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HON. RICARDO S. MARTINEZ

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,

Defendant.

Case No. 2:10-cv-00861 RSM

CASCADE YARNS INC.’S OPPOSITION TO DEFENDANTS DESIGNER YARNS, LTD., SION ELALOUF, DIANE ELALOUF, JAY OPPERMAN, DEBBIE BLISS AND DAVID WATT’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Note On Motion Calendar: August 20, 2010

I. INTRODUCTION

This is merely a note in Defendants’ symphony of delay for the purpose of continuing their fraud. For nearly ten years, defendants Knitting Fever, Inc. (“KFI”), Designer Yarns, Ltd. (“Designer Yarns”), Filatura Pettinata .V.G. Di Stefano Vaccari & C. (S.A.S.), Sion Elalouf, Diane Elalouf, Jay Opperman, David Watt and Debbie Bliss (collectively, “Defendants”) have engaged in a concerted scheme to defraud consumers and injure competitors by intentionally misrepresenting the fiber content of certain yarn products. This scheme has deterred customers

1 from purchasing competing products from plaintiff Cascade Yarns (“Cascade”) in the false belief
2 that KFI’s products are of similar content and of equal quality. Accordingly, Cascade brought
3 suit against Defendants in Washington, the forum where Cascade suffered its injuries and where
4 Defendants have transacted ample business in furtherance of their scheme. In its Amended
5 Complaint, Cascade asserts claims for unfair competition under the Lanham Act, 15 U.S.C. §
6 1125(a), the Washington Consumer Protection Act, RCW 19.86 *et seq.* and the Racketeer
7 Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 *et seq.* (“RICO”).

8 By this motion defendants Designer Yarns, Sion Elalouf, Diane Elalouf, Jay Opperman,
9 Debbie Bliss and David Watt (collectively, the “Non-KFI Defendants”) seek to grant for
10 themselves the motion for extension of time to answer, which the Court denied. ***Defendant KFI***
11 ***does not join in the Motion, thereby conceding that jurisdiction over it is proper in***
12 ***Washington.*** This concession is fatal to the Non-KFI Defendants Motion and demonstrates that
13 the Motion is specious. Further, the Non-KFI Defendants maintain that the Court lacks personal
14 jurisdiction alleging they do not have the “minimum contacts” necessary to establish general or
15 specific jurisdiction in Washington. They do so by neglecting mention Ms. Bliss’s August 2010
16 3-day promotional tour throughout Western Washington, VVG’s shipments of yarn directly to
17 Washington, and by completely ignore controlling law. Regardless of these direct contacts,
18 jurisdiction in this Court exists pursuant to Rule 4(k)(1)(C). Pursuant to 18 U.S.C. § 1965(b),
19 Cascade needs only to establish personal jurisdiction over one defendant in order to establish
20 jurisdiction over all of the co-defendants. KFI concedes that this Court has jurisdiction over it:
21 thus jurisdiction over all is automatic. But, in any event, Cascade establishes in this opposition
22 that specific jurisdiction over all defendants in this action. Accordingly, the Non-KFI
23 Defendants’ Motion should be denied.¹

24 _____
25 ¹ Alternatively, Cascade requests that the Court allow limited jurisdictional discovery on the issue
26 of personal jurisdiction. *America West Airlines, Inc., v. GPA Group, Ltd.*, 877 F. 2d 793, 801
(9th Cir. 1989) (a court may afford a plaintiff an opportunity to meet the burden of proving
jurisdictional facts by allowing limited discovery).

