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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051994
Party	Defendant Vallavista Corporation
Correspondence Address	Vallavista Corporation 3541 Wilkinson Lane Lafayette, CA 94549 UNITED STATES alicia@vallavista.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Kevin R. Martin
Filer's e-mail	kevin@pattonmartinsullivan.com
Signature	/kevin r. martin/
Date	03/08/2010
Attachments	Notice of Motion To Suspend Proceedings.pdf (3 pages)(149456 bytes) MPA's In Support of Motion To Suspend.pdf (4 pages)(158053 bytes) Dec of KRM re Motion To Suspend.pdf (3 pages)(63506 bytes) Ex A To KRM Declaration.pdf (1 page)(22674 bytes) Ex B to KRM Declaration.pdf (1 page)(21842 bytes) Ex C to KRM Declaration.pdf (18 pages)(529977 bytes) Ex D to KRM Declaration.pdf (21 pages)(125319 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

VERA BRADLEY DESIGNS, INC,

Petitioner,

v.

VALLAVISTA CORPORATION

Registrant.

Cancellation No. 92051994

Mark: TAXI WALLET

Registration No. 3,585,251

Registration Date: March 10, 2009

Mark: TAXI WALLET (and Design)

Registration No. 2,008,495

Registration Date: October 15, 1996

**NOTICE OF MOTION AND MOTION TO
SUSPEND PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

To Petitioner VERA BRADLEY DESIGNS, INC. (“Petitioner”) and its Attorney of Record:

NOTICE IS HEREBY GIVEN that Registrant VALLAVISTA CORPORATION (“Vallavista”) will, and hereby does, move for an order suspending these proceedings pending termination of the civil action currently on going in the United States District Court, Northern District of California, between Petitioner and Vallavista regarding (among other claims) the validity of Vallavista’s trademark rights its marks TAXI WALLET (the “Word Mark”), Reg. No. 3,585,251 (the “251 Registration”), and TAXI WALLET (and Design) (the “Design Mark”), Reg. No. 2,008,495 (the “495 Registration”).

The motion is made on the grounds that good cause exists to suspend the Cancellation proceedings because the parties to this proceeding are parties in a civil action involving the same marks and issues of fact and law, which overlap with this case. *See* 27 CFR 2.117.

The motion will be based on this Notice of Motion, on the Declaration of Kevin R. Martin and the Memorandum of Points and Authorities served and filed herewith, on the papers and records on file herein, and on such other evidence as may be presented in connection with the motion.

Respectfully submitted,



Date: March 8, 2010

KEVIN R. MARTIN
PATTON MARTIN & SULLIVAN LLP
6600 Koll Center Pkwy, Ste 250
Pleasanton, CA 94566
925-600-1800
925-600-1802 (Fax)
Kevin@pattonmartinsullivan.com
Attorneys for Registrant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the

NOTICE OF MOTION TO SUSPEND PROCEEDINGS, DECLARATION OF KEVIN R. MARTIN IN SUPPORT OF REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS, and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS

has been served upon the following counsel of record for Petitioner via United States first-class mail, postage prepaid, on March 8, 2010.

Brad R. Mauer
Louis T. Perry
BAKER & DANIELS LLP
300 North Meridian Street
Suite 2700
Indianapolis, Indiana 46204



Kevin R. Martin

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REGISTRANT'S MOTION TO SUSPEND
PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Registrant Vallavista Corporation brings this motion before the Board to suspend the present proceedings on the basis Petitioner Vera Bradley Designs, Inc. and Vallavista Corporation are presently engaged in a civil action in the United States District Court in the Northern District of California covering all of the issues presented here (and others), and consequently a final determination of such action will undoubtedly have a bearing on this action. Proceeding with this Petition To Cancel concurrently with the Federal Court action will only cause unnecessary expense and duplication of efforts, and could render contradictory findings undermining the registration and court processes. For these reasons, Registrant respectfully requests this Petition To Cancel be suspended pending resolution of the court action.

I. BACKGROUND FACTS

Registrant Vallavista Corporation (“Vallavista”) is the owner of United States Trademark Registration No. 3,585,251 (“ ‘251 Registration”) issued on March 10, 2009 for the word trademark TAXI WALLET ® used in connection with leather bags, suitcases and wallets, pocket wallets, wallets; wallets with card compartments; billfolds; change purses; clutch purses; coin purses; coin purses, not of precious metals; leather purses; multi-purpose purses; purses. See Declaration of Kevin R. Martin (“Martin Dec.”) ¶2, and Ex. A). Vallavista is also the owner of United States Trademark Registration No. 2,008,495 (“ ‘495 Registration”) issued on October 15, 1996, for the word and design trademark



used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets, coin purses, change purses, coin pocket billfolds and business card wallets in International Class 018. See Martin Dec. ¶3, and Ex. B.

On January 11, 2009, Vallavista filed a civil action against Vera Bradley Designs, Inc. (“Vera Bradley”) for trademark infringement, false designation of origin under 15 U.S.C. § 1125 (a); common law unfair competition, and violation of California Business & Professions Code Section 17200 arising out of Vera Bradley Designs, Inc.’s use of the name and mark TAXI WALLET and other unlawful activities conducted in connection with such use. The civil action was filed in the United States District Court for the Northern District (“District Court”), Case No. 5:10-cv-00120 HRL (“Civil Action”). (Martin Decl. ¶ 4, and Ex. C) Vera Bradley Design, Inc., the petitioner in this action, answered the Civil Action on March 1, 2010 and made various counterclaims against Vallavista Corporation regarding the ‘251 and ‘495 Registrations,

including the exact same claims of genericness and fraud as alleged here and on the exact same factual basis as alleged here. See Martin Decl. ¶ 5, and Ex. D.

II. ARGUMENT

A. THE TRIAL AND APPEAL BOARD SHOULD SUSPEND THE PROCEEDINGS PENDING THE OUTCOME OF THE CIVIL ACTION INVOLVING THE PARTIES.

Proceedings before the Trademark Trial and Appeal Board (the “Board”) may be suspended whenever it comes to the attention of the Board that parties to a pending case are engaged in a civil action, and a final determination of such action may have a bearing on the pending case. 37 CFR § 2.117(a) (July 1, 2008). Generally, it is the Board’s practice to suspend a Board proceeding when there is a pending civil action or another Board proceeding which may be dispositive of, or have a bearing on, the proceeding proposed to be suspended. *Miscellaneous Changes To Trademark Trial and Appeal Board Rules* 1214 TMOG 145, 147 (September 29, 1998).

As discussed above, Vallavista and Vera Bradley Designs, Inc. are parties in the Civil Action regarding Vallavista’s asserted trademark rights in the ‘251 and ‘495 Registrations. See Martin Dec. Exs. C and D. Vera Bradley Design, Inc. has made certain counterclaims in the Civil Action which mirror exactly its claims in this petition for findings of genericness and fraud as against Vallavista. Final determination of these issues in the Civil Action will resolve the issues raised in this Petition, thereby eliminating the need for further proceedings before the Board. Thus, a final determination of Vallavista’s trademark rights during the Civil Action has a bearing on the proceedings before the Board. As such, this Petition should be suspended pending termination of the Civil Action.

B. GOOD CAUSE EXISTS TO SUSPEND THE PROCEEDINGS PENDING THE OUTCOME OF THE CIVIL ACTION INVOLVING THE PARTIES.

Proceedings may be suspended, for good cause, upon motion or a stipulation of the parties, approved by the Board. 37 CFR § 2.117(c) (July 1, 2008). In the present case, good cause exists to suspend the proceedings because a final determination of Vallavista’s trademark

rights in the Civil Action will obviate the need for further proceedings before the Board.

Suspending the proceedings now will also save the Board and parties the time and resources of investigating the same claims and factual contentions presented before the District Court.

In addition, the Civil Action includes claims which will be litigated no matter what the outcome in this Petition. The common law claims of unfair competition and common law trademark infringement would not be resolved even if this Petition was granted in favor of Vera Bradley. Where a district court suit concerns infringement, the interest in prompt adjudication there far outweighs the value of having the views of the PTO. *Goya Foods, Inc. v. Tropicana Products, Inc.*, 846 F.2d 848, 854 (1988). Finally, suspending the proceedings now will avoid the possibility of divergent findings between the Board and the Federal Court or jury hearing the Civil Action.

III. CONCLUSION

Based on the foregoing reasons, Vallavista respectfully requests the Board suspend this Petition To Cancel pending final outcome of the Civil Action.

Respectfully submitted,



Date: March 8, 2010

KEVIN R. MARTIN
PATTON MARTIN & SULLIVAN LLP
6600 Koll Center Pkwy, Ste 250
Pleasanton, CA 94566
925-600-1800
925-600-1802 (Fax)
Kevin@pattonmartinsullivan.com
Attorneys for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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VERA BRADLEY DESIGNS, INC,

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v.

