HON. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington Corporation, Plaintiff, vs. KNITTING FEVER, INC., a New York Corporation, DESIGNER YARNS, LTD., a corporation of England, FILATURA PETTINATA V.V.G. DI STEFANO VACCARI & C. (S.A.S.), and entity organized or existing under the laws of Italy, SION ELALOUF, an individual, DIANE ELALOUF, an individual, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, DAVID WATT, an individual and DOES 1-50, Defendant.	Case No. 2:10-cv-00861 RSM **CASCADE YARNS INC.'S OPPOSITION TO DEFENDANT FILATURA PETTINATA V.V.G. DI STEFANO VACCARI & C.'S (S.A.S.) MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** **Note On Motion Calendar: November 26, 2010**

I. INTRODUCTION

Evidencing Defendants' ongoing efforts to delay filing an Answer, Filatura Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.) ("VVG") brought this Motion to Dismiss for Lack of Personal Jurisdiction, *three days* after the deadline to Answer. VVG's inability to file a timely Motion is inexcusable, as its counsel (also counsel for all of the Defendants in this action) simply substituted VVG's name and reprinted the very same frivolous motion it filed *months ago* for the

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

other defendants.[1] Of course, VVG, like the other Defendants, offers neither evidence nor persuasive legal argument; the whole point of the motion is to delay justice so as to perpetuate the on-going fraud.

For nearly ten years, these Defendants have engaged in a concerted scheme to defraud consumers and injure competitors by willfully misrepresenting the fiber content of their yarn products. This scheme deters customers from purchasing competing products from Cascade Yarns ("Cascade"), in the false belief that KFI's products are of similar content and quality. Accordingly, Cascade brought suit against Defendants in Washington, the forum where Cascade suffered its injuries and where Defendants have transacted ample business in furtherance of their scheme. In its Amended Complaint, Cascade asserts claims for unfair competition under the Lanham Act, 15 U.S.C. § 1125(a), the Washington Consumer Protection Act, RCW 19.86 *et seq*. and the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 *et seq*. ("RICO").

By this Motion, VVG -- like the Non-KFI Defendants[2] -- seeks to escape liability in Washington, where it knowingly and intentionally harmed Cascade's business. As with the Non-KFI Defendants' prior motion, KFI concession to the Court's jurisdiction is fatal to VVG's Motion: this alone is enough for the Court to find it frivolous. Simply put, jurisdiction in this Court exists pursuant to Fed. R. Civ. P. 4(k)(1)(C). Of course, VVG completely ignores this jurisdictional basis in its Motion, as did the non-KFI Defendants months ago. Pursuant to 18 U.S.C. § 1965(b), Cascade needs only to establish personal jurisdiction over one defendant in order to establish jurisdiction over all of the co-defendants. KFI concedes that this Court has jurisdiction over it and that all courts in the United States lack jurisdiction over Defendant Watt: thus jurisdiction over all in this District is automatic.

---

[1] With the exception of Knitting Fever, Inc. ("KFI") which appears to have every conceivable asset secured, while the related company, Designer Yarns, Ltd. appears to own licensing for all of the branding that KFI promotes.

[2] KFI has not challenged personal jurisdiction, thereby conceding that jurisdiction over it is proper in Washington.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

Even more brazenly, VVG asserts this Court lacks personal jurisdiction by falsely alleging the absence of "minimum contacts" to establish general or specific jurisdiction in Washington. VVG pilots a supertanker in the stream of commerce flowing to the United States and to Washington.[3] According to available importation records, VVG has sent literally hundreds of shipments of product into the United States over the last three years.[4] Defense counsel seeks to mislead[5] the Court by neglecting to mention that VVG has purposely availed itself to limited jurisdiction: VVG (1) ships yarn directly to Washington;[6] (2) sells to a list of distributors representing approximately 70% of the market of specialty yarn; (3) attends trade shows in the United States to market its yarns and to extinguish concerns regarding the fiber content of its products;[7] and (4) tortuously conspires with KFI and David Watt to perpetuate their criminal scheme and defame and discredit Cascade for raising questions about the lack of cashmere in the Debbie Bliss *Cashmerino* yarns. In short, specific jurisdiction exists over all defendants in this action, including VVG.

Lacking either a factual basis or legal merit, VVG's Motion should be summarily denied.[8]

---

[3] VVG sells yarn to almost all of the top distributors in the specialty yarn market. This list includes KFI, Coats and Clark (owner of redheart and Rowan brands), Berroco, Plymouth, JCA Reynolds, and Meunch. VVG even shipped yarn to Cascade in the past, shipping it to Washington State. Declaration of Robert A. Dunbabin ("Dunbabin Decl.") ¶ 3, Ex. A. These distributors represent 70% or more of the specialty market in the United States. *Id*.