1 **II. STATEMENT OF FACTS**

2 **A. Defendants Engage In A Scheme To Enlarge Profits By Injuring Cascade**
3 **And Their Other Competitors.**

4 Cascade is one of the nation's finest purveyors of yarns and sells its products through
5 specialty retailers and boutiques throughout the United States. Amended Compl, ¶ 2. Cascade's
6 products include many yarns containing a mix of wool and other natural fibers such as kid
7 mohair, silk and cashmere. *Id.* KFI similarly sells its products through retailers and boutiques
8 throughout the United States. *Id.* Cascade is one of KFI's chief competitors in the wholesale
9 yarn marketplace. *Id.*

10 Defendants have engaged in a decade-long concerted scheme to make an unreasonable
11 profit, defraud consumers and undercut their competitors' -- including Cascade's -- business. *Id.*
12 at ¶ 1. Indeed, beginning sometime in the early 2000s and certainly no later than 2006, KFI
13 began selling products that had literally false labels misrepresenting the products' cashmere, kid
14 mohair and/or silk content. *Id.* at ¶ 2. The literally false labels allowed KFI to sell its products
15 for a significantly lower price than Cascade's products, thereby damaging Cascade in the form of
16 lost profits and business injury. *Id.* In furtherance of the scheme, Defendants made false
17 representations regarding the fiber content of certain yarn products, including but not necessarily
18 limited to the *Noro Silk Garden*, *Debbie Bliss Cashmerino*, *Elsebeth Lavold Silky Wool* and
19 *Louisa Harding Kashmir* brands. *Id.* at ¶ 1.

20 On May 24, 2010, Cascade commenced this action for false advertising, unfair
21 competition, and violations of the Racketeer Influenced and Corrupt Organization Act. *See* Dkt.
22 No. 1. Cascade amended its complaint on June 9, 2010. *See* Dkt. No. 4.

23 **B. The Non-KFI Defendants Move To Dismiss For Lack of Personal**
24 **Jurisdiction.**

25 On July 26, 2010, pursuant to Rule 12(b)(2), the Non-KFI Defendants filed this meritless
26 Motion, Dkt. No. 34, to grant themselves the extension of time that the Court denied. Dkt. No. 27

1 (order denying extension of time). With no foundation in fact or law the Non-KFI Defendants
 2 claim, apparently to saddle KFI with all liability,² that the entire action should be dismissed as to
 3 them because this Court purportedly lacks both general and specific jurisdiction over them.³
 4 Motion, p. 2. They argue, without facts, that Cascade has failed to allege that any of the Non-KFI
 5 Defendants have sufficient contacts with Washington to justify general jurisdiction or that they
 6 have purposefully availed themselves of the privilege of conducting activities in Washington or
 7 purposefully directed any activities toward Washington. *Id.* They also claim that there is no
 8 basis for Federal Rule of Civil Procedure 4(k)(2) jurisdiction; they do so by omitting controlling
 9 law and operative facts. *Id.* at p. 10. They completely ignore applicable law; jurisdiction is
 10 proper pursuant to Rule 4(k)(1)(C). ***Tellingly, as 18 U.S.C. § 1965 is fatal to their Motion, the***
 11 ***Non-KFI Defendants purposefully fail to address personal jurisdiction under RICO.***

12 Review of this Motion shows that Defendants did no more than plug in names and hit
 13 print on a boilerplate law firm form. Lacking any merit, the motion is unsupported by law or fact.
 14 It is obviously intended to further delay responding to Cascade's Amended Complaint, so that the
 15 Defendants can continue to sell their mislabeled yarns through the lucrative Fall season and fund
 16 their meritless defense. The Non-KFI Defendants repeatedly claim that Cascade has not alleged
 17 sufficient contacts with Washington for jurisdiction over the Non-KFI Defendants. However,
 18 they purposefully avoid arguing that the Non-KFI Defendants actually lack sufficient requisite
 19 contacts. This calculated omission is similar to when Ms. Mc Inerney avoided testifying as to
 20 when Pepper Hamilton was asked to defend this lawsuit. As is shown below, the Non-KFI
 21 Defendants' willful omission was to avoid the law and facts establishing jurisdiction over them.⁴

22 ² Cascade suspects that Mr. and Mrs. Elalouf intend to bankrupt KFI, in the near future, only to
 23 re-organize in another form.