VALLAVISTA CORPORATION

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Registration Date: March 10, 2009

Mark: TAXI WALLET (and Design)

Registration No. 2,008,495

Registration Date: October 15, 1996

**DECLARATION OF KEVIN R. MARTIN
IN SUPPORT OF REGISTRANT'S
MOTION TO SUSPEND PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

I, Kevin R. Martin, declare:

1. I am attorney of record for Registrant Vallavista Corporation in this proceeding and before the United States District Court for the Northern District ("District Court"), Case No. 5:10-cv-00120 HRL ("Civil Action"). I make this declaration based on personal knowledge and if called as a witness I would testify to the facts set forth below.
2. Registrant Vallavista Corporation ("Vallavista") is the owner of United States Trademark Registration No. 3,585,251 (" '251 Registration") issued on March 10,

2009 for the word trademark TAXI WALLET ® used in connection with leather bags, suitcases and wallets, pocket wallets, wallets; wallets with card compartments; billfolds; change purses; clutch purses; coin purses; coin purses, not of precious metals; leather purses; multi-purpose purses; purses. Attached hereto as **Exhibit A** and incorporated by reference is a true and correct copy of the ‘251 Registration certificate of registration.

3. Vallavista is also the owner of United States Trademark Registration No. 2,008,495 (“ ‘495 Registration’”) issued on October 15, 1996, for the word and design



trademark used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets, coin purses, change purses, coin pocket billfolds and business card wallets in International Class 018. Attached hereto as **Exhibit B** and incorporated by reference is a true and correct copy of ‘495 Registration certificate of registration.

4. On January 11, 2009, Vallavista filed a civil action against Vera Bradley Designs, Inc. (“Vera Bradley”) for trademark infringement, false designation of origin under 15 U.S.C. § 1125 (a); common law unfair competition, and violation of California Business & Professions Code Section 17200 arising out of Vera Bradley Designs, Inc.’s use of the name and mark TAXI WALLET and other unlawful activities conducted in connection with such use. The civil action was filed in the United States District Court for the Northern District (“District Court”), Case No. 5:10-cv-00120

HRL (“Civil Action”). Attached hereto as **Exhibit C** and incorporated by reference is a true and correct copy of the Civil Action complaint.

5. Vera Bradley Design, Inc., the petitioner in this action, answered the Civil Action on March 1, 2010 and made various counterclaims against Vallavista regarding the ‘251 and ‘495 Registrations, including the exact same claims of genericness and fraud as alleged here and on the exact same factual basis as alleged here. Attached hereto as **Exhibit D** and incorporated by reference is a true and correct copy of Vera Bradley’s Answer and Counterclaims filed in the Civil Action.

I declare under penalty of perjury under the laws of the State of California and the U.S. Constitution that the foregoing is true and correct.

Executed this 8th of March, 2010 in Pleasanton, California .



Kevin R. Martin

Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22 and 41

United States Patent and Trademark Office

Reg. No. 3,585,251

Registered Mar. 10, 2009

TRADEMARK
PRINCIPAL REGISTER

TAXI WALLET

VALLAVISTA CORPORATION (CALIFORNIA
CORPORATION)
3541 WILKINSON LANE
LAFAYETTE, CA 94549

FOR: LEATHER BAGS, SUITCASES AND WAL-
LETS; POCKET WALLETS; WALLETS; WALLETS
WITH CARD COMPARTMENTS; BILLFOLDS;
CHANGE PURSES; CLUTCH PURSES; COIN PUR-
SES; COIN PURSES, NOT OF PRECIOUS METALS;
LEATHER PURSES; MULTI-PURPOSE PURSES;
PURSES, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 7-6-1988; IN COMMERCE 7-29-1988.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,008,495.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "WALLET", APART FROM THE
MARK AS SHOWN.

SER. NO. 77-179,030, FILED 5-11-2007.

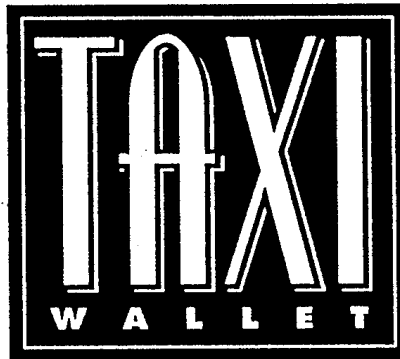
SANI KHOURI, EXAMINING ATTORNEY

Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22 and 41

United States Patent and Trademark Office Reg. No. 2,008,495
Registered Oct. 15, 1996

**TRADEMARK
PRINCIPAL REGISTER**



VALLAVISTA CORPORATION (CALIFORNIA CORPORATION)
3431 BLACKHAWK PLAZA CIRCLE
DANVILLE, CA 94506

FOR: WALLETS, COIN WALLETS, BILL-FOLDS, CREDIT CARD WALLETS, COIN PURSES, CHANGE PURSES, COIN POCKET BILLFOLDS, BUSINESS CARD WALLETS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 7-6-1988; IN COMMERCE 7-29-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WALLET", APART FROM THE MARK AS SHOWN.

SER. NO. 75-018,738, FILED 11-9-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

E-filing

ORIGINAL

1 Kevin R. Martin (SBN 176853)
2 PATTON MARTIN & SULLIVAN LLP
3 6600 Koll Center Parkway, Suite 250
4 Pleasanton, California 94566
5 Tel: 925-600-1800
6 Fax: 925-600-1802
7 kevin@pattonmartinsullivan.com

8 Attorneys for Plaintiff VALLAVISTA CORPORATION

FILED
JAN 11 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO/OAKLAND DIVISION

ADR

12 VALLAVISTA CORPORATION, a
13 California corporation,

Case No.:

C10-00120

HRL

14 Plaintiff,

COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR COMPETITION,
AND INJUNCTIVE RELIEF

15 vs.

[DEMAND FOR JURY TRIAL]

16 VERA BRADLEY DESIGNS, INC.,
an Indiana Corporation, DIZENGOFF
HANDBAGS, INC., a New York
Corporation, and TONY PEROTTI
ITALY (USA) LLC.,

Defendants.

Plaintiff Vallavista Corporation ("Plaintiff"), by and through its undersigned counsel, for its Complaint against VERA BRADLEY DESIGNS, INC. ("Vera Bradley"), DIZENGOFF HANDBAGS, INC. ("Dizengoff") and TONY PEROTTI ITALY (USA) ("Tony Perotti") states the following:

I. PARTIES

1. Plaintiff is a corporation organized under the laws of the State of California, with its principal place of business located at 3541 Wilkinson Lane, Lafayette, California 94549.

2. Upon information and belief, Vera Bradley is a corporation organized under the

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NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SENE

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1 laws of the State of Indiana and is conducting systematic and continuous business in California
2 through its brick and mortar stores in San Francisco, San Jose, Roseville and Glendale, on its
3 interactive website at <http://www.verabradley.com> and through its affiliate stores in the state.

4 3. Upon information and belief, Dizengoff is a corporation organized under the laws
5 of the State of New York and is conducting systematic and continuous business in California
6 through advertising and promotion of its products at various websites including
7 www.luggagepoint.com, and sending product into the state of California and other interactions.

8 4. Upon information and belief, Tony Perotti is a limited liability company
9 organized under the laws of the State of Georgia, and is conducting systematic and continuous
10 business in California through various websites including www.luggagepoint.com, and sending
11 product into the state of California and other interactions.

12 II. JURISDICTION

13 5. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §
14 1121 (actions arising under the Trademark Act of 1946), 15 U.S.C. § 1114 (registration of a
15 mark is prima facie evidence of its validity), 15 U.S.C. § 1125 (false designation of origin), 28
16 U.S.C. 1338(a) (acts of Congress relating to trademarks), 28 U.S.C. 1338(b) (pendent unfair
17 competition claims) and 28 U.S.C. § 1332(a) (diversity of citizenship). The amount in question
18 herein exceeds \$75,000.

19 6. Under 28 U.S.C. § 1391(a), venue is proper in the Northern District of California
20 because a substantial part of the events giving rise to this action occurred here.

21 III. INTRADISTRICT ASSIGNMENT

22 7. Pursuant to Civil L.R. 3-2(d), assignment to either the San Francisco Division or
23 Oakland Division is proper because a substantial part of the events giving rise to this action
24 occurred in Contra Costa County, California.

25 IV. ALLEGATIONS COMMON TO ALL COUNTS

26 8. This is an action for trademark infringement, false designation of origin under the
27 Trademark Act of 1946 (also known as The Lanham Act, 15 U.S.C. § 1051 *et seq.*) and unfair
28

1 competition under California Business & Professions Code Section 17200 *et seq.* and the
2 common law based on the Defendants' use of the name and mark TAXI WALLET and other
3 unlawful activities conducted by Defendants in connection with such use.

4 9. Plaintiff is the owner of United States Trademark Registration No. 3,585,251
5 ("the Word Mark Registration") issued on March 10, 2009 for the word trademark TAXI
6 WALLET ® used in connection with leather bags, suitcases and wallets, pocket wallets, wallets;
7 wallets with card compartments; billfolds; change purses; clutch purses; coin purses; coin purses,
8 not of precious metals; leather purses; multi-purpose purses; purses. A true and correct copy of
9 the U.S. Patent and Trademark certificate of trademark registration is attached hereto as Exhibit
10 1 and incorporated herein by reference.

11 10. Plaintiff is also the owner of United States Trademark Registration No. 2,008,495
12 ("the Logo Registration") issued on October 15, 1996, for the word and design trademark



18 used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets, coin
19 purses, change purses, coin pocket billfolds and business card wallets in International Class 018.
20 A true and correct copy of the U.S. Patent and Trademark certificate of trademark registration is
21 attached hereto as Exhibit 2 and incorporated herein by reference.