[4] Records available at www.panjiva.com show more than 125 shipments to more than 20 customers in the United States. Dunbabin Decl., Ex. B.

[5] Defense counsel appear well suited for these tasks. To date, no explanation has been offered for the apparently-perjured declaration of Deidre McInerney presented by Mr. Rheaume to this Court. *See* Dkt. Nos. 7-8.

[6] Undoubtedly, VVG would have brought any payment disputes, were they to exist with Cascade, before this very Court. This is the hornbook definition of purposeful availment.

[7] VVG's two managing agents Alberto and Roberto attended the a trade show in Indianapolis, Indiana in 2006 in an apparent effort to quell concerns regarding the labeling of its products. Dkt. No. 57, ¶ 3.

[8] Alternatively, Cascade requests that the Court allow limited jurisdictional discovery on the issue of personal jurisdiction. *America West Airlines, Inc., v. GPA Group, Ltd.*, 877 F. 2d 793, 801 (9th Cir. 1989) (a court may afford a plaintiff an opportunity to meet the burden of proving jurisdictional facts by allowing limited discovery).

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

II. STATEMENT OF FACTS

A. Defendants Engage In A Scheme To Enlarge Profits By Injuring Cascade And Their Other Competitors.

Cascade is one of the nation's finest purveyors of yarns and sells its products through specialty retailers and boutiques throughout the United States. Dkt. No. 4, ¶ 2. Cascade's products include many yarns containing a mix of wool and other natural fibers such as kid mohair, silk and cashmere. *Id.* KFI similarly sells its products through retailers and boutiques throughout the United States. *Id.* Cascade is one of KFI's chief competitors in the wholesale yarn marketplace. *Id.*

Defendants have engaged in a decade-long concerted scheme to make an unreasonable profit, defraud consumers and undercut their competitors' -- including Cascade's -- business. *Id.* at ¶ 1. Indeed, beginning sometime in the early 2000s and certainly no later than 2006, KFI began selling products that had literally false labels misrepresenting the products' cashmere, kid mohair and/or silk content. *Id.* at ¶ 2. The literally false labels allowed KFI to sell its products for a significantly lower price than Cascade's products, thereby damaging Cascade in the form of lost profits and business injury. *Id.* In furtherance of the scheme, Defendants made false representations regarding the fiber content of certain yarn products, including but not necessarily limited to the *Noro Silk Garden*, *Debbie Bliss Cashmerino*, *Elsebeth Lavold Silky Wool* and *Louisa Harding Kashmir* brands. *Id.* at ¶ 1. VVG produced many of these yarns.

B. The Non-KFI Defendants Move To Dismiss For Lack of Personal Jurisdiction.

On July 26, 2010, pursuant to Rule 12(b)(2), the Non-KFI Defendants filed a meritless motion to dismiss, Dkt. No. 34, to grant themselves the extension of time that the Court denied. Dkt. No. 27 (order denying extension of time). With no foundation in fact or law the Non-KFI Defendants claimed, apparently to saddle KFI with all liability,[9] that the entire action should be

[9] Cascade suspects that Mr. and Mrs. Elalouf intend to bankrupt KFI, in the near future, only to re-organize in another form.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

dismissed as to them because this Court purportedly lacks both general and specific jurisdiction over them. Dkt. No. 34. More than 21 days after Cascade served VVG under the Hague Convention, VVG filed the instant (and untimely) Motion.[10] Most recently, this Court requested supplemental briefing on the applicability of the alter-ego doctrine for personal jurisdiction as to Mr. Elalouf and the national contacts of Mr. Watt to sustain jurisdiction under 18 U.S.C. § 1965(b). Dkt. No. 110. Cascade hereby incorporates its supplemental briefing, to be filed on November 29, 2010, by reference.

C. Recycling The Non-KFI Defendants' Motion, VVG Belatedly Moves To Dismiss For Lack Of Personal Jurisdiction.

On October 29, 2010, days after the deadline to answer the Amended Complaint, VVG filed this Motion, Dkt. No. 88, pursuant to Rule 12(b)(2). Comparison of VVG's motion (Dkt No. 88) with the Non-KFI Defendants motion (Dkt. No. 34) confirms that they are identical, other than substituting VVG's name.[11] Like the Non-KFI Defendants, VVG argues, without fact, that Cascade has failed to allege that VVG has sufficient contacts with Washington to justify general jurisdiction or specific jurisdiction. Motion, pp. 1-2. VVG erects a straw man and claims that there is no basis for jurisdiction under Fed. R. Civ. P. 4(k)(2) jurisdiction while deceitfully failing to reference Rule 4(k)(1)(C). Gamesmanship and efforts to invite error is their only defense as 18 U.S.C. § 1965 (applicable through Rule 4(k)(1)(C)) is fatal to their Motion. VVG tactically fails to address personal jurisdiction under RICO. *Id*. at pp. 1-9.