24 ³ KFI, Mr. Elalouf and Ms. Elalouf are residents of New York (Amended Compl., ¶¶ 5, 8, 9); Mr.
 25 Opperman is a resident of New Jersey (*id.* at ¶ 10); Designer Yarns, Mr. Watt and Ms. Bliss are
 26 residents of the United Kingdom (*id.* at ¶¶ 6, 10, 11); and VVG is a resident of Italy (*id.* at ¶ 7).

⁴ The Court should note that Defendants have adduced no facts in support of the accuracy of their
 labeling, even in opposition to a motion for summary judgment filed the matter captioned *The*
Knit With v. Knitting Fever, Inc. et al. now pending in the United States District Court for the

1 Conspicuously absent from the Motion is KFI itself. KFI does not join in the Motion, and
2 the Non-KFI Defendants do not argue that KFI lacks sufficient contacts with the forum. *Id.* at
3 p.1. As demonstrated below, the Non-KFI Defendants would be hard-pressed to argue that
4 Washington cannot exercise personal jurisdiction over KFI, an entity that routinely transacts
5 business in the forum.

6 **C. Defendants Have Substantial Contacts With Washington.**

7 KFI is a participant in the United States wholesale market for handknitting yarns and has
8 been a leading wholesale supplier to specialty retailers. Amended Complaint., ¶ 16. KFI
9 operates an interactive website that appears capable of accepting orders from retailers in
10 Washington and directs consumers to the stores in Washington carrying their products. Guite
11 Decl., Ex. A. Indeed, as KFI states on its website: “If you're a consumer, you can reach us
12 through this page. If you're a retailer and aren't yet a customer of ours, please get in touch with us
13 here. Our current wholesale customers can place orders online—use the ‘wholesale’ link above—
14 or use the information below to reach us.” *Id.* A search on KFI’s website reveals that at least 20
15 stores in Olympia, Washington and Seattle, Washington alone carry KFI’s products, including the
16 intentionally mislabeled brands. *Id.* at Ex. B. In addition and in furtherance of its scheme, KFI --
17 through Mr. Elalouf and other corporate agents -- has made false representations about the
18 content of its yarns directly to Cascade in Washington and to consumers nationwide. Amended
19 Compl., ¶¶ 44-52.

20 Mr. Elalouf is the alter ego of KFI. *Id.* at ¶ 8. He has been the sole or controlling
21 shareholder and chief executive of KFI since 1980 and has been and continues to be responsible
22 for setting KFI’s trade policies and practices. *Id.* Further, Mr. Elalouf and/or KFI controls
23 Designer Yarns, which holds a license for the international marketing of handknitting yarns
24 bearing the Debbie Bliss brand name and has a distributorship agreement with KFI by which KFI

25
26 Eastern District of Pennsylvania under Case No. 2:08-CV-04221 (consolidated).

1 is the exclusive U.S. importer and distributor of yarns marketed by Designer Yarns. *Id.* at ¶ 6.
2 Finally, Mr. Elalouf also exerts significant -- if not complete -- control over VVG, the broker of
3 yarns for the KFI and Debbie Bliss brand names, including but not necessarily limited to the
4 mislabeled yarns. *Id.* at ¶ 7. Mr. Elalouf has actively participated in the tortious, fraudulent and
5 wrongful conduct that is the subject of this action, including but not limited to falsely advertising
6 and labeling goods distributed in interstate and/or foreign commerce, committing predicate acts of
7 racketeering (including wire fraud and mail fraud), conspiring with the other defendants to
8 engage in acts to further the racketeering scheme and causing harm to Cascade's business by the
9 acts of that racketeering enterprise. *Id.* at ¶ 8.

10 Ms. Bliss has licensed her name to Designer Yarns for the development and marketing of
11 a series of yarn branded under name and reserved the responsibility for assuring the quality for
12 handknitting yarns branded with her name. *Id.* at ¶ 11. As part of her duties, Ms. Bliss promotes
13 her products by regularly attending trade shows and making numerous sales and marketing
14 appearances in the United States and Washington, where at least 22 stores carry her brand. *Id.* at
15 ¶ 24; Guite Decl., Exs. B-D.

