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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
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12 WILLIAMS-SONOMA, INC.,
 13 Plaintiff,
 14 v.
 15 AMAZON.COM, INC.,
 16 Defendant.
 17

Case No.: 18-cv-07548

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF**
JURY TRIAL DEMAND

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1 Plaintiff Williams-Sonoma, Inc. (“WSI” or “Plaintiff”) for its complaint against
2 Defendant Amazon.com, Inc. (“Amazon” or “Defendant”) states as follows:

3 **INTRODUCTION**

4 1. This is an action for infringement of United States Patent No. D815452 under the
5 Patent Act, 35 U.S.C. §271; infringement and dilution of Plaintiff’s famous federally-registered
6 service mark WILLIAMS-SONOMA under Section 32(1) of the Lanham Act, 15 U.S.C.
7 §1114(1); infringement of Plaintiff’s common law trademarks under Section 32(1) of the Lanham
8 Act, 15 U.S.C. §1125; unfair competition and false designation of origin under Section 43(a) of
9 the Lanham Act, 15 U.S.C. §1125(a); and for substantial and related claims under the statutory
10 and common laws of the State of California.

11 2. The claims stated herein arise from Defendant’s pattern of trading upon WSI’s
12 goodwill and infringing WSI’s intellectual property, including through Defendant’s unauthorized
13 use of the registered service mark WILLIAMS-SONOMA and WSI’s common law trademarks,
14 as well as Defendant’s copying of Plaintiff’s proprietary designs and unauthorized commercial
15 manufacture, use, importation, offer for sale, and sale of infringing goods in connection with
16 home goods, lamps, chairs, and other furniture and lighting products.

17 3. In particular, WSI owns a federally-registered incontestable service mark for
18 online retail services and the exclusive right to use its WILLIAMS-SONOMA mark in connection
19 with such services. In violation of that exclusive right, Amazon has set up an unauthorized
20 WILLIAMS-SONOMA branded store on its website, falsely claiming that these retail services are
21 “by Williams-Sonoma” and leading to a variety of customer complaints misdirected to WSI that
22 actually concern Amazon’s unauthorized retail services. Amazon further directly participates in
23 this service mark infringement and dilution of WSI’s exclusive right to provide online retail
24 services by using the WILLIAMS-SONOMA mark in direct email marketing campaigns that
25 promote Amazon’s own online retail services as well as directly fulfilling orders for putative
26 WILLIAMS-SONOMA products. Many of these products have been the subject of customer
27 complaints on the Amazon website, are not subject to WSI’s quality control measures, and/or
28 have been damaged or altered such that the WILLIAMS-SONOMA mark no longer properly

1 applies.

2 4. Not content to misrepresent itself as an authorized purveyor of WILLIAMS-
3 SONOMA products, Amazon has taken its unlawful conduct a step further by infringing upon a
4 wide spectrum of WSI intellectual property rights in also setting up competing Amazon brands
5 that sell knockoffs of WSI products. Specifically, “Rivet,” an Amazon furniture and housewares
6 product line, sells knockoffs of WSI’s popular west elm® brand products. These knockoffs
7 infringe WSI’s design patent and trademark rights. Amazon’s course of conduct reflects
8 widespread effort on its part to compete unfairly with WSI.

9 5. Unless Defendant is enjoined from infringing WSI’s intellectual property rights
10 and otherwise deceiving the consuming public and tarnishing WSI’s flagship brand, WSI will
11 continue to suffer substantial ongoing and irreparable harm.

12 **JURISDICTION AND VENUE**

13 6. The complaint arises under the Patent Act, 35 U.S.C. § 1 et seq., under the Lanham
14 Act, 15 U.S.C. § 1051 et seq., and under the common laws of the State of California.

15 7. This court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. §§ 1331 and 1338 as to the claims under federal law and pursuant to 28 U.S.C. § 1367(a)
17 as to the claims under state law.

18 8. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(b), and
19 because Amazon sells or offers to sell its infringing products in this district, has committed acts of
20 patent and trademark infringement in this district, maintains a regular place of business in this
21 district, and because a substantial part of the events giving rise to WSI’s claims arose in this
22 district.

23 9. This Court has both general and specific personal jurisdiction over Amazon
24 consistent with the principles of due process and the California long-arm statute because Amazon
25 does systematic business in this district, including by maintaining both business operations (such
26 as Amazon Web Services, Amazon Digital Music, and Prime Now) and retail locations
27 (AmazonGo) in this district, as well as offering its infringing products and selling them in this
28 district, thereby committing acts of patent and trademark infringement and unfair competition in

1 this district.

2 **THE PARTIES**

3 10. WSI is a premier specialty retailer of home furnishings and related products and
4 one of the largest e-commerce retailers in the United States. In addition to its eponymous
5 Williams-Sonoma® brand, WSI operates the brands west elm®, Pottery Barn®, PBteen®, pottery
6 barn kids®, Rejuvenation®, and Mark and Graham®. WSI's brands offer furniture, lighting,
7 rugs, kitchenware, tableware, cookware, decorative accessories, bedding, linens, bath products,
8 window coverings, children's furniture and products, and other similar products and accessories.
9 WSI is a Delaware corporation and is headquartered in San Francisco, California.

10 11. Amazon.com, Inc. is one of the largest online retailers in the world. Defendant is a
11 Delaware corporation with offices in and employees working in this district, and conducts brick-
12 and-mortar retail and online retail operations in this district. Amazon distributes its products,
13 including the infringing products at issue in this litigation, throughout the United States, including
14 California and in this judicial district.