Like the recycled motion filed by the Non-KFI Defendants, VVG's motion is unsupported by law or fact. The only logical inference is that it is solely intended to further delay responding to Cascade's Amended Complaint so as not to hinder sales of yarns through the lucrative holiday

[10] Service of process on VVG was completed under the Hague Convention on October 5 (Dkt. No. 99) yet VVG did not file the instant motion until October 29 more than 21 days after it was served. Dkt. No. 88. The Court should note that the other non-KFI defendants did not file their motions to dismiss until five days after the Court denied their eleventh-hour Motion for Extension of Time to File Answer, more than 21 days after their answer was due. Dkt. Nos. 27, 34.

[11] Defense counsel did not even bother be edit and remove misplaced references in their motion, such as those to David Watt.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

season and fund their frivolous defense.[12] VVG repeatedly claims that Cascade has not alleged sufficient contacts with Washington for jurisdiction over VVG. This effort is deceitful as it purposefully avoids making an affirmative misrepresentation that VVG actually lacks sufficient requisite contacts.[13] This calculated omission is similar to when Ms. Mc Inerney avoided testifying as to when Pepper Hamilton was asked to defend this lawsuit. As is shown below, the VVG's willful omission was to avoid the controlling law and undisputed facts that conclusively establish jurisdiction over it.

D. Defendants, Including VVG, Have Substantial Contacts With Washington.

VVG is significant participant in the United States wholesale market for handknitting yarns and has been a leading wholesale supplier to specialty retailers; it has made over a hundred of shipments to scores of wholesalers (including KFI) since 2007. Dunbabin Decl., Ex. B. Indeed, a search on KFI's website reveals that at least 20 stores in Olympia, Washington and Seattle, Washington alone carry KFI's products, including the intentionally mislabeled brands that VVG manufactured. Declaration of Robert J. Guite, Ex. A; *see also* Dkt. No. 57, Ex. B. In addition and in furtherance of its scheme, KFI -- through Mr. Elalouf and other corporate agents -- have made false representations about the content of its yarns directly to Cascade in Washington and to consumers nationwide. Dkt. No. 4, ¶¶ 44-52. KFI also sends other agents to Washington -- including Mr. Opperman -- to sell and market its mislabeled yarns. Dkt. No. 113. Mr. Elalouf also exerts significant control over VVG, the manufacturer or broker of yarns for the KFI and Debbie Bliss brand names, including but not necessarily limited to the mislabeled yarns. Dkt. No. 4, ¶ 7.

---

[12] The Court should note that Defendants have come forward with no facts in support of the accuracy of their labeling, even in opposition to Cascade's Motion for Preliminary Injunction or its Motion for Writ of Attachment.

[13] Ms. McInerney submitted the apparently perjured declaration. Dkt. Nos. 8, 47 (Counsel appears to have agreed to represent Ms. Bliss a number of days before it *received* a copy of the complaint). The careful parsing of Ms. McInerney's words are a clear sign that her misstatements were willful.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

VVG manufactures and/or brokers intentionally mislabeled yarn, such as *Debbie Bliss Cashmerino*, which is sold at a number of stores throughout Washington and nationwide. Dunbabin Decl., Ex. B. From July 1, 2007 to October 21, 2010, VVG made at least 126 shipments of yarn to 21 customers throughout the United States. *Id*. In addition, VVG's employees and/or agents entered the United States and promoted its yarn products at an industry trade show in the United States. Dkt. No. 56, ¶ 3.

VVG also ships yarn directly to customers in Washington, including Cascade. Dunbabin Decl., Ex. A. VVG is fully aware of its direct sales to Washington. Further, in October 2006, Cascade met with VVG to discuss Cascade's labeling concerns. *Id*., Ex. C. Following that meeting, VVG wrote to Designer Yarns and to KFI through their respective representatives, Mr. Watt and Mr. Elalouf, to describe the meeting. *Id*. VVG reported that Cascade explained that it tested the yarn because Cascade was "not able to understand how is [sic] possible to sell this blend at the current price on the market, and wanted to investigate about the content." *Id.* VVG "strongly protested" against Cascade's decision to test the yarn and termed Cascade's behavior "dangerous" because "if everybody start [sic] testing everything on the market, the consequence would be a 'big war', and everybody will only get problems. . ." *Id*. VVG then advised Mr. Elalouf and Mr. Watt on how to further their scheme:

> usualy [sic], for hand knitting yarns . . . there is no need to use the best cashmere qualities, because nobody would feel the difference. So we, as many hand knitting yarn producers, ***usualy [sic] use these kind of "second level" cashmere. But if there are these kind of risks, we need to seriously think how to proceed in the future.*** In our opinion, there are following possibilities to check:
> ***a) we continue as so far, if we think that the risks are not too big.***
> b) we stop with this kind of blend.
> c) we change the blend and use the best possible cashmere quality, which will be easier to find in case of lab checks. Of course, the price would change. *Id.*

Despite Cascade's protestations, VVG continued manufacturing falsely-labeled yarn that it, through KFI, sold throughout Washington, knowing full well that it would harm Cascade's

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

business here.[14] *Id*. VVG even sent test reports purporting to show that the subject yarns contained cashmere to Roy Klein, Defendants' counsel in the United States, so that he would provide the reports to Cascade and other customers inquiring about the lack of cashmere. Guite Decl. at ¶ 3, Ex. B. Thus, VVG actively participated in the scheme to conceal the true fiber content of the yarn and continue the sales throughout the United States, including Washington.

VVG is aware that Cascade is headquartered in Washington. VVG has personally met with Cascade and sold and shipped yarn directly to Cascade in Washington. Dunbabin Decl., Ex. A. Also, Cascade has contacted other Defendants concerning their mislabeled yarn from its offices in Washington in 2006 and 2008. Dkt. No. 4, ¶¶ 44-48. Defendants are well aware that their misconduct has allowed them to profit to the detriment of Cascade's business. *See id.* at ¶ 95. Defendants have ***all*** advised, consented to and participated in KFI's wrongful conduct. *Id.* at ¶¶ 6-8, 10-12, 44-56, 94-95, 103, 107, 111, 118, 126-131. Defendants' wrongful conduct remains unabated. *Id.* at ¶ 96.

III. <u>DISCUSSION</u>

A. Plaintiff Need Only Make A *Prima Facie* Showing of Jurisdictional Facts.

In order to survive a challenge to personal jurisdiction brought pursuant to Fed. R. Civ. P. 12(b)(2), a "plaintiff need only make a prima facie showing of jurisdictional facts." *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). The plaintiff's allegations are assumed to be true for jurisdictional analysis. *See, e.g., AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). The "court may consider evidence presented in affidavits to assist in its determination." *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Conflicts between parties over statements contained in affidavits are resolved in the plaintiff's favor. *Bancroft and Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (overruled on other

[14] Like VVG, Defendant Bliss actively promotes the subject yarns in Washington, where at least 22 stores carry her brand. Dkt. No. 4 at ¶ 24; Dkt. No. 57, Exs. B-D. In August 2010 she made multiple appearances in Olympia, Bellevue, Seattle and Everett to sell and promote her products. Dkt. No. 57, Exs. C, D.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

grounds). Here, Cascade pled sufficient facts in its Amended Complaint (and submits additional facts herein in the form of sworn declarations) that VVG operates throughout the United States and that its conduct was aimed at the United States and, in some instances, specifically at Cascade in Washington. Tellingly, there is no Affidavit or Declaration submitted by VVG in support of its Motion.

B. VVG Has Sufficient Contacts With Washington To Support The Exercise Of Jurisdiction.

Personal jurisdiction over a nonresident defendant is determined under a two-part analysis: The exercise of jurisdiction must (1) satisfy the requirements of the applicable state long-arm statute, and (2) it must comport with federal due process. *Chute v. Carnival Cruise Lines*, 897 F.2d 377, 380 (9th Cir. 1990), *rev'd on other grounds*, *Panavision Int'l L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). It is well settled that the Washington's long-arm statute, RCW 4.28.185, extends jurisdiction to the limit of federal due process. *Chute v. Carnival Cruise Lines*, 113 Wn.2d 763 (1989); *Stairmaster Sports/Med. Prods., Inc. v. Pacific Fitness Corp.*, 916 F.2d 1049 (9th Cir. 1994). Accordingly, a federal court may exercise personal jurisdiction if doing so comports with constitutional due process. *See Pacific-Atlantic Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir. 1985); *Amazon.com, Inc. v. Kalaydjian*, 2001 U.S. Dist. LEXIS 4924, *4-5 (W.D. Wash., Feb. 20, 2001). Due process is satisfied where a non-resident defendant has "minimum contacts" with the forum state such that the assertion of jurisdiction "does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945).

