UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

VIRTUALPOINT, INC.,

Plaintiff,

v.

POARCH BAND OF CREEK INDIANS and NATIONAL ARBITRATION FORUM, INC.,

Defendants.

Case No.: SACV 15-02025-CJC(KESx)

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

Plaintiff Virtualpoint, Inc. ("Virtualpoint") brings this action against Defendants the Poarch Band of Creek Indians ("PBCI" or the "Tribe") and the National Arbitration Forum, Inc. ("NAF"). (*See* Dkt. 34 ["Second Amended Complaint" ("SAC")].) The only

causes of action relevant to this Order are those asserted against NAF, for declaratory relief and common law fraud. (*See id.* ¶¶ 75–88.) Before the Court is NAF's motion to dismiss those causes of action. (Dkt. 30.) For the following reasons, the motion is GRANTED, and the causes of action asserted against NAF are DISMISSED WITH PREJUDICE.[1]

II. BACKGROUND

Virtualpoint is a "premier website developer" that owns and develops website domains. (SAC ¶ 14.) Among the domains that Virtualpoint owns is <www.windcreek.com>. The Tribe owns and operates a casino bearing the name "Wind Creek" and has registered a number of trademarks containing that name. (*Id.* ¶ 20) In 2013, it contacted Virtualpoint to ask if <www.windcreek.com> was for sale. (*Id.* ¶ 33.) Virtualpoint informed the Tribe that it was not.

A little over two years later, in September 2015, the Tribe filed an administrative complaint against Virtualpoint before Defendant NAF, pursuant to the Uniform Domain Resolution Policy ("UDRP"). (SAC ¶ 34.) A court in the Western District of Washington has explained that policy as follows:

> The UDRP is a policy adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), which administers domain name registration matters. The UDRP is incorporated by reference into contractual agreements between registrants of domain names and the party accepting the registration. When third parties challenge a registration, they may seek arbitration under the UDRP even though they are not parties to the registration contract.

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for June 13, 2016 at 1:30 p.m. is hereby vacated and off calendar.

Stenzel v. Pifer, No. C06-49Z, 2006 WL 1419016, at *1 (W.D. Wash. May 22, 2006) (internal parentheticals and citations omitted).

In essence, the Tribe's administrative complaint alleged that Virtualpoint was operating <www.windcreek.com> as a pay-per-click website that advertised for the Tribe's competitors—i.e., other casinos and hotels. Specifically, the Tribe said, the <www.windcreek.com> domain was confusingly similar to its registered trademarks, and Virtualpoint was operating the domain in bad faith, thereby entitling the Tribe—under the terms of the UDRP—to have the ownership of the domain transferred from Virtualpoint to it.

NAF appointed a neutral to hear the dispute, and the neutral issued a decision ruling in favor of the Tribe and ordering that the domain name be transferred. Dissatisfied with this outcome, Virtualpoint filed suit against the Tribe in federal court, seeking review of the UDRP decision. (*See generally* SAC.) Virtualpoint also added NAF as a defendant. Its factual allegations against NAF are straightforward. First, in its decision awarding the domain name to the Tribe, the NAF neutral identified Virtualpoint as a "generic domain name reseller." (*Id.* ¶ 69.) Virtualpoint alleges that this description is inaccurate and unsupported by the record before the neutral. (*Id.*) Virtualpoint also expresses concern that if NAF does not amend the decision to remove that characterization, Virtualpoint will lose future arbitrations before NAF, since "UDRP decisions will often tip in favor of the complainant where the respondent is a generic domain name reseller." (*Id.*)

Virtualpoint also complains that the NAF decision incorrectly referred to Virtualpoint as using a "privacy service," when it should have used the term "parking service." (SAC ¶ 70.) Here again Virtualpoint is mostly concerned with this error's potential effect on future arbitrations: it says that "many UDRP decisions have found that

the use of a privacy service is a factor in finding bad faith registration and use of a domain name," and that it is therefore anxious to have the decision amended to read "parking service" instead. (*Id.* ¶ 70.) In November 2015, after the neutral issued her decision, Virtualpoint asked NAF to modify the decision. (*Id.* ¶ 71.) NAF refused, citing the UDRP Rules. (*Id.*) (Virtualpoint apparently disputes whether those Rules would have permitted NAF to fix the alleged errors.)

Virtualpoint alleges that NAF's refusal to amend its neutral's decision by changing "privacy service" to "parking service" and removing the phrase "generic domain name reseller" is evidence of bias. (SAC ¶ 73.) Virtualpoint's theory is this: the Tribe's law firm before NAF has filed almost 400 UDRP cases before NAF, and has lost only 11. (*Id.*) The filing fees associated with initiating a NAF proceeding are approximately $1,300, and so the Tribe's law firm has paid NAF "nearly a half million dollars in filing fees." (*Id.*) Virtualpoint evidently believes that NAF is therefore predisposed to rule in favor of that law firm's clients, and this bias is revealed by NAF's refusal to amend the decision in this case. (*Id.*) Based on these factual allegations, Virtualpoint asserts two claims against NAF: for a declaratory judgment and for common law fraud. (*Id.* ¶¶ 75–88.)

On May 13, 2016, NAF moved to dismiss.[2] (Dkt. 30.) Its motion argues that Virtualpoint's claims against it should be dismissed on four grounds. First, they are barred by the doctrine of arbitral immunity; second, the Court lacks personal jurisdiction over NAF; third, the Central District of California is not the proper venue for this dispute; and fourth, Virtualpoint has failed to state a claim. For the following reasons, the Court

[2] NAF technically moved to dismiss the First Amended Complaint. The Tribe also moved to dismiss the FAC, and its motion was granted with leave to amend. Virtualpoint subsequently filed the SAC, but its allegations against NAF in the SAC were identical to the ones in the FAC. To avoid NAF's motion being dismissed as moot, the parties filed a stipulation agreeing that the Court could construe NAF's motion as having been made against the SAC. (*See* STIPULATION.)

agrees that Virtualpoint's claims against NAF are barred by arbitral immunity, and those claims are accordingly DISMISSED WITH PREJUDICE.