15 **FACTS**

16 **A. The Williams-Sonoma Brand and Intellectual Property**

17 12. In 1956, WSI's founder, Chuck Williams opened the first Williams-Sonoma®
18 store in Sonoma, California.

19 13. Chuck Williams' store set a standard for customer service and helped fuel a
20 revolution in American cooking and entertaining that continues to this day. In the decades that
21 followed, the quality of WSI's products and WSI's customer-first approach to business have
22 facilitated the expansion of the WILLIAMS-SONOMA brand beyond the kitchen into nearly
23 every area of the home. WSI has pursued continuous innovation in its delivery of retail services,
24 and has been operating an online storefront since 1999—long before significant penetration of
25 broadband internet services into the U.S. market.

26 14. Today, Williams-Sonoma, Inc. is one of the United States' largest e-commerce
27 retailers with some of the best known and most beloved brands in the industry. WSI sells
28 nationwide and internationally through over 600 retail stores, its catalogs and its websites. Over

1 50% of WSI's sales occur via its comprehensive e-commerce platform, which operates through
2 eight main websites as well as through online gift registries that correspond with its brands.

3 15. WSI devotes significant resources to developing innovative, inherently distinctive,
4 and high-quality products to sell via its proprietary retail channels. WSI is well known for its
5 kitchenwares, furniture, décor items, and other home goods, as well as for its high-quality brick-
6 and-mortar, catalog, and online retail store services.

7 16. The exemplary service WSI's brands provide at retail and through e-commerce is
8 central to WSI's business model. The in-store and e-commerce services that WSI offers are
9 complemented by its own network of customer care centers, manufacturing and distribution
10 facilities, and other service hubs.

11 17. The WILLIAMS-SONOMA brand's online presence is strong, not only on its own
12 website, but on the various social media platforms through which it engages with the public.
13 WSI's Instagram account has over 850,000 followers. Its Facebook account has over 910,000
14 followers. Its Pinterest account has over 270,000 followers. Its Twitter account has over 100,000
15 followers. Its YouTube account has over 66,000 subscribers. And WSI's blog receives an
16 average of 600,000 page views per month.

17 18. WSI has used the WILLIAMS-SONOMA mark in commerce throughout the
18 United States continually since at least 1956 and has invested tens of millions of dollars
19 promoting its brand under the famous WILLIAMS-SONOMA mark (the "WILLIAMS-
20 SONOMA Mark").

21 19. WSI owns numerous valid and incontestable United States federal trademark and
22 service mark registrations for the famous WILLIAMS-SONOMA Mark, including, *inter alia*,
23 Reg. No. 2,353,758 covering "retail store services, mail order catalog services, and on-line retail
24 store services featuring culinary equipment, housewares, kitchenware and cookware" in
25 International Class 35, registered on May 30, 2000; and Reg. No. 2,410,528 for, *inter alia*, "on-
26 line gift registry services" in International Class 35, registered on December 5, 2000. True and
27 correct copies of WSI's registrations for the WILLIAMS-SONOMA Mark are attached hereto as
28 **Exhibit A.**

1 20. As a result of its widespread, continuous and exclusive use of the WILLIAMS-
2 SONOMA Mark to identify its goods and services and WSI as their source, WSI enjoys valid and
3 subsisting federal and state common law rights to the WILLIAMS-SONOMA Mark.

4 21. The goods and services WSI offers under the WILLIAMS-SONOMA Mark are of
5 high quality. WSI devotes an enormous amount of resources to product development and quality
6 control and to providing customer service to customers of its retail channels, all to ensure that the
7 goods and services it offers are reflective of, and consistent with, its brand’s prestige.

8 22. To protect the integrity of its brand, WSI does not license the WILLIAMS-
9 SONOMA Mark in connection with online retail services.

10 23. As a result of its distinctiveness, widespread use and promotion throughout the
11 United States, WSI’s WILLIAMS-SONOMA Mark is famous within the meaning of Section
12 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous prior to the acts of Defendant
13 alleged in this Complaint.

