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, an individual, DIANE ELALOUF, an individual, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, DAVID WATT, an individual and DOES 1-50.

Defendants.

No. C10-00861 RSM

DEFENDANTS' OPPOSITION TO MOTION TO DISQUALIFY DAVIS WRIGHT TREMAINE LLP

Noted on Motion Calendar:
August 6, 2010

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

I. INTRODUCTION

Cascade Yarns ("Cascade") asks this Court to disqualify DWT from representing Defendants because Michael J. Killeen—a DWT partner not involved in this litigation—declined over a year ago to take a potential engagement to defend Cascade in an unrelated pregnancy discrimination lawsuit. The Court should deny the motion for at least three reasons:

First, DWT's representation of Defendants does not constitute a conflict of interest. Mr. Killeen unequivocally declined the potential 2009 engagement within twenty-four hours of receiving Cascade's initial inquiry. He never took the case, no attorney-client relationship formed, and Cascade is not a former client.

Second, even if Mr. Killeen obtained any relevant information in the brief communications he had with Cascade, DWT removed any risk to Cascade by promptly erecting an ethical screen under RPC 1.18(d)(2) in the present case. Because DWT properly addressed any potential (hypothetical) risk, disqualification is unwarranted.

Third, even if this Court were to find that Cascade is a former client, disqualification still would be unwarranted because the matters are not the same or substantially related, and DWT has no access to confidential information that would materially advance Defendants' position in this Lanham Act and RICO lawsuit.[1]

II. FACTS

A. On March 4, 2009, Cascade Asked Mr. Killeen to Consider a Potential Engagement in an Unrelated Pregnancy Discrimination Case.

At about 11:00 a.m. on March 4, 2009, Robert Dunbabin, in-house counsel to Cascade, called Mr. Killeen, asking whether Mr. Killeen would consider defending Cascade in a pregnancy discrimination lawsuit filed by a former employee, Meredith Kohn. Killeen Decl. ¶ 3; Dunbabin Decl. ¶ 1.[2] As part of his due diligence in considering whether to take

[1] DWT also opposes Cascade's motion to disqualify it and Pepper Hamilton under RPC 1.7, and joins in Pepper Hamilton's responses to that part of Cascade's motion. Pl.'s Mot. at 5-7. Therefore, DWT does not repeat those arguments here.

[2] By bringing this motion and providing an inaccurate, highly misleading, and self-serving

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

the case, Mr. Killeen asked for a copy of the complaint and told Mr. Dunbabin that he would run a conflicts check, per DWT policy. Killeen Decl. ¶ 3; Reed Decl. ¶ 4. Mr. Killeen also recommended that Mr. Dunbabin find out if the company's insurance policies would cover the claim. Killeen Decl. ¶ 3.

From 3:03 p.m. to 4:12 p.m. that afternoon, Mr. Killeen conducted further due diligence. At 3:21 p.m. he received the conflicts check results, showing one potential conflict. *Id.* ¶ 4. He emailed Mr. Dunbabin about the potential conflict, requesting a response. *Id.* At 3:52 p.m., Mr. Killeen received a publicly available corporate profile of Cascade from the DWT Library, which he requested per DWT's recommended due diligence. *Id.* ¶ 5. Shortly thereafter, Mr. Dunbabin responded about the lease matter, reporting: "My father couldn't recall anything" about it. *Id.* ¶ 6, Ex. A.

At 4:12 p.m., Mr. Dunbabin sent an unsolicited email stating that Ms. Kohn was fired because she was overpaid and did not work hard. *Id.* ¶ 7. Mr. Killeen replied, asking a few basic questions about the company's size and the case. *Id.* He asked these questions as part of his due diligence in determining the basic nature, scope, and size of the case to decide whether it would make sense and be cost effective for DWT to represent Cascade. *Id.* Mr. Killeen did not see Mr. Dunbabin's answers until the next morning. *Id.* ¶ 8. In sum, on March 4, 2009, the ***only*** oral conversation Mr. Killeen had with Mr. Dunbabin was Mr. Dunbabin's initial phone call.