22 11. Together the word trademark and the logo trademark are herein referred to as "the
23 registered Marks."

24 12. Both registrations are in full force and effect and uncancelled and constitute
25 conclusive evidence of the validity of the registered Marks, Plaintiff's ownership thereof, and its
26 exclusive right to use the registered Marks throughout the United States in connection with the
27 designated goods. Because of the longevity of the Logo Registration, it is incontestable under 15
28 U.S.C. §1065.

1 13. The registered Marks are inherently distinctive when used in connection with
2 Plaintiff's wallets and similar products.

3 14. Plaintiff also enjoys substantial common law rights in the TAXI WALLET name
4 as it has been extensively engaged in the business of selling wallets and similar products under
5 the TAXI WALLET name throughout the United States since on or about July 6, 1988. As a
6 result of the widespread use, the public and the trade use the name TAXI WALLET to identify
7 and refer to Plaintiff's products, the public and trade recognize that such designations refer to a
8 high quality product emanating from a single source, and as a result TAXI WALLET has built
9 up secondary meaning and extensive goodwill.

10 15. Plaintiff has also created a distinctive design for certain wallet products sold
11 under the registered Marks. Plaintiff's unique design is illustrated in the drawings attached
12 hereto as Exhibit 3 ("Trade Dress") and incorporated herein by reference.

13 16. Plaintiff's Trade Dress is not essential to the functionality of wallet products and
14 does not affect the quality or cost of wallet products.

15 17. Continuously since on or about July 6, 1988, Plaintiff has been and now is
16 extensively engaged in the business of selling wallet products under the registered Marks and
17 Trade Dress.

18 18. The registered Marks are used extensively on and in connection with the sales of
19 Plaintiff's wallet products, including the packaging, promotional and marketing materials, and
20 advertising on the Internet.

21 19. Plaintiff has extensively promoted and marketed its wallet products nationwide
22 through various forms of media, including the Internet, in connection with the registered Marks
23 and Trade Dress.

24 20. As a result of such promotional and marketing efforts, and the inherent quality of
25 Plaintiff's wallet products, the registered Marks and Trade Dress have become widely and
26 favorably known, have become symbols of Plaintiff's goodwill, and have acquired
27 distinctiveness and secondary meaning.

28

1 21. Plaintiff has continuously and vigorously preserved the strength of the registered
2 Marks and Trade Dress and has actively guarded against infringement.

3 22. Notwithstanding Plaintiff's continuous and exclusive use of and prior rights in the
4 registered Marks, Defendants have sought to compete unfairly with Plaintiff by using the
5 registered Marks on and in connection with selling wallet products similar to those of Plaintiff.
6 Plaintiff is informed and believes, and thereon alleges, that the Defendants and each of them has
7 made sales under or in connection with the registered Marks or marks confusingly similar thereto
8 and with products bearing the same or strikingly similar to Plaintiff's Trade Dress.

9 23. Plaintiff has contacted the respective Defendants and made demand that they
10 immediately cease and desist use of the registered Marks or similar likenesses in promoting
11 competing wallet products, but Defendants have refused and continue to refuse to comply.

12 **V. CLAIMS FOR RELIEF**
13 **COUNT ONE: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

14 **As to All Defendants:**

15 24. Plaintiff hereby realleges and incorporates by reference the allegations of
16 paragraphs 1 through 23 of this Complaint as if fully set forth herein.

17 25. Defendants have used designations identical or substantially similar to the
18 registered Marks for the sale, offer for sale, advertisement, or promotion of wallet products.

19 26. Defendants' use of designations identical or substantially similar to the registered
20 Marks, as described herein, is without permission or authority of Plaintiff and is likely to cause
21 confusion and mistake or to deceive consumers as to the source or origin of goods. Defendants
22 actions described herein constitutes infringement of Plaintiff's federally-registered trademarks in
23 violation of Lanham Act Section 32, 15 U.S.C. § 1114.

24 27. Upon information and belief, Defendants' infringing activities have caused and,
25 unless enjoined by this Court, will continue to cause, irreparable injury and other damage to
26 Plaintiff's business, reputation and goodwill in its federally registered trademarks. Plaintiff has
27 no other adequate remedy at law.

28 28. By the reason of Defendants activities described herein, Plaintiff is entitled to

1 injunctive relief against all Defendants restraining further acts of infringement, to attorney's fees,
2 and trebled damages caused by Defendants' infringement of Plaintiff's registered trademarks.

3 **As To Defendant Vera Bradley:**

4 29. Vera Bradley is a merchant in the business of selling consumer goods, including
5 wallets and wallet products, in the United States and in competition with Plaintiff.

6 30. Vera Bradley has sold and/or continues to sell in interstate commerce wallets
7 designated as a "Taxi Wallet" or "Vera Bradley Taxi Wallet" in its brick and mortar stores and
8 through various websites including www.verabradley.com, www.qvc.com, and others. Upon
9 information and belief, Vera Bradley has also included the TAXI WALLET designation in
10 catalogues and other marketing materials.

11 31. Plaintiff has not given Vera Bradley any authorization to use the registered Marks
12 in promoting or advertising its competing products.

13 32. Vera Bradley's actions described herein are likely to cause confusion and mistake
14 or to deceive consumers as to the source or origin of goods.

15 33. Plaintiff contacted Vera Bradley regarding its unauthorized use in or about
16 September 2009 demanding it cease and desist further use of the registered Marks the same or
17 confusingly similar to that of Plaintiff's registered Marks. The parties entered into some
18 negotiation, but it became clear that Vera Bradley was unwilling to fully comply with efforts to
19 avoid confusion in the marketplace and in a timely fashion.

20 34. As a result of its notice, and refusal to cease and desist use of the registered Marks
21 or marks confusingly similar thereto, Vera Bradley's acts described herein have been malicious,
22 deliberate, willful, intentional, and in bad faith, committed with full knowledge and conscious
23 disregard of Plaintiff's prior and superior rights in the registered Marks and with an intent to
24 trade on Plaintiff's substantial goodwill in the registered Marks. Therefore, this is an exceptional
25 case pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

1 **As To Tony Perotti:**

2 35. Tony Perotti is a merchant in the business of selling leather goods in competition
3 with Plaintiff.

4 36. Tony Perotti has sold and continues to sell in interstate commerce wallets
5 designated as a "Tony Perotti Prima Traditional Taxi Wallet" with designs identical or
6 confusingly similar to Plaintiff's Trade Dress through commerce websites such as
7 www.shopwiki.com , www.shoebuy.com and www.luggagepoint.com.

8 37. Plaintiff has not given Tony Perotti any authorization to use the registered Marks
9 or the Trade Dress.

10 38. On or about March 2008 and continuing thereafter, Plaintiff has corresponded
11 with Tony Perotti demanding that it cease and desist all use of Plaintiff's registered Marks, Trade
12 Dress, or any other name or mark confusingly similar to Plaintiff's registered Marks or Trade
13 Dress.

14 39. On several occasions from that time, and including again in September 2009,
15 representatives for Tony Perotti acknowledged receipt of the correspondence and promised to
16 stop further infringing use, but has since failed to comply.

17 40. Despite receiving notice of its infringement regarding Plaintiff's registered Marks
18 and Trade Dress, Tony Perotti continues to sell, in interstate commerce, wallets identical or
19 substantially similar in style and design to Plaintiff's Trade Dress that are packaged and labeled
20 as "Taxi Wallet" or ""Tony Perotti Prima Traditional Taxi Wallet". These actions are likely to
21 cause confusion and mistake or to deceive consumers as to the source or origin of goods.

22 41. As a result of its notice, and refusal to cease and desist use of the registered Marks
23 or marks confusingly similar thereto in connection with products identical to or substantially
24 similar to those of Plaintiff and/or bearing the same or substantially similar trade dress to that
25 Trade Dress of Plaintiff, Tony Perotti's acts described herein have been malicious, deliberate,
26 willful, intentional, and in bad faith, committed with full knowledge and conscious disregard of
27 Plaintiff's prior and superior rights in the registered Marks and with an intent to trade on
28

1 Plaintiff's substantial goodwill in the registered Marks. Therefore, this is an exceptional case
2 pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

3 42. Upon information and belief, Tony Perotti's acts described herein have been
4 malicious, deliberate, willful, intentional, and in bad faith, committed with full knowledge and
5 conscious disregard of Plaintiff's prior and superior rights in the registered Marks and Trade
6 Dress and with intent to trade on Plaintiff's substantial goodwill in the registered Marks and
7 Trade Dress. Therefore, this is an exceptional case pursuant to Lanham Act Section 35(a), 15
8 U.S.C. § 1114.

9 **As to Defendant Dizengoff:**

10 43. As recent as January 6, 2010, Dizengoff was advertising and selling wallets called
11 "Dizengoff Taxi Wallet" at various commercial websites including www.newegg.com, www.luggagepoint.com,
12 www.shopwiki.com

13 44. Plaintiff has not given Dizengoff any authorization to use the registered Marks or
14 its Trade Dress in connection with its products.

15 45. Dizengoff's acts described herein are not authorized by Plaintiff and are likely to
16 cause confusion and mistake or to deceive consumers as to the source or origin of goods.