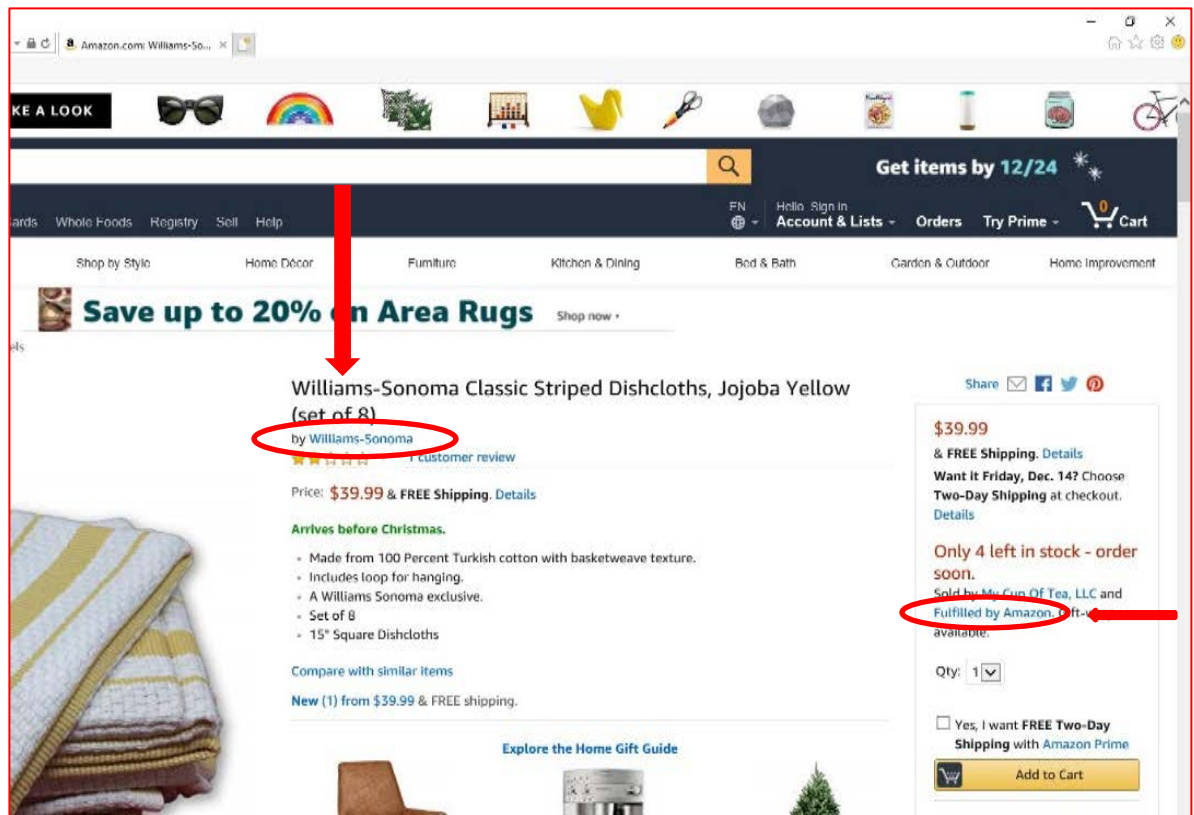
14 **B. Amazon’s Unauthorized Use of the WILLIAMS-SONOMA Mark**

15 24. Despite WSI’s longstanding rights in the WILLIAMS-SONOMA Mark, and
16 without WSI’s authorization, Defendant recently began using a mark identical to WSI’s
17 WILLIAMS-SONOMA Mark (the “Counterfeit Mark”) to advertise, promote and offer
18 competing retail services.

19 25. Defendant has been engaged in the unauthorized promotion and offering of online
20 retail services and goods for sale using the Counterfeit Mark.

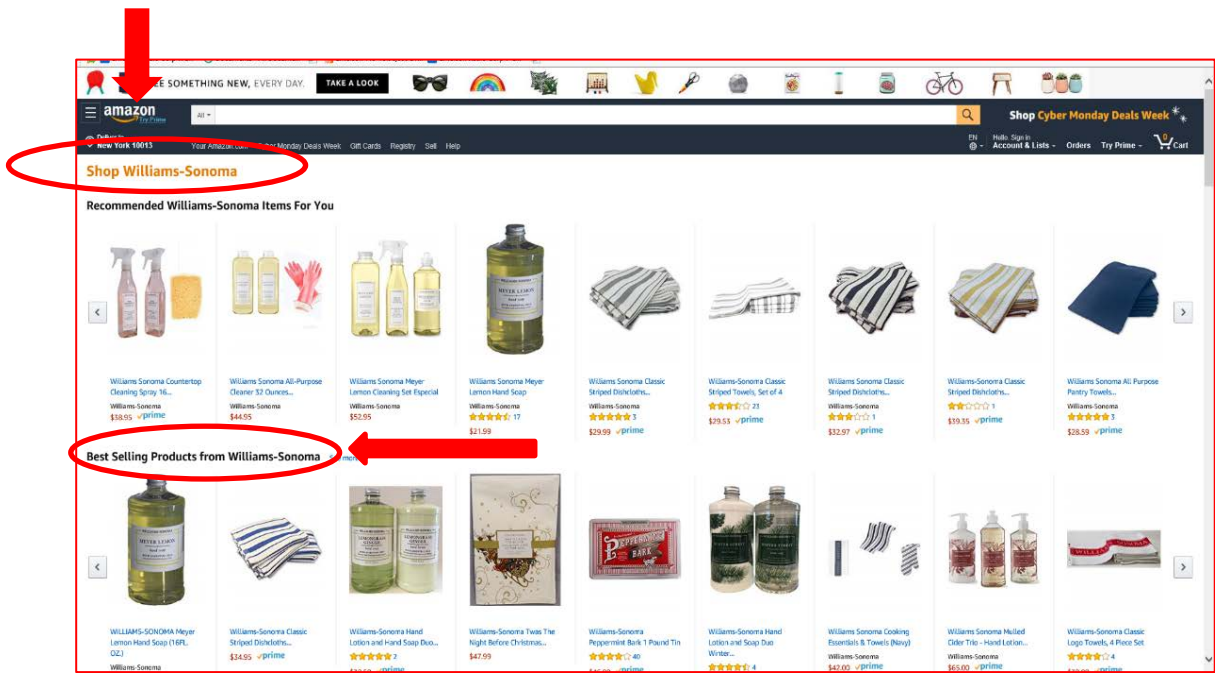
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26. Specifically, Defendant displays the Counterfeit Mark on its website in a confusing manner that is likely to lead, and has led, consumers to believe that Defendant’s platform is authorized by or is otherwise affiliated with, associated with, or approved by WSI. Specifically, at the top of product pages for purported Williams-Sonoma products for sale on the <amazon.com> platform and “Fulfilled by Amazon,” the phrase “by Williams-Sonoma” appears in blue font with a hyperlink, immediately above the product image and price, as shown below:



27. When a customer clicks on the blue hyperlink for “by Williams Sonoma” above the product image, the hyperlink leads to a landing page that prominently displays the phrase “Shop Williams-Sonoma” in bright yellow at the top, thus falsely indicating that consumers are browsing a shop offered by, authorized by, or affiliated with WSI. Further down the page there is an additional indication of “Best Selling Products from Williams-Sonoma,” again falsely implying that WSI is the one offering its products for sale on the Amazon website. These misleading elements are shown below:

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28. Further enhancing confusion, the Amazon “Shop Williams-Sonoma” page often uses WSI’s own copyrighted photos and product imagery. The use of WSI’s own photos of its own products on the Amazon “Shop Williams Sonoma” page strengthens the connection between Amazon’s unauthorized online retail commerce services and WSI’s authorized WILLIAMS-SONOMA website, creating a strong impression of affiliation between the two.

29. Amazon also promotes its online retail services under the Counterfeit Mark by using the WILLIAMS-SONOMA Mark to prospect for sales by sending targeted email to consumers and by purchasing keyword advertising that Amazon uses to serve misleading advertisements suggesting that Amazon is an authorized WILLIAMS-SONOMA retailer.

30. For example, on or about November 25, 2018, Amazon sent a marketing prospecting email to Janet Hayes, President of the Williams Sonoma brand, with the subject line that read: “Janet: Williams-Sonoma Peppermint Bark 1 Pound Tin and more items for you.” A true and correct copy of that email is attached hereto as **Exhibit B** (the “November 25, 2018 Email”). This email, by its use of the Counterfeit Mark, creates the false impression that Amazon’s online retail service is affiliated with, authorized by, or otherwise related to Williams-Sonoma.

1 31. Moreover, Amazon’s November 25, 2018 Email contains materially misleading
2 and deceptive statements. The body of the email referred to “millions of our items from our vast
3 selection at great prices.” While the email represents that Amazon offers “great prices” on the
4 products advertised, the specific Williams-Sonoma product featured in that email’s subject line
5 and body is advertised in the email for a price of \$47.35 for a 1 pound tin—nearly double the
6 \$28.95 price at which WSI sells the same product on its own authorized e-commerce site. Images
7 of the product page for Williams-Sonoma Peppermint Bark on Amazon’s e-commerce platform
8 compared to the same product on WSI’s e-commerce platform are attached hereto as **Exhibit C**.

9 32. Amazon also purchases keywords nearly identical to the WILLIAMS-SONOMA
10 Mark and uses them to serve misleading advertisements in search engine results. For example, a
11 search on the words “williams sonoma” in the Google-toolbar on Safari for iOS returns as the
12 second result a paid advertisement by Amazon for a competing WILLIAMS & SONOMA
13 branded retail offering. The advertisement, depicted below, prominently features a colorable
14 imitation of the WILLIAMS-SONOMA Mark (using an ampersand rather than a hyphen) as the
15 leading text for a “Williams & Sonoma at Amazon®” site which Amazon further describes as an
16 “Amazon Official Site.” The advertisement is misleading to ordinary consumers who are likely
17 to believe that they were purchasing goods from an “official” online retail source authorized by
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28 WSI. Consumers who are confused into believing that Amazon is an authorized WILLIAMS-
SONOMA retail outlet may not realize that their failure to locate a product is not indicative of the
selection available from WSI. Through this diversion, WSI also loses the opportunity to sell its
other goods to consumers who are tricked into visiting Amazon rather than the authorized WSI

1 website.

2 33. The services Amazon offers under the Counterfeit Mark to consumers also appear
3 to be deficient in quality and damaging to the Williams-Sonoma brand. Online reviews of
4 WILLIAMS-SONOMA branded goods offered on Amazon’s e-commerce platform and “Fulfilled
5 by Amazon”—but not subject to WSI’s quality control measures—feature complaints about
6 higher prices than charged for the same products on WSI’s authorized e-commerce sites, products
7 delivered that do not match the specifications advertised, and/or products sent without necessary
8 parts. A sampling of such reviews is attached hereto as **Exhibit D**. Pursuant to Rule 11(b), WSI
9 further alleges that discovery is likely to show sales of a wide variety of WILLIAMS-SONOMA
10 branded products using misleading designations, including perishables that cannot be delivered in
11 a safe fashion, through the “by Williams-Sonoma” site “Fulfilled by Amazon.”

12 34. Amazon’s infringing acts as alleged herein have caused and are likely to cause
13 confusion, mistake and deception among the relevant consuming public as to the source or origin
14 of Defendant’s services and have deceived and are likely to deceive the relevant consuming
15 public into believing, mistakenly, that Defendant’s services originate from, are associated or
16 affiliated with, or otherwise authorized by WSI.

17 35. Among the harm caused by Amazon’s infringing acts, consumers may come to
18 associate WSI’s WILLIAMS-SONOMA Mark with overpriced, low-quality or potentially unsafe
19 goods or services.

20 36. Indeed, Defendant’s infringing acts as alleged herein have already resulted in
21 actual confusion. For example, on November 5, 2018, a customer at a WILLIAMS-SONOMA
22 branded retail store informed a WSI employee that the customer was appalled that WSI would
23 sell its products on Amazon for double the price WSI charges in its WILLIAMS-SONOMA
24 branded stores.

25 37. Amazon’s acts are willful, with the deliberate intent to trade on the goodwill of
26 WSI’s WILLIAMS-SONOMA Mark, cause confusion and deception in the marketplace, and
27 divert customers of WSI’s services to Amazon.