B. On March 5, 2009, Mr. Killeen Declined the Potential Engagement.

The next day, Mr. Dunbabin sent Mr. Killeen an email at 10:10 a.m. requesting a phone call before 11:00. *Id.* ¶ 9, Ex. B. Mr. Killeen called at 10:30 a.m., per that request. *Id.* ¶ 10. Without prior notice, Mr. Dunbabin put Mr. Killeen on speaker phone with his parents and sister. *Id.* During that phone call, Mr. Killeen continued doing his due diligence to

account of the communications between Mr. Dunbabin and Mr. Killeen, Cascade has put those communications at issue. *See* Dunbabin Decl. ¶¶ 2-13; Pl.'s Mot. at 4-5, 8-10. Defendants may therefore discuss these communications in responding to and defending against this motion, pursuant to RPC 1.6(b)(5).

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

determine whether to take the case. *Id.* ¶ 11. He again asked about insurance coverage and repeated the status of his ongoing conflicts investigation. *Id.*; Reed Decl. ¶ 4. The Dunbabin family members said they did not recall the lease matter, and Mr. Killeen indicated he believed there was likely no conflicts problem. Killeen Decl. ¶ 11. He then asked a bit more about the nature of the case and context to determine whether to take it. *Id.* They told him some of the reasons why the plaintiff lacked credibility and their general reasons for firing her. *Id.* Mr. Killeen responded that employment cases are difficult to dismiss early and so, can be expensive. *Id.* They reiterated this was a frivolous case. *Id.* Mr. Killeen said he would think about whether it made sense for DWT to represent them. *Id.* ¶ 12. He explained that if it did, he would probably consider having a senior associate handle the matter. *Id.*

Immediately after the call Mr. Killeen approached a senior associate to discuss whether DWT should take the case. *Id.* ¶ 13. At 12:15 p.m., Mr. Killeen had decided not to take the case and emailed Mr. Dunbabin: "I've spoken [with the associate]. We both agree that it is [in] Cascade's best interest to engage a law firm other than DWT. I will send you a follow-up letter. Thanks for thinking of us." *Id.*; Ex. B. Mr. Dunbabin received this email on March 5. Dunbabin Decl. ¶ 12.

Mr. Killeen sent Mr. Dunbabin a declination letter that same day. *Id.* ¶ 15; Guite Decl. ¶ 8, Ex. F. The letter states, in part:

> This letter confirms our earlier conversation and my email to you that neither I nor this firm are able to represent Cascade Yarns, Inc. in connection with the Meredith Kohn lawsuit.
>
> . . . .
>
> Except for our email exchanges and our telephone conversations, I do not believe that I obtained any information from you that must be considered confidential. If you disagree in any respect with that conclusion, please call me immediately to discuss.

Dunbabin Decl. ¶ 13; Guite Decl. ¶ 8, Ex. F. Mr. Killeen copied on the letter the associate to whom he had spoken briefly in deciding to decline the case, and the outgoing and incoming

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

1 practice group chairs. Killeen Decl. ¶ 16. Mr. Dunbabin received this letter. Dunbabin Decl.
2 ¶ 13. His ***only*** response was an email, sent at 12:29 p.m. on March 5, stating: "Thanks for
3 getting back to me so promptly. I respected working with you from the other side and wish
4 you the best. Rob." Killeen Decl. ¶ 14, Ex. B; *id.* ¶ 17.
5 Mr. Killeen decided not to take the case for several reasons. *Id.* ¶ 19. He concluded it
6 was unlikely to be disposed of early and so, would be costly. *Id.* Also, given the company's
7 size he had concerns about whether it was prepared to pay DWT's rates and defense costs. *Id.*
8 Mr. Killeen did ***not*** disclose to any DWT lawyers representing Defendants any information he
9 received from Cascade. *Id.* ¶ 20.

