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8 Attorneys for Plaintiff
 9 LEVI STRAUSS & CO.

10 **UNITED STATES DISTRICT COURT**

11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 LEVI STRAUSS & CO.,
 13 a Delaware corporation,

14 Plaintiff,

15 v.

16 RIP N DIP, INC.,
 a California corporation,

17 Defendant.

Case No. 3:18-cv-05976

**COMPLAINT FOR TRADEMARK
 INFRINGEMENT, UNFAIR
 COMPETITION, AND DILUTION
 (INJUNCTIVE RELIEF SOUGHT)**

JURY TRIAL DEMAND

18
 19 Plaintiff Levi Strauss & Co. (“LS&Co.”), complains against Defendant Rip N Dip, Inc.
 20 (“Rip N Dip”) as follows:

21 **JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT**

22 1. Plaintiff LS&Co.’s first, second, and third claims arise under the Trademark Act
 23 of 1946 (the Lanham Act), as amended by the Trademark Dilution Revision Act of 2006 (15 U.S.C.
 24 §§ 1051, *et seq.*). This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a)
 25 and 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331 (federal question) and 15 U.S.C.
 26 § 1121 (Lanham Act). This Court has supplemental jurisdiction over the remaining state law claims
 27 under 28 U.S.C. § 1367.

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1 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Rip N Dip transacts
 2 affairs in this district, including by selling the infringing products identified in this Complaint into
 3 this district, and because a substantial part of the events giving rise to the claims asserted arose in
 4 this district.

5 3. Intra-district assignment to any division of the Northern District is proper under
 6 Local Rule 3-2(c) and the Assignment Plan of this Court as an “Intellectual Property Action.”

7 **PARTIES**

8 4. LS&Co. is a Delaware corporation with its principal place of business at Levi’s Plaza,
 9 1155 Battery Street, San Francisco, California 94111. Operating since approximately the 1850s,
 10 LS&Co. is one of the oldest and best known apparel companies in the world. It manufactures,
 11 markets, and sells a variety of apparel, including its traditional LEVI’S® brand products.

12 5. LS&Co. is informed and believes that defendant Rip N Dip is a California corporation
 13 headquartered at 724 Kohler Street, Los Angeles, California 90021.

14 6. LS&Co. is informed and believes that Rip N Dip manufactures, distributes, and/or
 15 sells, or has manufactured, distributed, and/or sold, pants and shirts under the brand name Rip N Dip
 16 which are offered for sale and sold throughout the United States, including in this judicial district.
 17 LS&Co. is further informed and believes that Rip N Dip has authorized, directed, and/or actively
 18 participated in the wrongful conduct alleged herein.

19 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

20 **LS&Co.’s Tab Trademark**

21 7. LS&Co. marks its LEVI’S® brand products with trademarks that are famous around
 22 the world. For many years prior to the events giving rise to this Complaint and continuing to the
 23 present, LS&Co. annually has spent great amounts of time, money, and effort advertising and
 24 promoting the products on which its trademarks are used and has sold hundreds of millions of
 25 these products all over the world, including throughout the United States and in California. Through
 26 these investments and large sales, LS&Co. has created considerable goodwill and a reputation for
 27 quality products. LS&Co. continuously has used these trademarks, some for well over a century,
 28 to distinguish its products.

1 8. Most of LS&Co.’s trademarks are federally registered; all are in full force and effect,
2 valid and protectable, and exclusively owned by LS&Co. LS&Co. continuously has used each of its
3 trademarks, from the registration date or earlier, until the present and during all time periods relevant
4 to LS&Co.’s claims.

5 9. Among its marks, LS&Co. owns the famous Tab Device Trademark (the “Tab
6 trademark”), which consists of a textile marker or other material sewn into one of the regular
7 structural seams of the garment. LS&Co. uses the Tab trademark on LEVI’S[®] jeans, pants,
8 jackets, shirts, and a variety of other clothing products.

9 10. LS&Co. began to display the Tab trademark on the rear pocket of its pants in 1936
10 when its then National Sales Manager, Leo Christopher Lucier, proposed placing a folded cloth
11 ribbon in the structural seams of the rear pocket. The purpose of this “tab” was to provide “sight
12 identification” of LS&Co.’s products. Given the distinctiveness of the Tab trademark, Mr. Lucier
13 asserted that “no other maker of overalls can have any other purpose in putting a colored tab on an
14 outside patch pocket, unless for the express and sole purpose of copying our mark, and confusing
15 the customer.”

