



1 introduced the Declaration of Yvonne M. Moore (“Moore Declaration”) into the record, setting  
2 forth sufficient facts to support jurisdiction over Mr. Opperman.

3 The Court did not consider the Moore Declaration because it was not technically  
4 incorporated into Cascade’s briefing on Defendants’ motion. It is manifest error for the Court to  
5 overlook this evidence because the Moore Declaration was part of the record when the Court  
6 issued its decision and was referenced twice in contemporaneous, related briefing. Mr.  
7 Opperman had ample opportunity to respond to this evidence. The Court should not elevate form  
8 over substance and allow Mr. Opperman to evade jurisdiction simply because Cascade did not  
9 reference the Moore Declaration in one particular set of briefing. Therefore, the Court should  
10 partially reconsider its order and reinstate Mr. Opperman as a defendant.

## 11 **II. FACTUAL BACKGROUND**

12 On May 24, 2010, Cascade, a Washington corporation, brought this action in the Western  
13 District of Washington. On July 26, Defendants Debbie Bliss, Designer Yarns, Ltd., Diane  
14 Elalouf, Sion Elalouf, Jay Opperman and David Watt (collectively, “Defendants”) brought a  
15 Motion to Dismiss for Lack of Personal Jurisdiction. Dkt. No. 34. Months later, on October 29,  
16 the remaining defendant, Filatura Pettinata V.V.G. Di Stefano Vaccari & C.’s (S.A.S.) (“VVG”),  
17 brought an untimely, identical motion. Dkt. No. 88. The same counsel represents Mr. Opperman  
18 and all the other defendants.

19 On August 16, Cascade opposed Defendants’ motion on the ground that the Court has  
20 specific and RICO jurisdiction over all of the defendants. Dkt. No. 55. Cascade argued that Mr.  
21 Opperman, a director of, and one of the registered owners of, the shares of defendant Designer  
22 Yarns, Ltd., has sufficient contacts with Washington to support specific jurisdiction. *Id.* Cascade  
23 pointed out that Mr. Opperman has held himself out as an independent sales representative of  
24 KFI, and more recently as KFI sales manager responsible for managing a national sales force  
25 tasked with “pushing” sales of handknitting yarn products to retailers. *Id.* This was the extent of  
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1 the information available to Cascade at that time. On August 20, Defendants filed a reply in  
2 support of their motion. Dkt. No. 63.

3 In November, nearly three months later, while preparing to respond to Defendants'  
4 opposition to Cascade's Motion for Writ of Attachment, Cascade spoke with Yvonne Moore, the  
5 owner of a yarn store in Burien, Washington. By chance, Ms. Moore mentioned that Mr.  
6 Opperman had visited her store to market and sell her various yarns, including the mislabeled  
7 Debbie Bliss Cashermino yarns. Dkt. No. 113. Cascade had already opposed Defendants'  
8 motion months earlier, but Defendants raised the issue of the Court's personal jurisdiction again  
9 in their Opposition to Motion for Writ of Attachment that was pending at that time. *See* Dkt. No.  
10 105 at pp. 2, 5. Cascade obtained a declaration from Ms. Moore, whereby Cascade established  
11 that Mr. Opperman personally calls on yarn stores in Washington to sell KFI's products,  
12 including the mislabeled yarns. Dkt. No. 113. To further buttress its argument that personal  
13 jurisdiction exists over Mr. Opperman, Cascade incorporated the Moore Declaration into its  
14 Reply in Support of the Motion for Writ of Attachment, filed on November 19, and in its  
15 Opposition to VVG's Motion to Dismiss for Lack of Personal Jurisdiction, filed on November 22.  
16 *See* Dkt. No. 111 at p. 2; Dkt No. 115 at p. 6.