III. DISCUSSION

"The doctrine of arbitral immunity provides that 'arbitrators are immune from civil liability for acts within their jurisdiction arising out of their arbitral functions in contractually agreed upon arbitration hearings.'" *Sacks v. Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011) (quoting *Wasyl, Inc. v. First Boston Corp.*, 813 F.2d 1579, 1582 (9th Cir. 1987)). The doctrine is rooted in the consideration that if arbitrators' decisions could be "questioned in suits brought against them by either party, there is a real possibility that their decisions will be governed more by the fear of such suits than by their own unfettered judgment as to the merits of the matter they must decide." *Lundgren v. Freeman*, 307 F.2d 104, 117 (9th Cir. 1962). Accordingly, arbitral immunity protects arbitrators and the arbitration process from "reprisals by dissatisfied litigants." *Wasyl*, 813 F.2d at 1582.

Arbitrators are protected from liability as to any act "within the scope of their duties and within their jurisdiction." *Wasyl*, 813 F.3d at 1582. Hence, the "only exception to arbitral immunity's broad scope is where there is a clear absence of jurisdiction or where the arbitrator engages in acts that clearly fall outside his or her arbitral capacity." *Cancer Ctr. Assocs. for Research and Excellence, Inc. v. Philadelphia Ins. Cos.*, No. 1:15-CV-00084 LJO, 2015 WL 2235347, at *2 (E.D. Cal. May 12, 2015). So long as a claim, "regardless of its nominal title, effectively seeks to challenge the decisional act of an arbitrator or arbitration panel . . . then the doctrine of arbitral immunity should apply." *Sacks*, 663 F.3d at 1070.

Here, Virtualpoint's claims clearly fall within the ordinary scope of arbitral immunity, and Virtualpoint does not bother disputing that the neutral's decision to label Virtualpoint a "generic domain name reseller" and her use of the term "privacy service" were acts falling within her jurisdiction and arbitral capacity. Instead, Virtualpoint argues that immunity should not apply because Virtualpoint has accused NAF of bias. For this proposition Virtualpoint has only one citation: *In re Nat'l Arbitration Forum Trade Practices Litig.*, 704 F. Supp. 2d 832 (D. Minn. 2010) ("*In re NAF*"). There, a putative class of individuals holding consumer debt sued NAF, asserting "systemic, pervasive, and far-reaching allegations of bias and corruption" that rendered "every single arbitration performed by NAF suspect." *Id.* at 836. Essentially, the plaintiffs alleged that the NAF was colluding with creditors appearing in arbitration proceedings before it; NAF would find in favor of creditors, who would in turn funnel more cases to NAF. *Id.* The district court denied NAF's motion to dismiss on the ground of arbitral immunity, noting that that doctrine exists to protect decisionmakers "from undue influence" and that plaintiffs were in fact alleging that *all* of NAF's arbitrations were corrupted by the sort of undue influence arbitral immunity is designed to prevent, so the application of immunity would have been improper. The court stressed the narrowness of its ruling, however, by acknowledging the "undeniably broad" scope of arbitral immunity and noting that the claims before would have been barred had they alleged only "procedural irregularities or even violations of [the NAF's] own rules." *Id.* Instead, the *In re NAF* court rested its holding on the fact that the plaintiffs alleged "systemic, pervasive, and far reaching allegations of bias and corruption." *Id.*

Even accepting *In re NAF*'s rule that allegations of systemic bias can overcome arbitral immunity, no analogous allegations are made here. Virtualpoint does not argue that NAF's processes or systems are corrupt. Instead, it argues that NAF is biased *in favor of a particular law firm* who has participated in many arbitrations before it. But allegations of this sort cannot overcome arbitral immunity. *Pham v. Fin. Indus.*

Regulatory Auth., Inc., No. C-12-6374 EMC, 2013 WL 633398, at *3 (N.D. Cal. Feb. 20, 2013) ("[B]ias in the arbitration process should be remedied by challenging the arbitration award, not by seeking to impose liability on the arbitrator or the sponsoring organization"); *Bridge Aina Le'a v. State of Hawaii Land Use Commission*, 125 F. Supp. 3d 1051, 1077 (D. Hawaii 2015) ("[A]llegations of bias, bad faith, malice, or corruption generally do not bar the application of quasi-judicial immunity."). And even the District of Minnesota has declined to extend *In re NAF* beyond its facts. *Owens v. American Arbitration Assoc., Inc.*, Civ. No. 15-3320 (PAM/TNL), 2015 WL 8483283, at *2 (D. Minn. Dec. 9, 2015) (explaining that *In re NAF* rested on the allegation that the "arbitrations" performed by NAF related to consumer debt "were not arbitrations at all, but that the NAF would regularly defer to credit-card companies as to the appropriate decision in a given case, rather than having arbitrators make that decision"). Virtualpoint has produced *no* examples of courts denying arbitral immunity based on allegations analogous to the ones it advances here, and the Court therefore concludes that its claims against NAF are clearly barred by the doctrine of arbitral immunity.

IV. CONCLUSION

For the foregoing reasons, NAF's motion is GRANTED. Virtualpoint's claims against NAF are barred and are therefore DISMISSED WITH PREJUDICE.

DATED: June 6, 2016

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE