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18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 Case No.: **CV09-05023CBM (JCx)**

21 RAYMOND P. CACCIOLI, individually and
22 on behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 LEVI STRAUSS & COMPANY and J.C.
26 PENNEY COMPANY, INC.

27 Defendant.

CLASS ACTION

**COMPLAINT FOR RESTITUTION
AND INJUNCTIVE RELIEF UNDER
CALIFORNIA BUSINESS AND
PROFESSIONS CODE §17200 *et seq.*
AND §17500 *et seq.*, FOR INJUNCTIVE
RELIEF UNDER CALIFORNIA CIVIL
CODE §1750 *et seq.*, FOR DAMAGES
AND OTHER RELIEF FOR BREACH
OF CONTRACT AND QUASI-
CONTRACT**

JURY TRIAL DEMANDED

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I. INTRODUCTION

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2
3 Plaintiff Raymond P. Caccioli, individually and on behalf of all others similarly
4 situated and on behalf of the general public complains against Defendant Levi Strauss &
5 Company (“Levi Strauss”) and J.C. Penney Company, Inc. (“J.C. Penney’s”), individually
6 and through any affiliates, parents, subsidiaries, divisions, departments, or agents as
7 follows:

8 1. This action involves Defendants’ perpetration of a false “JCPenney’s Round
9 Trip Flight Voucher Promotion 2007” (“Dockers Flight Promotion” or “Promotion”)
10 throughout the United States. From its California headquarters, Levi Strauss conceived,
11 designed and offered the Dockers Flight Promotion to consumers throughout California
12 and the nation who purchased at least \$125 of Levi Strauss’s Dockers-brand products from
13 J.C. Penney’s during the week of Father’s Day 2007. The Promotion was co-branded as
14 offered by both Dockers and J.C. Penney’s. When valid purchasers actually attempted to
15 redeem the Promotion in accordance with the Promotion’s Terms and Conditions,
16 Defendants simply ignored them or otherwise refused to honor the Promotion.

17 2. Many consumers throughout the United States, including Plaintiff, paid
18 Defendants \$125 for both Dockers clothing and the roundtrip flight that Defendants
19 offered. Unfortunately for these consumers, in almost all cases Defendants either: (1)
20 outright refused to respond to attempts to redeem the “free” travel offer; (2) obstructed the
21 redemption with bogus excuses not contemplated by the Promotion’s Terms and
22 Conditions; and/or (3) charged valid purchasers undisclosed, unauthorized fees to actually
23 collect the “free” travel.

24 3. The World Wide Web is awash with consumer complaints arising from
25 Defendants’ Dockers Flight Promotion. These complaints detail the drastic measures
26 Defendants have taken to stop customers from obtaining the roundtrip flight they paid for.
27 Consumers pervasively describe their payment of \$125 or more to J.C. Penney’s, complete
28 satisfaction of the Promotion’s Terms and Conditions of the Dockers Flight Promotion,

1 and the inevitable refusal by Defendants to fully honor the Promotion. According to one
2 complaint, Defendants' third-party administrator for the Promotion represented that the
3 Promotion would not be honored because unexpected increases in airline fares made it no
4 longer economically worthwhile.

5 4. Plaintiff brings this action on behalf of all purchasers of Dockers-brand
6 products in the United States who paid for and qualified for the benefits of the Dockers
7 Flight Promotion but who received either nothing, were forced to accept a benefit of lesser
8 value, or were forced to pay undisclosed fees to receive a roundtrip airline ticket.

9 5. By offering the Dockers Flight Promotion and then failing to provide it,
10 Defendants violated the Unfair Competition Law, Business & Professions Code §17200 *et*
11 *seq.* ("UCL"), the Consumer Legal Remedies Act, California Civil Code §1750 *et seq.*
12 ("CLRA"), and duties established at common law barring breach of contract and unjust
13 enrichment. By their misconduct, Defendants have violated state and common law and
14 retained ill-gotten gains at the expense of Plaintiff Class members. Plaintiff is entitled to
15 restitution, damages, equitable relief, and any and all other available remedies.

16 6. Since Defendants engaged in their misconduct with respect to Plaintiff's
17 transaction in the same manner as to numerous other consumers, a class action is the
18 superior means of resolving this issue for all affected consumers.

19 II. PARTIES

20 7. At all times relevant hereto, Plaintiff Raymond Caccioli was a resident of
21 California and resides at 4962 Alcove Ave., Valley Village, California.

