IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

VERISIGN, INC.,

Plaintiff,

v.

CENTRALNIC LIMITED, XYZ.COM, and DANIEL NEGARI,

Defendants.

Civil Action No. 1:15-cv-1028

ORDER

There are six motions currently before the Court:

1. CentralNic's Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim (Dkt. 2);
2. XYZ.COM and Daniel Negari's Motion to Dismiss for Failure to State a Claim (Dkt. 3);
3. Verisign's Motion to Remand to State Court (Dkt. 16);
4. Verisign's Motion to Strike Defendants' Opposition to the Motion to Remand (Dkt. 23);
5. Defendants' Motion for Leave to File an Amended Notice of Removal (Dkt. 27); and
6. Defendants' Cross-Motion for an Extension of Time to File an Opposition to the Motion to Remand (Dkt. 31).

The Court held a hearing on these Motions on November 13, 2015. The Court found there were flaws in Defendants' Notice of Removal. However, the Court also found those flaws were appropriately fixed in an amended notice of removal. In addition, the Court found that Verisign did not suffer prejudice as a result of Defendants' late filed Opposition to the Motion to Remand.

The Court therefore concluded that there was no good cause to strike that late filed brief. Accordingly, and for the reasons stated at the hearing on the Motion, the Court ORDERS that:

1. Verisign's Motion to Strike is DENIED;
2. Defendants' Cross-Motion for an Extension of Time to File an Opposition to the Motion to Remand is GRANTED;
3. Verisign's Motion to Remand to State Court is DENIED;
4. Defendants' Motion for Leave to File an Amended Notice of Removal is GRANTED.

At the November 13, 2015, hearing the Court also heard oral argument on the two Motions to Dismiss, (Dkts. 2, 3), but did not announce a ruling at that time. For the reasons stated below, the Court finds good cause to grant both CentralNic's Motion to Dismiss for Lack of Personal Jurisdiction and XYZ.COM and Daniel Negari's Motion to Dismiss for Failure to State a Claim.

I. Background[1]

In 2008, the Internet Corporation for Assigned Names and Numbers ("ICANN") approved a program for the launch of new generic top level domains ("gTLDs") in the Internet's addressing system. (First Amended Complaint ("FAC") ¶ 8). A top level domain is, in simple terms, the letters to the right of the "dot" in a domain name, e.g., <.com> or <.org>. As part of ICANN's new gTLD program, persons and entities were permitted to apply, for a fee, for the rights to serve as the exclusive registry for proposed gTLDs, e.g. <.attorney>. (FAC ¶ 9). Each applicant for a gTLD was required to demonstrate to ICANN that it was able to provide technically competent registry services for its proposed gTLD. (FAC ¶ 10). Plaintiff Verisign is an experienced operator of registry services for gTLDs; accordingly, it has entered into

[1] Because this matter is before the Court on a motion to dismiss, the following facts are drawn from the Complaint and accepted as true. *Tobey v. Jones*, 706 F.3d 379, 383 (4th Cir. 2013).

agreements with applicants for some of the new gTLDs to provide back-end registry services. (FAC ¶¶ 11-12).

This case involves Verisign's agreements with two companies, Key Brand Entertainment, Inc. ("KBE") and Symantec to provide back-end registry services for several gTLDs. Verisign contracted with KBE to provide back-end registry services for the gTLD <.theater>. Verisign contracted with Symantec to provide back-end registry services for the gTLDs <.protection> and <.security>.

In June of 2012, KBE submitted its initial application for <.theater> to ICANN. (FAC ¶ 22, Ex. 1). As required by its agreements with Verisign, KBE's initial application to ICANN identified Verisign as the exclusive provider of back-end registry services. (FAC ¶ 23). This application passed ICANN's initial evaluation process in June of 2013. (FAC ¶ 24).

In October of 2014, KBE submitted to ICANN a request to change its application. (FAC ¶ 25, Ex. 2). In that change request, and in violation of its obligations under its contracts with Verisign, KBE removed the reference to Verisign as the provider of back-end registry services, and deleted Verisign's specifications and responses regarding technical and operational capability for <.theatre>. (FAC ¶ 26). Instead, KBE identified Defendant CentralNic as the provider of back-end registry services, and substituted CentralNic's specifications and responses regarding technical and operational capability. (FAC ¶ 27).