17 46. Upon information and belief, Dizengoff's acts described herein have been
18 malicious, deliberate, willful, intentional, and in bad faith, committed with full knowledge and
19 conscious disregard of Plaintiff's prior and superior rights in the registered Marks and with intent
20 to trade on Plaintiff's substantial goodwill in the registered Marks. Therefore, this is an
21 exceptional case pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

22 **COUNT TWO: UNFAIR COMPETITION AND FALSE DESIGNATION**
23 **OF ORIGIN UNDER 15 U.S.C. § 1125(a)**
24 **(AS TO ALL DEFENDANTS)**

25 47. Plaintiff hereby realleges and incorporates by reference the allegations of
26 paragraphs 1 through 46 of this Complaint as if fully set forth herein.

27 48. By engaging in the acts described herein, Defendants have made and are making
28 false, deceptive, and misleading statements constituting unfair competition, false representations,

1 false designations of origin, and false advertising made in connection with goods distributed in
2 interstate commerce in violation of Lanham Act Section 43(a), 15 U.S.C. § 1125(a).

3 49. Upon information and belief, Defendants' acts described herein have caused, and
4 unless enjoined by this Court will continue to cause, irreparable injury and other damage to
5 Plaintiff's business, reputation and good will in its trademarks, trade dress, and trade names.
6 Plaintiff has no other adequate remedy at law.

7 50. By the reason of Defendants' acts described herein, Plaintiff is entitled to
8 injunctive relief against all Defendants restraining further acts of unfair competition, false
9 representations, false designations of origin, and false advertising, to attorneys' fees, and trebled
10 damages caused by Defendants' unlawful actions.

11 **COUNT THREE: COMMON LAW UNFAIR COMPETITION**
12 **(AS TO ALL DEFENDANTS)**

13 51. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1
14 through 50 of this Complaint as if fully set forth herein.

15 52. Defendants' acts described herein constitute unfair competition within the State of
16 California and are in violation of California law.

17 53. Defendants' unfair competition have caused, and unless enjoined by this Court
18 will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and
19 good will in its registered Marks, trade dress, and trade names. Plaintiff has no other adequate
20 remedy at law.

21 54. By the reason of Defendants' acts described herein, Plaintiff is entitled to
22 injunctive relief against all Defendants restraining further acts of unfair competition, to
23 attorney's fees, and damages caused by Defendants' unlawful actions.

24 **COUNT FOUR: UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND**
25 **PROFESSIONS CODE SECTION 17200 ET SEQ.**
26 **(AS TO ALL DEFENDANTS)**

27 55. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1
28 through 54 of this Complaint as if fully set forth herein.

1 56. Defendants' activities as stated herein constitute false advertising and unfair and
2 deceptive acts and practices in the conduct of its trade and business in violation of the California
3 Business and Professions Code Section 17200 *et seq.*

4 57. Upon information and belief, Defendants' wrongful and deceptive activities have
5 caused, and unless enjoined by this Court will continue to cause, irreparable injury and other
6 damage to Plaintiff's business, reputation and good will in its trademarks, trade dress, and trade
7 names. Plaintiff has no other adequate remedy at law.

8 **PRAYER FOR RELIEF:**

9 WHEREFORE, Plaintiff prays for judgment to be entered in its favor and against
10 Defendants, jointly and severally, as follows:

11 a. That all Defendants, their agents, servants, employees, representatives, attorneys
12 subsidiaries, related companies, successors, assigns, and all others in active concert or
13 participation with Defendants, be preliminarily and permanently enjoined and restrained from
14 using in any manner the registered Marks, any colorable imitation of the registered Marks, or any
15 mark, name, or designation confusingly similar to the registered Marks in connection with the
16 sales, advertising or promotion of goods that do not originate from Plaintiff.

17 b. That Tony Perotti, Dizengoff, their agents, servants, employees, representatives,
18 attorneys subsidiaries, related companies, successors, assigns, and all others in active concert or
19 participation with the defendants referenced in this paragraph, be preliminarily and permanently
20 enjoined and restrained from using in any manner Plaintiff's Trade Dress, any colorable
21 imitation of Plaintiff's Trade Dress, or any design confusingly similar to Plaintiff's Trade Dress.

22 c. That all Defendants, their agents, servants, employees, representatives, attorneys
23 subsidiaries, related companies, successors, assigns, and all others in active concert or
24 participation with Defendants, be preliminarily and permanently enjoined and restrained from
25 unfairly competing with Plaintiff, from engaging in unfair and deceptive trade practices, and
26 from injuring Plaintiff's goodwill or business reputation;

27 d. That all Defendants, their agents, servants, employees, representatives, attorneys
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1 subsidiaries, related companies, successors, assigns, and all others in active concert or
2 participation with Defendants, be ordered to take affirmative steps to dispel any and all false
3 impressions that have been created by Defendants' use of designations, names, marks, or designs
4 identical or confusingly similar to Plaintiff's registered Marks and Trade Dress.

5 e. That all Defendants be ordered to deliver up for impoundment during the
6 pendency of this action all products, fixtures, writings, signage, artwork, nameplates, labels,
7 advertisements, catalogues, and other materials incorporating or reproducing Plaintiff's
8 registered Marks or marks substantially similar to Plaintiff's registered Marks.

9 f. That all Defendants, upon final disposition of this matter, destroy all products,
10 fixtures, writings, signage, artwork, nameplates, labels, advertisements, catalogues and other
11 materials incorporating or reproducing the infringement on Plaintiff's Marks or Trade Dress,
12 pursuant to Lanham Act Section 36 (15 U.S.C. § 1118), Section 17200 *et seq.* of the California
13 Business and Professions Code, and the equitable power of this Court to enforce the laws of the
14 State of California.

15 g. That all Defendants be required to account to Plaintiff for any and all money,
16 profits and advantages wrongfully received by Defendants, including any and all profits derived
17 from the sale of goods bearing or sold under the infringing marks and trade dress, and interest
18 thereon;

19 h. That Plaintiff be awarded its damages in an amount to be determined at trial;

20 i. That Plaintiff's recovery be trebled pursuant to Lanham Act Section 35, 15 U.S.C.
21 § 1117;

22 j. That Plaintiff be awarded punitive damages pursuant to the laws of the State of
23 California in view of Defendants' intentional and willful infringement and unfair competition;

24 k. That Plaintiff be awarded attorneys' fees, expenses and costs incurred in this
25 action pursuant to Lanham Act Section 35, 15 U.S.C. § 1117; and
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1 1. For such other and further relief as may be just and equitable.

2 **VI. JURY DEMAND**

3 Plaintiff hereby requests a jury trial for all claims and causes of action triable by jury.

4
5 Respectfully Submitted,

6 Dated: January 8, 2010

PATTON MARTIN & SULLIVAN LLP

7
8
9 By:  _____
 KEVIN R. MARTIN
 Attorneys for Plaintiffs
 VALLAVISTA CORPORATION

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Exhibit 1

Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22 and 41

Reg. No. 3,585,251

United States Patent and Trademark Office

Registered Mar. 10, 2009

**TRADEMARK
PRINCIPAL REGISTER**

TAXI WALLET

VALLAVISTA CORPORATION (CALIFORNIA CORPORATION)
3541 WILKINSON LANE
LAFAYETTE, CA 94549

FOR: LEATHER BAGS, SUITCASES AND WALLETS; POCKET WALLETS; WALLETS; WALLETS WITH CARD COMPARTMENTS; BILLFOLDS; CHANGE PURSES; CLUTCH PURSES; COIN PURSES; COIN PURSES, NOT OF PRECIOUS METALS; LEATHER PURSES; MULTI-PURPOSE PURSES; PURSES, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 7-6-1988; IN COMMERCE 7-29-1988.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,008,495.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WALLET", APART FROM THE MARK AS SHOWN.

SER. NO. 77-179,030, FILED 5-11-2007.

SANI KHOURI, EXAMINING ATTORNEY

Exhibit 2

Int. Cl.: 18

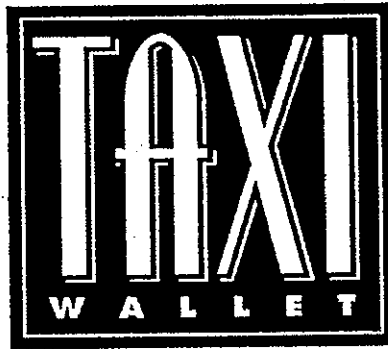
Prior U.S. Cls.: 1, 2, 3, 22 and 41

Reg. No. 2,008,495

United States Patent and Trademark Office

Registered Oct. 15, 1996

**TRADEMARK
PRINCIPAL REGISTER**



VALLAVISTA CORPORATION (CALIFORNIA CORPORATION)
3431 BLACKHAWK PLAZA CIRCLE
DANVILLE, CA 94506

FOR: WALLETS, COIN WALLETS, BILL-FOLDS, CREDIT CARD WALLETS, COIN PURSES, CHANGE PURSES, COIN POCKET BILLFOLDS, BUSINESS CARD WALLETS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

