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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 YARN’S INC.’S
OPPOSITION TO DEFENDANTS
DESIGNER YARNS, LTD., SION
ELALOUF, DIANE ELALOUF, JAY
OPPERMAN, DEBBIE BLISS AND
DAVID WATT’S MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

**Note On Motion Calendar:
August 20, 2010**

I. INTRODUCTION

Cascade Yarns, Inc.’s (“Cascade”) Amended Complaint is factually detailed and provides each Defendant with adequate notice of the claims being pursued by Cascade. Defendants’ Motion to Dismiss is limited to Cascade’s Sixth Claim for conspiracy under section 1962(d) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* (“RICO”). Defendants do not seek dismissal of Cascade’s claim under section 1962(c) of RICO, or any other causes of action. With respect to Cascade’s RICO

1 conspiracy claim, they allege that Cascade fails to “differentiate its allegations of a RICO
2 conspiracy as against each of the Defendants.”

3 Defendants’ assertion is belied by Cascade’s factually-detailed Amended
4 Complaint. In bringing the instant motion, Defendants ignore more than 80 paragraphs of
5 factual allegations in their latest attempt to further delay responding to Cascade’s
6 Amended Complaint. This Court earlier denied Defendants’ request for an extension of
7 time to respond to the Amended Complaint; rather than file their Answers, they brought
8 the instant motion along with a motion to dismiss on behalf of certain Defendants alleging
9 a lack of personal jurisdiction. These tactics can only be intended to delay resolution of
10 Cascade’s claims so that Defendants can continue selling mislabeled yarns to the
11 detriment of their competitors, including Cascade, and the public.

12 **II. DISCUSSION**

13 **A. Plaintiff’s Factual Allegations Are Specific And Detailed; Dismissal**
14 **Under Fed. R. Civ. P. 9(b) Is Unwarranted.**

15 Cascade’s Amended Complaint is replete with factual information regarding the
16 Defendants concerted scheme, beginning nearly a decade ago, to defraud consumers and
17 injure their competitors by making literally false representations regarding the fiber
18 content of certain yarn products, including, but not necessarily limited, to the *Noro Silk*
19 *Garden*, *Debbie Bliss Cashmerino*, *Elsebeth Lavold Silky Wool* and *Louisa Harding*
20 *Kashmir* brands. Cascade alleged that each defendant entered into one or more
21 agreements between co-conspirators and Sion Elalouf, in order to advance the parties’
22 mutual plan to profit from the manufacture, sale and distribution of falsely-labeled yarns.

23 As pled, the scheme and alleged agreements include:

- 24 1. To better “compete” in the importation, marketing, distribution and
25 sale of high-end designer handknitting yarn, defendants KNITTING FEVER, INC.
26 (“KFI”), DESIGNER YARNS, LTD. (“Designer Yarns”), FILATURA
PETTINATA V.V.G. DI STEFANO VACCARI & C. (S.A.S.) (“VVG”), SION
ELALOUF, DIANE ELALOUF, JAY OPPERMAN, DAVID WATT and

1 DEBBIE BLISS (collectively, “Defendants”) engaged in a concerted scheme,
2 beginning nearly a decade ago, to defraud consumers and injure their competitors
3 by making literally false representations regarding the fiber content of certain yarn
4 products, including but not necessarily limited to the *Noro Silk Garden, Debbie
5 Bliss Cashmerino, Elsebeth Lavold Silky Wool* and *Louisa Harding Kashmir*
6 brands. Defendants’ conduct caused harm to its competitors, including Cascade,
7 by driving customers away from purchasing Cascade’s products in the false belief
8 the KFI’s competing products were of similar content and of equal quality.

9 ...

10 3. On information and belief, in order to make an unreasonable profit
11 and to undercut its competitors’ (including Cascade’s) business, beginning
12 sometime in the early 2000s and certainly no later than 2006, KFI began selling
13 products that had literally false labels misrepresenting the products’ cashmere, kid
14 mohair and/or silk content. The literally false labels allowed KFI to sell their
15 products for a significantly lower price than Cascade’s products, thereby damaging
16 Cascade in the form of lost profits and business injury.

17 As to the Defendants, Cascade alleged:

18 5. **KFI**, on information and belief, is a corporation organized and/or
19 existing since 1980 under the laws of the State of New York. On information and
20 belief, KFI has its principal place of business at 315 Bayview Avenue, Amityville,
21 New York, 11701-2801.