In June of 2012, Symantec submitted its initial applications for <.protection> and <.security> to ICANN. (FAC ¶ 35, Ex. 3 & 4). As required by its agreements with Verisign, Symantec's initial applications identified Verisign as the exclusive provider of back-end registry services. (FAC ¶ 36).

In September of 2014, Symantec sought to terminate agreements it had entered into with Verisign. (FAC ¶ 37). After doing so, in February 2015, Symantec submitted to ICANN requests to change its applications, by removing the reference to Verisign as the provider of back-end registry services, and by deleting Verisign's specifications and responses regarding technical and operational capability for <.protection> and <.security>. (FAC ¶¶ 38-40, Ex. 5 & 6). Instead, Symantec identified CentralNic as the provider of back-end registry services, and substituted CentralNic's specifications and responses regarding technical and operational capability of <.protection> and <.security> where Verisign's previously had appeared. (FAC ¶ 40).

KBE and Symantec made the changes to their ICANN applications because they sold their applications to Defendant XYZ.com ("XYZ"), which is owned and/or controlled by Defendant Daniel Negari. (FAC ¶¶ 42, 43). XYZ and Negari required KBE and Symantec to breach their agreements with Verisign as part of those sales and to remove Verisign as the provider of back-end registry services. (FAC ¶¶ 44, 45). XYZ and Negari agreed with CentralNic to have CentralNic replace Verisign as the provider of back-end registry services for <.theatre>, <.protection> and <.security>. (FAC ¶¶ 46, 47).

Verisign brings three causes of action against XYZ, Negari, and CentralNic: Count 1, tortious interference with its contract with KBE; Count 2, tortious interference with its contract with Symantec; and Count 3, business conspiracy.

Verisign originally filed this case in Virginia State Court in Fairfax County. Defendants removed the case to this Court on August 13, 2015. Shortly thereafter, CentralNic moved to dismiss the claims against it on the grounds that the Court lacks personal jurisdiction over it and because the First Amended Complaint fails to state a claim against it. Defendants XYZ and

Negari moved to dismiss Count 3 on the grounds that the First Amended Complaint failed to state a claim of business conspiracy. The Court will address each of these Motions in turn.

II. Analysis

A. CentralNic's Motion to Dismiss for Lack of Personal Jurisdiction

"'Personal jurisdiction' is the phrase used to express a court's power to bring a person into its adjudicative process." *Noble Sec., Inc. v. MIZ Eng'g, Ltd.*, 611 F. Supp. 2d 513, 525 (E.D. Va. 2009) (citing Black's Law Dictionary 857 (7th ed. 1999)). In determining whether it has personal jurisdiction over a particular defendant, a federal district court must conduct a two-part analysis. *Peanut Corp. of Am. v. Hollywood Brands, Inc.*, 696 F.2d 311, 313 (4th Cir. 1982). First, the district court must consider whether personal jurisdiction over the defendant is authorized by the forum state's long-arm statute. *Mitrano v. Hawes*, 377 F.3d 402, 406 (4th Cir. 2004). Second, if the exercise of such personal jurisdiction is authorized, the defendant must have sufficient minimum contacts with the forum state to meet the requirements of the Due Process Clause of the Fourteenth Amendment. *Id.*

The Virginia long-arm statute provides multiple bases for the exercise of personal jurisdiction. *See* Va. Code § 8.01–328.1. Verisign asserts that § 8.01-328.1(A)(4) is the relevant provision in this case. That section provides for the exercise of personal jurisdiction where the claim arises out of "[c]ausing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth." However, both the state and federal courts have found that "Virginia's long-arm statute extends personal jurisdiction to the extent permitted by the Due Process Clause." *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002).

"Because Virginia's long-arm statute is intended to extend personal jurisdiction to the extent permissible under the due process clause, the statutory inquiry merges with the constitutional inquiry," and it is only necessary for a court to assess whether the exercise of personal jurisdiction over the defendant is constitutionally permissible. *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 276–77 (4th Cir. 2009).

To satisfy the constitutional due process requirement, a defendant must have sufficient "minimum contacts" with the forum state such that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) (quotation and citation omitted). This test is designed to ensure that the defendant is not "haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quotations and citations omitted). It protects a defendant from having to defend himself in a forum where he could not have anticipated being sued. *See World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). There are two types of personal jurisdiction that meet the requirements of due process: specific and general. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473–74 (1985); *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 292 n. 15 (4th Cir. 2009).

