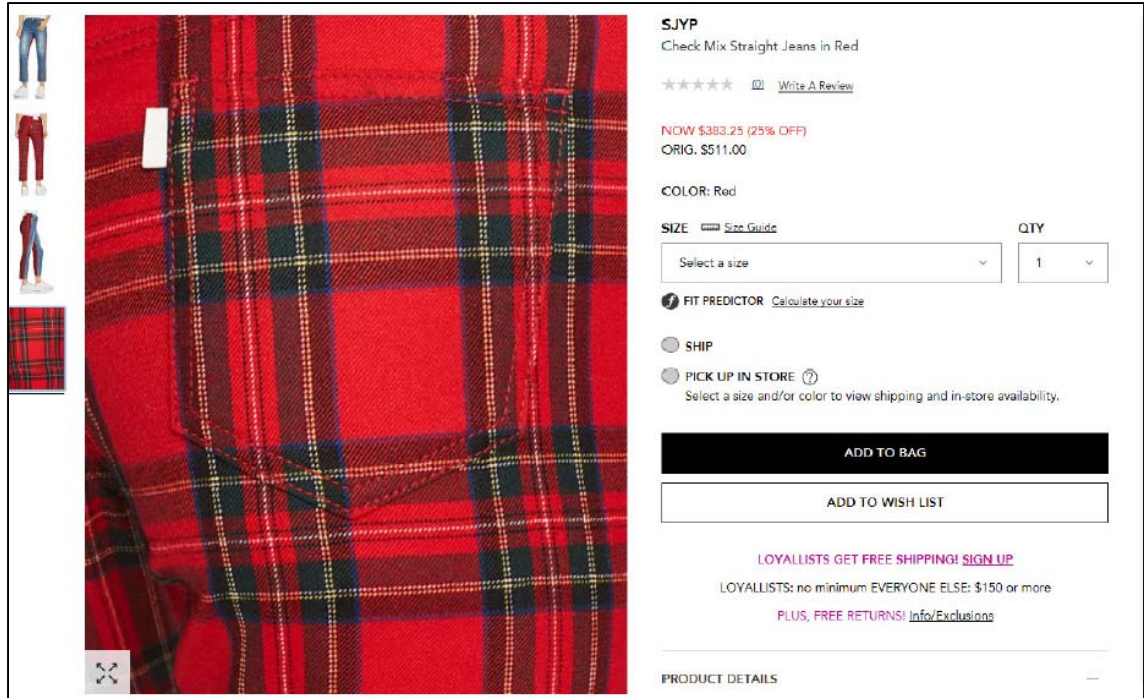
See Complaint for Declaratory Judgment, ¶19, J. Barbour & Sons Ltd., et al v. Levi Strauss & Co., 1:18-cv-05195 (S.D.N.Y.) (June 9, 2018).

33. Another coexisting third-party use of a pocket ornament is found on denim products sold by the clothing brand SJYP. As depicted below, SJYP sells jeans bearing a white pocket ornament affixed to the “left structural seam of a right rear patch pocket”:

 A screenshot of an e-commerce product page for SJYP jeans. The main image is a close-up of the rear patch pocket of light blue denim jeans, showing a white pocket ornament affixed to the left structural seam. To the left of the main image are three smaller thumbnail images of the jeans. To the right of the main image is the product information:

- SJYP** Tomboy Straight-Leg Patchwork Jeans in Denim
- ★★★★★ [Write A Review](#)
- NOW \$331.50 (25% OFF)**
ORIG. \$442.00
- COLOR: Denim
- SIZE [Size Guide](#) QTY: 1
- FIT PREDICTOR [Calculate your size](#)
- SHIP
- PICK UP IN STORE [?](#)
Select a size and/or color to view shipping and in-store availability.
- ADD TO BAG**
- ADD TO WISH LIST
- LOYALLISTS GET FREE SHIPPING! [SIGN UP](#)
- LOYALLISTS: no minimum EVERYONE ELSE: \$150 or more
- PLUS, FREE RETURNS! [Info/Exclusions](#)
- PRODUCT DETAILS

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These SJYP jeans are available online and in stores throughout the United States, including at Bloomingdale's, Net-A-Porter, and Farfetch.