28 38. Amazon is causing, and unless restrained, will continue to cause damage and

1 immediate irreparable harm to WSI and to its valuable reputation and goodwill with the
2 consuming public, for which damage WSI has no adequate remedy at law.

3 **C. The West Elm Brand and Intellectual Property**

4 39. WSI also owns the west elm® brand (“West Elm”), which was launched in
5 Brooklyn, New York in 2002.

6 40. Mixing clean lines, natural materials and handcrafted collections from the U.S. and
7 around the world, West Elm creates unique, affordable home furnishings and accessories for
8 modern living. From its commitment to Fair Trade Certified, local and handcrafted products, to
9 its community-driven in-store events and collaborations, to its role as part of an active community
10 on social media, everything West Elm does is designed to make an impact.

11 41. West Elm has retail locations in over 85 cities in the United States, as well as in
12 Canada, Mexico, Australia, the United Kingdom, and the Middle East in addition to its an online
13 storefront at <westelm.com>.

14 42. West Elm’s online presence is strong not only on its own website, but on the
15 various social media platforms through which it engages with the general public. West Elm’s
16 Instagram account has over 1,870,000 followers. Its Facebook account has over 954,000
17 followers. Its Pinterest account has over 510,000 followers. Its Twitter account has over 98,000
18 followers. Its YouTube account has over 30,000 subscribers. And West Elm’s blog has
19 approximately 100,000 subscribers and unique monthly visitors.

20 43. Over 90% of WSI’s WEST ELM branded products are exclusive to WSI and
21 designed by its West Elm in-house design staff. WSI’s West Elm brand focuses heavily on the
22 quality and sourcing of its products, and works to use organic, non-toxic, reclaimed, or recycled
23 materials and make sustainably-sourced products.

24 44. WSI devotes significant resources to developing innovative and inherently
25 distinctive products to sell exclusively in its West Elm retail channels. WSI also devotes an
26 enormous amount of product development and quality control resources to its West Elm products
27 to ensure that they are reflective of and consistent with the brand’s prestige. These products
28 accompany a range of other products for the home that are also often the product of proprietary

1 designs or innovations.

2 45. Among its West Elm products, WSI has developed a line of unique and distinctive
3 furniture, lighting and other home goods, often under distinctive trademark names identifying
4 product lines within the West Elm offering.

5 46. The goods offered and sold under the West Elm brand have been favorably
6 received by the U.S. consumer market, and WSI has expended significant sums in advertising and
7 promotion, including, *inter alia*, internet marketing, and has built up substantial goodwill and
8 reputation for both the West Elm brand and for the common law trademarks used in connection
9 with the West Elm products at issue in this litigation.

10 **D. Amazon's Rivet Brand**

11 47. On or about November 2017, Amazon announced the launch of its private-label
12 Rivet brand, under which Amazon sells furniture, lighting, and other home goods. Rivet is
13 among a handful of recently-launched private label lines offered under Amazon's "Amazon
14 Home" division.

15 48. Amazon's Rivet line is available exclusively on amazon.com. Amazon's Rivet
16 brand markets and sells an assortment of products which are strikingly similar to West Elm's.

17 49. Amazon advertises its Rivet brand as a combination of "Mid-Century and
18 Industrial Modern design" with "geometric shapes, sleek lines and mixed materials" designed to
19 bring consumers "affordable pieces" – directly positioning itself as a competitor of West Elm's
20 line of modern furniture, which focuses on "modern design," "clean design" and "affordability."

21 50. Under its Rivet brand, Amazon sells and offers for sale a line of products that are
22 colorable imitations of WSI's distinctive patented and/or proprietary designs, and which trade
23 upon WSI's goodwill and otherwise unfairly compete with or falsely imply an association with or
24 endorsement by WSI.

25 51. Throughout its Rivet line, Amazon has copied WSI's products and intellectual
26 property, and used without authorization WSI's common law trademarks intentionally in order to
27 capture and trade upon the goodwill and reputation of WSI and its genuinely affiliated brands. It
28 is implausible Amazon could have conceived of a product line with nearly identical product

1 designs which feature product names containing the very same non-descriptive terms WSI uses in
2 connection with those products, other than by intentionally undertaking to copy WSI's West Elm
3 product line and appropriate the trademarks WSI uses in connection with that line.

4 52. As described below, Amazon has unfairly and deceptively engaged in a
5 widespread campaign of copying WSI's designs and marketing those designs under trademarks
6 similar to those used by WSI in connection with those products.

7 **E. Infringement of WSI's Orb Chair Design and Trademark**

8 53. On or about December 2016, West Elm introduced a chair featuring a novel and
9 distinctive design and named it the "Orb" Dining Chair (the "WSI Orb Chair"). The WSI Orb
10 Chair was designed by West Elm's in-house designers and named by West Elm's in-house
11 marketing team. The current retail price of the Orb Chair as offered by West Elm is \$299.00
12 USD.

13 54. On January 11, 2017, WSI filed a design patent application entitled "Chair," with
14 the United States Patent Office ("PTO") claiming the design of the WSI Orb Chair.

15 55. On April 17, 2018, the PTO duly and lawfully issued Patent No. D815452 ("the
16 '452 Patent"), entitled "Chair," which protects the novel design of the WSI Orb Chair. A true and
17 correct copy of the '452 Patent is attached hereto as **Exhibit E**.

18 56. WSI owns all right, title and interest in and to the '452 Patent.

19 57. The '452 Patent claims the ornamental design for a chair, as shown and described
20 therein. The WSI Orb Chair embodies the '452 Patent.