22 6. **Designer Yarns**, on information and belief, is a closely held
23 corporation organized under the laws of England with a principal place of business
24 at Unit 8-10 Newbridge Industrial Estate, Pitt Street, Keighly, West Yorkshire,
25 United Kingdom, BD21 4PQ. On information and belief, Designer Yarns holds a
26 license for the international marketing of handknitting yarns bearing the Debbie
Bliss brand name and has a distributorship agreement with KFI by which KFI is
the exclusive U.S. importer and distributor of yarns marketed by Designer Yarns.
On information and belief, defendant Sion Elalouf and/or KFI control Designer
Yarns.

7. **VVG**, on information and belief, is a closely held entity organized
or held under the laws of Italy with a principal place of business at 11 Via
Gianasso, 13871 BENNA (BI) ITALIA. On information and belief, VVG
brokered (*i.e.*, identified and arranged for manufacture) yarns for the KFI and
Debbie Bliss brand names, including but not necessarily limited to the mislabeled
yarns described in this Complaint. On information and belief, Sion Elalouf exerts
significant, if not complete, control over VVG.

8. **Sion Elalouf** is a natural person and, on information and belief,
resides at 22 Longwood Road, Port Washington, New York 11050-1260. On
information and belief, since 1980, Mr. Elalouf has been the sole or controlling
shareholder and chief executive of KFI and has been and continues to be
responsible for setting KFI’s trade policies and practices. On information and
belief, except where explicitly stated otherwise, Mr. Elalouf has actively
participated in the tortious, fraudulent and wrongful conduct that is the subject of

1 this Complaint, including but not limited to falsely advertising and labeling goods
2 distributed in interstate and/or foreign commerce, committing predicate acts of
3 racketeering (including wire fraud and mail fraud), conspiring with the other
4 defendants to engage in acts to further the racketeering scheme and causing harm
to Cascade's business by the acts of that racketeering enterprise. On information
and belief, Mr. Elalouf operates KFI as his alter ego.

5 9. **Diane Elalouf** is a natural person and, on information and belief,
6 resides at 22 Longwood Road, Port Washington, New York 11050-1260. On
7 information and belief, at times material to this Complaint, Mrs. Elalouf was and
continues to be a KFI officer, director or shareholder. On information and belief,
Mrs. Elalouf has access to and responsibility for reviewing, approving and paying
invoices from KFI's foreign suppliers.

8 10. **Jay Opperman** is a natural person and, on information and belief,
9 resides at 78 Clinton Avenue, Montclair, New Jersey 07042-2116. On information
10 and belief, as recently as 2002, Mr. Opperman has held himself out as an
independent sales representative of KFI, and more recently as KFI sales manager
11 responsible for managing a national sales force tasked with "pushing" sales of
handknitting yarn products to retailers. On information and belief, since 2001, Mr.
Opperman is a director of, and one of the registered owners of, the shares of
12 Designer Yarns, Ltd. On information and belief, at all time relevant to this
Complaint, Mr. Opperman actively participated in the wrongful conduct that is the
13 subject of this Complaint, including but not limited to making false representations
of the fiber content of KFI's yarn products and thereby causing injury to Cascade.

14 11. **Debbie Bliss** is a natural person and, on information and belief, is a
15 subject of the United Kingdom residing at 9 Folkestone Road, Walthamstow,
London, United Kingdom, E17 9SD. On information and belief, in late 1999, and
16 no later than June 2000, Ms. Bliss desired to create her own handknitting yarn
brand name that would sell a range of value-priced yarns for sale in her retail yarn
17 business. On information and belief Ms. Bliss has licensed her name to Designer
Yarns for the development and marketing of a series of yarns branded under her
18 name. On information and belief, under the terms of that license, Ms. Bliss has
reserved the responsibility for assuring the quality for handknitting yarns branded
19 with her name. Since 2001, Ms. Bliss has regularly traveled to the U.S. for the
purpose of promoting yarn products with her brand name. On information and
20 belief, Ms. Bliss has participated and facilitated the wrongful conduct described in
this Complaint.

21 12. **David Watt** is a natural person and, on information and belief is a
22 subject of the United Kingdom. On information and belief, Mr. Watt's business
address is Designer Yarns, Ltd., Unit 8-10 Newbridge Industrial Estate, Pitt Street,
23 Keighly, West Yorkshire, United Kingdom, BD21 4PQ. Mr. Watt is actively
involved in the management of Designer Yarns, and, on information and belief, at
24 all time material to this Complaint, was an active participant in the scheme alleged
herein.

