

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington
corporation,

Plaintiff,

v.

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.) an entity organized or existing
under the laws of Italy, SION ELALOUF, a
natural person, DIANE ELALOUF, a natural
person, JAY OPPERMAN, an individual,
DEBBIE BLISS, a natural person, DAVID
WATT, a natural person and DOES 1-50.

Defendants.

Case No. C10-00861 RSM

**DEFENDANTS’ OPPOSITION TO
MOTION FOR LEAVE TO FILE
SECOND AMENDED
COMPLAINT**

**Note on Motion Calendar:
January 28, 2011**

In its First Amended Complaint, Plaintiff, Cascade Yarns, Inc. (“Cascade”), not only failed to allege facts sufficient to establish jurisdiction over Defendant Jay Opperman, it failed to allege that Mr. Opperman had *any* contacts with the State of Washington. Not surprisingly, the Court dismissed Mr. Opperman from the lawsuit for lack of personal

1 jurisdiction. In the wake of that dismissal, and *after* Cascade filed a summary judgment
 2 motion (which has since been stricken under Rule 56(d)), Cascade seeks to resurrect its
 3 claim against Mr. Opperman through the instant Motion for Leave to File a Second
 4 Amended Complaint. Cascade seeks to bring Mr. Opperman back into the case based only
 5 on belated, speculative allegations about Mr. Opperman's 2009 contacts with Washington.
 6 Defendants remaining in the case (Knitting Fever, Inc., Designer Yarns, Ltd., Sion Elalouf,
 7 and Debbie Bliss¹) hereby oppose Cascade's Motion, on several grounds.

8 First, Cascade ignores that it, as the Plaintiff, bore the burden of pleading and
 9 establishing personal jurisdiction over every defendant it chose to sue. *See, e.g., Boschetto*
 10 *v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008) ("In opposition to a defendant's motion to
 11 dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that
 12 jurisdiction is proper."); *Menkem v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007) ("When a
 13 defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden
 14 of demonstrating that the court has jurisdiction over the defendant."). It was not
 15 defendants' obligation to prove that the Court had no jurisdiction.² Cascade did not bother
 16 to make any allegations with respect to Mr. Opperman's contacts with Washington, and
 17 because of that failure to plead, the Court dismissed Mr. Opperman from the case.

18 Second, although it failed to allege sufficient jurisdictional contacts in its
 19 Complaint or Amended Complaint, in connection with its brief opposing Defendants'
 20 Motion to Dismiss, Cascade presented a declaration aimed at supporting jurisdiction over

21 ¹ Defendant Filatura Pettinata V.V.G. di Stefano Vaccari & C. (S.A.S.)'s motion to dismiss for lack of
 22 personal jurisdiction remains pending.

23 ² Again with this Motion, Cascade makes and unfounded and inaccurate personal attack on a defendant and
 defense counsel, this time arguing that Mr. Opperman was not "candid the to tribunal" because he filed a
 motion to dismiss "alleging that he lacked jurisdictional contacts with Washington." Motion at 2. The
 Motion to Dismiss Mr. Opperman, of course, did not *allege* anything; it merely argued, correctly, that
 Cascade's jurisdictional allegations were insufficient as a matter of law to meet Cascade's burden.

1 Mr. Opperman. The Court noted as much, but dismissed Mr. Opperman anyway, without
 2 granting leave to amend. *See* Dkt. No. 161 at p. 12 and n.4. The Court already has
 3 decided the issue Cascade seeks to revive. The cases that Cascade cites for the proposition
 4 that “Courts in the Ninth Circuit have routinely granted leave to amend *following*
 5 dismissals for lack of personal jurisdiction,” Motion at 5 (emphasis added), are actually
 6 cases in which courts granted leave to amend simultaneously with a dismissal.³ The Court
 7 did not grant such leave here.

8 Finally, the proposed amendment would be futile. Even if Cascade’s speculative,
 9 “on information and belief” allegations were sufficient to establish personal jurisdiction
 10 over Mr. Opperman (which they are not), the allegations against Mr. Opperman
 11 individually are not sufficient to state a claim. Cascade should not be permitted
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 18 ³ *See In re Toyota Motor Corp.*, No. 8:10ML 02151 JVS (FMOx), 2010 U.S. Dist. LEXIS 134875, at *89
 19 (C.D. Cal. Dec. 9, 2010) (dismissing the complaint for lack of personal jurisdiction and providing plaintiff
 20 leave to file an amended complaint); *Salt Optics, Inc. v. Jand, Inc.*, No. SACV 10-0828 DOC (RNBx), 2010
 21 U.S. Dist. LEXIS 131388, at *13 n.1 (C.D. Cal., Nov. 19, 2010) (dismissing the complaint without prejudice
 22 and noting that the plaintiff could file an amended complaint to cure the jurisdictional defects); *Kruska v.*
 23 *Perverted Justice Found. Inc. Org.*, No. CV-08-00054-PHX-SMM, 2010 U.S. Dist. LEXIS 126765, at *2 (D.
 Ariz., Nov. 17, 2010) (stating that the court previously granted defendant’s motion to dismiss and allowed
 plaintiff to amend her complaint); *Del Mar Land Partners, LLC v. Stanley Consultants, Inc.*, No. 10-CV-
 1074W (CAB), 2010 U.S. Dist. LEXIS 78104, at *7, *9 (S.D. Cal., Aug. 3, 2010) (granting defendant’s
 motion to dismiss and providing plaintiff leave to amend); *Young v. Actions Semiconductor Co.*, No.
 06cv1667-L(AJB), 2007 U.S. Dist. LEXIS 54633, at *16 (S.D. Cal., July 27, 2007) (denying defendant’s
 motion to dismiss); *Gutierrez v. Givens*, 989 F. Supp. 1033, 1046 n.1 (S.D. Cal. 1998) (stating that in a
 previous order the court dismissed the complaint for lack of personal jurisdiction and provided leave to
 amend)

1 to continue this futile effort, which would serve only as a waste of both the Court's time
2 and resources and those of Defendants

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4 DATED this 25th day of January, 2011⁴

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⁴ This document is intended as a substitute to the document filed in error on January 24, 2011 (Dkt. No. 185), and is being filed in accordance with instructions received from the ECF Help Desk.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing Response to Motion for Leave to File a Second Amended Complaint with the Clerk of Court using CM/ECF system which will send notification of such filing to the following:

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DATED this 25th day of January, 2011.

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