

1 defendants made a decision to warehouse and to stop shipping the inexcusable acrylic-heavy
2 version after Mr. Elalouf signed the Continuing Guaranty.

3 **II. REPLY**

4 **A. KFI Stopped Shipping A Whole Line Of Yarn, Not One Color As It
5 Misleadingly Implies.**

6 In her sworn declaration, Ms. Lucente clearly testified that KFI admitted that “the entire
7 [Kashmir] DK line has been discontinued.” Dkt No. 134, ¶3. She was told that this occurred
8 seven months ago. *Id.* This was contradictory as new colors were added to the line as disclosed
9 on KFI’s website for this Fall. *Id.* Even as of today, KFI’s website lists the yarn as being in
10 stock. Reply Declaration of Robert J. Guite, Ex. A. Even Mr. Elalouf’s declaration is consistent
11 with this understanding, and at odds with defense counsel’s inference to the contrary. He testified
12 that “KFI has recently discontinued its sale of Louisa Harding Kashmir DK.” Dkt. No. 146, ¶4.¹

13 **B. Expedited Discovery Is Crucial Where KFI Admitted That It Is Trying To
14 “Empty The Warehouse” And Where Defense Counsel Argues That There Is
15 No Duty To Preserve The Yarn For Random Sampling.**

16 Mr. Elalouf’s convenient offer to preserve samples for testing purposes aside, Cascade
17 would prefer to obtain its own samples directly from KFI’s inventory. Defendant’s agent
18 admitted to Ms. Lucente that KFI was trying to “empty the warehouse” of this product. Dkt. No.
19 134, ¶3. More concerning than KFI’s intent to dispose of the incriminating evidence, is defense
20 counsel’s argument that defendants have no duty to preserve what they are trying to destroy:
21 “KFI’s inventory management and sales practices... are separate and apart from its obligations to
22 preserve and produce documents and things which may be relevant to this lawsuit.” Dkt No. 145
23 at 4:4-6. Here, KFI is both in the process of disposing of the smoking gun, while arguing that it
24 has a legitimate business duty to do so.

25 ¹ Defense counsel have already been shown to, at a minimum, play fast and loose with sworn
26 testimony. Mr. Elalouf’s misstatement that he signed his declaration in Amityville, New York on
December 20, 2010, while the facsimile header line evidences that it was sent from an OfficeMax
in Hallandale Beach, Florida, borders on the bizarre.

1 **C. Expedited Discovery Is Needed For The Cashmere Luxury Yarns That KFI**
2 **Manufactured For A.C. Moore, But Were Returned By A.C. Moore As Those**
3 **Yarns Lacked The Labeled Cashmere.**

4 Mr. Elalouf was aware that the “Cashmere Luxury” brand of yarns that he imported for
5 A.C. Moore lacked cashmere, but he advised them to continue to sell the yarn that they knew to
6 be mislabeled. Dkt. No. 133, ¶ 8, Ex. G at p. 3 (“The SGS tests show the product doesn’t contain
7 the fiber content it’s supposed [to] contain per the label;” *Id.* “This product is as good as it gets
8 for what it is....It is just the nature of the beast.” *Id.* and “The bottom line is that the Cashmere
9 Luxury product that you bought from us is just fine and we would like you to sell through your
10 inventory as well as the inventory that we hold here for you.”). *Id.* KFI did accept a return of the
11 Cashmere Luxury product. *Id.* However, KFI appeared to recently offer this same yarn on
12 consignment this past summer. Dkt. No. 135, ¶¶ 4-6.

13 Based upon the exchange between KFI and A.C. Moore, Cascade believes that KFI had a
14 substantial amount of Luxury Cashmere that A.C. Moore either had not accepted or had returned.
15 Allowing Cascade to inspect, and draw samples of this product, would allow Cascade to estimate
16 how much of this product is still in stock and how much of it has been sold, after it was refused as
17 mislabeled.

18 **D. It Has Been Nearly Seven Months Since KFI Was Served In This Action And**
19 **KFI Does Not Deny That It Will Suffer No Burden As A Result Of The**
20 **Requested Expedited Discovery.**

21 KFI was served in early June, nearly seven months ago. Normally, discovery would be
22 coming to a close at this point and Cascade would not have been required to seek leave of this
23 Court to complete discovery allowed by Fed. R. Civ. P. 34. *Martin v. Reynolds Metal Corp.*, 297
24 F.2d 49, 57 (9th Cir. 1961); *Minnesota Mining & Mfg. v. Nippon Carbide Indus. Co., Inc.*, 171
25 F.R.D. 246, 248-49 (D. Minn. 1997). KFI does not dispute the availability of expedited
26 discovery or that sampling is available and appropriate under Rule 34. Apart from the lack of any
27 real expedition of discovery, KFI does not allege that it will suffer any burden by having Cascade

1 purchase its products. Balancing the clear need with the lack of burden, the Court should grant
2 this motion.

3 **III. CONCLUSION**

4 KFI's opposition falls fully flat: it does not deny that it has stopped selling yarn, which is
5 still in its warehouse, due to signing the Continuing Guaranty. Nor does it allege any burden in
6 allowing Cascade to make purchases of its yarn. Accordingly, given the showing of good cause
7 and the lack of any burden, this motion should be granted.

8
9 Dated: December 23, 2010

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