25 Paragraphs 16 through 30 of the Amended Complaint describe the formation of the
26 relationships between the Defendants, their licensing of the subject yarns and their

1 agreements to distribute yarns within the United States. Paragraph 28 specifically
2 describes Mr. Elalouf's discovery of two versions of a yarn called *Cashmerino* --one
3 version of which contained cashmere and another that did not between July 2000 and June
4 2001. Paragraph 29 details the significance of this discovery and the difficulty of
5 detecting the absence of cashmere in the *Cashmerino* yarn. Paragraph 30 described Mr.
6 and Mrs. Elalouf's role in this phase of the scheme:

7
8 30. On information and belief and through processes currently
9 unknown to Cascade, no later than October 2001 and continuing through the
10 present, among the many legitimate employees and/or contractors at KFI, only Mr.
11 and Mrs. Elalouf had access to documents concerning the yarns imported and
12 wholesaled by KFI. On information and belief, Mrs. Elalouf had sole
13 responsibility to scrutinize, approve and pay manufacturers' and suppliers' invoice
14 and, therefore, had sole access to the information regarding the attendant fiber
15 content of the yarns made by KFI's suppliers and manufacturers. On information
16 and belief, this allowed Mrs. Elalouf to prevent regular KFI employees from
17 learning the invoiced purchase values of goods imported and eventually resold by
18 KFI, from learning the true source of the products imported and eventually resold
19 by KFI, and from learning the actual fiber content of goods imported and
20 eventually resold by KFI.

21 As to the racketeering enterprise and conspiracy, Cascade alleged:

22 31. On information and belief, following his discovery of the two
23 versions of the Cashmerino Yarn, on a date presently unknown to Cascade but
24 believed to be before June 9, 2001, Mr. Elalouf and Designer Yarns entered into an
25 agreement to substitute the 0% cashmere version of the product for the
26 Cashmerino spun of 12% cashmere.

32. On information and belief, following the agreement described
above, Alberto Oliaro, VVG's principal officer, was directed by Mr. Elalouf to and
actually did manufacture the 0% cashmere yarn but nevertheless labeled the
finished product as containing 12% cashmere.

33. On information and belief, on a date presently unknown to Cascade
but believed to be before June 9, 2001, the 0% cashmere Cashmerino (labeled as
containing 12% cashmere) was included in the new line of Debbie Bliss yarns to
be launched by Designer Yarns.

34. The 0% cashmere version of Cashmerino was subsequently
imported into the U.S. by KFI and was sold, using means of interstate and/or
foreign commerce, to retailers throughout the U.S. under the Debbie Bliss brand
name from Designer Yarns.

1 35. On information and belief, the non-cashmere Cashmerino was
2 formally introduced at a June 9-11, 2001 U.S. trade show for the yarn industry.

3 36. On information and belief, even prior to its formal introduction Mr.
4 Opperman, in his role as an independent sales representative for KFI, represented
5 that a new KFI product, called Cashmereno DK, contained 55% merino wool, 33%
6 microfiber and 12% cashmere.

7 37. On information and belief, based on Mr. Opperman's
8 representations as to the fiber content of the Cashmereno DK product, certain of
9 Cascade's customers bought the Cashmereno DK instead of comparable Cascade
10 products.

11 38. On information and belief, between August 2001 and continuing at
12 through the present, KFI regularly used the United States Mail and interstate wires
13 to issue to as many as 2,000 specialty yarn retailers throughout the U.S. price and
14 product lists identifying the KFI and Debbie Bliss Cashmerino products as spun of
15 a fiber content consisting of 55% merino wool, 33% microfiber and 12%
16 cashmere.

17 39. On information and belief, based on the representations contained
18 in KFI's price and products list, certain of Cascade's customers bought the KFI
19 and Debbie Bliss Cashmerino products listed as being spun of a fiber content
20 consisting of 55% merino wool, 33% microfiber and 12% cashmere instead of
21 comparable Cascade products.

22 Cascade further alleged that when the mislabeling was discovered the
23 Defendants sought to cover up the scheme and continue the enterprise's affairs
24 thru racketeering acts. Amended Compl. ¶¶ 40-58, 94-96. Specifically, Cascade
25 alleged:

26 40. In early 2006, Cascade became aware of the extent of KFI's
enormous success with its Cashmerino line of yarn products.

 41. Cascade then contacted the Cashmere and Camel Hair
Manufacturers Institute ("CCMI") and submitted a sample of KFI's Cashmerino
yarn purportedly containing 12% cashmere for fiber testing. CCMI informed
Cascade that it had submitted the sample to K.D. Langley Fiber Services ("K.D.
Langley") for testing. On May 26, 2006, Langley issued a report and concluded
that "[n]o cashmere fibers were observed."

 42. As noted above, because it is impossible to determine the true fiber
content of spun yarn without expert fiber test results, Cascade was ignorant of the
true fiber content of the mislabeled KFI products until the release of the May 26,
2006 test results.