16 In August 2010 alone, Ms. Bliss made multiple appearances in Olympia, Bellevue, Seattle
17 and Everett, Washington to sell and promote her products, conduct fashion shows, give
18 demonstrations and answer questions. *Id.* at Exs. C, D. Washington even honored Ms. Bliss, two
19 weeks ago, by allowing her to throw out the first pitch at a recent Seattle Mariner's game at the
20 "6th Annual Stitch 'N Pitch Night." *Id.* During the game, Ms. Bliss signed copies of her latest
21 book while Pacific Fabrics sold a selection of Debbie Bliss yarns.⁵ *Id.* at Ex. D. Ms. Bliss was
22 even served with process, while promoting "her" yarn, in another lawsuit while in Washington
23 this month. *Id.* at Ex. E.

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26 ⁵ Pacific Fabrics, a retailer in Washington, purchases Debbie Bliss yarns from KFI. *Id.* at Ex. A.

1 Ms. Bliss actively encourages customers in Washington to attend her presentations. For
2 example, she announced her visit to Washington on her public Facebook profile: “Here are the
3 stores I will be visiting when I am on my ‘pitching’ tour. August 4th Yarn Garden, Portland OR,
4 August 5th Canvas Works, Olympia [sic] WA, August 6th Pacific Fabric and Crafts stores in
5 Greater Seattle. Acorn Street Shop, Seattle. I will post up more details as I get them.” *Id.* at Ex.
6 C. She also urged customers in Washington to come out and watch her throw the first pitch:
7 “Come and join us for the Texas Rangers vs Seattle Mariners game on the 5th of August 2010.
8 Watch Debbie Bliss throw the first pitch while enjoying the company of knitting and baseball
9 enthusiasts!” *Id.* She posted frequent updates to ensure that her followers were informed of her
10 whereabouts. *Id.* These activities were all part of her sales and marketing efforts in Washington.

11 As for the other Non-KFI Defendants, Mrs. Elalouf was and continues to be a KFI officer,
12 director or shareholder; she has access to and responsibility for reviewing, approving and paying
13 invoices from KFI’s foreign suppliers. *Id.* at ¶ 9. Additionally, Mr. Opperman has held himself
14 out as an independent sales representative of KFI, and more recently as KFI sales manager
15 responsible for managing a national sales force tasked with “pushing” sales of handknitting yarn
16 products to retailers. *Id.* at ¶ 10. Since 2001, Mr. Opperman has been a director of, and one of
17 the registered owners of, the shares of Designer Yarns. *Id.* Finally, Mr. Watt is actively involved
18 in the management of Designer Yarns. *Id.* at ¶ 12.

19 Defendants are aware that Cascade is headquartered in Washington.⁶ Cascade has
20 contacted Defendants concerning their mislabeled yarn from its offices in Washington in 2006
21 and 2008. *Id.* at ¶¶ 44-48. In response, certain Defendants -- namely Designer Yarns, KFI, Mr.
22 Elalouf and Ms. Bliss -- have corresponded with Cascade in Washington, misrepresenting the
23 content of their yarn and threatening Cascade for pursuing the issue. *Id.* KFI went so far as to
24

25 ⁶ Although VVG has not joined in the Motion as it has not yet been served, it also has specific
26 contacts in Washington. In fact, it sold yarns to Cascade and transacted business in Washington.
Declaration of Jean F. Dunbabin.

1 have an industry publication known as *Yarn Marketing News* contact Cascade to offer to publish a
2 retraction and public apology on Cascade's behalf, for any claims about the content of KFI's
3 products -- an offer which Cascade declined. *Id.* at ¶ 52. Defendants are well aware that their
4 misconduct has allowed them to profit to the detriment of Cascade's business. *See id.* at ¶ 95.

5 All of the Non-KFI Defendants have advised, consented to and participated in KFI's
6 wrongful conduct. *Id.* at ¶¶ 6-8, 10-12, 44-56, 94-95, 103, 107, 111, 118, 126-131. Defendants
7 continue this wrongful conduct even today. *Id.* at ¶ 96.