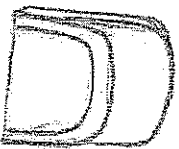
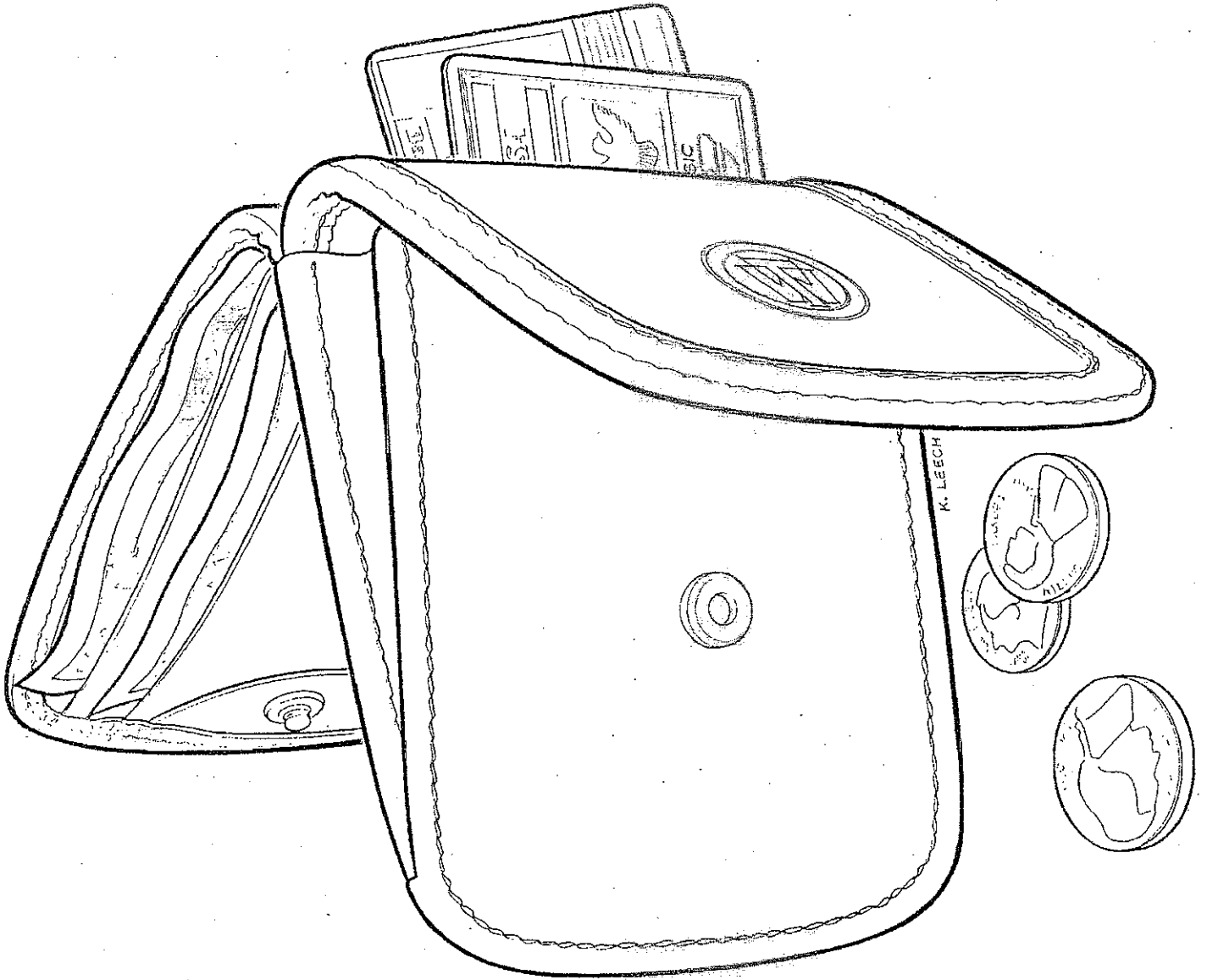
FIRST USE 7-6-1988; IN COMMERCE 7-29-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WALLET", APART FROM THE MARK AS SHOWN.

SER. NO. 75-018,738, FILED 11-9-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

Exhibit 3



1 Neil A. Smith, Cal. Bar No. 63777
2 Nathaniel Bruno, Cal. Bar No. 228118
3 SHEPPARD MULLIN RICHTER & HAMPTON LLP
4 Four Embarcadero Center, 17th Floor
5 San Francisco, CA 94111-4109
6 Telephone: (415) 434-9100
7 Facsimile: (415) 434-3947
8 E-mail: nsmith@sheppardmullin.com
9 nbruno@sheppardmullin.com

7 David P. Irsmscher (*pro hac vice*)
8 Brad R. Maurer (*pro hac vice*)
9 BAKER & DANIELS LLP
10 300 North Meridian Street, Suite 2700
11 Indianapolis, Indiana 46204
12 Telephone: (317) 237-0300
13 Facsimile: (317) 237-1000
14 E-mail: david.irmscher@bakerd.com
15 brad.maurer@bakerd.com

12 *Counsel for Defendant*
13 *Vera Bradley Designs, Inc.*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

18 VALLAVISTA CORPORATION, a
19 California corporation,

19 Plaintiff,

20 v.

21 VERA BRADLEY DESIGNS, INC., an
22 Indiana corporation, DIZENGOFF
23 HANDBAGS, INC., a New York
24 corporation, and TONY PEROTTI ITALY
(USA) LLC,

24 Defendants.

Case No.: 5:10-cv-00120-HRL

**ANSWER AND COUNTERCLAIMS OF
DEFENDANT VERA BRADLEY DESIGNS,
INC. TO COMPLAINT FOR
TRADEMARK INFRINGEMENT, UNFAIR
COMPETITION, AND INJUNCTIVE
RELIEF; AND
DEMAND FOR JURY TRIAL**

Hon. Howard R. Lloyd, U.S. Mag. Judge

ANSWER

Defendant Vera Bradley Designs, Inc. (“VBD”), for its Answer to Plaintiff Vallavista Corporation’s (“Vallavista”) Complaint, states as follows and, except where admitted or otherwise answered, denies every allegation in the Complaint:

I. PARTIES

1. VBD is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.

2. VBD admits that it is a corporation organized under the laws of the State of Indiana and is conducting business in California through VBD stores in San Francisco, San Jose, Roseville and Glendale, and its website at <http://verabradley.com>, and that other stores in the state sell VBD goods, and denies any remaining allegations in paragraph 2.

3. VBD is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.

4. VBD is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

II. JURISDICTION

5. VBD admits that the Court has subject matter jurisdiction.

6. VBD admits that the venue in the Northern District of California is proper.

III. INTRADISTRICT ASSIGNMENT

7. Denied as a wrong interpretation of this Court's Civil Local Rules and Assignment Plan. If this case is assigned according to the Court's standard Assignment Plan, it should be assigned on a district-wide basis under Civil L.R. 3-2(c) because it is an intellectual property action, and furthermore, the related case provisions of Civil L.R. 3-12 may also apply to affect the ultimate assignment of this case.

IV. ALLEGATIONS COMMON TO ALL COUNTS

8. VBD answers that the Complaint speaks for itself, and denies any remaining allegations in paragraph 8 of the Complaint.

1 9. VBD answers that the document attached as Exhibit 1 to the Complaint speaks for
2 itself and denies any remaining allegations in paragraph 9 of the Complaint.

3 10. VBD answers that the document attached as Exhibit 2 to the Complaint speaks for
4 itself and denies any remaining allegations in paragraph 10 of the Complaint.

5 11. VBD answers that the Complaint speaks for itself and denies any remaining
6 allegations in paragraph 11 of the Complaint.

7 12. VBD is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations in paragraph 12 of the Complaint, and further specifically denies those allegations on
9 the basis that the alleged registrations are invalid.

10 13. VBD denies the allegations of paragraph 13 of the Complaint.

11 14. VBD denies the allegations of paragraph 14 of the Complaint.

12 15. VBD denies the allegations in the first sentence of paragraph 15, answers that the
13 document attached as Exhibit 3 to the Complaint speaks for itself, and denies any remaining
14 allegations in paragraph 15 of the Complaint.

15 16. VBD is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in paragraph 16 of the Complaint, and therefore denies those allegations.

17 17. VBD is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 17 of the Complaint, and therefore denies those allegations.

19 18. VBD is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 18 of the Complaint, and therefore denies those allegations.

21 19. VBD is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in paragraph 19 of the Complaint, and therefore denies those allegations.

23 20. VBD denies the allegations of paragraph 20 of the Complaint.

24 21. VBD denies the allegations in paragraph 21 of the Complaint.

25 22. VBD admits that it has sold wallets bearing the generic term "taxi wallet" and denies
26 the remaining allegations of paragraph 22 of the Complaint, and further specifically denies that it has
27 infringed the alleged trade dress of Vallavista in any way (which Vallavista does not plead against
28 VBD but ambiguously refers to in paragraph 22 of the Complaint with reference to all Defendants).

1 23. VBD admits that Vallavista has contacted VBD and claimed trademark rights in and
2 demanded that VBD cease and desist using the generic term "taxi wallet" with wallets, that VBD
3 declined Vallavista's demands, and denies any remaining allegations in paragraph 23 of the
4 Complaint.

5 **V. CLAIMS FOR RELIEF**
6 **COUNT ONE: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

7 **As to All Defendants:**

8 24. VBD incorporates by reference its responses to the allegations of paragraphs 1 through
9 23 of the Complaint.

10 25. VBD admits that it has used the generic term "taxi wallet" in association with wallets
11 and their sale, offer for sale, advertisement and promotion, is without knowledge or information
12 sufficient to form a belief as to the truth of the allegations against the other defendants, and denies
13 any remaining allegations of paragraph 25 of the Complaint.