16 11. LS&Co. owns, among others, the following United States and California Registrations
17 for its Tab trademark, attached as Exhibit A. The United States Registrations have become incontest-
18 able under the provisions of 15 U.S.C. § 1065.

- 19 a. U.S. Registration No. 516,561 (first used as early as September 1, 1936;
20 registered October 18, 1949);
- 21 b. U.S. Registration No. 1,157,769 (first used as early as September 1,
22 1936; registered June 16, 1981);
- 23 c. U.S. Registration No. 2,791,156 (first used as early as September 1,
24 1936; registered December 9, 2003);
- 25 d. U.S. Registration No. 356,701 (first used as early as September 1, 1936;
26 registered May 10, 1938);
- 27 e. U.S. Registration No. 577,490 (first used as early as September 1, 1936;
28 registered July 21, 1953);

- 1 f. U.S. Registration No. 774,625 (first used as early as May 22, 1963;
2 registered August 4, 1964);
- 3 g. U.S. Registration No. 775,412 (first used as early as October 9, 1957;
4 registered August 18, 1964);
- 5 h. U.S. Registration No. 2,726,253 (first used as early as March 7, 1969;
6 registered June 17, 2003); and
- 7 i. California Registration No. 052312 (first used as early as March 7,
8 1969; registered June 12, 1974).

9 12. The Tab trademark is valid and protectable, and exclusively owned by LS&Co. The
10 Tab trademark is famous and recognized around the world and throughout the United States by con-
11 sumers as signifying authentic, high quality LEVI'S® garments. The Tab trademark became famous
12 prior to Rip N Dip's conduct that is the subject of this Complaint.

13 13. Examples of LS&Co.'s use of its Tab trademark on LEVI'S® garments are attached
14 as Exhibit B.

15 **Rip N Dip's Infringement of LS&Co.'s Trademarks**

16 14. Beginning at some time in the past and continuing until the present, Rip N Dip has
17 manufactured, promoted, and sold garments that infringe and dilute LS&Co.'s trademarks.

18 15. In particular, LS&Co. is informed and believes that Rip N Dip has manufactured,
19 sourced, marketed, and/or sold shirts and pants bearing pocket tab devices that are highly similar
20 to LS&Co.'s Tab trademark (hereinafter "Rip N Dip Tab") and are likely to confuse consumers
21 about the source of Rip N Dip's products and/or a relationship between Rip N Dip and LS&Co.
22 Images of some of Rip N Dip's products bearing the Rip N Dip Tab are attached to this Complaint
23 as Exhibit C.

24 16. LS&Co. is informed and believes that Rip N Dip has manufactured, marketed, and
25 sold products bearing the Rip N Dip Tab, and has obtained and continues to profit from these sales.

26 17. There is no doubt that Rip N Dip's conduct as outlined in this Complaint has been
27 willful. Rip N Dip has known of LS&Co.'s claims since at least as early as July 5, 2018, when
28 LS&Co. wrote to Rip N Dip alleging that the products bearing the Rip N Dip Tab infringed and

1 diluted LS&Co.'s Tab trademark. On information and belief, Rip N Dip has avoided LS&Co.'s
2 counsel's phone calls and offered hollow promises of substantive responses in service of its
3 continued, willful infringement.

4 18. Rip N Dip's actions have caused and will cause LS&Co. irreparable harm for which
5 money damages and other remedies are inadequate. Unless Rip N Dip is restrained by this Court, it
6 will continue and/or expand its illegal activities and otherwise continue to cause great and irreparable
7 damage and injury to LS&Co. by, among other things:

- 8 a. Depriving LS&Co. of its statutory rights to use and control use of
9 its trademarks;
- 10 b. Creating a likelihood of confusion, mistake, and deception among
11 consumers and the trade as to the source of the infringing products;
- 12 c. Causing the public falsely to associate LS&Co. with Rip N Dip and/or
13 its products, or vice versa;
- 14 d. Causing incalculable and irreparable damage to LS&Co.'s goodwill
15 and diluting the capacity of its Tab trademark to differentiate LEVI'S[®]
16 products from others;
- 17 e. Causing LS&Co. to lose sales of its genuine clothing products; and
- 18 f. Causing others to believe that the distinctive features of the Tab
19 trademark may be misappropriated for their use.

20 19. Accordingly, in addition to other relief sought, LS&Co. is entitled to injunctive relief
21 against Rip N Dip, its affiliates, licensees, subsidiaries, and all persons acting in concert with it.

22 **FIRST CLAIM**
23 **FEDERAL TRADEMARK INFRINGEMENT**
24 **(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

25 20. LS&Co. realleges and incorporates by reference each of the allegations contained in
26 paragraphs 1 through 19 of this Complaint.