Personal jurisdiction can be general or specific. Washington permits the assertion of general jurisdiction over a foreign defendant "doing business" within the state. RCW 4.28.080(10); *Varnau v. GM of Can. Ltd.*, 2010 U.S. Dist. LEXIS 44076 (W.D. Wash., May 5, 2010). In the absence of general jurisdiction, a court may still exercise specific jurisdiction if a defendant's "less substantial contacts with the forum give rise to the cause of action before the

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

court." *Doe*, 248 F.3d at 922. Washington allows personal jurisdiction over a foreign defendant that personally ***or through an agent*** transacts business within the state or performs an unfair trade practice in Washington. *See* RCW 4.28.185(1)(a); RCW 19.86.160. Here, it is undisputed that VVG transacted business within the state by shipping yarn here, and invoicing Cascade in Washington for the same. Dunbabin Decl., Ex. A.

C. Jurisdiction Over VVG Is Also Proper Pursuant To Federal Statute.

For cases arising under RICO, 18 U.S.C. § 1961 *et seq*., Congress has authorized nationwide and, in some cases, worldwide service of process. 16 James Wm. Moore et al., *Moore's Federal Practice* § 108.123[2][b] (3d ed. 2010). RICO was "enacted before the service of process element of jurisdiction was separated from the basis element as it is now in Rule 4(k)." *Id.* RICO speaks to nationwide service but actually means that "the court may acquire jurisdiction under [RICO] over defendants who do not have minimum contacts with the state where the federal court sits." *Id.* Thus, jurisdiction is proper if the defendant's contacts with the entire United States satisfy due process. *Id.* (citing *Go-Video v. Akai Elec. Co.*, 885 F.2d 1406, 1413 (9th Cir. 1989)); *see also Herbstein v. Bruetman*, 768 F. Supp. 79, 81-82 (S.D.N.Y. 1991) (finding jurisdiction under RICO over Argentine corporation based on minimum contacts with the United States).

Specifically, RICO's long-arm statute -- 18 U.S.C. § 1965(b) -- provides:

> [A]ny district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U.S.C. § 1965(b). "Congress intended the 'ends of justice' provision to enable plaintiffs to bring all members of a nationwide RICO conspiracy before a court in a single trial." *Butcher's Union Local No. 498 v. SDC Invest., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986).

Accordingly, pursuant to RICO, personal jurisdiction can be established over all co-defendants in a particular forum if: (1) there is personal jurisdiction over at least one of the

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

participants in the alleged conspiracy; and (2) there is no other district in which a court will have personal jurisdiction over all of the alleged co-conspirators. *See Butcher's Union Local No. 498*, 788 F.2d at 538; *see also Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1229-33 (10th Cir. 2006); *Bray v. Kendall*, 2010 U.S. Dist. LEXIS 281, at *10 (N.D. Cal., Jan. 5, 2010). Cascade has satisfied both requirements. First, as set forth below, this Court has personal jurisdiction over all Defendants in this action. Alternately, at a minimum, this Court has personal jurisdiction over KFI. In fact, KFI has not challenged personal jurisdiction as it admits that jurisdiction is proper as to it. This precludes the instant motion as at least one defendant is subject to jurisdiction in this district. *Bray*, 2010 U.S. Dist. LEXIS 281, at *10. Second, VVG does not contend that another district has personal jurisdiction over all of the alleged conspirators. In fact, it alleges that no other district has personal jurisdiction over it or defendant Watt. Motion, p. 9. Accordingly, both requirements are met, and the exercise of personal jurisdiction over all Defendants in this action is proper.[15] Here, jurisdiction over VVG is proper under the traditional jurisdictional analysis or pursuant to 28 U.S.C. § 1965.

D. Even If Specific Jurisdiction Were Required, Cascade Has Established That This Court Has Specific Jurisdiction Over Defendants.

Specific jurisdiction is proper where a cause of action arises directly from a defendant's contacts with the forum state. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). To establish specific jurisdiction, a plaintiff must show: (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed [itself] of the privileges of conducting activities in the forum; (2) the claim arises out of or results from the defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable." *Bancroft and Masters, Inc.*, 223 F.3d at 1086. Plaintiff bears the burden of proving the first two prongs of

[15] VVG argues that jurisdiction cannot be established under Federal Rule of Civil Procedure 4(k)(2). Motion, pp. 9-10. Because Cascade has shown that RICO's long arm statute, 18 U.S.C. § 1965 confers personal jurisdiction over all Defendants pursuant to Rule 4(k)(1), it does not respond to this argument as 18 U.S.C. § 1965(b) provides a specific basis for jurisdiction under Rule 4(k)(1).

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

the test, and if it can do so, the burden shifts to Defendant to present a "compelling case" that jurisdiction would be unreasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-802 (9th Cir. 2004).