34. Among the many third-party uses of such pocket ornaments include the brands G.H. Bass & Co., DKNY, Tommy Hilfiger, Nautica, Vigoss, Paul Smith, Stussy, and Carhartt, as depicted below:

G.H. Bass & Co

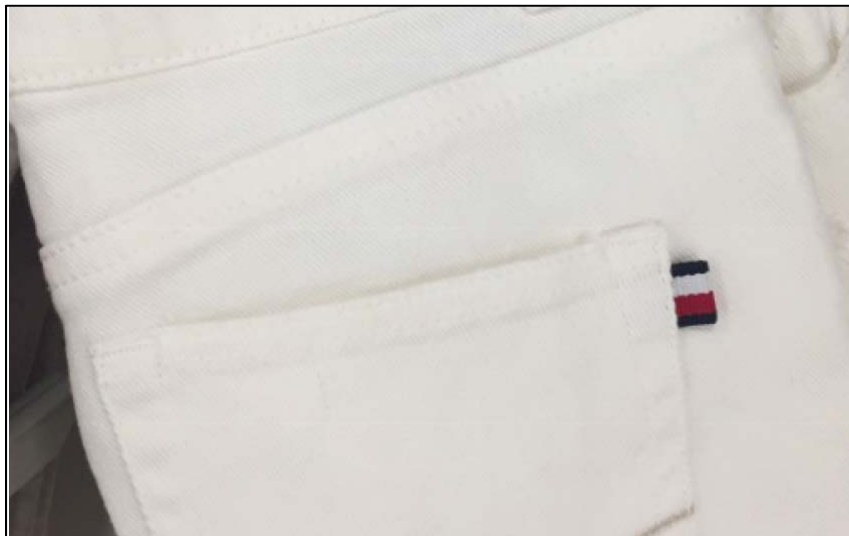


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DKNY



Tommy Hilfiger



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Nautica



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Paul Smith



Stussy



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Carhartt



35. Other pocket ornaments on the market are fully sewn in the structural seam of the pocket, such as those shown below, made by Miller International Inc.:



1 Upon information and belief, Levi Strauss has consented to the use of the above pocket ornament
2 by Miller International, Inc.

3 36. Further examples of third-party uses of pocket ornaments, all of which on
4 information and belief coexist with Levi Strauss' Tab trademark in the marketplace, are enclosed
5 as Exhibit A. On information and belief, these third-party uses include products offered by major
6 brands, and are widely available to prospective customers.

7 37. With the presence of so many pocket ornaments in the marketplace, consumers
8 coming across such pocket ornaments will undoubtedly generally view them as common, basic
9 and generic design elements which do not function as a trademark under 15 U.S.C.
10 §§1051, 1052, and 1127. Due to the ubiquitous nature of these pocket ornaments, consumers
11 understand these design elements as purely ornamental structures incapable of trademark
12 significance.

13
14 **Differences between the Parties Respective Designs**

15 38. In addition to the common use of pocket ornaments in the marketplace, there are
16 differences in the parties' respective pocket ornaments, products, and consumers, which
17 eliminate any possibility of confusion.

18 39. The Saint Laurent pocket ornament is located on the right structural seam of a
19 pants pocket, while the Levi Strauss Tab trademark, upon information and belief, always
20 includes a pocket ornament affixed to the left structural seam of a pocket.

21 40. The Saint Laurent pocket ornament is made of a relatively thick, leather-like
22 material, while, upon information and belief, the Levi Strauss pocket ornament characteristically
23 uses only woven natural or synthetic fibers.

24 41. The Saint Laurent pocket ornament is never used in red while, upon information
25 and belief, most of Levi Strauss' uses of the Tab trademark, by a considerable margin, consist of
26 a red pocket ornament, which upon information and belief, is the only color that consumers may
27 associate as a trademark of Levi Strauss.

28 42. The Saint Laurent Jeans are most often offered for sale at Saint Laurent's own

1 stores and at high-end Saint Laurent boutiques within department stores such as Nordstrom's,
2 Bergdorf Goodman, and Barney's.

3 43. The Saint Laurent Jeans retail for between \$550 and \$2,590 per pair, which makes
4 it unlikely that the Saint Laurent Jeans are impulse purchases made hastily by consumers, but
5 rather these jeans are being sold to highly informed consumers who are exercising great care, and
6 understand exactly what they are buying and for what reason, and from whom. On the other
7 hand, Levi Strauss jeans bearing the Tab trademark can be found for under \$20.