8 **III. LEGAL STANDARDS**

9 Rule 12(b)(2) of the Federal Rules of Civil Procedure permits a court to dismiss a suit for
10 lack of personal jurisdiction over a defendant. In the absence of a jurisdictional hearing, a
11 "plaintiff need only make a prima facie showing of jurisdictional facts." *Dole Food Co. v. Watts*,
12 303 F.3d 1104, 1108 (9th Cir. 2002). A plaintiff's allegations are assumed to be true for
13 jurisdictional analysis. *See, e.g., AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th
14 Cir. 1996). The "court may consider evidence presented in affidavits to assist in its
15 determination." *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Conflicts between
16 parties over statements contained in affidavits are resolved in the plaintiff's favor. *Bancroft and*
17 *Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (overruled on other
18 grounds).

19 Personal jurisdiction over a nonresident defendant is tested by a two-part analysis. The
20 exercise of jurisdiction must (1) satisfy the requirements of the applicable state long-arm statute,
21 and (2) it must comport with federal due process. *Chute v. Carnival Cruise Lines*, 897 F.2d 377,
22 380 (9th Cir. 1990) (*rev'd on other grounds*); *Panavision Int'l L.P. v. Toebben*, 141 F.3d 1316,
23 1320 (9th Cir. 1998). It is well settled that the Washington State long-arm statute -- RCW
24 4.28.185 -- extends jurisdiction to the limit of federal due process. *Chute v. Carnival Cruise*
25 *Lines*, 113 Wn.2d 763 (1989); *Stairmaster Sports/Med. Prods., Inc. v. Pacific Fitness Corp.*, 916
26 F.2d 1049 (9th Cir. 1994). Accordingly, a federal court may exercise personal jurisdiction if

1 doing so comports with constitutional due process. *See Pacific-Atlantic Trading Co. v. M/V*
2 *Main Express*, 758 F.2d 1325, 1327 (9th Cir. 1985); *Amazon.com, Inc. v. Kalaydjian*, 2001 U.S.
3 Dist. LEXIS 4924, *4-5 (W.D. Wash., Feb. 20, 2001). Due process is satisfied where a non-
4 resident defendant has “minimum contacts” with the forum state such that the assertion of
5 jurisdiction “does not offend traditional notions of fair play and substantial justice.” *International*
6 *Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945).

7 Personal jurisdiction can be general or specific. Washington permits the assertion of
8 general jurisdiction over a foreign defendant “doing business” within the state. RCW
9 4.28.080(10); *Varnau v. GM of Can. Ltd.*, 2010 U.S. Dist. LEXIS 44076 (W.D. Wash., May 5,
10 2010). In the absence of general jurisdiction, a court may still exercise specific jurisdiction if a
11 defendant’s “less substantial contacts with the forum give rise to the cause of action before the
12 court.” *Doe*, 248 F.3d at 922.

13 Pursuant to Rule 4(k)(1)(C), personal jurisdiction exists where a federal statute allows
14 nationwide service of process. Here, RICO, 18 U.S.C. § 1961 *et seq.*, contains a long-arm statute
15 -- 18 U.S.C. § 1965(b) -- permitting nationwide service of process. Section 1965(b) provides:

16 [A]ny district court of the United States in which it is shown that the ends of
17 justice require that other parties residing in any other district be brought before the
18 court, the court may cause such parties to be summoned, and process for that
purpose may be served in any judicial district of the United States by the marshal
thereof.

19 18 U.S.C. § 1965(b). “Congress intended the ‘ends of justice’ provision to enable plaintiffs to
20 bring all members of a nationwide RICO conspiracy before a court in a single trial.” *Butcher’s*
21 *Union Local No. 498 v. SDC Invest., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986).

22 Accordingly, pursuant to RICO, personal jurisdiction can be established over all co-
23 defendants in a particular forum if: (1) there is personal jurisdiction over at least one of the
24 participants in the alleged conspiracy; and (2) there is no other district in which a court will have
25 personal jurisdiction over all of the alleged co-conspirators. *See Butcher’s Union Local No. 498*,

26

1 788 F.2d at 538; *see also Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1229-33 (10th Cir.
2 2006); *Bray v. Kendall*, 2010 U.S. Dist. LEXIS 281, at *10 (N.D. Cal., Jan. 5, 2010).

