United States District Court
Central District of California

JS-6

Voltage Pictures, LLC et al.,

Petitioners,

v.

Gulf Film, LLC,

Respondent.

LACV 18-00696-VAP (SKx)

Order Granting Petitioners' Motion for Order Confirming Arbitration Award; Denying Respondent's Motion to Dismiss for Lack of Jurisdiction or Quash Service of Process; Denying Respondent's Motion to Vacate Arbitration Award

(Doc. Nos. 1, 20, 25.)

This case concerns the validity of an arbitration between Petitioners Voltage Pictures, LLC and Dandelion, LLC ("Petitioners") and Respondent Gulf Film, LLC ("Respondent"). Three Motions are now pending before the Court: (1) a Motion for Order Confirming Arbitration Award ("Motion for Confirmation") (Doc. No. 1), pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, filed by Petitioners; (2) a Motion to Dismiss for Lack of Jurisdiction or Quash Service of Process ("Motion to Quash") (Doc. No. 20), filed by Respondent; and (3) a Motion to Vacate, or in the Alternative, Modify, Correct and/or Amend Arbitration Award ("Motion to Vacate") (Doc. No. 25), filed by Respondent.

The parties timely filed Oppositions (Doc. Nos. 18, 23, 28) and Replies (Doc. Nos. 22, 26, 30) in connection with their respective Motions. After

considering all papers filed in support of and in opposition to the three Motions, and the arguments of counsel at the hearing, the Court rules as follows.

I. BACKGROUND

Petitioners, who are both United States LLCs and motion picture producers with their principal places of business in Los Angeles, California, collectively entered into eleven distribution license agreements ("the Distribution Agreements") with Respondent, a LLC and citizen of the United Arab Emirates ("UAE"), between 2013 and 2015. (Doc. No. 1 at 4.) The Distribution Agreements concerned the distribution of eleven motion pictures in certain countries in the Middle East. (Declaration of Nicholas Chartier ("Chartier Decl."), Doc. No. 2, ¶¶ 3-6.) Each of the Distribution Agreements called for all disputes to be resolved by binding arbitration under the Independent Film & Television Alliance ("IFTA") International Arbitration Rules and specified that the prevailing party in the arbitration "shall be entitled to recover all of its reasonable outside attorney's fees and expenses actually incurred." (Id. ¶ 7.)

After Petitioners and Respondent entered into the Distribution Agreements, a dispute arose, and Petitioners each served a notice of arbitration with the IFTA International Arbitration Tribunal on February 8, 2017. (Id. ¶¶ 8-9.) On April 6, 2017, Hillary S. Bibicoff ("the Arbitrator") was appointed as the arbitrator, in accordance with IFTA Rules. (Id. ¶ 10.) The Arbitrator consolidated all of Petitioners' claims into a single arbitration, Case No. 17-07 (the "Arbitration"). (Id. ¶ 11.) The Arbitration took place on July 27, 2017, July 28, 2017, and August 17, 2017, in Santa Monica, California, after the parties filed their briefs and witness lists. (Id. ¶ 12.) Throughout the course of the Arbitration, the parties made opening statements, examined witnesses, introduced documents, made arguments in support of their positions, and submitted closing briefs. (Id.) On

October 17, 2017, the Arbitrator issued a 23-page interim arbitration award ("Interim Ruling" (Doc. No. 25-4)). (Id. ¶ 13.) In the Interim Ruling, the Arbitrator found, inter alia, that Respondent materially breached the Distribution Agreements, and awarded payments and prejudgment interest to Petitioners. (Doc. No. 25-4 at 23-24.) After the parties submitted briefing as to Petitioners' request for attorney's fees and Respondents' Motion to Stay Proceedings, the Arbitrator issued a "Final Ruling and Award" (the "Final Arbitration Award" or the "Award") (Doc. No. 25-3)) on December 6, 2017. (Declaration of A. Raymond Hamrick ("Hamrick Decl."), Doc. No. 20 at 8-9, ¶ 2.) In the Final Arbitration Award, the Arbitrator adopted in full the Interim Award, rejected Respondent's Motion to Stay, and awarded $94,707.51 in attorney's fees and expenses to Petitioners. (Doc. No. 25-3 at 8-9.)

On January 5, 2018, Respondent filed a Motion to Modify and Correct the Final Ruling and Award in the IFTA Arbitration Tribunal. (Hamrick Decl., Ex. I.) The Arbitrator denied Respondent's Motion on January 30, 2018. (Id., Ex. J.)

On January 26, 2018, Petitioners filed the Motion for Confirmation in this Court. (Doc. No. 1.) Petitioners contend the Final Arbitration Award resolved the IFTA arbitration in all respects between themselves and Respondent. (Id. at 4.)

On February 20, 2018, Respondent filed the Motion to Quash in this Court, in which it argues that Petitioners failed to effect service on it in the UAE pursuant to Federal Rule[1] of Civil Procedure 4(f). (Doc. No. 20.)

[1] All further references to any "rule" are to the Federal Rules of Civil Procedure, unless otherwise noted.

On March 7, 2018, Respondent filed the Motion to Vacate in this Court. (Doc. No. 25.) According to Respondents, the Award must be vacated or modified pursuant to sections 10 and 11 of the FAA. (Id. at 9.)