1. General Jurisdiction

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct., 2851, 2853 (2011). Absent exceptional circumstances, a corporation is usually only subject to the general jurisdiction of the forum state

if it is incorporated there or has its principal place of business there. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014) ("The paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business."). This high standard for finding general jurisdiction is consistent with the Supreme Court's recognition of the relatively recent trend favoring assertions of specific jurisdiction over general jurisdiction. *See, e.g., Daimler*, 134 S.Ct. at 758 ("As this Court has increasingly trained on the 'relationship among the defendant, the forum, and the litigation,' i.e., specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme.").

CentralNic, a corporation organized and existing under the laws of the United Kingdom with its principal place of business in London, England, argues that its limited activities in Virginia are not sufficient to meet the lofty general jurisdiction standard. CentralNic is neither incorporated in Virginia, nor does it have its principal place of business in Virginia. CentralNic asserts that it "does not have any office; employ any individuals to work; hold any licenses; have any phone listings or mailing addresses; directly pay any taxes; own any real estate; or hold any bank accounts, in Virginia." Dkt. 3, at 8. CentralNic further asserts that it derives less than 1.5% of its total revenues from its contacts with Virginia. Based on these facts, this Court cannot conclude that CentralNic is "essentially at home" in Virginia. *See Goodyear Dunlop*, 131 S.Ct. at 2853.

The Supreme Court's recent decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), upon which CentralNic relies heavily, is instructive. The plaintiff in *Daimler* argued that California had general jurisdiction over the defendant—Daimler, a German company—because one of Daimler's subsidiaries—Mercedes-Benz USA—had several facilities in California and was the largest supplier of luxury vehicles in California. *Id.* The Supreme Court rejected this

contention, noting most prominently that neither the defendant nor its subsidiary was incorporated in California nor did either have its principal place of business there. *Id.* at 761. The *Daimler* court explained in greater detail that "the general jurisdiction inquiry does not 'focu[s] solely on the magnitude of the defendant's in-state contacts.' General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20. Using this approach the Supreme Court found that Daimler was not at home in California where Mercedes-Benz USA's California sales accounted for only 2.4% of Daimler's worldwide sales. *Id.* at 752, 62.

In opposition to the Motion, Verisign asserts that in 2014 CentralNic derived over $140,000 in revenue from its Virginia contacts last year (1.5% of CentralNic's reported total revenue from 2014). Verisign argues that courts have held that far less revenue was sufficient for establishing personal jurisdiction over a defendant. However, all of the cases Verisign cites are several decades old and are not controlled by the Supreme Court's approach to general jurisdiction announced recently in *Goodyear* and *Daimler*. Using a dollar amount—instead of a percentage of nationwide and worldwide activity—to assess whether a defendant is subject to the Court's general jurisdiction does not comport with the Supreme Court's directive in *Daimler*. Following this directive, this Court must conclude that CentraNic's contacts with Virginia are so few that this Court does not have general jurisdiction over it.

2. Specific Jurisdiction

A court has specific jurisdiction over a foreign corporation where "the corporation's in-state activity is 'continuous and systematic' and gave rise to the episode-in-suit." *Goodyear Dunlop tires Operations, S.A. v. Brown*, 131 S.Ct., 2846, 2853 (2011) (quoting *Int'l Shoe*, 326 U.S. at 317). However, "the commission of certain 'single or occasional acts' in a State may be

sufficient to render a corporation answerable in that State [but only] with respect to those acts." *Id.* (quoting *Int'l Shoe*, 326 U.S. at 318). In determining whether it has specific jurisdiction over a defendant, a district court considers: "(1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs' claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4th Cir. 2003).

As discussed above, CentralNic has a few contacts with Virginia. However, none of the claims Verisign asserts arise out of CentralNic's contacts with Virginia. As CentralNic points out, Verisign only alleges that CentralNic tortuously interfered with KBE's and Symantec's contracts with Verisign. Verisign has not alleged that this inference took place in Virginia and none of these allegation relate to or concern CentralNic's contacts with Virginia. Accordingly, this Court must conclude that it does not have specific jurisdiction over CentralNic.