10 **C. DWT Timely Erected a Screen Under RPC 1.18.**

11 Upon review, DWT determined that the pregnancy discrimination lawsuit was not
12 substantially related to the current Lanham Act and RICO lawsuit, and that Mr. Killeen had
13 not received disqualifying information. Reed Decl. ¶ 9. Nevertheless, DWT erected a screen
14 under RPC 1.18(d)(2). *Id.* ¶ 6, Ex. A. On one side of the screen, DWT placed Mr. Killeen,
15 the associate to whom he had spoken briefly about whether to take the case, and the outgoing
16 and incoming practice group chairs. *Id.* DWT included these additional persons even though
17 none had received any information. *Id.* DWT also requested the Accounting Department
18 ensure that Mr. Killeen receive no portion of any fee Defendants might pay DWT. *Id.* DWT
19 notified Mr. Guite (Cascade's counsel) in writing that it would erect the screen. *Id.* ¶ 7.

20 **D. DWT Declined to Withdraw from Representing Defendants.**

21 Despite DWT's precautionary screen, Mr. Guite requested that DWT withdraw. *Id.*
22 ¶ 8. He did so based not on any documents or personal knowledge, but instead on conclusory
23 allegations from Mr. Dunbabin. *Id.* Because the matters are not substantially related,
24 Mr. Killeen had no information that would materially advance the position of Defendants, and
25 a screen existed, DWT declined to withdraw.
26
27

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

III. ARGUMENT

Cascade's request for disqualification seeks a "drastic remedy that exacts a harsh penalty" and "should be imposed only when absolutely necessary." *In re Firestorm 1991*, 129 Wn.2d 130, 140, 916 P.2d 411 (1996) (citation omitted); *see also Daines v. Alcatel*, 194 F.R.D. 678, 684 (E.D. Wash. 2000). Thus, "disqualification should be imposed sparingly." *In re Firestorm 1991*, 129 Wn.2d at 145 (reversing disqualification because less severe options available). Disqualification motions "should be 'viewed with extreme caution for they can be misused as a technique of harassment.'" *See, e.g.*, *U.S. ex rel. Lord Elec. Co. v. Titan Pac. Constr. Corp.*, 637 F. Supp. 1556, 1562 (W.D. Wash. 1986) (individual lawyer disqualified but firm could continue work upon filing certificates that no confidential information had been exchanged). Using a disqualification motion for "purely tactical purposes" justifies denial on that basis alone. *See In re Firestorm 1991*, 129 Wn.2d at 145.

A. No Disqualifying Conflict Exists.

Attempting to rewrite history, Cascade announces, without any documentary support, that an attorney-client relationship formed when it approached Mr. Killeen about a potential engagement because, over a period of twenty-four hours, Mr. Killeen engaged in due diligence. *See* Pl.'s Mot. at 4-5, 8-10. Neither the facts nor the law support its position.

A former attorney-client relationship must exist before a court can find a conflict of interest under the Rules of Professional Conduct. *See Bohn v. Cody*, 119 Wn.2d 357, 364, 832 P.2d 71 (1992) (prior code's conflict of interest provisions did not apply to relationship with nonclient). *See also Bieter Co. v. Blomquist*, 132 F.R.D. 220, 224 (D. Minn. 1990) (interpreting ethical rule with same language as RPC 1.9). RPC 1.9 applies ***only*** if an attorney-client relationship existed. Here, no attorney-client relationship formed because DWT unequivocally declined the engagement, and Mr. Dunbabin understood this. Dunbabin Decl. ¶¶ 12-13; Killeen Decl. ¶¶ 13-14, Ex. B. And DWT extinguished any risk of unfair advantage by erecting a screen under RPC 1.18(d)(2). Reed Decl. ¶ 6, Ex. A. For these reasons, alone, this Court should deny the disqualification motion.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