1. Defendants, Including VVG, Have Purposefully Availed Themselves Into Washington.

Where a defendant's acts are tortious in nature, the Ninth Circuit applies the "effects test" to determine whether a defendant has "purposefully availed" itself into a forum. *Calder v. Jones*, 465 U.S. 783, 787 n.6 (1984); *Panavision Int'l*, 141 F.3d at 1321 (applying the effects test because unfair competition case was akin to a tort case); *United Truck & Equip., Inc. v. Curry Supply Co.*, 2008 U.S. Dist. LEXIS 110213, at *12 (D. Ariz., Nov. 5, 2008) (applying the effects test to an action for unfair competition and false advertising). To meet the effects test, a defendant allegedly must have "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Brayton-Purcell v. Recordon & Recordon*, 575 F.3d 981, 986 (9th Cir. 2009) (superseded on other grounds). The "express aiming" requirement "is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state." *Bancroft and Masters*, 223 F.3d at 1087; *Bryant v. Mattel*, 573 F. Supp. 2d 1254, 1272 (C.D. Cal. 2007) ("express aiming" requirement satisfied in a RICO action where the defendant's actions were "specifically engineered to result in the alleged illegal acquisition of trade secrets" belonging to the plaintiff, a resident of the forum state).

VVG's contacts with Washington alone satisfy all of the requirements for specific jurisdiction. Additionally, KFI's conduct should be imputed to VVG through an agency and/or conspiracy theory of jurisdiction. *See, e.g., Underwager v. Channel 9 Austl.*, 69 F.3d 361, 364 (9th Cir. 1995) (acknowledging the theory of conspiracy jurisdiction but noting that the plaintiff failed to allege facts of a conspiracy); *Northwest Laborers-Employers Health & Sec. Trust Fund v. Philip Morris, Inc.*, 1998 U.S. Dist. LEXIS 22814, at *7-8 (W.D. Wash., May 13, 1998) (prima

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

facie showing of personal jurisdiction on agency and conspiracy theories); *see also Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1031-32 (D.C. Cir. 1997); *Textor v. Bd. of Regents of N. Ill. Univ.*, 711 F.2d 1387, 1392-93 (7th Cir. 1983); *Res. Ventures, Inc. v. Res. Mgmt. Int'l, Inc.*, 42 F. Supp. 2d 423, 434 (D. Del. 1999). Here, Cascade has alleged and VVG does not dispute that it manufactured and/or brokered mislabeled yarn that it knew would end up in Washington and nationwide, and through KFI, it marketed, advertised and sold the mislabeled yarn in Washington. Dunbabin Decl., Ex. A; Dkt. 56, ¶ 3; Dkt. No. 57, Exs. A, B. VVG even circulated test reports purportedly showing that the mislabeled yarns contained cashmere in order to placate Cascade and other customers in Washington and throughout the United States. Guite Decl., Ex. B. In these circumstances, it is appropriate for the Court to impute the contacts of KFI -- the agent of VVG -- to VVG.

Furthermore, KFI's conduct need not be imputed as the October 2006 letter to Messer's. Watt and Elalouf shows that VVG undertook independent tortious acts directed at libeling and slandering Cascade and injuring its business with competitive shipments of falsely labeled yarn. Dunbabin Decl., Ex. C. These tortious acts even included at least one visit to a national trade show in the United States to peddle their mislabeled wares to other customers of Cascade and to quell concerns regarding Debbie Bliss *Cashmerino*. Dkt. No. 56, ¶ 3.

For purposes of the jurisdictional analysis, the first requirement of an "intentional act" is easily satisfied. As alleged throughout Cascade's Amended Complaint, Defendants have all engaged in an intentional, concerted scheme to sell mislabeled yarn in order to gain an unfair advantage and to harm Cascade's reputation and business. Dkt. No. 4, ¶¶ 1, 7. The intentional acts giving rise to specific jurisdiction for tort liability need not occur within Washington in order to confer jurisdiction.[16] *Glud & Marstrand A/S v. Microsoft Corp.*, 2006 U.S. Dist. LEXIS 62363, at *14 (W.D. Wash., Aug. 15, 2006).

[16] The proper inquiry is "to look specifically at the minimum contacts of the individual regardless of whether that individual was acting within his or her official capacity." *Kukui Gardens Corp. v. Holco Capital Group, Inc.*, 664 F. Supp. 2d 1103, 1110 (D. Hawaii 2008). Other courts have

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

Indeed, in *State of Washington v. Reader's Digest Ass'n*, the Washington Supreme Court found jurisdiction over a foreign corporation that sent unlawful sweepstakes materials into Washington through the mails. 81 Wn.2d 259, 277 (1972). The foreign corporation had no agents, employees, offices or other property within Washington, but it "deliberately and purposefully sought contact with Washington residents through the mail for the purpose of increasing subscriptions and sales of its products." *Id.* at 278. Because the corporation purposefully did some act directed at the forum state and the action arose out of that activity, the minimum contacts test was satisfied. *Id.*

Similarly, in *Huebner v. Sales Promotion, Inc.*, the Washington Court of Appeals found jurisdiction over foreign defendants that solicited business through magazine advertisements and personally contacted Washington residents. 28 Wn.App. 66, 71 (1984). One of the defendants had never visited Washington, but the court still found jurisdiction because he was a primary participant in sales to Washington residents that allegedly violated the Washington Consumer Protection Act. *Id.* at 71-72. The fact that the defendant conducted his activities outside the borders of the State of Washington "did not preclude Washington from exercising jurisdiction over him where the harm was suffered in Washington" because the harm that would flow from his activities would foreseeably flow to Washington. *Id*. at 72.