14 26. VBD answers that permission is not needed to use the generic term "taxi wallet" in
15 association with wallets and is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations against the other defendants, and denies any remaining allegations of
17 paragraph 26 of the Complaint.

18 27. VBD denies the allegations of paragraph 27 of the Complaint.

19 28. VBD denies the allegations of paragraph 28 of the Complaint.

20 **As to Defendant Vera Bradley:**

21 29. VBD admits that it sells consumer goods, including wallets, in the United States and
22 denies any remaining allegations in paragraph 29 of the Complaint.

23 30. VBD admits that it has sold wallets bearing the generic term "taxi wallet" in its stores
24 and through the websites www.verabradley.com and www.qvc.com, and has included the generic
25 term "taxi wallet" to identify wallets in catalogues and other marketing material, and denies any
26 remaining allegations in paragraph 30 of the Complaint.

1 31. VBD admits that Plaintiff has not given Vera Bradley any authorization to use any of
2 Plaintiff's trademarks, answers that no permission is needed to use the generic term "taxi wallet" in
3 association with wallets, and denies any remaining allegations in paragraph 31 of the Complaint.

4 32. VBD denies the allegations of paragraph 32 of the Complaint.

5 33. VBD admits that Plaintiff contacted Vera Bradley on or about September 2009
6 regarding VBD's use of the generic term "taxi wallet" with wallets and demanded that VBD cease
7 and desist using the generic identification, that VBD and Vallavista thereafter exchanged
8 communications, and denies any remaining allegations in paragraph 33 of the Complaint.

9 34. VBD denies the allegations of paragraph 34 of the Complaint.

10 **As to Tony Perotti:**

11 35. VBD is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations in paragraph 35 of the Complaint.

13 36. VBD is without knowledge or information sufficient to form a belief as to the truth of
14 the allegations in paragraph 36 of the Complaint.

15 37. VBD is without knowledge or information sufficient to form a belief as to the truth of
16 the allegations in paragraph 37 of the Complaint.

17 38. VBD is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations in paragraph 38 of the Complaint.

19 39. VBD is without knowledge or information sufficient to form a belief as to the truth of
20 the allegations in paragraph 39 of the Complaint.

21 40. VBD is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations in paragraph 40 of the Complaint.

23 41. VBD is without knowledge or information sufficient to form a belief as to the truth of
24 the allegations in paragraph 41 of the Complaint.

25 42. VBD is without knowledge or information sufficient to form a belief as to the truth of
26 the allegations in paragraph 42 of the Complaint.

1 **As to Defendant Dizengoff:**

2 43. VBD is without knowledge or information sufficient to form a belief as to the truth of
3 the allegations in paragraph 43 of the Complaint.

4 44. VBD is without knowledge or information sufficient to form a belief as to the truth of
5 the allegations in paragraph 44 of the Complaint.

6 45. VBD is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations in paragraph 45 of the Complaint.

8 46. VBD is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations in paragraph 46 of the Complaint.

10
11 **COUNT TWO: UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**
12 **UNDER 15 U.S.C. § 1125(a)**
13 **(AS TO ALL DEFENDANTS)**

14 47. VBD incorporates by reference its responses to the allegations of paragraphs 1 through
15 46 of the Complaint.

16 48. VBD denies the allegations of paragraph 48 of the Complaint.

17 49. VBD denies the allegations of paragraph 49 of the Complaint.

18 50. VBD denies the allegations of paragraph 50 of the Complaint.

19 **COUNT THREE: COMMON LAW UNFAIR COMPETITION**
20 **(AS TO ALL DEFENDANTS)**

21 51. VBD incorporates by reference its responses to the allegations of paragraphs 1 through
22 50 of the Complaint.

23 52. VBD denies the allegations of paragraph 52 of the Complaint.

24 53. VBD denies the allegations of paragraph 53 of the Complaint.

25 54. VBD denies the allegations of paragraph 54 of the Complaint.

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**COUNT FOUR: UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.
(AS TO ALL DEFENDANTS)**

55. VBD incorporates by reference its responses to the allegations of paragraphs 1 through 54 of the Complaint.

56. VBD denies the allegations of paragraph 56 of the Complaint.

57. VBD denies the allegations of paragraph 57 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails, in whole or in part, to state a claim against VBD upon which relief can be granted.

SECOND DEFENSE

Vallavista’s alleged damages, if any, may have been caused by Vallavista’s own conduct and/or failure to mitigate damages or by others beyond the control of VBD.

THIRD DEFENSE

Vallavista’s claims may be barred in whole or in part by the doctrines of waiver, estoppel, and/or laches.

FOURTH DEFENSE

Vallavista has not suffered injury in fact and has not lost money or property as a result of the alleged acts of VBD.

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FIFTH DEFENSE

Vallavista is not entitled to any injunctive or equitable relief because it will not suffer irreparable harm.

SIXTH DEFENSE

Vallavista is not entitled to any injunctive or equitable relief because it has an adequate remedy at law.

SEVENTH DEFENSE

Vallavista's claims may be barred in whole or in part by Vallavista's acts in fraudulently obtaining, maintaining and renewing federal trademark registrations that include the generic term "taxi wallet" by making false declarations related to use in association with goods identified in the registrations, and thereafter, with notice of the falsity thereof, failing to correct such fraudulent statements or to abandon such registrations.

EIGHTH DEFENSE

Vallavista's claims may be barred in whole or in part by the doctrine of unclean hands, including for Vallavista's fraud on the USPTO and trademark misuse.

NINTH DEFENSE

VBD's use of the generic term "taxi wallet" for wallets is a fair use.

TENTH DEFENSE

The term "taxi wallet" lacks distinctiveness.

ELEVENTH DEFENSE

The term "taxi wallet" lacks secondary meaning.

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TWELFTH DEFENSE

The purported trademark registrations asserted by Vallavista against VBD (*i.e.*, Registration Nos. 3,585,251 and 2,008,495) are invalid as generic and not entitled to receive protection under the trademark laws of the United States; they are not distinctive or inherently distinctive, lack secondary meaning, and/or are in the public domain.

THIRTEENTH DEFENSE

VBD does not infringe Registration Nos. 3,585,251 and 2,008,495.

WHEREFORE, defendant VBD respectfully prays that the Court enter a judgment:

- (a) On Vallavista’s claims against VBD, in favor of VBD and against Vallavista (also including, but not limited to, with respect to any allegations of trade dress infringement, which is not pled against VBD but is ambiguously referenced Vallavista's Complaint and Prayer for Relief therein);
- (b) Awarding VBD its costs of suit herein and granting VBD its reasonable attorneys’ fees, including for the reason that this is an "exceptional" case under 15 U.S.C. § 1117(a); and
- (c) Awarding VBD such other relief as the Court may deem just and equitable under the circumstances.

COUNTERCLAIMS AGAINST VALLAVISTA

Counterclaim Plaintiff, Vera Bradley Designs, Inc. (“VBD”), for its Counterclaims against Counterclaim Defendant, Vallavista Corporation (“Vallavista”), states and alleges as follows:

PARTIES

1. VBD is corporation organized under the laws of the State of Indiana, having a principal place of business at 2208 Production Road, Fort Wayne, Indiana 46808.

1 2. Vallavista is a corporation organized under the laws of the State of California, having
2 a principal place of business at 3541 Wilkinson Lane, Lafayette, California 94549.

3 **JURISDICTION AND VENUE**

4 3. This is a counterclaim for declaratory judgment pursuant to 28 U.S.C. § 2201 with
5 respect to an actual controversy between Counterclaim Plaintiff VBD and Counterclaim Defendant
6 Vallavista, for invalidity, non-infringement, and cancellation of federal trademark registrations
7 pursuant to 15 U.S.C. § 1119, and for damages pursuant to 15 U.S.C. § 1120.

8 4. Subject matter jurisdiction of these Counterclaims arises under 28 U.S.C. § 1367 in
9 that the Counterclaims form part of the same case or controversy as Vallavista's claims in the
10 Complaint, and under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. §§ 1119 and 1121(a).

11 5. Venue is proper in this judicial district under 28 U.S.C. § 1391 (b) and (c), in that
12 Vallavista transacts business affairs within this District, and filed its Complaint in this Court.

13 **FIRST COUNTERCLAIM: DECLARATORY JUDGMENT AND CANCELLATION OF**
14 **FEDERAL REGISTRATION NOS. 3,585,251 AND 2,008,495 BASED ON GENERICNESS**

15 6. VBD realleges and incorporates by reference, as if fully set forth herein, the
16 allegations in paragraphs 1 through 5 of its Counterclaims.

17 7. Vallavista owns Federal trademark registrations for the marks TAXI WALLET (the
18 "Word Mark"), Reg. No. 3,585,251 (the "'251 Registration") and TAXI WALLET (and Design) (the
19 "Design Mark"), Reg. No. 2,008,495 (the "'495 Registration") (collectively, the Word Mark and the
20 Design Mark the "Marks", and the '251 Registration and the '495 Registration the "Registrations").

21 8. The goods description in the '495 Registration for the Design Mark identifies "wallets,
22 coin wallets, billfolds, credit card wallets, coin purses, change purses, coin pocket billfolds, business
23 card wallets" in International Class 18.

24 9. The application that matured into the '495 Registration was filed on November 9,
25 1995.