22 8. Defendant Levi Strauss is a Delaware corporation, which maintains its
23 headquarters and principal place of business at 1155 Battery St., San Francisco, California
24 94111. Levi Strauss was the self-ascribed "**Sponsor**" of the Promotion, and is responsible
25 for the acts and omissions of its chosen "Administrator," TLC Marketing, and for the
26 misrepresentations described in this Complaint.

27 9. Defendant J.C. Penney's is a Delaware corporation, which maintains its
28 headquarters and principal place of business at 601 Legacy Drive, Plano, TX 75024. J.C.

1 Penney's is a retail department store and is responsible for the misconduct alleged herein
2 as the co-branded offeror of the Promotion, including but not limited to the
3 misrepresentations and other misconduct described herein.

4 III. JURISDICTION AND VENUE

5 10. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005
6 ("CAFA"), 28 U.S.C. 1332(d). Plaintiff seeks to prosecution this class action on a
7 nationwide basis, satisfying CAFA's diversity requirement. 28 U.S.C. § 1332(d)(2)(A).
8 On information and belief, there were over 40,000 Promotion-qualifying purchases of
9 Dockers apparel or accessories at a cost of \$125 each. Plaintiffs also asserts entitlement to
10 attorneys fees. Therefore, by a preponderance of the evidence, the matter in controversy
11 exceeds \$5,000,000.00. *Id.* at § 1332(d)(2).

12 11. Plaintiff has standing to assert all claims set forth below. Plaintiff and all
13 Class members suffered injury-in-fact and lost money as a direct result of Defendants'
14 misconduct described herein. Defendants induced Plaintiff and members of the Class to
15 buy \$125 or more of Dockers apparel by promising to also provide a round-trip domestic
16 flight. After receiving their money from Plaintiff and the Class, Defendants simply turned
17 around and refused to provide the flight.

18 12. Defendant Levi Strauss transacts business and maintains its principal place of
19 business within the State of California. Fundamentally all of the events, conduct or
20 omissions giving rise to the claims herein occurred in or emanated from this state.
21 Defendants engaged in the complained-of transactions with Plaintiff Caccioli in this
22 District. Substantial decisions and corporate policies regarding the misconduct challenged
23 herein were made at or emanated from Levi Strauss's offices in San Francisco, California
24 and affected Class members' transactions both inside and outside of California. Further,
25 Defendants have consented to jurisdiction and venue in this Court by removing a lawsuit
26 brought by other claimants arising from the same course of misconduct to and engaging in
27 ongoing litigation in this Court. This Court accordingly has jurisdiction over this action
28 and venue is proper in this Court.

1
2 **IV. GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

3 **A. *The Dockers Flight Promotion***

4 13. The misconduct underlying this action is not complex. Called the “Round
5 Trip Flight Promotion 2007,” Defendants offered a round trip airline ticket to anyone who
6 between June 3 through June 9, 2007, purchased at least \$125 of Dockers-brand men’s
7 apparel or accessories from JC Penney’s, either at retail stores, online at jcpenny.com, or
8 otherwise. Dockers is a clothing brand owned by Levi Strauss. Levi Strauss sells a variety
9 of casual clothing under the Dockers brand, such as slacks, golf shirts, sweaters and hats.

10 14. The roundtrip flight Defendants offered was not “free”—it was a package
11 deal requiring cash outlays from Plaintiff and the Class. The package contained a certain
12 amount of Dockers apparel and a round-trip domestic flight to certain U.S. cities. The
13 minimum outlay for this package was \$125, plus, eventually, airport taxes and fees. Thus,
14 the apparel received by purchasers constituted a fraction of the value (if any) of the total
15 package, and purchasers who sought a flight voucher did not receive the promised goods
16 in exchange for the money they paid.

17 15. The Terms and Conditions for the Promotion were also non-complex and
18 detail Defendants’ broken promises to Plaintiff and the proposed Class.

19 16. In relevant part, after purchasing “\$125 or more of men’s Dockers apparel
20 and/or accessories,” Defendants directed valid purchasers to “Obtain a JC Penney’s Round
21 Trip Flight Voucher Promotion 2007 redemption form” (“Redemption Form”) either from
22 the JC Penney store itself or by download from the Internet.

23 17. Consumers were then directed to “Complete and mail the [Redemption] Form
24 in an envelope, along with your ORIGINAL sales receipt with the Qualifying Purchases
25 circled[.]”

26 18. Defendant then represented that, “Upon receipt and verification by third
27 party administrator TLC Marketing of the request, TLC Marketing will send the verified
28 participant a Dockers Free Flight Voucher and Booking Form (“Booking Form”).