17 Around that same time, the Court ordered supplemental briefing on Defendants' motion  
18 with respect to Mr. Watt and Mr. Elalouf. Dkt. No. 110. The Court did not ask for additional  
19 information regarding Mr. Opperman; therefore, in compliance with the Court's request for  
20 limited supplemental briefing, Cascade did not discuss the Moore Declaration in its Supplemental  
21 Brief, which was filed on November 29. *See id.*; Dkt No. 121. That same day, Defendants filed  
22 their supplemental brief in support of their Motion, and VVG filed an untimely reply in support of  
23 its Motion to Dismiss. Dkt. No. 119; Dkt. No. 120. Neither Mr. Opperman nor any other  
24 defendant acknowledged or challenged the Moore Declaration, despite the fact that it had been  
25 raised in briefing twice in the past two weeks. *See id.* Cascade was confident that it had raised  
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1 for Mr. Opperman and the Court that Mr. Opperman had sufficient contacts with Washington to  
2 support jurisdiction.

3 On January 3, 2011, the Court issued an order granting in part and denying in part  
4 Defendants' motion. Dkt. No. 161. The Court dismissed Mr. Opperman from this action, finding  
5 that the Court lacked RICO jurisdiction and that Cascade failed to allege sufficient facts  
6 supporting specific personal jurisdiction over Mr. Opperman. *Id.* at pp. 12, 18. Specifically, the  
7 Court found that Cascade offered no facts to determine whether Mr. Opperman made contacts or  
8 sales with customers in Washington. *Id.* at p. 12. In a footnote, the Court stated: "Although  
9 Cascade presents a declaration highlighting Mr. Opperman's sales contacts within Washington  
10 (Dkt. # 113), it did not incorporate those into either the Amended Complaint or the responsive  
11 pleadings, declarations, and exhibits associated with these motions." *Id.* at p. 12 n.4. Thus, the  
12 Court suggested that if Cascade had incorporated the Moore Declaration in the briefing associated  
13 with Defendants' motion, it would have found jurisdiction over him. *See id.* Cascade now  
14 requests that the Court reconsider its decision to disregard the Moore Declaration and reinstate  
15 Mr. Opperman as a defendant.

### 16 **III. DISCUSSION**

#### 17 **A. Partial Reconsideration Is Warranted Because The Court Should Consider 18 The Moore Declaration.**

19 The Federal Rules of Civil Procedure do not explicitly provide for a motion for  
20 reconsideration prior to a final judgment. However, a district court always has the inherent power  
21 to reconsider and modify its interlocutory orders prior to the entry of judgment. *Smith v.*  
22 *Massachusetts*, 543 U.S. 462, 475 (2005). Furthermore, L.R. 7(h) expressly authorizes a motion  
23 for reconsideration. L.R. 7(h) provides that the moving party must show "manifest error in the  
24 prior ruling or a showing of new facts or legal authority which could not have been brought to its  
25 attention earlier with reasonable diligence." A district court should grant reconsideration where  
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1 facts were indeed presented but overlooked. *DeLong Corp. v. Raymond Int'l, Inc.*, 622 F.2d 1135,  
2 1140 (3d Cir. 1980) (overruled on other grounds).

3 **1. It is Manifest Error to Overlook the Moore Declaration**

4 Cascade satisfies L.R. 7(h) because it is manifest error not to consider evidence in the  
5 record relevant to the existence of personal jurisdiction over Mr. Opperman. *See Grasso v. Estate*  
6 *of Joseph Grasso, Sr.*, 2010 U.S. Dist. LEXIS 136506, at \*5 (N.D.N.Y, Dec. 24, 2010). In  
7 *Grasso*, under a standard virtually identical to L.R. 7(h), the court granted a motion for  
8 reconsideration of a ruling dismissing a party from the action for lack of personal jurisdiction. *Id.*  
9 In his motion for reconsideration, the plaintiff pointed to factual evidence in the record that the  
10 court had not considered in making its initial determination that the court did not have personal  
11 jurisdiction over a particular defendant. *Id.* The court found that the evidence it had not  
12 considered actually compelled “the opposite result, and [it found] that failure to amend its earlier  
13 decision in light of this evidence would lead to manifest injustice to [the plaintiff], namely the  
14 wrongful dismissal of his claims against [the defendant] in his individual capacity.” *Id.* The  
15 court thus reversed its prior ruling and reinstated the defendant because it confirmed that personal  
16 jurisdiction comported with the requirements of due process. *Id.* at \*6.