21 58. In connection with the WSI Orb Chair, WSI has sold, offered for sale, and
22 advertised products, namely chairs, under the common law trademark "ORB" since as early as
23 December 2016.

24 59. The WSI Orb Chair has been an outstanding commercial success. In the first ten
25 months of 2018 alone, WSI's sales of this single item exceeded \$2,000,000. The WSI Orb Chair
26 has been favorably featured in numerous interior design and lifestyle publications, such as
27 People.com, POPSUGAR, MyDomaine (which has featured the WSI Orb Chair on multiple
28 occasions), Domino, Lonny, Apartment Therapy (which featured the WSI Orb Chair on multiple

1 occasions) and HGTV. Representative copies of some of the recognition the WSI Orb Chair has
2 gained in the press are attached hereto as **Exhibit F**.

3 60. WSI has expended significant sums in advertising and promotion, including, *inter*
4 *alia*, internet marketing, and has built up substantial goodwill and reputation for the WSI Orb
5 Chair.

6 61. As a result of this extensive marketing and sales, the trademark “ORB” (the “Orb
7 Mark”) has become a means by which WSI’s product is identified by the industry and the public
8 and distinguished from the goods of others. The ORB Mark has come to symbolize valuable
9 goodwill which WSI enjoys.

10 62. On or about March 19, 2018, Amazon began offering for sale its Rivet Modern
11 Upholstered Orb Office Chair (the “Amazon Orb Chair”).

12 63. WSI owns the patented design for its WSI Orb Chair as illustrated in its patent
13 claims, and the Amazon Orb Chair is so highly similar that the ordinary observer would be
14 confused by the imitation. Images depicting the WSI Orb Chair and the Amazon Orb Chair side-
15 by-side are attached hereto as **Exhibit G**. That similarity is reinforced by the infringing use of
16 exactly the same non-descriptive word mark in conjunction with the identical design.

17 64. Notwithstanding WSI’s rights in the design of the WSI Orb Chair, Amazon has
18 and continues to manufacture, import, offer for sale and/or sell chairs which are a duplicate of the
19 patented design of the WSI Orb Chair, are indistinguishable to the ordinary observer, and which
20 appear to be of inferior quality to the WSI Orb Chair.

21 65. Amazon has been and is inducing infringement of the ’452 Patent by actively and
22 knowingly inducing others to manufacture, import, offer for sale and/or sell chairs which infringe
23 upon the patented design of the WSI Orb Chair.

24 66. In addition, through its unauthorized use of the term “ORB” in connection with the
25 Amazon Orb Chair, Amazon has infringed upon WSI’s common law trademark rights in the ORB
26 Mark in connection with chairs—goods identical to those upon which WSI uses its ORB Mark.

27 **F. Infringement of WSI’s Slope Chair Trademark**

28 67. On or about June 2015, West Elm introduced the Slope Dining Chair (the “WSI

1 Slope Dining Chair”), which was designed by West Elm’s in-house designers and named by West
2 Elm’s in-house marketing team. The current retail price of the WSI Slope Dining Chair is
3 \$399.00 USD.

4 68. On or about June 2016, West Elm introduced the Slope Leather Swivel Office
5 Chair (the “WSI Slope Office Chair”), which was designed by West Elm’s in-house designers and
6 named by West Elm’s in-house marketing team. The current retail price of the WSI Slope Office
7 Chair is \$449.00 USD.

8 69. In connection with the WSI Slope Office Chair and WSI Slope Dining Chair (the
9 “WSI Slope Chairs”), WSI has sold and offered for sale chairs under the SLOPE mark since at
10 least June 2015.

11 70. West Elm’s WSI Slope Chair line has been an outstanding commercial success.
12 The WSI Slope Dining Chair was featured in Architectural Digest in December 2016, and today,
13 WSI’s Slope Chairs continue to be immensely popular with consumers: In the first ten months of
14 2018 alone, WSI’s sales of the WSI Slope Office Chair have exceeded \$1,000,000 USD, and
15 sales of the WSI Slope Dining Chair exceeded \$5,000,000 USD.

16 71. WSI has expended significant sums in advertising and promotion, including, *inter*
17 *alia*, internet marketing, and has built up substantial good will and reputation for the WSI Slope
18 Chairs.

19 72. As a result of WSI’s extensive marketing and sales effort, the mark “SLOPE” (the
20 “SLOPE Mark”) has become a means by which WSI’s products are identified by the trade and the
21 public and distinguished from the goods of others. The SLOPE Mark has come to symbolize
22 valuable good will which WSI enjoys.

23 73. On or about March 19, 2018, Amazon began offering for sale its Rivet Industrial
24 Slope Top-Grain Leather Swivel Office Chair (the “Amazon Slope Chair”), which it sells for a
25 price of \$279.00 USD. The Amazon Slope Chair looks just like, and aims to be directly
26 competitive with, the WSI Slope Office Chair.

27 74. Through its use of the mark “SLOPE” in connection with a directly competing
28 product of nearly identical design, Amazon has infringed upon WSI’s common law trademark

1 rights in its SLOPE Mark in connection with chairs—goods identical to those upon which WSI
2 uses its ORB Mark.

3 75. These are not the only products sold by Rivet that appear to be identical or nearly
4 identical in design to West Elm. Amazon has engaged in a systematic campaign of copying
5 WSI’s West Elm products and infringing upon WSI’s common law trademark rights in those
6 products. Amazon deliberately chose to adopt West Elm’s brand identity and create a Rivet
7 brand that gives consumers the same overall visual impression as West Elm.