 43. At The National Needlework Association trade show, which took
place on June 10 through June 12, 2006 in Indianapolis, Indiana, test results

1 showing that KFI's Cashmerino yarn products did not contain any cashmere
2 became known.

3 44. On June 22, 2006, Mr. Elalouf contacted Cascade by telephone and
4 left a message for Robert Dunbabin, Sr. to call. Robert Dunbabin, Jr., of Cascade,
5 returned this call by cellular telephone. During the course of the conversation Mr.
6 Elalouf represented to Mr. Dunbabin that he was not surprised that the test results
7 did not show cashmere because, according to Mr. Elalouf, the type of cashmere
8 that KFI uses will not show up in fiber tests. In an effort to further his scheme,
9 Mr. Elalouf threatened Mr. Dunbabin, Jr. with litigation if Cascade did not seek to
10 dispel "rumors" about the lack of cashmere content in the Cashmerino yarns.

11 45. On June 27, 2006, Roy A. Klein, an attorney working on behalf of
12 KFI, Designer Yarns and Ms. Bliss sent a letter by U.S. mail and facsimile to
13 Cascade. In that letter, Mr. Klein accused Cascade of misrepresenting the fiber
14 content of Debbie Bliss Cashmerino. Mr. Klein's letter also represented that KFI
15 had independent lab reports showing that KFI's yarn "indeed has the cashmere
16 content indicated on its label." Mr. Klein's letter further demanded a public
17 apology, to be approved by KFI in advance, and that should Cascade refuse to
18 issue such an apology, KFI, Ms. Bliss and Designer Yarns would "not hesitate to
19 pursue all appropriate rights and remedies to recover compensatory and punitive
20 damages for [Cascade's] tortious and illegal conduct." On information and belief,
21 Mr. Elalouf directed Mr. Klein to send the June 27, 2006 letter and to make the
22 representations contained therein.

23 46. On June 28, 2006, counsel for Cascade responded to Mr. Klein's
24 letter and explained that Cascade had not made any misrepresentation. Cascade's
25 counsel's June 28 letter further requested information regarding KFI's test results.

26 47. On July 11, 2006, Mr. Klein responded to Cascade's counsel via
facsimile and, while asserting that fiber tests for cashmere content in spun yarn are
inherently unreliable, attached copies of test results purporting to show that Debbie
Bliss Cashmerino yarns contained cashmere. On information and belief, Mr.
Elalouf directed Mr. Klein to send the July 11, 2006 letter and to make the
representations contained therein.

48. On July 17, 2006, Cascade's counsel responded to Mr. Klein.
Cascade's counsel challenged the assertion that it is difficult to test for cashmere
content and explained that K.D. Langley used a reliable testing protocol approved
by the American Association of Textile Chemists and Colorists when he examined
the fiber content of Debbie Bliss Cashmerino yarn.

49. On July 20, 2006, KFI distributed by electronic mail and by U.S.
mail, an open letter to its customers in which it represented that Debbie Bliss
Cashmerino yarn contains cashmere. On information and belief, the July 20, 2006
letter was authored by Mr. Elalouf and Mr. Klein.

50. On July 22, 2006, David Watt wrote to Sion Elalouf via email and
suggested that Mr. Elalouf take a different approach to quieting the rumors about
Debbie Bliss Cashmerino. Mr. Watt suggested that attacking Mr. Langley's
expertise of testing for cashmere would be counterproductive, but that KFI should

1 criticize the fact that Cascade had based its disclosure solely upon one test. Mr.
2 Watt expressed that this strategy would allow KFI to take the “moral high
ground.”

3 51. On July 25, 2006, Sion Elalouf wrote to VVG in an effort to obtain
4 a “test report” that would placate A.C. Moore over concerns that the Luxury
5 Cashmere Aran products that KFI supplied to them actually contained cashmere.
Mr. Watt was copied in this letter and actively involved in this and the cover-up
regarding the fiber content of the other Cashmerino products.

6 52. Sometime in the Summer of 2006, an industry publication known
7 as Yarn Marketing News contacted Cascade and offered to publish a retraction and
8 public apology on Cascade’s behalf, for any claims about the cashmere content of
KFI’s products. Yarn Marketing News indicated that this was being arranged by
KFI and that KFI would bear the costs associated with this purported retraction
and apology. Cascade declined this offer.

9 53. On or around September 26, 2006, amidst the growing controversy
10 in the hand knitting yarn community, Debbie Bliss sent a letter, on information and
11 belief by U.S. mail, to a number of yarn stores throughout the United States. In
the September 26 letter, Ms. Bliss represents that the Debbie Bliss branded yarns
12 contain cashmere. On information and belief, Mr. Elalouf directed Ms. Bliss to
send the September 26 letter and to make the representations therein.

