

1 with the added tactical bonus simultaneous filing of its supplemental brief (due November 29)
 2 and raising a new argument on Reply -- VVG filed its Reply on November 29. Its Reply should
 3 be stricken and all arguments contained therein should not be considered by this Court. LR 7(g).

4 **B. VVG's National Contacts Are Relevant; This Court Has Jurisdiction.**

5 In the untimely reply, VVG argues for the first time that service abroad precludes
 6 jurisdiction under RICO because RICO does not expressly provide for worldwide service.
 7 VVG's argument, even if correct, would not support dismissal. Cascade has specific jurisdiction
 8 over VVG based on its contacts with Washington and the contacts of its agent, KFI, which sells
 9 VVG's products in Washington. Dkt. No. 118. Because KFI concedes this Court has jurisdiction
 10 over it and because Rule 4(k)(2) provides jurisdiction over Defendant Watt based on his contacts
 11 with the United States,² the requirements of RICO are met, jurisdiction exists in Washington.³

12 VVG argues that jurisdiction under RICO is based on the method of service. However,
 13 courts have routinely exercised RICO jurisdiction over defendants abroad based on their contacts
 14 with the United States, regardless of the method of service. *See, e.g., Larsen v. Lauriel Invs.,*
 15 *Inc.*, 161 F. Supp. 2d 1029, 1048 (D. Ariz. 2001) (exercising RICO jurisdiction over Bahamian
 16 residents); *Nagoya Venture Ltd. v. Bacopulos*, 1998 U.S. Dist. LEXIS 8580, *13-16 (S.D.N.Y.
 17 June 11, 1998) (exercising RICO jurisdiction over Canadian corporations); *Madanes v. Madanes*,
 18 981 F. Supp. 241, 260 (S.D.N.Y. 1997) (exercising RICO jurisdiction over Argentinian citizen
 19 and Isle of Man resident and corporation); *Herbstein v. Bruetman*, 768 F. Supp. 79, 81 (S.D.N.Y.
 20 1991) (exercising RICO jurisdiction over Argentinian corporation). Furthermore, the Ninth
 21 Circuit has never conditioned the national contacts test based on the manner or place where

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 23 ² VVG acknowledges in its opening brief that this is the Court should consider Defendant Watt's
 contacts with the United States under Rule 4(k)(2). Dkt. No. 88, pp. 2, 8-9.

24 ³ The requirement that all defendants cannot be subject to suit in another forum is, thus, satisfied.
 25 However, this requirement, as set forth in *Butcher's Union Local No. 498, United*
Food & Commercial Workers v. SDC Inv. Inc., 788 F.2d 535, 538 (9th Cir. 1986), has been
 26 heavily criticized and may have been wrongly decided. *See, e.g., Cory v. Aztec Steel Bldg., Inc.*,
 468 F.3d 1226, 1231 (10th Cir. 2006).

1 service was actually effected or the specific statutory provision authorizing nationwide service.
 2 *North v. Winterthur Assurances*, 279 B.R. 845, 852 (D. Ariz. 2002) (rejecting argument that
 3 national contacts do not apply unless the defendant is served pursuant to the applicable provision
 4 for nationwide service of process); *see also Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406,
 5 1414 (9th Cir. 1989). Instead, the Ninth Circuit has emphasized the fact that Congress, by
 6 authorizing national service, broadened the authorized scope of personal jurisdiction, regardless
 7 of the wording of the statute.⁴ *Id.*

8 VVG's contrary position is based on outdated principles. *See Stauffacher v. Bennett*, 969
 9 F.2d 455, 460 (7th Cir. 1992). In 1992, when *Stauffacher* was decided, service on foreign
 10 defendants could only be made pursuant to a particular federal statute or a state statute or rule.
 11 *North*, 279 B.R. at 852. Thus, in the absence of an express federal statute, courts had to apply the
 12 applicable state long arm statute. *Id.* In 1993, the requirement that service outside of the United
 13 States had to be authorized by state or federal law was eliminated. Cascade is no longer so
 14 limited and, thus, the RICO national contacts test is appropriate when service is effected through
 15 Rule 4. Cascade properly served VVG and, thus, based on its minimum contacts with
 16 Washington and the United States, VVG is subject to jurisdiction before this Court. No amount
 17 of gamesmanship can change this result.

18 Dated: December 3, 2010

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 22 CASCADE YARNS, INC.

23 ⁴ It would not make sense to apply the traditional minimum contacts test because it "was derived
 24 primarily out of a concern for principles of federalism[, which] principles are inapplicable when
 25 Congress has authorized nationwide service of process." *North*, 279 B.R. at 852. A foreign
 26 defendant -- unconcerned with state boundaries and principles of federalism -- should not be
 allowed to benefit from a more restrictive minimum contacts test simply because it was served
 offshore. *See id.* Otherwise, foreign defendants with substantial, harmful contacts with the
 United States could evade RICO jurisdiction.