1 19. Next, Defendants directed consumers to “Complete the Booking Form,
2 including your selection of departure city and three different destination and date
3 preferences, and return it to TLC marketing at the address provided with the Booking
4 Form.”

5 20. The departure cities available under the Promotion numbered in the dozens,
6 including all major cities in the United States and thirteen cities in California, including
7 Los Angeles.

8 21. Thereafter, Defendants promised that “Within 10-14 days of receipt of the
9 completed Booking Form, TLC Marketing will contact the participant to confirm travel
10 itinerary. Additional passengers may be booked at this time through TLC Marketing if
11 requested.”

12 22. Next, Defendants promised:

13 Upon confirmation of reservation, TLC Marketing will send participant an e-
14 Ticket and itinerary or, if participant chooses, a paper ticket and itinerary.
15 Travel under this program is ONLY from one of the designated US airports to
16 one of the following destinations in the continental US: Boston, New York
17 City, Washington D.C., Miami, Los Angeles, San Francisco, Las Vegas,
Chicago, Orlando, or Dallas.

18 23. The Terms and Conditions also noted that the consumer, and not Defendants,
19 would be responsible for paying all “taxes and fees” charged by third party airports and
20 airlines. Nowhere did Defendants disclose that consumers would be required to pay any
21 “fees or taxes” charged by Defendants or their third party administrator in order to obtain
22 the roundtrip flight.

23 24. Finally, Defendant required all participants in the Promotion to book their
24 travel by July 31, 2008.

25 ***B. Plaintiff Caccioli’s Fruitless Attempt to Obtain His Roundtrip Flight***

26 25. Plaintiff Caccioli was one of the many consumers across the United States
27 who was victimized by Defendants’ Dockers Flight Promotion.
28

1 26. In June 2007, Plaintiff saw an advertisement for the Dockers Flight
2 Promotion in the Los Angeles Times. Defendants were responsible for the content of such
3 advertisements. The advertisement indicated that if he paid Defendants \$125 or more for
4 Dockers-brand clothing from a JC Penney entity, he would also receive a roundtrip airline
5 ticket. Although Plaintiff does not normally purchase Dockers clothing, he recognized the
6 value of the offer.

7 27. On June 6, 2007, Plaintiff traveled to the JC Penney's store at the Glendale
8 Galleria Mall in Glendale, California. Plaintiff did not normally shop at this mall, or at JC
9 Penney's, but he determined it was the most convenient location to participate in the
10 Promotion. Plaintiff purchased \$146.65 worth of Levi Strauss's Dockers-brand men's
11 clothing for the purpose of also receiving a roundtrip flight under the Dockers Flight
12 Promotion. Plaintiff received a Redemption Form at the time of purchase.

13 28. Plaintiff mailed in the Redemption Form, along with his original receipt, to
14 obtain a Booking Form in accordance with the Promotion's Terms and Conditions.
15 Thereafter, Defendants, whether on their own or through their agent TLC, verified the
16 validity of Plaintiff's purchases and sent Plaintiff a Booking Form in the mail.

17 29. In June 2008, Plaintiff completed, signed and dated the Booking Form. On or
18 about June 10, 2008, Plaintiff sent the Booking Form to Defendants' agent and third party
19 administrator via registered U.S. mail. Plaintiff later received the signed return receipt,
20 which was hand-dated June 23, 2008.

21 30. On his completed Booking Form, Plaintiff requested Los Angeles
22 International Airport ("LAX") as the departure airport. Plaintiff requested New York,
23 Boston, and Washington D.C. as his "Preferred," "2nd Choice" and "3rd Choice
24 Destination cities respectively. Plaintiff also provided three sets of preferred travel dates.
25 Plaintiff requested travel dates well within the time period required by Defendant.

26 31. On the Booking Form Plaintiff completed and properly submitted, Defendants
27 promised, "You will be notified within 14 days of receipt of this request form regarding
28 availability."

1 38. There are questions of law and fact common to the Class which predominate
2 over questions solely affecting individual members of the Class. These common questions
3 of law and fact include, but are not limited to:

