

HON. RICARDO S. MARTINEZ

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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

Defendants.

Case No. 2:10-cv-00861 RSM

DECLARATION OF ROBERT A. DUNBABIN, JR. IN SUPPORT OF PLAINTIFF CASCADE YARNS, INC.'S MOTION TO DISQUALIFY

Note On Motion Calendar: August 6, 2010

I, Robert A. Dunbabin, Jr., hereby declare as follows:

1. I am an attorney at law, admitted to practice before all of the courts of the State of Washington and this Court and am in-house counsel with Cascade Yarns, Inc. ("Cascade") and personally involved in numerous business decisions of the same. I submit this declaration in support of Cascade's Motion to Disqualify Pepper Hamilton LLP and Davis Wright Tremaine

1 LLP. This declaration is based on my personal knowledge and, if called upon to do so, I would
2 and could testify competently as to the matters set forth herein.

3 2. In 2009, in response to a lawsuit by a management level employee, I contacted
4 Michael Killeen at Davis Wright Tremaine, for the purpose of obtaining his representation on
5 behalf of Cascade.

6 3. In the initial telephone conversation, Mr. Killeen stated that he needed to perform
7 a conflicts check. Following that conversation, either he or I initiated another call (I do not recall
8 who) and Mr. Killeen informed me that there was no conflict and that he was available to
9 represent Cascade on this matter. At that point, it was my understanding that Mr. Killeen
10 undertook representation and that I agreed to his representation on behalf of Cascade.

11 4. We spoke once or twice more, before a final conference call which is discussed
12 below. A number of times I asked about him filing a Notice of Appearance with the court or
13 putting in an Answer. Mr. Killeen stated that, as I had contacted him shortly after service, there
14 was no time urgency, but that he would submit the appropriate paperwork in a timely manner.
15 We also corresponded a few times via email during this time.

16 5. To prepare our Answer and to formulate a strategy, Mr. Killeen requested that the
17 four members of the control group join him in a telephone conference.

18 6. Prior to my position with Cascade, as in-house counsel, I practiced as a private
19 civil and employment litigation attorney with a plaintiff-oriented focus.

20 7. I had known Mr. Killeen from an extremely contentious class action case that I
21 was primarily responsible for handling. That matter was captioned *McAllister v. Hays Home*
22 *Delivery* and was filed in the King County Superior Court. There were three law firms for the
23 various defendants in the case. I believe that the main defendant (whom Mr. Killeen did not
24 represent) was directing the actions of the other two law firms, including Davis Wright Tremaine.
25 The disagreements between the principal of the firm where I worked, myself, and the attorneys
26 for the main defendant were severe and progressed to the point where the main defense attorney

1 was not able to participate in depositions that I conducted or defended. Nevertheless, Mr. Killeen
2 and I maintained a cordial relationship and I found him to have a calming effect on the tension
3 that occurred during depositions and appearances before the court.

4 8. Based upon my impression that Mr. Killeen was not instigating the improper
5 litigation tactics in that matter and that he lacked the authority necessary to respond to some
6 discovery requests, I positioned the case such that plaintiff was able to bring a motion to compel.
7 Plaintiff obtained the order and then sought the imposition of sanctions in connection with Mr.
8 Killeen and his client's failure to comply with the same. The court sanctioned defendants \$5,000
9 for failure to comply, following an unflattering report from a highly esteemed Seattle attorney
10 who acted as special master. I did not believe that there would be any hard feelings between
11 myself and Mr. Killeen, as the sanction really was a result of the nature of his representation and
12 apparent lack of authority to respond to discovery not vetted by the main defendant's attorney.

13 9. After the initial communications, which are discussed above, Cascade's control
14 group met in my office for the telephone conference with Mr. Killeen, in order to prepare a
15 defense and formulate an Answer to the Complaint. During that conference, Mr. Killeen asked
16 pointed questions regarding Cascade's internal procedures, decision making processes, approach
17 toward litigation (such as aversion to risk and propensity to settle or to litigate), conflicts among
18 management, decision-making authority, autonomy and reputation in the industry and the
19 community. We operated under the impression that we had retained Mr. Killeen and were
20 forthcoming and honest about the operation of the company and our litigation posture and desires.
21 I specifically sought out Mr. Killeen (and Davis Wright Tremaine) because I believed that his
22 litigation strategy, and that of his firm, would benefit Cascade in the subject action. I advised Mr.
23 Killeen, repeatedly, that we specifically retained him because of that belief.

24 10. We would have not shared our company litigation strategy with Mr. Killeen if we
25 thought that it would be disclosed. As in-house counsel, I certainly would not want what I said to
26 Mr. Killeen about our company litigation philosophy to be disclosed to the Defendants in this

1 action, as I believe that such information could be used against Cascade to its detriment. I
2 repeated our litigation philosophy to Mr. Killeen at least twice and would not want this shared
3 with the Defendants in this case or their counsel for obvious strategic reasons.

4 11. In this telephone conference, which lasted 45 minutes to an hour, Mr. Killeen's
5 tone began to take an edge as the time progressed. He took a very different attitude than he had in
6 our earlier telephone calls. I found him to be patronizing and dismissive of me, to the point of
7 provoking raised eyebrows and hand gestures from the three other people in the room. From the
8 perspective of the people in the room, he became abusive and condescending, and brushed aside
9 some key facts that we offered to explain our defense. To me, it became obvious that he had not
10 put aside the \$5,000 discovery sanction that the Court ordered in the *McAllister* matter. Two of
11 the people in the room urged me to hang the telephone up on Mr. Killeen and retain another
12 attorney. I did terminate the call, though I do not recall the exact means other than I did not
13 simply just hang-up on him. I believe that someone had finally said "hang up on him" and that I
14 told Mr. Killeen that I would have to call him back, or something else unconvincing to that effect.

15 12. Following that call on March 5, 2009, I received a terse email wherein Mr. Killeen
16 wrote that "it is in Cascade's best interest to engage a lawfirm [sic] other than DWT."

17 13. Thereafter, I received an envelope from Davis Wright Tremaine, which I expected
18 to be a bill for Mr. Killeen's time. To my great surprise, it was a curt letter indicating that Mr.
19 Killeen had declined to undertake our representation. I never did receive a bill and suspect that
20 the matter was handled informally within the firm.

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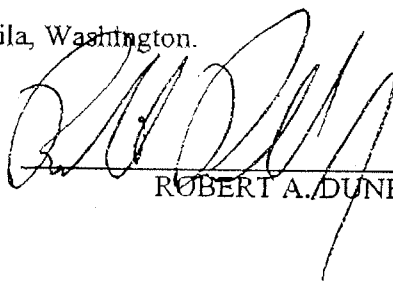
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14. At no time, has Davis Wright Tremaine sought, or has Cascade offered, to waive the conflict. My first notice of this was when Defendant's made an appearance with the Court.

I declare under penalty of perjury under the laws of the United States of America and the state of Washington that the foregoing is true and correct.

Executed on July 22, 2010 at Tukwila, Washington.



ROBERT A. DUNBABIN, JR.

DECLARATION OF ROBERT A. DUNBABIN, JR. IN SUPPORT OF CASCADE'S MOTION TO DISQUALIFY - 5 CASE NO. 2:10-CV-00861 RSM

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