3 **IV. DISCUSSION**

4 **A. RICO's Long Arm Statute, 18 U.S.C. § 1965 Confers Personal Jurisdiction**
5 **Over All Defendants.**

6 Since KFI does not contest personal jurisdiction, and thereby concedes it, Cascade has
7 established personal jurisdiction over all defendants and need not show specific jurisdiction. To
8 establish jurisdiction pursuant to RICO, a plaintiff must show that at least one defendant is
9 subject to jurisdiction of the forum and that no other forum has jurisdiction over all other
10 defendants. *See Butcher's Union Local No. 498*, 788 F.2d at 538; *see also Cory*, 468 F.3d at
11 1229-33; *Bray*, 2010 U.S. Dist. LEXIS 281, at *10.

12 Cascade has satisfied both requirements. First, as set forth below, this Court has personal
13 jurisdiction over all Defendants in this action. Alternately, at a minimum, this Court has personal
14 jurisdiction over KFI, Mr. Elalouf and Ms. Bliss in Washington. In fact, KFI did not even join in
15 the Motion challenging personal jurisdiction as it admits that jurisdiction is proper as to it. This
16 precludes the Non-KFI Defendants motion as at least one defendant is subject to jurisdiction in
17 this district. *Bray*, 2010 U.S. Dist. LEXIS 281, at *10. Second, the Non-KFI Defendants do not
18 contend that another district has personal jurisdiction over all of the alleged conspirators. In fact,
19 they allege that no other district has personal jurisdiction over defendant Watt. Motion, p. 10.
20 Accordingly, both requirements are met, and the exercise of personal jurisdiction over all
21 Defendants in this action is proper.⁷

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24 ⁷ The Non-KFI Defendants argue that jurisdiction cannot be established under Federal Rule of
25 Civil Procedure 4(k)(2). Motion, pp. 9-10. Because Cascade has shown that RICO's long arm
26 statute, 18 U.S.C. § 1965 confers personal jurisdiction over all Defendants, it does not respond to
this argument.

1 **B. Even If Specific Jurisdiction Were Required, Cascade Has Established That**
 2 **This Court Has Specific Jurisdiction Over Defendants.**

3 Specific jurisdiction is proper where a cause of action arises directly from a defendant's
 4 contacts with a forum state. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). To establish
 5 specific jurisdiction, a plaintiff must show: (1) the defendant has performed some act or
 6 consummated some transaction within the forum or otherwise purposefully availed [itself] of the
 7 privileges of conducting activities in the forum; (2) the claim arises out of or results from the
 8 defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable.” *Bancroft*
 9 *and Masters, Inc.*, 223 F.3d at 1086. Plaintiff bears the burden of proving the first two prongs of
 10 the test, and if it can do so, the burden shifts to Defendant to present a “compelling case” that
 11 jurisdiction would be unreasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
 12 801-802 (9th Cir. 2004).

13 **a. Defendants Have Purposefully Availed Themselves Into**
 14 **Washington.**

15 Where a defendant’s acts are tortious in nature, the Ninth Circuit applies the “effects test”
 16 to determine whether a defendant has “purposefully availed” itself into a forum. *Calder v. Jones*,
 17 465 U.S. 783, 787 n.6 (1984); *Panavision Int’l*, 141 F.3d at 1321 (applying the effects test
 18 because unfair competition case was akin to a tort case); *United Truck & Equip., Inc. v. Curry*
 19 *Supply Co.*, 2008 U.S. Dist. LEXIS 110213, at *12 (D. Ariz., Nov. 5, 2008) (applying the effects
 20 test to an action for unfair competition and false advertising). To meet the effects test, a
 21 defendant allegedly must have “(1) committed an intentional act, (2) expressly aimed at the forum
 22 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”
 23 *Brayton-Purcell v. Recordon & Recordon*, 575 F.3d 981, 986 (9th Cir. 2009) (superseded on
 24 other grounds). The “express aiming” requirement “is satisfied when the defendant is alleged to
 25 have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a
 26 resident of the forum state.” *Bancroft and Masters*, 223 F.3d at 1087; *Bryant v. Mattel*, 573 F.
 Supp. 2d 1254, 1272 (C.D. Cal. 2007) (“express aiming” requirement satisfied in a RICO action