- 4 a. Whether Defendants offered the Dockers Flight Promotion to the
5 general public;
- 6 b. Whether Defendants agreed to provide roundtrip airfare to anyone who
7 agreed to pay at least \$125 for Dockers clothing and otherwise satisfied
8 the Promotion's Terms and Conditions;
- 9 c. Whether Defendants failed to provide roundtrip airfare to anyone who
10 agreed to pay at least \$125 for Dockers clothing and otherwise satisfied
11 the Promotion's Terms and Conditions;
- 12 d. Whether, instead of providing roundtrip airfare, Defendants required
13 consumers who satisfied the Promotion's Terms and Conditions to
14 accept something of lesser value or nothing at all;
- 15 e. Whether Defendants required consumers who satisfied the Promotion's
16 Terms and Conditions to pay undisclosed fees in order to obtain a
17 roundtrip flight;
- 18 f. Whether Defendants' misconduct described herein is unlawful, unfair,
19 unconscionable or fraudulent, in violation of Bus. & Prof. Code §
20 17200 *et seq.*;
- 21 g. Whether Defendants failed to administer the Promotion in compliance
22 with their offer and representations;
- 23 h. Whether Defendants failed to monitor the activities of the Promotion's
24 third party administrator;
- 25 i. Whether Defendants failed to control the activities of the Promotion's
26 third party administrator;
- 27
28

- 1 j. Whether Defendants failed to correct any failures of its third party
- 2 administrator in fulfilling the Promotion in compliance with
- 3 Defendants' offer;
- 4 k. Whether Defendants failed to correct any failures of the Promotion's
- 5 third party administrator to contact those who submitted valid Booking
- 6 Forms to arrange flight reservations, in compliance with Defendants'
- 7 offer;
- 8 l. Whether Defendants, themselves or via their third party administrator,
- 9 charged undisclosed fees purported to be airline or airport taxes and
- 10 fees, as a prerequisite to obtaining a roundtrip flight under the
- 11 Promotion;
- 12 m. Whether Defendants should provide restitution to Plaintiff and the
- 13 Class; and
- 14 n. The amount and type of damages and other relief to be awarded to
- 15 Plaintiff and the Class.

16 Resolving these issues for Plaintiff or any other Class member will also resolve the claims
17 of the entire Class.

18 39. Plaintiff's claims are typical of the claims of the members of the Class.
19 Plaintiff has the same interests as all members of the Class in that the nature and character
20 of the challenged conduct is the same. Plaintiff and all members of the Class challenge
21 Defendants' conduct under the same legal theories. The primary and predominant issue in
22 dispute is whether or not Defendants offered to include roundtrip airfare along with
23 Dockers clothing in exchange for \$125 and thereafter declined to provide the full benefits
24 of the Promotion to eligible consumers.

25 40. Plaintiff will fairly and adequately represent and protect the interests of the
26 members of the Class. Plaintiff has retained competent counsel experienced in consumer
27 Class litigation. Plaintiff is a member of the Class and does not have interests antagonistic
28 to or in conflict with members of the Class. Neither Plaintiff nor Plaintiff's counsel have

1 any interests which might cause them not to vigorously pursue this claim for the Class.
2 Plaintiff's claims are the same as those of the claims of the Class, which all arise from the
3 same operative facts and are based on the same legal theories.

4 41. Certification of the Class pursuant to Fed. R. Civ. P. 23(b)(3). As alleged
5 above, several common questions of fact and law predominate in this action. The
6 overarching issue boils down to this: Did Defendants make good on their offer to provide
7 a "roundtrip flight" to Plaintiff and members of the Class in exchange for paying \$125 for
8 Dockers-brand clothes? Individualized issues, such as whether a consumer was contacted
9 at all versus whether he or she was contacted but told a flight was unavailable, carry no
10 great weight in light of Defendants' concrete obligation to provide a roundtrip flight. The
11 common issues predominate over any individualized ones.

12 42. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy because the membership of the Class is so numerous and
14 sufficiently geographically widespread that joinder of all members is impracticable. In
15 addition, the prosecution of separate actions by individual members of the Class would
16 create a risk of incompatible standards of conduct for Defendants and inconsistent or
17 varying adjudications for all parties. There will be no difficulty in the management of this
18 case as a class action.

19 43. A class action is an appropriate method for the fair and efficient adjudication
20 of this controversy. The interest of Class members in individually controlling the
21 prosecution of separate claims against Defendants is non-existent because it is not feasible
22 for them to bring individual claims. The nature of the practices complained of, the offer of
23 a roundtrip flight in exchange for paying \$125 for Dockers clothing, to large numbers of
24 individuals, makes a class action superior.

25 44. The number of unfair transactions that took place can be determined through
26 use of Defendants' records, files, billing records, and Booking Forms in its or their
27 administrator's possession.
28

1 redeem the Promotion by obtaining, completing and remitting a
2 Booking Form;

- 3 d. Plaintiff is dissatisfied with receiving only part of what he was
4 promised (clothing) and not receiving the remainder of what he was
5 promised (a roundtrip airline flight);
- 6 e. If Plaintiff attempted to obtain substitute air travel, he would have had
7 to pay for airfare himself, and he would *not* have been required to
8 purchase Dockers-brand clothing as well;
- 9 f. Defendants, as the co-branded sponsors of the promotion and the
10 parties benefitting directly from consumers' payments under the
11 Promotion, never disclosed that their promises would not be honored if
12 their chosen third party administrator for the Promotion failed to book
13 flights;
- 14 g. Defendants also failed to provide a flight to other consumers even
15 though they properly submitted a valid Booking Request form;
- 16 h. Other consumers failed to fully receive a flight because they were
17 deceptively charged undisclosed fees, the overages of which
18 Defendants or their third party administrator retained;
- 19 i. Defendants failed to monitor, supervise, control, and correct the
20 activities of their third party administrator and failed to disclose to
21 consumers that they would not honor their promises in the event that
22 providing and arranging for roundtrip flights became economically
23 unpalatable to Defendants or their third party administrator.
- 24 j. Plaintiff and Class members have each been deprived of \$125 cash,
25 requiring restitution, and also have been deprived of the benefit of their
26 bargains, a roundtrip flight, requiring damages amounting to the fair
27 market value of a round trip airline ticket during the time period in
28 question, or, for those who received a flight but were charged

1 undisclosed fees, the return of the fees in excess of what the
2 Promotion's Terms and Conditions permit.

3
4 **VII. CAUSES OF ACTION**

5
6 **FIRST CAUSE OF ACTION**

7 **(VIOLATION OF BUS. & PROF. CODE §17200 *et seq.*)**

8 49. Plaintiff incorporates the allegations of all the foregoing paragraphs by
9 reference, as if fully set forth herein.

10 50. Plaintiff brings this action individually, on behalf of the Class, and on behalf
11 of the general public pursuant to § 17200 *et. seq.* of the Bus. & Prof. Code, the Unfair
12 Competition Act.

13 **Unfair Business Acts**

14 51. Defendants caused Plaintiff and Class members to pay more for Dockers-
15 brand clothing than they otherwise would have paid absent the promise to arrange for a
16 "free flight" on a third party airline.

17 52. The materiality of Defendants' offer and representations to Plaintiff and Class
18 is established *ipso facto* by the performance of the Plaintiff and Class members. If the
19 promise of a flight were not material, Plaintiff and Class members would not have
20 purchased the Dockers clothing, mailed in the Redemption Form with their original
21 receipts to obtain a Booking Form, completed and mailed in the Booking Form, and
22 otherwise attempted to redeem the Promotion.

23 53. Defendants' misconduct amounted to a systematic breach of its contracts with
24 consumers. By virtue of their Promotion, Defendants made a uniform offer of a roundtrip
25 flight to Plaintiff and members of the Class. Plaintiff and members of the Class accepted
26 this offer by paying \$125. Defendants then, without any excuse, simply declined to
27 perform and provide the flight.

1 e. How: By printed advertisement and via the World Wide Web on
2 websites identified by Defendants and detailing the Terms and
3 Conditions of the Promotion.

4 58. Plaintiff and consumers similarly situated were damaged by Defendants' act
5 because Defendant did not provide or arrange for any roundtrip flights as they promised
6 they would.

7 59. The acts complained of herein, and each of them, constitute unfair, unlawful
8 or fraudulent business practices in violation of Business and Professions Code §17200 *et.*
9 *seq.* Such acts and violations have not abated and will continue to occur unless enjoined.

10 60. The unfair business practices and fraudulent acts set forth above have and
11 continue to injure Plaintiffs, the Class, and the general public and cause the loss of money.
12 These violations have unjustly enriched Defendants at the expense of the Class. As a
13 result, Plaintiff, the Class and the general public are entitled to injunctive relief, restitution,
14 and other equitable relief.

15 61. Restitution under the UCL is available where the sum at issue can be traced to
16 particular funds or property in Defendants' possession. The amount awarded should
17 restore to Plaintiff and Class members, the persons in interest, the money Defendants
18 acquired by means of unfair competition. Because Defendants bundled articles of clothing
19 with a roundtrip flight in both their promotions and the Promotion's Terms and
20 Conditions, Plaintiff and Class members had an ownership interest in *both* items as soon as
21 their money was accepted and the forms were duly filled out. Under the UCL, "free"
22 items bundled with set-priced items are subject to claims of restitution if they are not in
23 fact provided for free. As bundled, the clothes and roundtrip flight constituted a package
24 deal, for which each Class member paid the minimum \$125. The value of the flight
25 outweighed the value of the clothes. Therefore, a significant portion of the \$125 (an
26 amount to be determined at trial) paid by and traceable to each Class member should be
27 returned as restitution.