13 54. KFI responded to the growing controversy regarding its yarns, and
14 the increase of retailer testing of its products by liquidating its intentionally
15 mislabeled yarns, without correcting the labels or informing the purchasers of the
16 problem. For example, on information and belief in or around August 2006, one
of KFI’s customers, A.C. Moore, raised concerns regarding the cashmere content
17 of certain KFI-supplied products, whose labels stated that the product contained
6% cashmere. KFI, despite its repeated criticism of results from CCMI-approved
18 fiber testing laboratories, advised A.C. Moore to engage a testing facility
recommended by CCMI. On information and belief, A.C. Moore then had the
19 suspect product tested and the test results revealed that the product had 0%
cashmere. On information and belief, when Mr. Elalouf was informed of these
20 results, and with knowledge of those results, stated that the product was fine and
that A.C. Moore should sell through its current inventory and the inventory that
KFI was holding for A.C. Moore.

21 55. On information and belief, Mr. Elalouf, with the advice of Mr.
Klein, contacted VVG and reformulated a number of the “cashmerino” type
22 products. On information and belief, this led to a letter from VVG to Mr. Watt and
Mr. Elalouf outlining VVG’s view of the situation. On information and belief, in
23 this letter, VVG stated that “if everybody start[s] testing everything on the market
the consequences would be big war and everybody will only get problems.” On
24 information and belief, VVG further sated that “there is no need to use the best
cashmere qualities because nobody would feel the difference.” On information
25 and belief, VVG nevertheless noted that “if there are these kind of risks, we need
to seriously think how to proceed in the future.” On information and belief, VVG
26 advised that there were three possibilities, “a) we continue so as done so far, if
were think the risks are not too big. b) we stop this kind of blend. c) we change

1 the blend and use the best possible cashmere quality, which will be easier to find
2 in case of lab check. Of course the price would change.”

3 56. On information and belief, the communications between VVG, Mr.
4 Watt and Mr. Elalouf led to a reformulation of certain of Defendants’ products.
5 On information and belief, prior to this, Cashmere was wholly absent and was
6 replaced by surplus acrylic: dyelots of this type contained no letter. After this
7 dyelots with a “B” or a “C” were introduced. On information and belief, these
8 dyelots contained some cashmere, but materially less than the amount stated on the
9 label. On information and belief, these dyelots “B” and “C” had surplus wool,
10 unlike surplus acrylic in the pre-June 2006 “no letter in dyelot” versions of the
11 yarn. On information and belief, the purpose for this change was to make
12 detection more difficult by including some cashmere and keeping the easily
13 detectable acrylic fiber content consistent with the labeling. On information and
14 belief, Mr. Klein advised Mr. Elalouf that this change would make charges of
15 intentional mislabeling more difficult to establish. Upon information and belief,
16 and despite knowledge of the mislabeling, Defendants continued to market, sell
17 and ship mislabeled product through at least December 2008. Upon information
18 and belief, those customers who had previously complained about the lack of
19 cashmere received product that contained some amount of cashmere, identified as
20 dyelots “B” and “C.” Upon information and belief, for a short period of time KFI
21 placed the “no letter in dyelot” product on closeout for liquidation but stopped that
22 course of action because of inquiries it received from the customers as to why the
23 product was on closeout and, thereafter, continued to sell and ship the “no letter in
24 dyelot” product as described herein.

25 57. On information and belief, in 2006 certain of KFI’s customers
26 began complaining about the fiber content of certain of its yarn products. On
information and belief, when KFI received complaints from its customers, it
actively discouraged the customers from having independent testing of the yarns’
fiber content conducted. On information and belief, KFI offered to sign “letters of
guarantee” that were drafted by Mr. Klein and would not have effectively insulated
KFI’s customers from liability from selling mislabeled products. On information
and belief these complaints led to disputes between KFI, on the one hand, and
certain of its customers, on the other.

58. On information and belief, in furtherance of the unlawful conduct
that is the subject of this complaint, KFI instituted lawsuits against certain of its
customer, including but not limited to the following yarn stores: Knit and Purl in
Rochester New York; Red Needle in Savannah, Georgia; NY Knits in Victor, New
York; Charlotte’s Fiber, Brevard, North Carolina; and A.C. Moore in New Jersey.
On information and belief, Mr. Elalouf directed KFI to undertake these lawsuits to
collect on debts incurred for purchases of yarn with labels that were literally false
as to the fiber content of the yarn.

In addition, Cascade presented the results of fiber analysis testing of the subject
yarns conducted in 2006 and 2010 confirming the mislabeling of the subject yarns.