Here, Cascade has provided evidence that Defendants (including VVG) brokered, manufactured, advertised, sold and distributed the mislabeled yarn to retailers and consumers in Washington and nationwide. Dkt. No. 57, Exs. A-D; Guite Decl., Ex. A; Dunbabin Decl., Exs. A, B. It does not matter that some of these acts were performed outside of Washington. For example, VVG may have manufactured its yarn in Italy, but this does not insulate VVG from

---

found that individual contacts are relevant: (1) where the corporation is the agent or alter ego of the individual defendant; or (2) by virtue of the individual's control of, and direct participation in the alleged activities. *See Swartz v. Deutsche Bank*, 2008 U.S. Dist. LEXIS 36139, at *31 (W.D. Wash., May 2, 2008); *Wolf Designs, Inc. v. DHR & Co.*, 322 F. Supp. 2d 1065, 1072 (C.D. Cal. 2004). Either way, the individual contacts of Mr. Elalouf, Mrs. Elalouf, Mr. Opperman and Mr. Watt are relevant because they were all primary participants in the wrongdoing directed at Cascade in Washington. Dkt. No. 4., ¶¶ 6-8, 10-12, 44-56, 94-95, 103, 107, 111, 118, 126-131.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

liability, especially where the conduct was clearly directed to have an unlawful effect on Cascade and others in Washington. This is especially true where VVG conspired to conceal the mislabeling that had been brought to its attention by Cascade and actively attempted to mislead customers in Washington -- and Cascade -- that the subject yarn did, in fact, contain cashmere. Dunbabin Decl., Ex. C. Accordingly, the first prong is satisfied.

Second, the "express aiming" requirement is satisfied because Cascade has sufficiently alleged wrongful conduct against Defendants -- namely, unfair competition under the Washington Consumer Protection Act, false advertising under the Lanham Act and violations of RICO. Dkt. No. 4, ¶¶ 97-131. Cascade has also demonstrated that it competes directly with KFI and that Defendants were aware of the nature, scope, and location of Cascade's operations in Washington. Dkt. No. 4, ¶¶ 2, 44-48. VVG certainly knew -- it directly shipped yarn to Cascade in Washington. Dunbabin Decl., Ex. A. These allegations lead to the inexorable conclusion that VVG purposefully directed their intentional acts at the state of Washington. *See, e.g., The Bear Mill, Inc. v. Teddy Mountain, Inc.*, 2008 U.S. Dist. LEXIS 38007, at *17-19 (D. Idaho, May 7, 2008) ("[t]he fact that the parties are competitors in the teddy bear and franchise business, coupled with Defendant's knowledge of the location of Plaintiffs' business" satisfies the effects test); *Precision Craft Log Structures, Inc. v. Cabin Kit Co.*, 2006 U.S. Dist. LEXIS 19233, at *20 (D. Idaho, Mar. 3, 2006) (because the parties were competitors and sold goods throughout the United States, the defendant's "alleged intentional actions were expressly aimed or directed at the forum state and caused harm which the defendant knew would be suffered in the forum state where [the plaintiff] had its principal place of business").

A foreign defendant's act of soliciting business in the forum state will generally be considered purposeful availment if that solicitation results in the transaction of business or even mere contract negotiations. *See, e.g., Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). Further, and fatal to VVG's assertion, a defendant's act of placing a product into the stream of commerce and "***marketing the product through a distributor who has agreed to***

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

serve as the sales agent in the forum State" is also considered purposeful availment. *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (emphasis added). Here, Cascade has alleged and provided evidence that KFI distributed the mislabeled yarn brands to a number of stores in Washington, that VVG manufactured those falsely labeled brands, that its agent KFI sold those brands throughout Washington and that Mr. Opperman and Ms. Bliss made appearances to promote and market those same products in Washington.[17] *See* Dkt. No. 57, Exs. B-D, Dkt. No. 113, Guite Decl., Ex. A; Dunbabin Decl., Exs. A - C. This conduct is sufficient to show purposeful availment.