1 caused to be made and disseminated before the public in California and disseminated from
2 California before the public in many other states, in newspapers and other advertising
3 devices, including over the Internet, statements concerning such personal property and
4 services that were untrue and misleading, and which by the exercise of reasonable care
5 should be known to be untrue and misleading. i.e., Defendants advertised its untrue and
6 misleading offer in newspapers and on placards in stores.

7 67. Defendants should have known through reasonable investigation whether
8 there were able to make good on their commitment to arrange flights for consumers who
9 paid \$125 for Dockers-brand apparel. Defendants knew they had no back up plan in place
10 to fulfill their promise in the case they or their administrator failed to arrange flights for
11 Defendants' customers. Defendants' intent not to fulfill their Promotion became painfully
12 obvious to Plaintiff and the Class by the fact Defendants made no effort to contact them or
13 even attempt to make them whole. Defendants only contingency plan was to attempt an
14 unenforceable get-out-of-jail-free clause in its Promotion which asserts consumers have no
15 legal rights against Defendants should they refuse to honor the Promotion

16 68. Members of the public, as reasonable consumers, were likely to be deceived
17 by Defendants' express, advertised offers, made in writing and published to the general
18 public. The statements were not mere puffery. Defendants are well-known, venerable,
19 and credible companies who are generally expected by the general consuming public to
20 stand behind their products and promises. Such consumers, along with Plaintiff, were
21 damaged by Defendants' misrepresentations and false statements, as the roundtrip flight
22 promise had great value and was a material part of the transaction, as demonstrated by
23 Plaintiff's and Class members' attempts to redeem the Promotion.

24
25 **THIRD CAUSE OF ACTION**
26 **(VIOLATION OF CALIFORNIA CONSUMERS' LEGAL REMEDIES ACT,**
27 **CALIFORNIA CIVIL CODE §§1750-1782)**
28

1
2 Cal. Civ. Code § 1770 (West 2008).

3 75. In violation of California Civil Code, § 1770(a)(9), Defendants advertised a
4 roundtrip flight, in exchange for a paying a certain amount for other merchandise, with the
5 intent not to provide the promised flight if it became economically unpalatable to do so.

6 76. In violation of California Civil Code, section 1770(a)(10), Defendants
7 advertised a roundtrip flight with the intent not to supply the reasonably expectable
8 demand for a roundtrip flight, promised in exchange for a purchase of other merchandise,
9 if it became economically unpalatable to do so. Defendants disclosed no limitation on
10 quantity of flights available and, in fact, promised to provide an item of equal or greater
11 value in place of flights.

12 77. In violation of California Civil Code, § 1770(17), Defendants represented that
13 purchasers of Dockers-brand merchandise would receive the economic benefit of a
14 roundtrip flight, despite the fact that Defendants deceptively and misleadingly did not
15 inform their customers that obtaining the flight was contingent upon 1) Defendants'
16 subsequent determination that actually providing a roundtrip flight would be economically
17 palatable to Defendants and 2) customers' payment of "fees" or "taxes" not disclosed
18 under the Promotion's terms and conditions.

19 78. Defendants' violations of Civil Code § 1770, described throughout, present a
20 continuing threat to Class members and members of the public in that Defendants continue
21 to engage in these practices, continue to refuse to return amounts paid by consumers, and
22 continue to make representations in derogation of their state and common law obligations.
23 Plaintiff and the Class are entitled to injunctive relief from this continuing conduct.

24 79. By letter dated July 2, 2009, sent via certified mail as directed in Civil Code
25 §1782, Plaintiff notified Defendant Levi Strauss of its violations of the Consumer Legal
26 Remedies Act and demanded that Defendant provide a remedy that rectifies its conduct.
27 By letter dated July 8, 2009, sent via certified mail as directed in Civil Code § 1782,
28

1 Plaintiff notified Defendant J.C. Penney's of its violations of the Consumer Legal
2 Remedies Act and demanded that Defendant provide a remedy that rectifies its conduct.

3 80. Should Defendants fail to give or agree to give within a reasonable time a
4 sufficient remedy to all Class members as set forth in Civil Code § 1782(c) for the above-
5 mentioned violations of law, Plaintiff will seek to amend this Complaint to add claims for
6 damages and punitive damages under the CLRA on behalf of himself and the Class.

7 81. By reason of the foregoing, Plaintiff and the Class are entitled to recover
8 injunctive relief.