Amended Compl. ¶¶ 59-93 and Exhs. A-D.

1 As shown above, and contrary to Defendants' Rule 9(b) motion, Cascade's
2 Amended Complaint is extremely detailed, specifying the context and manner of the
3 scheme, the nature of the communications (or failures to disclose), the participants in the
4 fraudulent communications, and when and where those communications occurred. The
5 Amended Complaint is more than sufficient to provide each defendant with the "fair
6 notice" required. *Reyn's Pasta Bella v. Visa U.S.A., Inc.*, 259 F. Supp. 2d 992, 1001
7 (N.D. Cal. 2003). Moreover, even if the Amended Complaint suffered from vagueness or
8 insufficient detail (which is not the case), the Defendants should have challenged it by
9 motion for a more definite statement rather than a motion to dismiss. *Harman v. Valley*
10 *Nat'l Bank of Ariz.*, 339 F.2d 564, 569 (9th Cir. 1964). Tellingly, Defendants have not
11 moved to dismiss Cascade's Fifth Claim for injury to its business and property under 18
12 U.S.C. § 1962(c). Given that their failure to challenge that substantive RICO count, there
13 is no basis to dismiss Cascade's broader conspiracy count under section 1962(d).
14 *National Western Life Ins. Co. Deferred Annuities Litig.*, 467 F. Supp. 2d 1071, 1086
15 (S.D. Cal. 2006) (recognizing that where a section 1962(c) claim is not subject to
16 dismissal, a motion to dismiss a claim under section 1962(d) should be denied); *In re*
17 *American Honda Motor Co. Inc. Dealership Relations Litig.*, 941 F. Supp. 528, 550-51
18 (D. Md. 1996).

19 Faced with a detailed account of their fraudulent conduct, the Defendants resort to
20 the tactic of quoting only from the Amended Complaint's "Counts" section, which sets
21 forth the causes of action, while ignoring more than 30 preceding pages, which contain the
22 factual allegations giving rise to the causes of action, including the RICO conspiracy
23 claim. The Sixth Claim for conspiracy under section 1962(d), the only cause of action
24 that is the subject of the instant motion, expressly incorporates the factual allegations
25 contained in all preceding paragraphs of the Amended Complaint. Amended Compl. ¶

1 126. The Defendants' Rule 9(b) motion thus amounts to a request that this Court
2 selectively read only the last section of the Amended Complaint, ignoring more than 10
3 paragraphs describing the parties and more than 100 paragraphs describing the facts and
4 conduct giving rise to Cascade's causes of action. This Court should do no such thing.
5 The Amended Complaint should be read in its entirety; review of the Amended Complaint
6 confirms that its allegations far exceed the "fair notice" required by the rules.

7 Most importantly, a complaint need only give the defendant fair notice of what the
8 claim is and the grounds on which it rests. *Reyn's Pasta Bella*, 259 F. Supp. 2d at 1001
9 (citing *Swierkiewicz v. Sorema*, 534 U.S. 506, 512 (2002)). This "notice pleading"
10 requirement applies to fraud claims governed by Rule 9(b) no less than any other cause of
11 action. As the Ninth Circuit explains, "[p]leading is sufficient under Rule 9(b) if it
12 identifies the circumstances constituting fraud so that the defendant can prepare an
13 adequate answer from the allegations." *Blake v. Dierdorff*, 856 F.2d 1365, 1368 (9th Cir.
14 1988); *Semegen v. Weidner*, 780 F.2d 727, 734-35 (9th Cir. 1985). The "fair notice"
15 pleading standard, when applied to fraud claims, requires only allegations as to the "time,
16 place and nature of the alleged fraudulent activities," *Zatkin v. Primuth*, 551 F. Supp. 39,
17 42 (S.D. Cal. 1982), and standards applicable to a motion under Rule 12 (b)(6). *See*
18 *Mueller v. Walgreens Corp.*, 175 F.R.D. 631, 634 n.8 (N.D. Cal. 1997).

19 Although the higher pleading standard applicable under Fed. R. Civ. P. 9(b) is
20 intended to address the concerns that general, unsupported allegations of fraud can
21 damage a party's reputation, the rule does not abrogate Fed. R. Civ. P. 8, which condones
22 conclusory pleading averments. 2 James Wm. Moore et al., *Moore's Federal Practice* ¶
23 9.03[7] (3d ed. 1997 & Supp. 2010). Indeed, "[c]ourts read the rules together to
24 harmonize the specificity requirements of Rule 9 with the liberal pleading policies of Rule
25 8." *Id.* (citing *Wenger v. Lumisys, Inc.*, 2 F. Supp. 2d 1231, 1240 (N.D. Cal. 1998).