1. Cascade is not a former client.

"The existence of an attorney-client relationship may be implied based largely upon the subjective belief of the client, but this belief 'does not control the issue unless it is ***reasonably*** formed based on the attending circumstances, including the attorney's words or actions." *Sherman v. State*, 128 Wn.2d 164, 189, 905 P.2d 355 (1995) (citation omitted) (emphasis added). *See also Oxford Sys., Inc. v. CellPro, Inc.*, 45 F. Supp. 2d 1055, 1059 (W.D. Wash. 1999) (reasonable to believe attorney-client relationship existed where party had used firm exclusively for thirteen years, though not in the last two). But, "[a]n attorney/client relationship is not created . . . merely because an attorney discusses the matter of a transaction with a nonclient." *Sherman*, 128 Wn.2d at 189 (alteration in original) (citation omitted). In determining whether the client reasonably believed an attorney-client relationship formed, courts may consider the ***client's level of sophistication***. *See Sky Valley Ltd. v. ATX Sky Valley, Ltd.*, 150 F.R.D. 648, 654 (N.D. Cal. 1993) (court questioned whether an informed party "would form an attorney-client relationship without a shred of paper memorializing even the most basic terms of that alleged relationship"); *see also Scantek Med., Inc. v. Sabella*, 693 F. Supp. 2d 235, 240-41 (S.D.N.Y. 2008) (court questioned, among other things, whether sophisticated individual would enter attorney-client relationship without a "shred of documentary evidence" to memorialize the engagement).

In *Sherman v. State*, the Washington Supreme Court held that no attorney-client relationship formed even though the attorney sought and obtained information from the doctor in a prior medical malpractice lawsuit. 128 Wn.2d at 178, 189. The court determined that the doctor's reply did not suggest he believed such a relationship existed, the attorney's request made clear he was not representing the doctor, and the parties had no further contact regarding the matter. *Id.* at 189.

As with the doctor in *Sherman*, Mr. Dunbabin expressly acknowledged that no attorney-client relationship had formed, and he had no further contact with Mr. Killeen. Within twenty-four hours of Mr. Dunbabin's initial call and after brief communications,

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

Mr. Killeen emailed Mr. Dunbabin that "it is [in] Cascade's best interest to engage a law firm other than DWT." Killeen Decl. ¶ 13, Ex. B. Mr. Dunbabin admits he received this email. Dunbabin Decl. ¶ 12; Pl.'s Mot. at 5. He immediately responded to it: "Thanks for getting back to me so promptly. I respected working with you from the other side and wish you the best. Rob."[3] Killeen Decl. ¶ 14, Ex. B. It is telling that Mr. Dunbabin, a practicing attorney, did not mention any belief that an attorney-client relationship had formed. Killen Decl. ¶ 14, Ex. B; *id.*¶ 17.

Nevertheless, Mr. Dunbabin claims he had the "impression" Cascade had "retained" Mr. Killeen and was "surprise[d]" to receive Mr. Killeen's the declination letter. Dunbabin Decl. ¶¶ 9, 13. But, despite having copies of Mr. Killeen's notes and emails, he points to no expressions that could give rise to a reasonable belief that Mr. Killeen had accepted the case. *See* Pl.'s Mot. at 4-5, 8-10. And, as a lawyer, Mr. Dunbabin would understand that Mr. Killeen could not unilaterally bind DWT to a client. *See* Reed Decl. ¶ 4. Cascade is not a former client, and RPC 1.9 has no application here. Cascade's after-the-fact characterizations do nothing more than raise an inference of using this motion for tactical advantage.

2. Mr. Killeen did not receive more information than necessary.

Under RPC 1.18(d)(2), if a lawyer receives disqualifying information in determining whether to take a case, representation is still "permissible" if the lawyer is timely screened, apportioned no fee, and the prospective client receives prompt written notice. This rule recognizes that, in deciding whether to accept a case, the lawyer must learn "information to determine whether there is a conflict of interest . . . and whether the matter is one that the lawyer is willing to undertake." RPC 1.18, cmt. [3]; *see also* Annotated Model Rules, Rule 1.18, cmt [3].[4]

[3] Mr. Dunbabin's email thanking Mr. Killeen for responding with the declination decision so early and "wish[ing] [Mr. Killeen] the best" reveals the utter dishonesty of Mr. Dunbabin's claim now that he was "surprise[d]" to receive Mr. Killeen's formal declination letter. Dunbabin Decl. ¶ 13; Killeen Decl. ¶ 14, Ex. B.

[4] Although Washington courts have not formally adopted the commentary to the RPCs, they view the commentary as instructive. *State v. Hunsaker*, 74 Wn. App. 38, 46, 873 P.2d 540 (1994).