8 76. The Rivet products at issue in this action appear to be of inferior quality to the
9 West Elm products. For example, the Amazon Slope Chair is advertised as a “leather” chair.
10 However, customer reviews of the Amazon Slope Chair indicate that consumers find the quality
11 of the material to be consistent with faux leather—not with genuine leather. WSI’s West Elm
12 Slope Chairs, by contrast, are constructed of genuine leather. The respective product descriptions
13 for the Amazon Slope Chair and the WSI Slope Chairs are attached hereto as **Exhibit H**.

14 77. Amazon’s inferior line of copycat products, marketed using infringing trademarks,
15 has been causing, and unless restrained, will continue to cause WSI irreparable harm.

16 **FIRST CLAIM**
17 **INFRINGEMENT OF U.S. PATENT NO. D815,452**
18 **(35 U.S.C. § 271)**

19 78. WSI repeats and realleges the allegations contained in paragraphs 1 through 77 as
20 though fully set forth herein.

21 79. United States Patent No. D815452, entitled “Chair” was duly and lawfully issued
22 by the United States Patent and Trademark office on April 17, 2018.

23 80. WSI is the owner of the entire right, title and interest in the ’452 Patent and
24 possesses all rights of recovery under the ’452 Patent, including the right to recover damages.

25 81. The product information for the Orb Chair on the West Elm website prominently
26 displays “U.S. Patent Number D815452” in the main “Overview” section of the product
27 description.

28 82. Amazon, alone or in concert with others, has been and is now infringing the ’452
Patent by making, using, selling, and offering for sale within this district and elsewhere in the

1 United States, and importing into the United States, products such as the Amazon Orb Chair
2 which infringe the '452 Patent. Amazon had constructive notice of WSI's patent through its
3 marking. Pursuant to Rule 11(b), WSI alleges that discovery will show Amazon had actual
4 knowledge that the design was patented and copied it anyway.

5 83. Amazon has been and is infringing the '452 Patent by actively and knowingly
6 inducing others to make, use, sell, offer for sale, and/or import into the United States products,
7 including the Amazon Orb Chair, which infringe the '452 Patent.

8 84. Amazon's acts will continue unless enjoined by this Court.

9 85. WSI is being harmed by Amazon's acts of infringement of the '452 Patent and will
10 continue to be irreparably harmed unless Amazon is enjoined by this Court. WSI has no adequate
11 remedy at law against Amazon's acts of infringement.

12 86. Amazon's infringing activity has caused and continues to cause WSI to suffer
13 damages in an amount to be determined at trial.

14 **SECOND CLAIM**
15 **FEDERAL TRADEMARK INFRINGEMENT AND TRADEMARK COUNTERFEITING**
16 **UNDER SECTION 32(1) OF THE LANHAM ACT**
(15 U.S.C. §1141(1))

17 87. WSI repeats and realleges the allegations contained in paragraphs 1 through 86 as
18 though fully set forth herein.

19 88. Defendant's unauthorized use in commerce of the Counterfeit Mark as alleged
20 herein is likely to deceive consumers as to the origin, source, sponsorship, and/or affiliation of
21 Defendant's services, and is likely to cause consumers to mistakenly believe that Defendant's
22 services are offered, authorized, endorsed, or sponsored by Plaintiff, or that Defendant is in some
23 way affiliated with or sponsored by Plaintiff. Defendant's conduct therefore constitutes service
24 mark infringement and counterfeiting in violation of Section 32(1) of the Lanham Act, 15 U.S.C.
25 § 1114(1).

26 89. Amazon has committed the foregoing acts of infringement and counterfeiting with
27 full knowledge of WSI's prior rights in the WILLIAMS-SONOMA Mark and with the intent to
28 cause confusion and trade on WSI's goodwill.

1 90. Amazon's conduct is causing immediate and irreparable harm and injury to WSI
2 and to its goodwill and reputation and will continue to both damage WSI and confuse the public
3 unless enjoined by this court. WSI has no adequate remedy at law.

4 91. WSI is entitled to injunctive relief and an award of actual damages, Defendant's
5 profits, treble damages and profits, attorneys' fees, and costs under Sections 34 and 35 of the
6 Lanham Act, 15 U.S.C. §§ 1116, 1117.

7 **THIRD CLAIM**
8 **FEDERAL TRADEMARK DILUTION OF THE WILLIAMS-SONOMA MARK**
9 **(15 U.S.C. § 1125(C))**

10 92. WSI realleges and incorporates by reference each of the allegations contained in
11 paragraphs 1 through 91 as though fully set forth herein.

12 93. For decades, WSI has exclusively and continuously used and promoted its
13 registered WILLIAMS-SONOMA Mark, both in the United States and throughout the world. The
14 WILLIAMS-SONOMA Mark is widely recognized by the consuming public. This mark became
15 a famous and well-known symbol of Plaintiff and its products well before Defendant began
16 offering services under its infringing mark.

17 94. Defendant is making use in commerce of a mark that dilutes and is likely to dilute
18 the distinctiveness of WSI's WILLIAMS-SONOMA Mark by eroding the public's exclusive
19 identification of this famous mark with WSI, tarnishing and degrading the positive associations
20 and prestigious connotations of the WILLIAMS-SONOMA Mark, and otherwise lessening the
21 capacity of the WILLIAMS-SONOMA Mark to identify and distinguish Plaintiff's retail and
22 online retail services.

23 95. Amazon's actions demonstrate an intentional, willful, and malicious intent to trade
24 on the goodwill associated with Plaintiff's WILLIAMS-SONOMA Mark and to cause dilution of
25 that mark, which has and will cause great and irreparable injury to WSI.