9
10 **FOURTH CAUSE OF ACTION**
11 **(BREACH OF CONTRACT)**

12 82. Plaintiff incorporates the allegations of all the foregoing paragraphs by
13 reference, as if fully set forth herein.

14 83. There is a contract between Plaintiff and each Defendant. Each Defendant
15 expressly offered a free flight in exchange for the Plaintiff's payment of \$125 for Dockers-
16 brand clothing and the proper completion and timely submission of a Booking Form.
17 Plaintiff accepted Defendants' offer by paying the requisite amount for Dockers clothing
18 and properly filling out and submitting a Booking Form.

19 84. Plaintiff performed his obligations under the contract. Because Defendants
20 offered a unilateral contract, Plaintiff's acceptance of and performance under the contract
21 were accomplished by paying the requisite amount for Dockers-brand apparel and properly
22 and timely filling out the forms required.

23 85. Defendants breached the contract. Upon receipt of the Booking Form,
24 Defendants were required to contact Plaintiff within 10-14 days to confirm a travel
25 itinerary. Defendants were then obligated to confirm a reservation, send Plaintiff an e-
26 Ticket, or paper ticket, and itinerary. Defendants were also obligated to pass through only
27 the "taxes and fees" charged by applicable airports and airlines, rather than charging or
28 allowing its third party administrator to inflate those fees, while presenting them as

1 attributable to the airport and airline. Despite these obligations, neither Defendants nor
2 their administrator ever contacted Plaintiff to arrange for a roundtrip flight

3 86. Plaintiff was damaged. Plaintiff relied to his detriment upon Defendants'
4 promise to provide a "free" flight by paying \$125 for Dockers-brand clothing and by
5 filling out a Booking Form. But for the Promotion, Plaintiff would not have paid that
6 much money, if any, for Dockers-brand clothing. Both Plaintiff and members of the Class
7 can demonstrate their reliance on Levi Strauss's promises by the fact that they all filled out
8 Booking Forms. The contract created a legal right to a roundtrip flight or something of
9 equal or greater value. Defendants provided neither. Plaintiff has been deprived of that
10 right, and his damages include, but are not limited to, the cash value of the domestic flight
11 he bargained for.

12 13 **FIFTH CAUSE OF ACTION**

14 **(ALTERNATIVE RELIEF BASED ON QUASI-CONTRACT)**

15 87. Defendants, by the actions alleged above, have collected money from Plaintiff
16 and Class members under such circumstances that in equity and good conscience it cannot
17 retain, and which in justice and fairness belongs to Plaintiff and the Class. Defendants
18 requested and obtained a benefit from Plaintiff and Class members by receiving money in
19 exchange for clothing and a roundtrip flight. Plaintiff and Class members conferred a
20 benefit on Defendants by expending the money sought by Defendant. Plaintiff and Class
21 members had a reasonable expectation of receiving the goods for which they paid.

22 88. Under California law, unjust enrichment is a basis for obtaining restitution
23 based on quasi-contract, which is an obligation created by the law without regard to the
24 intention of the parties, and is designed to restore the aggrieved party to his or her former
25 position by returning the money attributable to the benefit conferred. Plaintiff and Class
26 members seek such a remedy in the alternative to the relief they seek based on their breach
27 of contract theory.

1 89. As a result of Defendants' violations, described above, they have unjustly
2 enriched themselves at the expense of Plaintiff and the Class. Defendants' unjust
3 enrichment continues to accrue as they continue to engage in unlawful business acts and
4 practices and collect the challenged fees.

5 90. Defendants' retention of money gained through unlawful and deceptive
6 practices is unjust considering the circumstances under which the funds were obtained.

7 91. As a result of the foregoing, Plaintiff and the Class were deprived of their
8 money and suffered loss as alleged above.

9 92. To prevent its unjust enrichment, Defendants are required to identify, account
10 for, and fully remit all of its ill-gotten gains to Plaintiff and Class members.

11 93. The amount awarded should restore to Plaintiff and Class members, the
12 persons in interest, the money Defendants acquired by means of unfair competition.
13 Because Defendants bundled articles of clothing with a roundtrip flight in both its
14 Promotion and Terms and Conditions, Plaintiff and Class members had an ownership
15 interest in *both* items as soon as their money was accepted and the forms were duly filled
16 out. As bundled, the clothes and roundtrip flight constituted a package deal, for which
17 each Class member paid the minimum \$125. The value of the flight outweighed the value
18 of the clothes. Therefore, a significant portion of the \$125 (an amount to be determined at
19 trial) paid by and traceable to each Class member should be returned as restitution.
20 Defendants should be ordered to return all such amounts to Plaintiff and the Class,
21 together with interest thereon.