27 21. Without LS&Co.'s consent, Rip N Dip has used, in connection with the sale, offering
28 for sale, distribution, or advertising of its products, designs that infringe upon LS&Co.'s registered
Tab trademark.

1 22. These acts of trademark infringement have been committed with the intent to cause
2 confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

3 23. As a direct and proximate result of Rip N Dip’s infringing activities, LS&Co. is
4 entitled to recover Rip N Dip’s unlawful profits and LS&Co.’s substantial damages under 15 U.S.C.
5 § 1117(a).

6 24. Rip N Dip’s infringement of LS&Co.’s Tab trademark is an exceptional case and was
7 intentional, entitling LS&Co. to treble the amount of its damages and Rip N Dip’s profits, and to an
8 award of attorneys’ fees under 15 U.S.C. § 1117(a).

9 25. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

10 **SECOND CLAIM**
11 **FEDERAL UNFAIR COMPETITION**
12 **(False Designation of Origin and False Description)**
(15 U.S.C. § 1125(a); Lanham Act § 43(a))

13 26. LS&Co. realleges and incorporates by reference each of the allegations contained
14 in paragraphs 1 through 25 of this Complaint.

15 27. Rip N Dip’s use of the Rip N Dip Tab tends falsely to describe its products within
16 the meaning of 15 U.S.C. § 1125(a)(1). Rip N Dip’s conduct is likely to cause confusion, mistake,
17 or deception by or in the public as to the affiliation, connection, association, origin, sponsorship,
18 or approval of Rip N Dip’s products, to the detriment of LS&Co. and in violation of 15 U.S.C.
19 § 1125(a)(1).

20 28. As a direct and proximate result of Rip N Dip’s infringing activities, LS&Co. is
21 entitled to recover Rip N Dip’s unlawful profits and LS&Co.’s substantial damages under 15 U.S.C.
22 § 1117(a).

23 29. Rip N Dip’s infringement of LS&Co.’s Tab trademark is an exceptional case and was
24 intentional, entitling LS&Co. to treble the amount of its damages and Rip N Dip’s profits, and to an
25 award of attorneys’ fees under 15 U.S.C. § 1117(a).

26 30. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

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THIRD CLAIM
FEDERAL DILUTION OF FAMOUS MARKS
(Trademark Dilution Revision Act of 2006)
(15 U.S.C. § 1125©; Lanham Act § 43(c))

31. LS&Co. realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 30 of this Complaint.

32. LS&Co.'s Tab trademark is distinctive and famous within the meaning of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c), and was distinctive and famous prior to Barbour's conduct as alleged in this Complaint.

33. Rip N Dip's conduct is likely to cause dilution of LS&Co.'s Tab trademark by diminishing its distinctiveness in violation of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c).

34. LS&Co. is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116(a) and 1125(c).

FOURTH CLAIM
CALIFORNIA TRADEMARK INFRINGEMENT AND DILUTION
(Cal. Bus. & Prof. Code §§ 14245, 14247, 14250)

35. LS&Co. realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 34 of this Complaint.

36. Rip N Dip's infringement of LS&Co.'s Tab trademark is likely to cause consumer confusion and dilution of LS&Co.'s marks in violation of California Business & Professions Code sections 14245 and 14247.

37. Rip N Dip infringed and diluted LS&Co.'s Tab trademark with knowledge and intent to cause confusion, mistake, or deception.

38. Rip N Dip's conduct is aggravated by that kind of willfulness, wantonness, malice, and conscious indifference to the rights and welfare of LS&Co. for which California law allows the imposition of exemplary damages.

39. Pursuant to California Business & Professions Code sections 14247 and 14250, LS&Co. is entitled to injunctive relief and damages in the amount of three times Rip N Dip's profits and three times all damages suffered by LS&Co. by reason of Rip N Dip's manufacture, use, display, or sale of infringing goods.

FIFTH CLAIM
CALIFORNIA UNFAIR COMPETITION
(Cal. Bus. & Prof. Code § 17200)

40. LS&Co. realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 39 of this Complaint.

41. Rip N Dip’s conduct as alleged in this Complaint constitutes “unlawful, unfair or fraudulent business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertising” within the meaning of California Business & Professions Code section 17200.

42. As a consequence of Rip N Dip’s actions, LS&Co. is entitled to injunctive relief preventing the conduct alleged in this Complaint.