17 Here, as in *Grasso*, Mr. Opperman should be reinstated as a defendant. The Court has not  
18 considered the Moore Declaration, which the Court itself acknowledges was part of the record  
19 when Mr. Opperman was dismissed. *See* Dkt No. 161 n.4. Although Cascade did not incorporate  
20 the Moore Declaration in its briefing on the Motion to Dismiss given that the briefing was closed  
21 by the time it obtained the Moore Declaration, it did in fact incorporate the Moore Declaration  
22 into related, contemporaneous briefing, to which Mr. Opperman had ample opportunity to  
23 respond. Dkt. No. 111 at p. 2; Dkt. No. 115 at p. 6. Although Cascade concluded its briefing on  
24 Defendants’ Motion in August and did not discover the evidence regarding Mr. Opperman until  
25 November, it included the newly discovered evidence in all related briefing filed thereafter. *See*  
26 Dkt. No. 111 at p. 2; Dkt No. 115 at p. 6. Cascade was not aware of and thus could not cite to

1 Mr. Opperman's activities in Washington when it filed its opposition to Defendants' motion in  
2 August 2010. Cascade did not reference the Moore Declaration in its Supplemental Brief because  
3 the Court did not ask for additional information on Mr. Opperman. *See* Dkt. No. 110; Dkt. No.  
4 121.

## 5 **2. The Moore Declaration Establishes Personal Jurisdiction over Mr. 6 Opperman**

7 To overlook Ms. Moore's unrebutted testimony will result in the wrongful dismissal of  
8 claims against Mr. Opperman in this District. *See DeLong Corp.*, 622 F.2d at 1140; *Grasso*, 2010  
9 LEXIS 136506 at \*5. The Moore Declaration, along with the other evidence introduced by  
10 Cascade, shows that the exercise of jurisdiction over Mr. Opperman in Washington comports with  
11 due process. Indeed, in its order, the Court suggests as much. *See* Dkt. No. 110 n.4.  
12 Furthermore, the Court conferred jurisdiction over Defendants Designer Yarns, Ltd. and Debbie  
13 Bliss based on just one letter sent to Cascade in Washington via their attorney. Dkt. No. 110 at  
14 pp. 12-14. Mr. Opperman actually came to Washington to sell and promote the products,  
15 including mislabeled yarn; thus, *a fortiori*, jurisdiction over Mr. Opperman is proper.

16 Mr. Opperman's actions in Washington were related to this litigation and purposefully  
17 directed at Cascade. The exercise of personal jurisdiction thus comports with due process. Mr.  
18 Opperman should not be able to escape this Court's jurisdiction simply because Cascade  
19 incorporated the Moore Declaration in related briefing, but not in its Supplemental Brief, which  
20 was not supposed to address Mr. Opperman at all.

## 21 **IV. CONCLUSION**

22 The Moore Declaration establishes the Court has jurisdiction over Mr. Opperman. This  
23 evidence was introduced into the record and incorporated into related briefing while Defendants'  
24 motion was pending. Thus, it is manifest error to overlook the evidence and dismiss Cascade's  
25 claims properly brought against Mr. Opperman in this forum. Accordingly, Cascade respectfully  
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1 requests that the Court reverse the portion of its order dismissing Mr. Opperman from this action  
2 and reinstate Mr. Opperman as a defendant.

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SQUIRE, SANDERS & DEMPSEY (US) LLP

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

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Attorneys for Plaintiff  
Cascade Yarns, Inc.

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