Furthermore, Cascade has provided evidence that KFI used an interactive website to accept orders from retailers in Washington and to direct consumers in Washington to those retailers. Dkt. No. 57, Exs. A, B. This fact alone is sufficient to confer jurisdiction over KFI and, thus, its related company or principal, VVG, in Washington. *Asahi Metal Indus. Co.*, 480 U.S. at 112; *Qwest Comms. Int'l v. Sonny Corp.*, 2006 U.S. Dist. LEXIS 29832, *4-7 (W.D. Wash., May 15, 2006) (effects test satisfied where the defendant operated an "interactive-not passive-website" and intentionally made sales to Washington residents and shipped its product here). Accordingly, Defendants, including VVG, have "expressly aimed" their conduct into Washington and, accordingly, should have reasonably anticipated that they would be haled into court there.

The third and final requirement is satisfied because Cascade and KFI are direct competitors, any sale facilitated by Defendants' scheme has the effect of injuring Cascade in Washington, even if the sale was not to an Washington resident. Indeed, Defendants' conduct has caused harm to Cascade in the form of lost business, and at least since 2006, Defendants have known the location of Cascade's business. Dkt. No. 4, ¶¶ 44-48, 95. Therefore, the Court should

[17] This Court may consider Ms. Bliss's contacts with Washington occurring after this action was commenced because her actions reveal her intent to serve the yarn market in Washington. *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947-48 (7th Cir. 1992).

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

find that Defendants purposefully directed their activities at Washington and that Defendants should have reasonably anticipated being sued in Washington.

2. Cascade's Claims Arise Out of or Relate to Defendants' Forum-Related Activities.

The second requirement for finding specific personal jurisdiction is that the plaintiff's claim arises out of or relates to the defendant's forum-related activities. This element is established if the plaintiff would not have been injured "but for" the defendant's activities. *Panavision*, 141 F.3d at 1322. This test "preserves the requirement that there be some nexus between the cause of action and the defendant's activities in the forum." *Chute*, 897 F.2d at 385.

Here, but for VVG's intentional conduct of manufacturing brokering, advertising and marketing mislabeled yarn, and its attempt to quash discussion of the lack of fiber content of those yarns, which reached into this district and affected Cascade, Cascade's claims would not have arisen. As such, there is a nexus between Cascade's claims and Defendants' activities.

3. The Exercise of Jurisdiction is Reasonable.

The exercise of personal jurisdiction must also be reasonable. Once a plaintiff has shown purposeful availment, jurisdiction is presumptively reasonable, and the burden shifts to the defendant to show a "compelling case" why jurisdiction is unreasonable. *Roth v. Garcia Marquez*, 942 F.2d 617, 625 (9th Cir. 1991). In determining reasonableness, courts weigh the following factors: (1) the extent of defendant's injection into the forum; (2) defendant's burden in litigating in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Theo H. Davies and Co. v. Republic of The Marshall Islands*, 174 F.3d 969, 975 n.4 (9th Cir. 1999).

VVG cannot present a compelling case why the exercise of jurisdiction in this case is unreasonable. The factor of purposeful interjection is satisfied by a finding of purposeful

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887

availment. *Roth*, 942 F.2d at 620-21. Additionally, there is no significant inconvenience to VVG. Indeed, modern advances in communications and transportation have significantly reduced the burden of litigating in a foreign state. *See Sinatra*, 854 F.2d at 1199. VVG has already retained local counsel, with whom they may confer by telephone, fax, and e-mail.

Furthermore, Washington has a substantial interest in providing effective judicial redress for its citizens. *Id.* at 1200. This interest is particularly strong where the claim is one for tortious injury. *Glud & Marstrand A/S*, 2006 U.S. Dist. LEXIS 62363, at *23. This forum is convenient for Cascade because it is a resident of Washington and was injured in the forum. And, as discussed above, there appears to be no alternative forum where Cascade can bring suit against all Defendants. Accordingly, it is reasonable to hear the case here in Washington. VVG cannot meet its burden of establishing otherwise.

IV. CONCLUSION

Cascade respectfully requests that the Court deny VVG's Motion;[18] jurisdiction is proper under 18 U.S.C. § 1965 and/or specific jurisdiction exists over all of the Defendants -- including VVG -- in the Western District of Washington.

Dated: November 22, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: */s/ Robert J. Guite*
Robert J. Guite, WSBA No. 25753

Attorneys for Plaintiff
CASCADE YARNS, INC.

[18] The Court may also consider *sua sponte* ordering a show cause hearing for defense counsel's filing of a motion which is neither founded in fact or in law.

SQUIRE, SANDERS & DEMPSEY L.L.P.
275 BATTERY STREET, SUITE 2600
SAN FRANCISCO, CALIFORNIA 94111-3492
415.954.0200 FAX: 415.393.9887