PRAYER FOR JUDGMENT

WHEREFORE, LS&Co. prays that this Court grant it the following relief:

1. Adjudge that LS&Co.’s Tab trademark has been infringed by Rip N Dip in violation of LS&Co.’s rights under common law, 15 U.S.C. § 1114, and/or California law;

2. Adjudge that Rip N Dip has competed unfairly with LS&Co. in violation of LS&Co.’s rights under common law, 15 U.S.C. § 1125(a), and/or California law;

3. Adjudge that Rip N Dip’s activities are likely to dilute LS&Co.’s famous Tab trademark in violation of LS&Co.’s rights under common law, 15 U.S.C. § 1125(c), and/or California law;

4. Adjudge that Rip N Dip and its agents, employees, attorneys, successors, assigns, affiliates, and joint venturers, and any person(s) in active concert or participation with it, and/or any person(s) acting for, with, by, through, or under it, be enjoined and restrained at first during the pendency of this action and thereafter permanently from:

- a. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising, or promoting any goods that display any words or symbols that so resemble LS&Co.’s Tab trademark as to be likely to cause confusion, mistake or deception, on or in connection with any product that is not authorized by or for LS&Co., including, without limitation, any product that bears the Rip N Dip Tab which is the subject

1 of this Complaint and for which Rip N Dip is responsible, or any other
2 approximation of LS&Co.'s trademarks;

- 3 b. Using any word, term, name, symbol, device, or combination thereof
4 that causes or is likely to cause confusion, mistake, or deception as to
5 the affiliation or association of Rip N Dip or its products with LS&Co.
6 or as to the origin of Rip N Dip's goods, or any false designation of
7 origin, false or misleading description or representation of fact, or any
8 false or misleading advertising;
- 9 c. Further infringing the rights of LS&Co. in and to any of its trademarks
10 in its LEVI'S® brand products or otherwise damaging LS&Co.'s good-
11 will or business reputation;
- 12 d. Further diluting the Tab trademark;
- 13 e. Otherwise competing unfairly with LS&Co. in any manner; and
- 14 f. Continuing to perform in any manner whatsoever any of the other acts
15 complained of in this Complaint;

16 5. Adjudge that Rip N Dip be required immediately to supply LS&Co.'s counsel with
17 a complete list of individuals and entities from whom or which it purchased, and to whom or which
18 it sold, offered for sale, distributed, advertised, or promoted, infringing products as alleged in this
19 Complaint;

20 6. Adjudge that Rip N Dip be required immediately to deliver to LS&Co.'s counsel
21 its entire inventory of infringing products, including, without limitation, pants, shirts, and any other
22 clothing, packaging, labeling, advertising and promotional material, and all plates, patterns, molds,
23 matrices, and other material for producing or printing such items, that are in its possession or subject
24 to its control and that infringe LS&Co.'s trademarks as alleged in this Complaint;

25 7. Adjudge that Rip N Dip, within thirty (30) days after service of the judgment
26 demanded herein, be required to file with this Court and serve upon LS&Co.'s counsel a written
27 report under oath setting forth in detail the manner in which it has complied with the judgment;

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1 8. Adjudge that LS&Co. recover from Rip N Dip its damages and lost profits, and Rip N
2 Dip's profits, in an amount to be proven at trial, as well as punitive damages under California law;

3 9. Adjudge that Rip N Dip be required to account for any profits that are attributable to
4 its illegal acts, and that LS&Co. be awarded (1) Rip N Dip's profits and (2) all damages sustained by
5 LS&Co., under 15 U.S.C. § 1117, plus prejudgment interest;

6 10. Adjudge that the amounts awarded to LS&Co. pursuant to 15 U.S.C. § 1117 shall be
7 trebled;

8 11. Order an accounting of and impose a constructive trust on all of Rip N Dip's funds
9 and assets that arise out of its infringing activities;

10 12. Adjudge that LS&Co. be awarded its costs and disbursements incurred in connection
11 with this action, including LS&Co.'s reasonable attorneys' fees and investigative expenses; and

12 13. Adjudge that all such other relief be awarded to LS&Co. as this Court deems just and
13 proper.

14
15 Dated: September 28, 2018

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

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17
18 By: /s/ Ryan T. Bricker
19 Ryan T. Bricker

20 Attorneys for Plaintiff
LEVI STRAUSS & CO.
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DEMAND FOR JURY TRIAL

Levi Strauss & Co. demands that this action be tried to a jury.

Dated: September 28, 2018

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Ryan T. Bricker
 Ryan T. Bricker

Attorneys for Plaintiff
LEVI STRAUSS & CO.

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