1 where the defendant's actions were "specifically engineered to result in the alleged illegal
2 acquisition of trade secrets" belonging to the plaintiff, a resident of the forum state).

3 First, the "intentional act" requirement is easily satisfied. As alleged throughout
4 Cascade's Amended Complaint, Defendants have all engaged in an intentional, concerted scheme
5 to sell mislabeled yarn in order to gain an unfair advantage and to harm Cascade's reputation and
6 business. Amended Compl., ¶ 1. The intentional acts giving rise to specific jurisdiction for tort
7 liability need not occur within Washington in order to confer jurisdiction. *Glud & Marstrand A/S*
8 *v. Microsoft Corp.*, 2006 U.S. Dist. LEXIS 62363, at *14 (W.D. Wash., Aug. 15, 2006).
9 Nonetheless, Cascade has provided evidence that Defendants advertised, sold and distributed the
10 mislabeled yarn to retailers and consumers in Washington and nationwide. Guite Decl., Exs. A-
11 D. Accordingly, the first prong is satisfied.

12 Second, the "express aiming" requirement is satisfied because Cascade has sufficiently
13 alleged wrongful conduct against the Non-KFI Defendants -- namely, unfair competition, false
14 advertising and violations of RICO. *Id.* at ¶¶ 97-131. Cascade has also demonstrated that it
15 competes directly with KFI and that Defendants were aware of the nature, scope, and location of
16 Cascade's operations in Washington. *Id.* at ¶¶ 2, 44-48. These allegations require the conclusion
17 that Defendants purposefully directed their intentional acts at the state of Washington. *See, e.g.,*
18 *The Bear Mill, Inc. v. Teddy Mountain, Inc.*, 2008 U.S. Dist. LEXIS 38007, at *17-19 (D. Idaho,
19 May 7, 2008) ("[t]he fact that the parties are competitors in the teddy bear and franchise business,
20 coupled with Defendant's knowledge of the location of Plaintiffs' business" satisfies the effects
21 test); *Precision Craft Log Structures, Inc. v. Cabin Kit Co.*, 2006 U.S. Dist. LEXIS 19233, at *20
22 (D. Idaho Mar. 3, 2006) (because the parties were competitors and sold goods throughout the
23 United States, the defendant's "alleged intentional actions were expressly aimed or directed at the
24 forum state and caused harm which the defendant knew would be suffered in the forum state
25 where [the plaintiff] had its principal place of business").

1 The Non-KFI Defendants claim that Cascade must demonstrate show conduct expressly
2 aimed towards Washington. Motion, p. 9. Although it need not, Cascade can easily make this
3 showing as well. Indeed, Cascade has provided evidence that KFI used an interactive website to
4 accept orders from retailers in Washington and to direct consumers in Washington to those
5 retailers. Guite Decl., Exs. A, B. This fact alone is sufficient to confer jurisdiction over KFI in
6 Washington. *Qwest Comms. Int'l v. Sonny Corp.*, 2006 U.S. Dist. LEXIS 29832, *4-7 (W.D.
7 Wash., May 15, 2006) (effects test satisfied where the defendant operated an “interactive-not
8 passive-website” and intentionally made sales to Washington residents and shipped its product
9 here). Cascade has also provided evidence that KFI distributed the mislabeled yarn brands to a
10 number of stores in Washington and that Ms. Bliss made appearances to promote and market the
11 same products in Washington. *See* Guite Decl., Exs. B-D. This conduct is similarly sufficient to
12 show purposeful availment. *See, e.g., Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1195
13 (9th Cir. 1988) (non-resident defendant’s act of soliciting business in the forum state will
14 generally be considered purposeful availment if that solicitation results in the transaction of
15 business or even mere contract negotiations). Accordingly, Defendants have “expressly aimed”
16 their conduct into Washington and, accordingly, should have reasonably anticipated that they
17 would be haled into court there.