8 44. The Saint Laurent Jeans are always sold with clear markings featuring the Saint
9 Laurent Trademarks that would allow consumers to immediately recognize the Saint Laurent
10 Jeans as originating from Saint Laurent.

11 45. Levi Strauss' products include other indicia of source that are used in close
12 proximity to its Tab trademark, such as its arcuate stitching on its pockets, and the Levi's
13 waistband jacron patch.

14 46. On information and belief, there has been no confusion between the parties'
15 respective designs.

16
17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Declaration of No Trademark Infringement under Federal or California Law**

20 47. YSL America hereby realleges each allegation contained in the foregoing
21 paragraphs, as if fully set forth herein.

22 48. In filing this Complaint, and in its correspondence with YSL America both before
23 and after the filing of this Complaint, Levi Strauss has alleged that the Saint Laurent Jeans
24 infringe upon the Levi Strauss Tab trademark by virtue of the Saint Laurent Jeans containing a
25 non-red leather-like strip on the right structural seam of its right rear pocket.

26 49. YSL America denies that its sale of the Saint Laurent Jeans infringes on Levi
27 Strauss' rights in the Tab trademark.

28 50. The use of a non-red leather-like strip on the right structural seam of the right rear

1 pocket of the Saint Laurent Jeans is not confusingly similar to the Tab trademark, and consumers
2 are not likely to be misled or confused as to the source of the parties' respective goods.

3 51. Upon information and belief, unadorned pocket ornaments, including the marks
4 asserted by Levi Strauss in this action, have generally become or have always been common or
5 generic elements, not recognized by consumers as an indicator of source of the product bearing
6 such ornaments. A pocket ornament of this nature is a common, basic and generic design
7 element which does not function as a trademark and generally is not viewed by relevant
8 consumers as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather, is only
9 recognized by consumers as purely ornamental, decorative element, or other non-source
10 indicating element, incapable of performing a trademark function or acting as a trademark to
11 denote source or origin of the products bearing the pocket ornament.

12 52. Levi Strauss' allegations of infringement against YSL America have and will
13 continue to harm YSL America until such claims are resolved.

14 53. Based on the foregoing, an actual case or controversy exists with respect to Levi
15 Strauss' allegations that Saint Laurent is committing acts of trademark infringement with respect
16 to its Tab trademark and with respect to the validity and enforceability of Levi Strauss' alleged
17 trademark(s).

18 54. Accordingly, YSL America is seeking a judgment declaring that its use of a non-
19 red leather-like strip on the right structural seam of the right rear pocket of the Saint Laurent
20 Jeans is not confusingly similar to the Tab trademark, and cannot infringe Levi Strauss' generic
21 ornament, that YSL America has not engaged in any acts of trademark infringement relating to
22 its sale of the Saint Laurent Jeans, and that Levi Strauss is not entitled to any injunctive,
23 monetary, or any other relief based on said conduct by YSL America.

24 25 COUNT II

26 **Declaration of No Unfair Competition under Federal or California Law by YSL America**

27 55. YSL America hereby realleges each allegation contained in the foregoing
28 paragraphs, as if fully set forth herein.

1 56. In filing this Complaint, and in its correspondence with YSL America both before
2 and after the filing of this Complaint, Levi Strauss has alleged that YSL America's sale of the
3 Saint Laurent Jeans constitutes unfair competition with respect to Levi Strauss Tab trademark by
4 virtue of the Saint Laurent Jeans containing a non-red leather-like strip on the right structural
5 seam of its right rear pocket.

6 57. YSL America denies that its sale of the Saint Laurent Jeans constitutes an act of
7 unfair competition relating to Levi Strauss' rights in the Tab trademark.

8 58. The use of a non-red leather-like strip on the right structural seam of the right rear
9 pocket of the Saint Laurent Jeans is not confusingly similar to the Tab trademark, and consumers
10 are not likely to be misled or confused as to the source of the parties' respective goods.

11 59. Upon information and belief, unadorned pocket ornaments, including the marks
12 asserted by Levi Strauss in this action, have generally become or have always been common or
13 generic elements, not recognized by consumers as an indicator of source of the product bearing
14 such ornaments. A pocket ornament of this nature is a common, basic and generic design
15 element which does not function as a trademark and generally not viewed by relevant consumers
16 as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather, is only recognized by
17 consumers as purely ornamental, decorative element, or other non-source indicating element,
18 incapable of performing a trademark function or acting as a trademark to denote source or origin
19 of the products bearing the pocket ornament.

20 60. Levi Strauss' allegations of unfair competition against YSL America have and
21 will continue to harm YSL America until such claims are resolved.

22 61. Based on the foregoing, an actual case or controversy exists with respect to Levi
23 Strauss' allegations that Saint Laurent is committing acts of unfair competition with respect to its
24 Tab trademark and with respect to the validity and enforceability of Levi Strauss' alleged
25 trademark(s).

26 62. Accordingly, YSL America is seeking a judgment declaring that its use of a non-
27 red leather-like strip on the right structural seam of the right rear pocket of the Saint Laurent
28 Jeans is not confusingly similar to the Tab trademark, and cannot infringe Levi Strauss' generic

1 ornament, that YSL America has not engaged in any acts of unfair competition relating to its sale
2 of the Saint Laurent Jeans, and that Levi Strauss is not entitled to any injunctive, monetary, or
3 any other relief based on said conduct by YSL America.

4
5 **COUNT III**

6 **Declaration of No Dilution under Federal or California Law by YSL America**

7 63. YSL America hereby realleges each allegation contained in the foregoing
8 paragraphs, as if fully set forth herein.

9 64. In filing this Complaint, and in its correspondence with YSL America both before
10 and after the filing of this Complaint, Levi Strauss has alleged that YSL America's sale of the
11 Saint Laurent Jeans constitutes dilution of Levi Strauss Tab trademark by virtue of the Saint
12 Laurent Jeans containing a non-red leather-like strip on the right structural seam of its right rear
13 pocket.

14 65. YSL America denies that its sale of the Saint Laurent Jeans constitutes an act of
15 dilution relating to Levi Strauss' rights in the Tab trademark.

16 66. The use of a non-red leather-like strip on the right structural seam of the right rear
17 pocket of the Saint Laurent Jeans does not blur the distinction, if any, that consumers associate
18 between the Tab trademark and Levi Strauss, and will not tarnish the Tab trademark.

19 67. Upon information and belief, unadorned pocket ornaments, including the marks
20 asserted by Levi Strauss in this action, have generally become or have always been common or
21 generic elements, not recognized by consumers as an indicator of source of the product bearing
22 such ornaments. A pocket ornament of this nature is a common, basic and generic design
23 element which does not function as a trademark and generally not viewed by relevant consumers
24 as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather, is only recognized by
25 consumers as purely ornamental, decorative element, or other non-source indicating element,
26 incapable of performing a trademark function or acting as a trademark to denote source or origin
27 of the products bearing the pocket ornament.

1 1,157,769 is invalid because the design does not function as a trademark and/or is generic.

2 75. The continued existence of U.S. Trademark Registration No. 1,157,769 damages
3 and injures YSL America.

4 76. Accordingly, YSL seeks cancellation.

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6 **COUNT V**

7 **Cancellation of U.S. Registration No. 774,625**

8 77. YSL America hereby realleges each allegation contained in the foregoing
9 paragraphs, as if fully set forth herein.

10 78. This claim is for cancellation of Levi Strauss' U.S. Trademark Registration No.
11 774,625 pursuant to 15 U.S.C. §§ 1051, 1064 and 1119.

12 79. Upon information and belief, unadorned pocket ornaments, including the marks
13 asserted by Levi Strauss in this action, have generally become or have always been common or
14 generic elements, not recognized by consumers as an indicator of source of the product bearing
15 such ornaments. A pocket ornament of this nature is a common, basic and generic design
16 element which does not function as a trademark and generally is not viewed by relevant
17 consumers as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather, is only
18 recognized by consumers as purely ornamental, decorative element, or other non-source
19 indicating element, incapable of performing a trademark function or acting as a trademark to
20 denote source or origin of the products bearing the pocket ornament.

21 80. Levi Strauss' Tab trademark registered under U.S. Trademark Registration No.
22 774,625 is invalid because the design does not function as a trademark and/or is generic.

23 81. The continued existence of U.S. Trademark Registration No. 774,625 damages
24 and injures YSL America.

25 82. Accordingly, YSL seeks Cancellation.

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COUNT VI

Cancellation of U.S. Registration No. 2,726,253

83. YSL America hereby realleges each allegation contained in the foregoing paragraphs, as if fully set forth herein.

84. This claim is for cancellation of Levi Strauss' U.S. Trademark Registration No. 2,726,253 pursuant to 15 U.S.C. §§ 1051, 1064 and 1119.

85. Upon information and belief, unadorned pocket ornaments, including the marks asserted by Levi Strauss in this action, have generally become or have always been common or generic elements, not recognized by consumers as an indicator of source of the product bearing such ornaments. A pocket ornament of this nature is a common, basic and generic design element which does not function as a trademark and generally is not viewed by relevant consumers as a trademark under 15 U.S.C. §§1051, 1052, and 1127, but rather, is only recognized by consumers as purely ornamental, decorative element, or other non-source indicating element, incapable of performing a trademark function or acting as a trademark to denote source or origin of the products bearing the pocket ornament.

86. Levi Strauss' Tab trademark registered under U.S. Trademark Registration No. 2,726,253 is invalid because the design does not function as a trademark and/or is generic.

87. The continued existence of U.S. Trademark Registration No. 2,726,253 damages and injures YSL America.

88. Accordingly, YSL seeks Cancellation.

COUNT VII

Cancellation of California Registration No. 52312

89. YSL America hereby realleges each allegation contained in the foregoing paragraphs, as if fully set forth herein.

90. This claim is for cancellation of Levi Strauss' California Registration No. 52312 pursuant to 15 U.S.C. § 1119 and Cal. Bus. and Prof. Code Art. 6, § 14230 and common law.

91. Upon information and belief, unadorned pocket ornaments, including the marks

1 asserted by Levi Strauss in this action, have generally become or have always been common or
2 generic elements, not recognized by consumers as an indicator of source of the product bearing
3 such ornaments. A pocket ornament of this nature is a common, basic and generic design
4 element which does not function as a trademark and generally is not viewed by relevant
5 consumers as a trademark under BPC Section 14230(c)(5) NS BPC Section 14230(d), but rather,
6 is only recognized by consumers as purely ornamental, decorative element, or other non-source
7 indicating element, incapable of performing a trademark function or acting as a trademark to
8 denote source or origin of the products bearing the pocket ornament.

9 92. Levi Strauss' Tab trademark registered under California Registration No.52312 is
10 invalid because the design does not function as a trademark and/or is generic.

11 93. The continued existence of California Registration No.52312 damages and injures
12 YSL America.

13 94. Accordingly, YSL seeks Cancellation.

14
15 **DEMAND FOR JURY TRIAL**

16 In accordance with Rule 38 of the Federal Rules of Civil Procedure, YSL America
17 respectfully demands a jury trial of all issues triable to a jury in this action.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, YSL America respectfully requests that this Court enter judgment in its
21 favor and against Levi Strauss and grant the following relief:

- 22 A. Dismissal of Levi Strauss' Complaint with Prejudice; and
23 B. A declaration that YSL America's sale of the Saint Laurent Jeans does not
24 infringe on Levi Strauss' rights, if any, in the Tab trademark; and
25 C. A declaration that YSL America's sale of the Saint Laurent Jeans does not
26 constitute an act of unfair competition with respect to Levi Strauss' rights, if any,
27 in the Tab trademark; and
28

- 1 D. A declaration that YSL America’s sale of the Saint Laurent Jeans does not dilute
- 2 Levi Strauss’ rights, if any, in the Tab trademark; and
- 3 E. A declaration that the Tab trademark does not function as a trademark or is
- 4 generic; and
- 5 F. An order enjoining Levi Strauss from pursuing any action against YSL America
- 6 relating to its sale of the Saint Laurent Jeans; and
- 7 G. An order directing cancellation of US. Reg. Nos. 1,157,769, 774,625, 2,726,253
- 8 and Cal. Reg. No. 52312; and
- 9 H. An order awarding YSL America its attorneys’ fees and costs relating to this
- 10 actions; and
- 11 I. An order granting YSL America any further and additional relief that it deems
- 12 just and proper.

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Respectfully submitted,

Dated: March 19, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the Electronic Service List for this Case.

Dated: March 19, 2019

WILLENKEN WILSON LOH & DELGADO LLP

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