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

DWT complied with RPC 1.18 because Mr. Killeen did not receive more information than necessary and did not disclose any information, and because DWT timely erected a screen. Killeen Decl. ¶¶ 11, 18, 20; Reed Decl. ¶¶ 6-9. Contrary to Cascade's suggestions otherwise, Mr. Killeen asked only what he needed to conduct his due diligence—questions about the company's insurance coverage and size, the basic nature and context of the case, and the potential for conflicts. Killeen Decl. ¶¶ 3, 7, 11. These questions go to conflicts and client quality issues, which DWT policy requires an attorney to consider. Reed Decl. ¶ 4. This is exactly the type of information RPC 1.18 contemplates attorneys must obtain in determining whether to accept an engagement. Moreover, Mr. Killeen did not speak to any DWT attorney representing Defendants about Cascade. Killeen Decl. ¶ 20; Reed Decl. ¶ 10. Nevertheless and to ensure ethical compliance, DWT erected a screen pursuant to RPC 1.18(d)(2). Reed Decl. ¶ 6, Ex. A. DWT notified Cascade in writing that it would erect this screen. *Id.* ¶ 7; Guite Decl. ¶ 8.

Because DWT and Mr. Killeen complied with RPC 1.18, no disqualification can be imputed to DWT. *See* RPC 1.18(d)(2); Annotated Model Rules, Rule 1.18, cmt. [7]; *INA Underwriters Ins. Co. v. Rubin*, 635 F. Supp. 1, 5 (E.D. Pa. 1983) (screen particularly effective where firm is large, only one member needs screening, and that member's involvement was not ongoing but consisted of one meeting).

B. The Matters Are Not Substantially Related and There Is No Risk of Materially Advancing Defendants' Position.

Under RPC 1.9(a):[5]

> A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

[5] RPC 1.9(b) does not apply here because this case does not involve lawyers moving between firms.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

1. The Pregnancy Discrimination Lawsuit Is Not Substantially Related to the Current Lanham Act and RICO Lawsuit.

Washington courts look to the "factual context" of the matters to determine if they are "substantially related." *See Hunsaker*, 74 Wn. App. at 45. Matters are substantially related "if they involve the same client and the matters or transactions in question are relevantly interconnected or reveal the client's pattern of conduct," *id.* at 44, or involve "the same transaction or legal dispute." *FMC Techs., Inc. v. Edwards Processing Equip. Solutions, Inc.*, 420 F. Supp. 2d 1153, 1159 (W.D. Wash. 2006) (citation omitted). The "underlying question is whether the lawyer was ***so involved*** in the matter that the subsequent representation can be justly regarded as a ***changing of sides***. . . ." *Hunsaker*, 74 Wn. App. at 46 (citation omitted) (emphasis added). "If the matters are not substantially related, the court will ***not*** presume that confidential information was disclosed requiring disqualification." *Id*. at 47 (emphasis added).

The two matters here—pregnancy discrimination, and Lanham Act and RICO claims—are not substantially related by any stretch of the imagination. *See, e.g.*, *Sherman*, 128 Wn.2d at 190 (termination for substance abuse not substantially related to medical malpractice claim).

Further, general litigation information, the ***only*** type of information Cascade claims Mr. Killeen obtained, does ***not*** satisfy the substantially related test.[6] "Where the only allegation of similarity is the attorney's alleged insight into the former client's 'general litigation thinking,' similarity is ***not*** established." *Scantek Med.*, 693 F. Supp. 2d at 240 (citing *Vestron, Inc. v. Nat'l Geographic Soc'y*, 750 F. Supp. 586, 595 (S.D.N.Y. 1990)) (emphasis added). Indeed, "if insight into a former client's general 'litigation thinking' were to constitute 'relevant privileged information,' then disqualification would be mandated in virtually every instance of successive representation." *Vestron*, 750 F. Supp. at 595.