22 94. By reason of the foregoing, Plaintiff and the Class are entitled to recover from
23 Defendants restitution, injunctive relief, declaratory relief, an accounting, and any other
24 relief allowed by law and deemed just and equitable in the circumstances.

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VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- a. An Order certifying this case as a class action pursuant to Fed. R. Civ. P. 23(b)(2), (b)(3) and/or (c)(4), and appointing Plaintiff as Class representatives and his undersigned counsel as Class counsel;
- b. An order of restitution in favor of Plaintiff and the Class;
- c. An award of damages in favor of Plaintiff and the Class;
- d. An injunction prohibiting Defendants and their successors, agents, representatives, employees, and all persons who act in concert with any of them, from making untrue or misleading statements as described in this Complaint;
- e. An accounting;
- f. Pursuant to Cal. Civ. Proc. Code § 1021.5, Cal. Civ. Code § 1780, and the Court's inherent equitable power, an order requiring Defendants to pay reasonable attorneys' fees, costs and disbursements;
- g. All other relief allowed at equity or law;
- h. All other relief the Court deems just and proper in the circumstances.

ROSMAN & GERMAIN LLP



Daniel L. Germain (CA Bar No. 143334)
 16311 Ventura Boulevard
 Suite 1200
 Encino, CA 91436-2152
 Telephone: (818) 788-0877
 Facsimile: (818) 788-0885

Dated: July 10, 2009

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David M. Cialkowski (MN Bar No. 306526)
Brian C. Gudmundson (MN Bar No. 336695)
ZIMMERMAN REED, P.L.L.P.
651 Nicollet Mall, Suite 501
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile: (612) 341-0844

Attorneys for Plaintiff and the Class

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

ROSMAN & GERMAIN LLP



Dated: July 10, 2009

Daniel L. Germain (CA Bar No. 143334)
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Facsimile: (612) 341-0844

Attorneys for Plaintiff and the Class

DECLARATION OF RAYMOND P. CACCIOLI

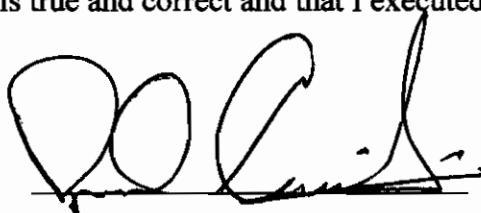
I, Raymond P. Caccioli, declare as follows:

1. I am a Plaintiff in the accompanying Class Action Complaint entitled *Caccioli v. J.C. Penney Company, Inc., et al.* I submit this declaration in support of the Class Action Complaint which seeks injunctive relief pursuant to the Consumers Legal Remedies Act (California Civil Code § 1750, *et seq.*).

2. Pursuant to Civil Code §1780(d), I hereby affirm that the United States District Court for the Central District of California is the proper place for the trial of the action because each defendant sued herein is or was at all relevant times doing business in the County of Los Angeles and the transaction or any substantial portion thereof occurred in the County of Los Angeles.

3. I am a resident of the City of Los Angeles, in the County of Los Angeles. On June 6, 2007, I purchased from J.C. Penney Company, Inc. in excess of \$125 in qualified Dockers Apparel and Accessories in order to qualify for a round trip airline ticket pursuant to the "JCPenney's Round Trip Flight Promotion 2007." The purchase was made at the J.C. Penney's store at the Glendale Galleria Mall in Glendale, California in the County of Los Angeles.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that I executed this declaration on July 10, 2009 at Los Angeles, California.



Raymond P. Caccioli

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Raymond P. Caccioli	DEFENDANTS Levi Strauss & Company and J.C. Penney Company, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Daniel L. Germain, Rosman & Germain LLP 16311 Ventura Blvd., Suite 1200, Encino, CA 91436-2152 Telephone: (818) 788-0877	Attorneys (If Known) Angela L. Padilla, Orrick, Herrington & Sutcliffe LLP 405 Howard Street, San Francisco, CA 94105-2669 Telephone: (415) 773-5805

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> <td style="width:33%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF		PTF	DEF		<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ >\$5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 1332(d); This is a consumer class action under CAFA

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV09-05023

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): Gernain v. J.C. Penney Company, Inc., et al., Case No. CV09-2847 CAS (FMOx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LA	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	J.C. Penney Company, Inc., incorporated in Delaware, principal place of business in Texas, Levi Strauss & Co., incorporated in Delaware, principal place of business in San Francisco, California

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County, California	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date July 13, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))