3. Consent to Jurisdiction

Verisign has alternatively argued that CentralNic consented to jurisdiction in this Court via a forum selection clause.

A forum selection clause may act as consent to personal jurisdiction, thus obviating the need for the traditional minimum contacts analysis. *See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703–04 (1982). This Court has previously held that, "non-parties may be bound to a forum selection clause, if the non-party is so 'closely related' to the dispute such that it becomes 'foreseeable' that it will be bound." *Allianz Ins. Co. of Canada v. Cho Yang Shipping Co.*, 131 F. Supp. 2d 787, 791 (E.D. Va. 2000). Verisign argues that a party alleged to have tortuously interfered with a contract containing a forum selection clause is

deemed to be so "closely related" to the contract that it is subject to that forum selection clause. Accordingly, Verisign argues that CentralNic should be subject to the forum selection clauses contained in the contracts between KBE and Verisign and between Symantec and Verisign because CentralNic tortuously interfered with those contracts. Even assuming that this theory is permissible, the cases Verisign relies on do not establish that CentralNic should be subject to the forum selection clauses in those contracts because they are factually distinct from the case at hand.

In *Radian Guaranty Inv. v. Bolen*, 18 F. Supp. 3d 635, *647 (E.D. Penn. 2014), a non-signatory defendant, Arch MI, sought to employ one of the plaintiff's employees while knowing that she was employed by the plaintiff under a contract with a non-competition agreement. Arch MI had extensive communications with the employee, asked her multiple times about the non-competition agreement, and consulted an attorney regarding the agreement. *Id.* The Court found this knowledge of the contract and its terms was sufficient to justify subjecting Arch MI to the forum selection clause and exercising personal jurisdiction over it. *Id.* At the same time, the *Radian* court found it did not have personal jurisdiction over a different non-signatory defendant, Arch Group. *Id.* In justifying its holding, the court explained that there was no evidence that the employee ever met or communicated with executives from Arch Group, and there was no evidence that Arch Group had any detailed knowledge of the contract. *Id.*

CentralNic is much more analogous to Arch Group than it is to Arch MI. CentralNic has submitted an affidavit from its Chief Executive Officer, Ben Crawford, stating that XYZ and Negari did not contact CentralNic about providing backend registry services for <.theater> until August, 25, 2014, after XYZ had purchased the rights to <.theater> from KBE. Dkt. 3-1, at 2. CentralNic further maintains that before being contacted by Negari, it had no prior knowledge of

KBE's contracts with Verisign or XYZ's purchase, and it did not contact or communicate with KBE until after it was contacted by Negari. *Id.* Similarly, Crawford maintains that XYZ and Negari did not contact CentralNic about <.protection> and <.security> until November 23, 2014, after XYZ had purchased the rights to these gTLDs from Symantec. *Id.* at 2-3. CentralNic also maintains that it had no prior knowledge of Symantecs's contracts with Verisign or XYZ's purchase, and it did not contact or communicate with Symantec until after it was contacted by Negari. *Id.* Thus, like Arch Group in *Radian*, there is no evidence—nor has Verisign alleged—that CentralNic communicated with KBE or Symantec, or knew about their contracts with Verisign, before KBE and Symantec breached those contracts. The Court must therefore conclude that CentralNic was not so closely related to the dispute to justify subjecting it to the forum selection clause in the contracts between KBE and Verisign, and between Symantec and Verisign. *See also ELA Med., Inc. v. Arrhythmia Mgmt. Associates, Inc.*, 2007 WL 892517, at *6 (D. Minn. Mar. 21, 2007) (subjecting non-signatory defendant to forum selection clause in contract where defendant "clearly was aware of the Contract" and expressly sought a judicial declaration of the parties rights and duties under the contract in a separate court).

As stated above, the Court does not have general or specific jurisdiction over CentralNic. The Court also cannot conclude that CentralNic consented to the jurisdiction of this Court via a forum selection clause. Therefore, there is no viable theory that would permit this Court to exercise personal jurisdiction over CentralNic. Accordingly, CentralNic's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED. Because the Court has concluded it does not have personal jurisdiction over CentralNic, the Court need not address whether the First Amended Complaint states a claim against CentralNic.

B. XYZs and Negari's Partial Motion to Dismiss for Failure to State a Claim

Defendants XYZ and Negari next argue that Count 3—business conspiracy under VA Code §§ 18.2-499, -500—should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6), failure to state a claim upon which relief can be granted.

To recover in an action under the Virginia business conspiracy statute a plaintiff must establish that (1) a combination of two or more persons acted; (2) for the purpose of willfully and maliciously injuring plaintiff in his business; and (3) the plaintiff was damaged as a result. *Dunlap v. Cottman Transmission Systems, LLC*, 287 Va. 207 (2014). "It is not necessary for a plaintiff to prove that the defendant conspirators acted with actual malice, i.e., ill-will, hatred, or spite directed toward the plaintiff." *Id.* (citations omitted). "Rather, a plaintiff must establish by clear and convincing evidence only that the conspirators acted with legal malice, i.e., intentionally, purposely, and without lawful justification." *Id.* (quotations omitted). Defendants argue that Verisign has not sufficiently alleged the first or second elements. The parties also disagree over what pleading standard applies to a Virginia business conspiracy claim: the typical pleading standard in Federal Rule of Civil Procedure 8(a) or the heightened pleading standard of Rule 9(b).

XYZ and Negari argue that Verisign has not alleged the first element—a combination of two or more persons—because of the intra-corporate immunity doctrine. Under the intra-corporate immunity doctrine, as a matter of law, "a corporation cannot conspire with its wholly-owned subsidiary or with its officers and directors." *Williams v. 5300 Columbia Pike Corp.*, 891 F. Supp. 1169, 1174 (E.D. Va. 1995) (citing *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769–70 (1984). Negari is an officer of XYZ. Therefore, XYZ and Negari argue that if CentralNic has been dismissed from this action a conspiracy could not exist because the only remaining defendants in this case are a corporation and one of its officers. However, the case

law makes clear that so long as one alleged co-conspirator is not covered by the intra-corporate immunity doctrine, a conspiracy claim will survive a motion to dismiss, even if the party not covered by the doctrine is not named as a party to a lawsuit. *Stith v. Thorne*, 2006 WL 5444366, at *15 (E.D. Va. Oct. 30, 2006); *AWP, Inc. v. Commonwelath Excavating, Inc.*, No. 5:13CV031, 2013 WL 3830500, at *4 (W.D. Va. July 24, 2013).

Verisign argues that it has stated a claim of business conspiracy, even if CentralNic has been dismissed by this Court, because it has alleged in its First Amended Complaint that Negari and XYZ conspired with CentralNic. Verisign has correctly stated the law; CentralNic need not be a defendant in this action for Verisign to allege a claim of business conspiracy. However, the Court finds Verisign has not sufficiently alleged that Negari and XYZ actually conspired with CentralNic, even if the Court finds the more lenient pleading standard under Federal Rule of Civil Procedure 8(a) applies. *See* Fed. R. Civ. Pro. 8(a)(2) (requiring "a short and plain statement of the claim showing that the pleader is entitled to relief"). This pleading standard, though low, "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The facts alleged in the complaint "must be enough to raise a right to relief above the speculative level." *Id.*

Verisign has alleged that "XYZ, Negari and CentralNic combined, associated, agreed, mutually undertook and concerted together for the purpose of willfully and maliciously injuring Verisign in its business, by seeking to circumvent Key Brands', KBE Holdings' and Symantec's contractual requirements." FAC ¶ 59. However, this is a mere recitation of a legal conclusion. The First Amended Complaint has not alleged specific facts that support the conspiracy allegations. The facts put forth in the FAC show that KBE and Symantec replaced Verisign with

CentralNic as the provider of back-end registry services. But no specific facts raise an inference that CentalNic actively conspired with XYZ and Negari to induce KBE and Symantec to breach their contracts beyond a speculative level. Because the factual allegations are merely conclusory, Verisign has not sufficiently alleged a claim of business conspiracy. Accordingly, the Court finds good cause to grant XYZ and Negari's Motion to Dismiss for Failure to State a Claim.

III. Conclusion

For the reasons stated above, the Court ORDERS that:

1. CentralNic's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED and the claims against CentralNic are DISMISSED.

2. XYZ and Negari's Motion to Dismiss is GRANTED and Count 3 of the First Amended Complaint against XYZ and Negari is DISMISSED.

November 18, 2015
Alexandria, VA

/s/
Liam O'Grady
United States District Judge