1 10. The goods description in the '251 Registration for the Word Mark identifies "Leather
2 bags, suitcases and wallets; Pocket wallets; Wallets with card components; Billfolds; Change purses;
3 Clutch purses; Coin purses; Coin purses, not of precious metals; Leather purses; Multi-purpose
4 purses; Purses" in International Class 18.

5 11. The application that matured into the '251 Registration was filed on May 11, 2007.

6 12. In its Complaint, Vallavista alleges, among other things, that VBD's use of
7 "designations identical or substantially similar" to the Marks for "the sale, offer for sale,
8 advertisement, or promotion of wallet products" constitutes trademark infringement under 15 U.S.C.
9 §1114.

10 13. However, the generic term "taxi wallet" has been widely used by wallet
11 manufacturers, retailers, and consumers to refer to a particular subset of wallets which are compact
12 and convenient for traveling.

13 14. The term "taxi wallet" is generic in that the primary significance of the term to the
14 relevant public is as the name for wallets which are compact and convenient for traveling.

15 15. The Registrations should be cancelled pursuant to 15 U.S.C. §1064(3), as the term
16 "taxi wallet" is generic.

17 16. The existence of the Registrations is damaging to VBD, as Vallavista has charged
18 VBD through its Complaint with trademark infringement, claiming exclusive rights in the generic
19 term "taxi wallet" based on its ownership of the Registrations, and demanding that VBD cease and
20 desist from infringing the generic term "taxi wallet" in connection with VBD's wallets, all to the
21 detriment of VBD.

22 **SECOND COUNTERCLAIM: DECLARATORY JUDGMENT AND CANCELLATION OF**
23 **FEDERAL REGISTRATION NOS. 3,585,251 AND 2,008,495 BASED ON FRAUD**

24 17. VBD realleges and incorporates by reference, as if fully set forth herein, the
25 allegations in paragraphs 1 through 16 of its Counterclaims.
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1 18. On September 9, 1995, Vallavista submitted the application that eventually matured
2 into the '495 Registration in which Vallavista represented to the United States Patent and Trademark
3 Office ("USPTO") (and signed a Declaration under penalty of fine or imprisonment under 18 U.S.C.
4 § 1001) that it was using the Design Mark in commerce in connection with, among other things, coin
5 wallets, credit card wallets, coin purses, change purses, coin pocket billfolds, and business card
6 wallets. (Vallavista Application for the Design Mark, attached hereto as Exhibit A). Vallavista
7 made this representation to induce the USPTO to issue the '495 Registration.

8 19. On October 9, 2002, Vallavista submitted its Combined Declaration of Use and
9 Incontestability Under §§ 8 & 15 to the USPTO in which Vallavista represented to the USPTO (and
10 signed a Declaration under penalty of fine or imprisonment under 18 U.S.C. § 1001) that it was
11 using the Design Mark in commerce in connection with, among other things, coin wallets, credit
12 card wallets, coin purses, change purses, coin pocket billfolds, and business card wallets. A copy of
13 this representation in the Combined Declaration of Use and Incontestability Under §§ 8 & 15 for the
14 Design Mark is attached hereto as Exhibit B.

15 20. On June 2, 2006, Vallavista submitted its Combined Declaration of Use in Commerce
16 and Application For Renewal of Registration of a Mark Under §§ 8 & 9 to the USPTO in which
17 Vallavista again represented to the USPTO (and signed a Declaration under penalty of fine or
18 imprisonment under 18 U.S.C. § 1001) that it was using the Design Mark in commerce in connection
19 with, among other things, coin wallets, credit card wallets, coin purses, change purses, coin pocket
20 billfolds, and business card wallets. A copy of this representation in the Combined Declaration of
21 Use in Commerce and Application For Renewal of Registration of a Mark Under §§ 8 & 9 for the
22 Design Mark is attached hereto as Exhibit C.

23 21. The truth, however, is that Vallavista has admitted under oath that it never used the
24 Design Mark in commerce in connection with coin wallets, credit card wallets, coin purses, change
25 purses, coin pocket billfolds, and business card wallets. (Deposition of Alicia Klein taken
26 September 23, 2008 ("Klein Deposition"), pp. 42-47, attached hereto as Exhibit D).

27 22. The representations made to the USPTO on September 9, 1995, October 9, 2002, and
28 June 2, 2006 were false.

1 23. Vallavista knew that the representations were false.

2 24. Vallavista knowingly made material misrepresentations to the USPTO to procure and
3 maintain the '495 Registration.

4 25. The USPTO relied on these representations in issuing and renewing the '495
5 Registration.

6 26. Vallavista has not corrected the false statements made to the USPTO and goods
7 identification with respect to the '495 Registration, even though Vallavista is aware of the false
8 statements and goods identification, and Vallavista has now further brought a lawsuit against VBD
9 with knowledge of the false statements and goods identification and has relied on such false and/or
10 fraudulent statements in its specific allegations against VBD in the Complaint.

11 27. Vallavista's actions in the procurement and maintenance of the '495 Registration, and
12 its continued and ongoing failure to amend or otherwise seek to accurately identify the goods sold in
13 connection with the Design Mark, and its subsequent lawsuit, constitutes fraud, thereby invalidating
14 the '495 Registration. Accordingly, the '495 Registration should be canceled in its entirety.

15 28. On May 11, 2007, Vallavista submitted the application that eventually matured into
16 the '251 Registration in which Vallavista represented to the USPTO that it was using the Word Mark
17 in commerce in connection with, among other things, coin purses and change purses. (Vallavista
18 Application for the Word Mark, attached hereto as Exhibit E). Vallavista made this representation to
19 induce the USPTO to issue the '251 Registration.

20 29. On August 30, 2007, Vallavista submitted substitute specimens and a Response to
21 Office Action to the USPTO in which Vallavista represented to the USPTO that it was using the
22 Word Mark in commerce in connection with, among other things, coin purses and change purses.
23 (Vallavista August 30, 2007 Response to Office Action, attached hereto as Exhibit F). Vallavista
24 made this representation to induce the USPTO to issue the '251 Registration.

25 30. As noted, however, Vallavista has admitted under oath that it never used the Word
26 Mark in commerce in connection with coin wallets, credit card wallets, coin purses, change purses,
27 coin pocket billfolds, and business card wallets. (Klein Deposition, pp. 42-47, attached as Exhibit D
28 hereto).

1 31. The representations made to the USPTO on May 11, 2007 and August 30, 2007 were
2 each false.

3 32. Vallavista knew that the representations were false.

4 33. Vallavista knowingly made material misrepresentations to the USPTO to procure and
5 maintain the '251 Registration.

6 34. The USPTO relied on these representations in issuing the '251 Registration.

7 35. Vallavista has not corrected the false statements and goods identification made to the
8 USPTO with respect to the '251 Registration, even though Vallavista is aware of the false statements
9 and goods identification, and Vallavista has now further brought a lawsuit against VBD with
10 knowledge of the false statements and goods identification and has relied on such false and/or
11 fraudulent statements in its specific allegations against VBD in the Complaint.

12 36. Vallavista's actions in the procurement of the '251 Registration, and its continued and
13 ongoing failure to amend or otherwise seek to accurately identify the goods sold in connection with
14 the Word Mark, and its subsequent lawsuit, constitutes fraud, thereby invalidating the '251
15 Registration. Accordingly, the '251 Registration should be canceled in its entirety.

16 **THIRD COUNTERCLAIM: DECLARATORY JUDGMENT AND CANCELLATION OF**
17 **FEDERAL REGISTRATION NOS. 3,585,251 AND 2,008,495 BASED ON INVALIDITY**

18 37. VBD realleges and incorporates by reference, as if fully set forth herein, the
19 allegations in paragraphs 1 through 36 of its Counterclaims.

20 38. The Registrations are invalid and should be cancelled. The alleged trademarks are
21 generic and should not receive protection under the trademark laws of the United States, and are also
22 not distinctive or inherently distinctive, lack secondary meaning, and/or are in the public domain, in
23 addition to the reasons pled above and incorporated herein by reference. As such, the Registrations
24 are invalid, as they do not have secondary meaning or distinctiveness connected to Vallavista, its
25 products, or its business, and do not have source-identifying function.

1 39. Because Vallavista does not possess the rights it claims to have in the Registrations,
2 Vallavista cannot require VBD to cease use of the Registrations and their associated marks, words,
3 and designs (including the generic term "taxi wallet"), and cannot assert any rights it claims to have
4 in the Registrations against VBD.

5 40. Because of Vallavista's accusations of trademark infringement filed against VBD in
6 this action, an actual controversy that needs judicial resolution exists between VBD and Vallavista
7 as to the validity or invalidity of the Registrations. As such, VBD respectfully requests that,
8 pursuant to the federal Declaratory Judgment Act, 28 U.S.C. § 2201, this Court exercise its equitable
9 powers to issue declaratory relief finding that the Registrations, and each of them, are invalid.

10 **FOURTH COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-INFRINGEMENT**
11 **OF FEDERAL REGISTRATION NOS. 3,585,251 AND 2,008,495**

12 41. VBD realleges and incorporates by reference, as if fully set forth herein, the
13 allegations in paragraphs 1 through 40 of its Counterclaims.

14 42. VBD brings this claim for declaratory relief seeking a declaration that its business
15 endeavors and activities, as well as the marks, words, and designs it uses in connection with its
16 business (including the generic term "taxi wallet"), do not infringe the alleged Registrations.