1 “Although RICO cases may be pesky, courts should not erect artificial barriers --
 2 metaphysical or otherwise -- as a means of keeping RICO cases off the federal docket.”
 3 *Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 189, 194 (9th Cir. 1987).

4 **1. Plaintiff Need Not Allege Each Fact With Particularity.**

5 In any event, in the Ninth Circuit, the “enterprise” and “control” elements of a
 6 RICO cause of action need not be pleaded with particularity. *Odom v. Microsoft Corp.*,
 7 486 F.3d 541 (9th Cir. 2007) (*en banc*), *cert. denied*, 552 U.S. 985 (holding that only
 8 aspects of RICO claim that require particularized allegations are factual circumstances of
 9 fraud itself and that the scienter element can be alleged generally). Indeed, in complex
 10 RICO cases involving multiple defendants, the particularized pleading requirement of
 11 Fed. R. Civ. P. 9(b) is satisfied by setting forth the circumstances constituting the overall
 12 fraudulent scheme. *Id.* at 453-54; *In re Sumitomo Copper Litig.*, 995 F. Supp. 451, 455-56
 13 (S.D.N.Y. 1998); 2 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 9.03[6][b] (3d
 14 ed. 1997 & Supp. 2010).¹

15 A claim under 18 U.S.C. § 1962(d) can be proved in either one of two ways: (1) by
 16 showing an agreement on an overall objective; or (2) showing that a defendant agreed
 17 personally to commit two or more predicate acts and therefore to participate in a “single
 18 objective” conspiracy. *United States v. Valera*, 845 F.2d 923, 929 (11th Cir. 1988), *cert.*
 19 *denied*, 490 U.S. 1046 (1989). The existence of a conspiracy may be inferred from the
 20 “conduct of the alleged participants or from circumstantial evidence of the scheme.”
 21

22 ¹ Indeed, no particular structure is required to be pled. As the United States Supreme
 23 Court recently recognized, “[f]rom the terms of RICO, it is apparent that an association-
 24 in-fact enterprise must have at least three structural features: a purpose, relationships
 25 among those associated with the enterprise, and longevity sufficient to permit these
 26 associates to pursue the enterprise’s purpose.” *Boyle v. United States*, 129 S. Ct. 2237,
 2250 (2009). Such an enterprise is “a group of persons associated together for a common
 purpose of engaging in a course of conduct.” *Id.* (quoting *United States v. Turkette*, 452
 U.S. 57, 583).

1 *United States v. Ard*, 731 F.2d 718, 724 (11th Cir. 1984). Further, a conspirator need not
2 have full knowledge of every detail regarding the conspiracy, it is sufficient if he knows
3 of the “essential nature of the plan.” *United States v. Koptiuk*, 690 F.2d 1289, 1323 (11th
4 Cir. 1982). Liability for conspiracy applies even to an individual who indirectly aids the
5 conspirator in committing a substantive RICO violation. *Sturge v. Munther Bilbeisi Orion*
6 *Sys., Inc.*, 1992 U.S. Dist. LEXIS 17365 at *48 (S.D. Fla., Sept. 10, 1992). As the court
7 recognized in *Mason Tenders Dist. Council Pension Fund v. Messera*, 1996 U.S. Dist.
8 LEXIS 8929 (S.D.N.Y., June 26, 1996) “in RICO cases, a pleading of conspiracy such as
9 contained in the Second and Fourth Counts is measured under the more liberal pleading
10 requirements of *Rule 8(a)*” and need not satisfy Rule 9(b). *Id.* (citing *Hecht v. Commerce*
11 *Clearing House, Inc.*, 897 F.2d 21, 26 n.4 (2d Cir. 1990).

12 Defendants’ reliance on *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir.
13 2007) and *Kauhi v. Contrywide Home Loans, Inc.*, 2009 U.S. Dist. LEXIS 90916 at *13-
14 14 (W.D. Wash., Sept. 29, 2009) is misplaced. Neither case addressed a RICO conspiracy
15 claim. A RICO conspiracy claim under 18 U.S.C. § 1962(d) is the only claim that the
16 Defendants seek to dismiss in the instant motion. This distinction alone renders those
17 decisions inapt. Further, in *Kauhi*, the dismissal was based on the court’s conclusion that
18 the facts that were actually pled were contradictory to any fraud claim and were “facially
19 insufficient.” *Kauhi*, 2009 U.S. Dist. LEXIS at *13. Here, Defendants have not even
20 alleged that the facts alleged by Cascade are contrary to any claim of fraud. Further, the
21 plaintiff in *Kauhi* conceded that not even one predicate offense was alleged. *Id.* at *16. In
22 contrast, the facts alleged by Cascade wholly support its fraud claims and Cascade has
23 alleged numerous predicate offenses.