[6] DWT does not concede that Mr. Killeen received any general litigation thinking information.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

In *Vestron, Inc. v. National Geographic Society*, a federal district court held that information about a company's "approach to and strategy in litigation matters," including the company's views on settlement, could not transform distinct matters (trademark litigation and breach of contract) into substantially related ones. *Id.* Other courts have held likewise. *See, e.g.*, *Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc.*, 687 F. Supp. 2d 381, 392-93 (S.D.N.Y. 2010) (no "substantial relationship" where trademark and supplemental register trademark matters distinct, despite claims of "access to . . . strategic thinking"); *State ex rel. v. Ogden Newspapers, Inc.*, 566 S.E.2d 560, 567 (W. Va. 2002) ("Vague general impressions associates may have gleaned about a client's philosophical outlook, which is the most we can formulate from the situation . . . is not enough to warrant disqualification."). *See also* RESTATEMENT OF THE LAW GOVERNING LAWYERS § 132 cmt. d(iii) (2000) (general litigation or business knowledge insufficient unless directly at issue or of unusual value); RPC 1.9, cmt. [2].

The cases Cascade relies upon do not say otherwise. It cites *Sanders v. Woods*, 121 Wn. App. 593, 89 P.3d 312 (2004), and *Hunsaker* for the proposition that general litigation thinking establishes a "substantial relationship." Pl.'s Mot. at 9. But these cases do not so hold. Neither case mentions "general litigation thinking." *See Sanders*, 121 Wn. App. at 598-99; *Hunsaker*, 74 Wn. App. at 44-45. The *Sanders* court reversed denial of disqualification because the matters involved the same issues—an employer's non-compete agreement. 121 Wn. App. at 598. And the *Hunsaker* court held disqualification was "***unwarranted***" on a record lacking any information about the matters. 74 Wn. App. at 46 (emphasis added).

Here, the matters are not substantially related and any general litigation thinking knowledge, if acquired, could not change this fact. Consequently, "the court will not presume that confidential information was disclosed requiring disqualification." *Id.* at 47.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2. No DWT Attorney Learned Confidential Information About Cascade that Would Materially Advance Defendants' Position.

Cascade has not shown a substantial risk that any information Mr. Killeen may have obtained would materially advance Defendants' position. *See* RPC 1.9, cmt. [3]. It complains only that Mr. Killeen gleaned general litigation thinking information. Pl.'s Mot. at 4, 8-9. But its sole support for these assertions is Mr. Dunbabin's self-serving declaration. *See id.* Tellingly, Cascade does not rely on anything in Mr. Killeen's contemporaneous notes and emails, though it has them. Guite Decl. ¶ 9. There is good reason for this—the notes and emails reveal that Mr. Killeen received no confidential information that could possibly materially advance Defendants' position in this case. *See* Killeen Decl. ¶¶ 2-18. Moreover, Mr. Killeen has not disclosed any information he may have learned to any DWT lawyer representing Defendants, and DWT has erected a screen. *Id.* ¶ 20; Reed Decl. ¶ 6, Ex. A; Reed Decl. ¶¶ 9-10. Cascade Yarns cannot create a conflict where none exists by rewriting history for tactical advantage. "Disqualification is a serious matter which cannot be based on imagined scenarios of conflict." *Local 2-1971 of PACE Int'l Union v. Cooper*, 364 F. Supp. 2d 546, 553 (W.D.N.C. 2005) (denying disqualification motion because, among other things, bankruptcy proceeding and ERISA/WARN Act cases not "substantially related").

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny the Motion to Disqualify DWT.

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200 · 1201 Third Avenue
Seattle, Washington 98101-3045
(206) 622-3150 · Fax: (206) 757-7700

Respectfully submitted,

Dated: August 2, 2010

s/ Rebecca Francis

Warren J. Rheaume, WSBA # 13627
Rebecca Francis, WSBA #41196
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101

Joshua R. Slavitt
Deirdre E. McInerney
3000 Two Logan Square
Philadelphia, PA 19103
(215) 981-4000
(215) 981-4750 (fax)

Attorneys for Defendants Knitting Fever, Inc., et al.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on August 2, 2010, I electronically filed the foregoing OPPOSITION TO MOTION TO DISQUALIFY with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert J. Guite
rguite@ssd.com

DATED this 2nd day of August, 2010.

Davis Wright Tremaine LLP
Attorneys for Defendants

By *_/s/ Rebecca Francis_*
Rebecca Francis, WSBA #41196
Davis Wright Tremaine, LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: (206) 757-8285
Fax: (206) 757-7285
E-mail: rebeccafrancis@dwt.com