17 43. Because of Vallavista's accusations of trademark infringement filed against VBD in
18 this action, an actual controversy that needs judicial resolution exists between VBD and Vallavista
19 as to the infringement or non-infringement of the Registrations.

20 44. None of VBD's business activities or endeavors, or the marks, words, and designs it
21 uses in connection therewith (including the generic term "taxi wallet"), infringe upon any trademark
22 rights of Vallavista. In addition to VBD's factual allegations above that are incorporated into this
23 claim, VBD asserts that there is no likelihood of confusion between its business, marks, and
24 products, on the one hand, and those of Vallavista constituting or incorporating Registrations, on the
25 other hand. On information and belief, Vallavista contends otherwise.

26 45. Because VBD has not infringed the alleged Registrations, Vallavista cannot require
27 VBD to cease use of the marks, words, and designs that Vallavista is now belatedly and wrongly
28 claiming are protected by the Registrations, including the generic term "taxi wallet."

1 46. As such, VBD respectfully requests that, pursuant to the federal Declaratory Judgment
2 Act, 28 U.S.C. § 2201, this Court exercise its equitable powers to issue declaratory relief, finding
3 that the alleged Registrations of Vallavista have not been and are not infringed by VBD's business
4 activities or endeavors, or by the marks, words, and designs VBD uses in connection therewith
5 (including the generic term "taxi wallet"), which Vallavista is now belatedly and wrongly claiming
6 infringe upon the Registrations.

7 **FIFTH COUNTERCLAIM: CLAIM FOR DAMAGES UNDER 15 U.S.C. § 1120 BASED ON**
8 **FRAUD**

9 47. VBD realleges and incorporates by reference, as if fully set forth herein, the
10 allegations in paragraphs 1 through 46 of its Counterclaims.

11 48. Vallavista procured the Registrations by false or fraudulent declarations or
12 representations.

13 49. Vallavista has maintained and renewed the Registrations by false or fraudulent
14 declarations or representations.

15 50. Vallavista has failed to correct, amend or otherwise seek to accurately describe the
16 goods sold in connection with the Marks as identified in the Registrations, despite having knowledge
17 that Vallavista does not use the Marks with all of the goods identified in the Registrations.

18 51. If Vallavista is permitted to retain the Registrations for the Marks obtained, maintained
19 and renewed as a result of false or fraudulent declarations or representations, and not corrected
20 despite Vallavista's knowledge of the false or fraudulent declarations or representations, and is
21 permitted to bring suit with such knowledge, VBD will be damaged.

22 52. VBD has already been damaged by Vallavista's procurement of the Registrations by
23 false or fraudulent declarations or representations, or by false means, in that, *inter alia*, VBD has
24 been obliged to incur attorneys' fees to defend its rights to use the term "taxi wallet."

25 53. Vallavista is liable to VBD pursuant to 15 U.S.C. § 1120 for any damages sustained in
26 consequence of Vallavista's false and/or fraudulent Registrations, in amount to be proven at trial.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Defendant and Counterclaim Plaintiff VBD prays for relief as follows:

1 a. That this Court declare and enter judgment for Defendant and Counterclaim Plaintiff
2 VBD on all claims in Plaintiff and Counterclaim Defendant Vallavista's Complaint;

3 b. That this Court declare and enter a judgment that the term "taxi wallet" is generic in
4 association with wallets, or otherwise lacks the capability of functioning as a trademark, that U.S.
5 Trademark Registration Nos. 3,585,251 and 2,008,495 for TAXI WALLET be cancelled, and that
6 the Director of the USPTO be provided with a certified Order of same;

7 c. That this Court declare and enter a judgment that U.S. Trademark Registration Nos.
8 3,585,251 and 2,008,495 for TAXI WALLET were obtained and have been maintained and renewed
9 via false and/or fraudulent representations to the USPTO, that U.S. Trademark Registration Nos.
10 3,585,251 and 2,008,495 for TAXI WALLET be cancelled, and that the Director of the USPTO be
11 provided with a certified Order of same;

12 d. That this Court declare and enter a judgment that U.S. Trademark Registration Nos.
13 3,585,251 and 2,008,495 for TAXI WALLET are for or include generic terms which may not
14 receive protection under the trademark laws of the United States, because they are not distinctive or
15 inherently distinctive, lack secondary meaning, and/or are in the public domain, and that the Director
16 of the USPTO be provided with a certified Order to cancel such registrations;

17 e. That this Court declare and enter a judgment that U.S. Trademark Registration Nos.
18 3,585,251 and 2,008,495 for TAXI WALLET, or any rights of Vallavista, have not been and are not
19 infringed by VBD's business activities or endeavors, or by the marks, words, and designs VBD uses
20 in connection therewith (including the generic term "taxi wallet"), and that the Director of the
21 USPTO be provided with a certified Order of same;

22 f. That Vallavista and its agents, officers, attorneys, representatives, and those acting in
23 concert or privity with them, be preliminarily and permanently enjoined by this Court from suing,
24 threatening to sue, or making any charges that VBD, VBD's distributors, or VBD's customers, have
25 committed any acts of trademark infringement or unfair competition respecting U.S. Trademark
26 Registration Nos. 3,585,251 and 2,008,495 for TAXI WALLET or the use of the term "taxi wallet";
27
28

1 g. That this Court grant and enter a judgment that Vallavista is liable for all damages
2 sustained by VBD in consequence of the false or fraudulent registration of the Marks and the
3 assertion of rights in such Marks against VBD;

4 h. That this Court assess the costs of this action and attorneys' fees against Vallavista,
5 under the provisions of the Trademark Act based upon findings that this case is exceptional, pursuant
6 to 15 U.S.C. § 1117; and

7 i. That VBD have such other and further relief as the Court may deem just.

8 Dated: March 1, 2010

9 By: */s/Neil A. Smith*

10 _____
11 Neil A. Smith, Cal. Bar No. 63777
12 Nathaniel Bruno, Cal. Bar No. 228118
13 SHEPPARD MULLIN RICHTER & HAMPTON LLP
14 Four Embarcadero Center, 17th Floor
15 San Francisco, CA 94111-4109
16 Telephone: (415) 434-9100
17 Facsimile: (415) 434-3947
18 E-mail: nsmith@sheppardmullin.com
19 nbruno@sheppardmullin.com

20 David P. Irmscher
21 Indiana Bar No.: 15026-02
22 Brad R. Maurer
23 Indiana Bar No: 21730-49
24 BAKER & DANIELS LLP
25 300 N. Meridian St., Ste. 2700
26 Indianapolis, IN 46204
27 Telephone: (317) 237-0300
28 Facsimile: (317) 237-1000
E-mail: brad.maurer@bakerd.com

*Counsel for Defendant,
Vera Bradley Designs, Inc.*

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), defendant Vera Bradley Designs, Inc. hereby demands a jury trial on all issues triable of right by a jury.

Dated: March 1, 2010

By: */s/Neil A. Smith*

Neil A. Smith, Cal. Bar No. 63777
Nathaniel Bruno, Cal. Bar No. 228118
SHEPPARD MULLIN RICHTER & HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
Telephone: (415) 434-9100
Facsimile: (415) 434-3947
E-mail: nsmith@sheppardmullin.com
nbruno@sheppardmullin.com

David P. Irmscher
Indiana Bar No.: 15026-02
Brad R. Maurer
Indiana Bar No: 21730-49
BAKER & DANIELS LLP
300 N. Meridian St., Ste. 2700
Indianapolis, IN 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
E-mail: brad.maurer@bakerd.com

*Counsel for Defendant,
Vera Bradley Designs, Inc.*

PROOF OF SERVICE

I am employed in the County of San Francisco; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4 Embarcadero Center, 17th Floor, San Francisco, CA, 94111.

On **March 1, 2010**, I am causing to be served the following document described as

ANSWER AND COUNTERCLAIMS OF DEFENDANT VERA BRADLEY DESIGNS, INC. TO COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND INJUNCTIVE RELIEF; AND DEMAND FOR JURY TRIAL

on the interested parties in this action as follows:

Kevin R. Martin Patton Martin & Sullivan LLP 6600 Knoll Center Parkway, Suite 250 Pleasanton, CA 94566 Telephone: (925) 600-1800 Facsimile: (925) 600-1802 E-mail: kevin@pattonmartinsullivan.com (Counsel for Plaintiff)	Via electronic transmission through the CM/EFC system of the United States District Court for the Northern District of California
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- BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT DELIVERY:** I caused such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- BY FACSIMILE:** I served said document to be transmitted by facsimile pursuant to Rule 2.306 of the California Rules of Court. The telephone number of the sending facsimile machine was 415-434-3947. The names and facsimile machine telephone numbers of the persons served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2.306(g)(4), a copy of that report is attached to this declaration.
- BY HAND DELIVERY:** I am causing such envelope(s) to be delivered by hand to the office of the addressee(s) as indicated above.
- BY ELECTRONIC MAIL:** I am causing to be served said document by transmitting such by electronic mail to the following addressees as follows:

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kevin@pattonmartinsullivan.com (through CM/ECF system)

- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL:** I declare that I am a member of the bar of this Court. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **March 1, 2010**, at San Francisco, California.

/s/ Neil A. Smith

Neil A. Smith