24 Cascade alleged that each Defendant entered into one or more agreements with co-
25 conspirators Sion Elalouf in order to advance the parties’ mutual plan to profit from the
26

1 manufacture, sale and distribution of falsely-labeled yarns. The quoted language
2 illustrates that Cascade made ample “factually specific allegations” that Defendants
3 directed themselves to engage in an ongoing enterprise to defraud customers as to the true
4 fiber content of the subject yarns to sell fraudulently-labeled goods and reap illegal and
5 unconscionable profits. Cascade is therefore entitled to pursue its RICO conspiracy claim
6 under 18 U.S.C. § 1962(d).

7
8 **2. Even If Fraud Is Required To Be Alleged With Particularity,
Cascade’s Amended Complaint Satisfies That Standard.**

9 Cascade’s 35-page Amended Complaint describes the facts and circumstances
10 supporting its claims and the ongoing scheme perpetrated by the Defendants. It alleges
11 that Defendants came to a mutual understanding to accomplish the unlawful plan to sell
12 yarn products with false representations as to the products’ fiber content and continued
13 that scheme from 2000 or 2001 through the present with increasing sophistication and
14 obfuscation. Cascade further asserts that at the time of Defendants’ mutual understanding,
15 they were employed by or associated with the enterprise and engaged in activities that
16 affected interstate and/or foreign commerce. Further, that they knowingly and willfully
17 entered into Defendants’ mutual understanding by indicating, through their words and/or
18 actions, their agreement to conduct or participate, directly or indirectly, in the conduct of
19 the affairs of the enterprise described in this Complaint through a pattern of racketeering
20 activity and committed overt acts to accomplish the goals of their mutual understanding.
21 Amended Compl. ¶¶ 126-31. Of course, the facts underlying the Sixth Claim were
22 described in the preceding paragraphs and incorporated by reference.

23 **B. If This Court Concludes That More Specificity Is Required, Leave To
24 Amend Should Be Granted.**

25 Cascade submits that review of the Amended Complaint confirms that the facts
26 and allegations contained therein exceed any specificity required by Fed. R. Civ. P. 9(b),

1 if that standard were to apply. Defendants' attempt to focus solely on paragraphs 127
2 through 131 of the Amended Complaint, which set forth the RICO conspiracy claim, to
3 the exclusion of more than 100 other paragraphs that contain specific and detailed factual
4 allegations is misleading and specious. A fair reading of the Amended Complaint
5 confirms that it affords the Defendants ample notice of the facts and circumstances
6 evincing their scheme to manufacture, import and sell mislabeled yarns to the detriment of
7 their competitors and consumers. If this Court concludes otherwise, Cascade should be
8 granted leave to amend. *Odom*, 486 F.3d at 555; *Schreiber Distrib. v. Serv-Well Furniture*
9 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (holding that the district court erred in
10 dismissing a RICO cause of action with prejudice where the complaint lacked specificity
11 required by Fed. R. Civ. P. 9(b) and remanding with instruction that the district court
12 permit plaintiff to file an amended complaint); *Luce v. Edelstein*, 802 F.2d 49, 56 (2d Cir.
13 1986) (holding that complaints dismissed for failure to comply with Fed. R. Civ. P. 9(b)
14 are almost always dismissed with leave to amend).

15 Indeed, the Ninth Circuit recognizes that "leave to amend should be granted if it
16 appears at all possible that the plaintiff can correct the defect." *Vess v. Ciba-Geigy Corp.*
17 *USA*, 317 F.3d 1097, 1108 (9th Cir. 2003) (citing *Balistreri v. Pacifica Police Dep't*, 901
18 F.2d 696, 701 (9th Cir. 1988) (when dismissing for failure to comply with Rule 9(b)
19 "leave to amend should be granted unless the district court determines that the pleading
20 could not possibly be cured by the allegation of other facts"); *Caputo v. Pfizer, Inc.*, 267
21 F.3d 181, 191 (2d Cir. 2001) (where the plaintiff has requested leave to amend in the
22 event the court is inclined to dismiss on Rule 9(b) grounds, "the failure to grant leave to
23 amend is an abuse of discretion unless the plaintiff has acted in bad faith or the
24 amendment would be futile"); *see also Eminence Capital v. Aspeon, Inc.*, 316 F.3d 1048
25 (9th Cir. 2003).

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III. CONCLUSION

The Amended Complaint sufficiently details the facts underlying Cascade's Sixth Claim for conspiracy under RICO. The motion to dismiss should be denied.

Dated: August 16, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

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