26 96. Amazon has caused and will continue to cause irreparable injury to WSI's
27 goodwill and business reputation, and dilution of the distinctiveness and value of WSI's famous
28 and distinctive WILLIAMS-SONOMA Mark in violation of 15 U.S.C. § 1125(c). WSI is
therefore entitled to injunctive relief and to Defendant's profits, actual damages, enhanced profits

1 and damages, and reasonable attorneys' fees.

2 **FOURTH CLAIM**
3 **UNFAIR COMPETITION UNDER SECTION 43(A) OF THE LANHAM ACT**
4 **(15 U.S.C. § 1125(A))**

5 97. WSI repeats and realleges the allegations contained in paragraphs 1 through 96 as
6 though fully set forth herein.

7 98. Defendant's acts are likely to deceive consumers as to the origin, source,
8 sponsorship and/or affiliation of Defendant's goods and services, and are likely to cause
9 consumers to believe, contrary to fact, that Defendant's goods and services are sold or offered,
10 authorized, endorsed, or sponsored by Plaintiff, or that Defendant is in some way affiliated with
11 or sponsored by Plaintiff.

12 99. Defendant is knowingly and intentionally misrepresenting and falsely designating
13 to the general public the affiliation, connection, association, origin, source, sponsorship,
14 endorsement and approval of Defendant's services and goods, and intends to misrepresent and
15 falsely designate to the general public the affiliation, connection, association, origin, source,
16 approval, endorsement or sponsorship of Defendant's services and goods, so as to create a
17 likelihood of confusion by the public as to the affiliation, connection, association, origin, source,
18 approval, endorsement and sponsorship of Defendant's services and goods.

19 100. Defendant's acts are the result of Defendant's bad faith intent to misappropriate
20 the commercial advantage WSI has gained through its investments in its service mark, trademarks,
21 and the marketing, sale and promotion thereof.

22 101. Defendant's activities will cause their goods to be mistaken for the goods and
23 goodwill of WSI, and will cause consumer confusion between WSI's goods and those of
24 defendant, and have misled or will mislead the trade and the public into the false belief that WSI
25 and Defendant are affiliated or that Defendant's goods or services have their source in WSI or are
26 sponsored by WSI or associated with WSI.

27 102. Defendant's conduct as alleged herein constitutes trademark infringement, false
28 endorsement, false designation of origin, and unfair competition in violation of Section 43(a) of
the Lanham Act, 15 U.S.C. § 1125(a).

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SIXTH CLAIM
DILUTION UNDER CALIFORNIA LAW
(Cal. Bus. & Prof. Code § 14200 et seq.)

111. WSI realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 110 as though fully set forth herein.

112. The WILLIAMS-SONOMA mark is famous in California, as well as throughout the United States, and has been prior to Amazon's unauthorized use of that mark.

113. Amazon's activities have diluted the distinctive quality of the WILLIAMS-SONOMA mark in violation of California trademark law, Business and Professions Code Section 14200 et seq.

114. As a direct and proximate cause of Defendant's wrongful conduct, Defendant has been and will continue to be unjustly enriched, and WSI has sustained and will continue to sustain diversion of trade with lost profits and injury to its business reputation and goodwill.

115. As a direct result of Defendant's conduct, WSI is entitled to injunctive relief and to recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

SEVENTH CLAIM
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(Cal. Bus. & Prof. Code §17200, et seq.)

116. WSI realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 115 as though fully set forth herein.

117. Defendant has engaged in a pattern of willful and intentional acts designed to appropriate WSI's prestige and goodwill, including without limitation, by copying WSI's products, trademarks, and registered service marks.

118. Defendant has been and is passing off its online retail services as those of Plaintiff, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Defendant's affiliation, connection, or association with Plaintiff, and otherwise damaging the public.

119. Defendant's conduct is unlawful, unfair and deceptive in violation of California Business & Professions Code § 17200.

120. As a direct and proximate cause of Defendant's wrongful conduct, Defendant has

1 been and will continue to be unjustly enriched, and WSI has sustained and will continue to sustain
2 diversion of trade with lost profits and injury to its business reputation and goodwill.

3 121. As a direct result of Defendant's conduct, WSI is entitled to injunctive relief and to
4 recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, WSI prays that the Court order the following relief:

- 7 a. Judgment that Defendant willfully infringed the '542 patent;
- 8 b. Judgment that Defendant has willfully infringed and counterfeited WSI's
9 registered WILLIAMS-SONOMA Mark;
- 10 c. Judgment that Defendant has diluted WSI's famous WILLIAMS-SONOMA Mark;
- 11 d. Judgment that Defendant has committed unfair competition in violation of the
12 Lanham Act and state law;
- 13 e. Judgment that Defendant has committed common law trademark infringement in
14 violation of the Lanham Act and state law;
- 15 f. Judgment that Defendant has committed false endorsement in violation of the
16 Lanham Act;
- 17 g. Judgment that Defendant has competed unfairly with WSI in violation of WSI's
18 rights under California law;
- 19 h. A permanent injunction enjoining Defendant from making, using, selling, or
20 offering to sell its infringing goods;
- 21 i. A permanent injunction enjoining Defendant from using the WILLIAMS-
22 SONOMA mark in conjunction with its online retail services and otherwise
23 infringing or diluting WSI's marks;
- 24 j. Damages, exemplary damages and disgorgement of profits in an amount to be
25 proven at trial;
- 26 k. Enhancement of damages including treble damages required to be awarded for
27 trademark counterfeiting;
- 28