18 The third and final requirement is satisfied because Cascade and KFI are direct
19 competitors, any sale facilitated by Defendants’ scheme has the effect of injuring Cascade in
20 Washington, even if the sale was not to an Washington resident. Indeed, Defendants’ conduct has
21 caused harm to Cascade in the form of lost business, and at least since 2006, Defendants have
22 known the location of Cascade’s business. Amended Compl., ¶¶ 44-48, 95. Therefore, the Court
23 should find that Defendants purposefully directed their activities at Washington and that
24 Defendants should have reasonably anticipated being sued in Washington.

1 **b. Cascade’s Claims Arise Out of or Relate to Defendants’ Forum-Related Activities.**

2 The second requirement for finding specific personal jurisdiction is that the plaintiff’s
3 claim arises out of or relates to the defendant’s forum-related activities. This element is
4 established if the plaintiff would not have been injured “but for” the defendant’s activities.
5 *Panavision*, 141 F.3d at 1322. This test “preserves the requirement that there be some nexus
6 between the cause of action and the defendant’s activities in the forum.” *Chute*, 897 F.2d at 385.

7 Here, but for Defendants’ intentional conduct of advertising and marketing mislabeled
8 yarn, which reached into this district and affected Cascade, Cascade’s claims would not have
9 arisen. As such, there is a nexus between Cascade’s claims and Defendants’ activities.

10 **c. The Exercise of Jurisdiction is Reasonable.**

11 The exercise of personal jurisdiction must also be reasonable. Once a plaintiff has shown
12 purposeful availment, jurisdiction is presumptively reasonable, and the burden shifts to the
13 defendant to show a “compelling case” why jurisdiction is unreasonable. *Roth v. Garcia*
14 *Marquez*, 942 F.2d 617, 625 (9th Cir. 1991).

15 In determining reasonableness, courts weigh the following factors: (1) the extent of
16 defendant’s injection into the forum; (2) defendant’s burden in litigating in the forum; (3) the
17 extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in
18 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the
19 importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the
20 existence of an alternative forum. *Theo H. Davies and Co. v. Republic of The Marshall Islands*,
21 174 F.3d 969, 975 n.4 (9th Cir. 1999).

22 The Non-KFI Defendants cannot present a compelling case why the exercise of
23 jurisdiction in this case is unreasonable. The factor of purposeful interjection is satisfied by a
24 finding of purposeful availment. *Roth*, 942 F.2d at 620-21. Additionally, there is no significant
25 inconvenience to the Non-KFI Defendants. Indeed, modern advances in communications and
26

1 transportation have significantly reduced the burden of litigating in a foreign state. *See Sinatra*,
2 854 F.2d at 1199. The Non-KFI Defendants have already retained local counsel, with whom they
3 may confer by telephone, fax, and e-mail.

4 Furthermore, Washington has a substantial interest in providing effective judicial redress
5 for its citizens. *Id.* at 1200. This interest is particularly strong where the claim is one for tortious
6 injury. *Glud & Marstrand A/S*, 2006 U.S. Dist. LEXIS 62363, at *23. This forum is convenient
7 for Cascade because it is a resident of Washington and was injured in the forum. And, as
8 discussed above, there appears to be no alternative forum where Cascade can bring suit against all
9 Defendants. Accordingly, it is reasonable to hear the case here in Washington. The Non-KFI
10 Defendants cannot meet their burden of establishing otherwise.

11 **V. CONCLUSION**

12 Cascade respectfully requests that the Court deny the Non-KFI Defendants' Motion;
13 jurisdiction is proper under 18 U.S.C. § 1965 and/or specific jurisdiction exists over all of the
14 Defendants in the Western District of Washington.

15 Dated: August 16, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

17
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