II. MOTION TO QUASH

The Court first turns to Respondent's Motion to Quash, as it concerns preliminary matters of service and jurisdiction. According to Respondent, Petitioners have failed to establish personal jurisdiction over it, as they failed to serve the Motion for Confirmation properly. (Doc. No. 20 at 3-4.) Respondent therefore argues the Court should quash service of the Motion for Confirmation pursuant to Rules 12(b)(4) and 12(b)(5). (Id.)

A. LEGAL STANDARD

Rule 12(b)(5) authorizes district courts to dismiss a case for "insufficient service of process." Fed. R. Civ. P. 12(b)(5). Rule 4 governs service of the summons and complaint. Fed. R. Civ. P. 4. Although "Rule 4 is a flexible rule that should be liberally construed so long as a party received sufficient notice of the complaint … neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction without 'substantial compliance with Rule 4.'" Benny v. Pipes, 799 F.2d 489 (9th Cir. 1986) (citing Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982) and United Food & Commercial Workers Union, Locals 197, 373, 428, 588, 775, 839, 870, 1119, 1179, and 1532 v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984)).

Once service is challenged, the plaintiff bears the burden of establishing that service was valid. Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004). "A

general appearance or responsive pleading by a defendant that fails to dispute personal jurisdiction will waive any defect in service or personal jurisdiction." Id.

B. DISCUSSION

The parties dispute whether Respondent agreed to waive the requirements of Rule 4 by signing the Distribution Agreements, all of which contain a provision by which the parties agreed to accept service of process in accordance with the IFTA Rules. (Doc. No. 23 at 3; Doc. No. 26 at 5-6.) IFTA Arbitration Rule 12.5 provides that "[s]ervice of any … process necessary to obtain confirmation of the Arbitrator's award may be accomplished by any procedure authorized by applicable law." (Chartier Decl., Ex. 8.) IFTA Rule 13.1 defines "applicable law" as "the laws of the State of California." (Id.) Petitioners thus contend that by signing the Distribution Agreements, Respondent effectively waived its Rule 4 notice rights and that service of the Motion to Confirm could be effected pursuant to California law, which authorizes service on out-of-state persons by first-class mail. (Doc. No. 23 at 3-4 (citing section 415.40 of the California Code of Civil Procedure ("CCP")[2].) Respondent, on the other hand, points out that the Ninth Circuit has not explicitly ruled on whether an agreement to arbitrate disputes in the forum state amounts to a consent to personal jurisdiction in the forum state. (Doc. No. 26 at 5-6 (citing Fireman's Fund Ins. Co. v. Nat'l Bank of Cooperatives, 103 F.3d 888, 893–94 (9th

[2] This section provides, in relevant part, "[a] summons may be served on a person outside this state … by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt." CCP § 415.40; see also Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions (The Rutter Group March 2018) § 4:293 ("This is the most liberal method for service of summons under California law: A nonresident defendant can be served anywhere in the world simply by mailing him or her copies of the summons and compliant 'by first-class mail, postage prepaid, requiring a return receipt' (i.e., certified or registered mail))" (citing CCP § 415.40).

Cir. 1996) and Johnson v. Mitchell, No. CIV S-10-1968 GEB GGH PS, 2012 WL 1594203, at *3 (E.D Cal. May 4, 2012).)

On this issue, the Court agrees with Petitioners. Although Respondent is correct that the Ninth Circuit "has not definitely ruled on whether an agreement to arbitrate disputes in the forum state is by itself a consent to personal jurisdiction," see Johnson, 2012 WL 1594203 at *3, there is sufficient authority in support of Petitioner's argument that the parties agreed to allow for service under the IFTA Arbitration Rules, and therefore, California law. Respondent does not dispute that it signed the Distribution Agreements and that the Distribution Agreements each contained a provision "consent[ing] and submit[ting] to the jurisdiction of the state and federal courts located in Los Angeles County, California with respect to any action arising out of or relating to this Agreement or the Picture"). (See Chartier Decl., Exs. 2-7, 9-13.) Moreover, "[t]he procedures found in Rule 4 need not be followed if the parties agree to another form of service." Masimo Corp. v. Mindray DS USA, Inc., Case No. SACV 12-02206-CJC (JPRx), 2013 WL 12131723, at *2 (C.D. Cal. Mar. 18, 2013) (citing Comprehensive Merch. Catalogs, Inc. v. Madison Sales Corp., 521 F.2d 1210, 1212 (7th Cir. 1975); see also Nat'l Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 (1964) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether."); Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions (The Rutter Group March 2018) § 5:21 ("The constitutional and statutory requirements re summons exist for defendant's protection, and are subject to contractual waiver by the defendant. The only limitation is that such waiver be knowing and voluntary") (emphasis in original). This proposition is not foreclosed by the Ninth Circuit's holding in Fireman's Fund, and is consistent with findings of other circuit courts that an agreement to arbitrate a

dispute in the forum state can constitute consent to personal jurisdiction in the forum state.[3]

Thus, Respondent's attempt to reserve its right to challenge this Court's exercise of personal jurisdiction in its Motion to Vacate (Doc. No. 25 at 2 n.1), and argument that the Court cannot exercise personal jurisdiction in the absence of strict compliance with Rule 4, are futile. Respondent has already consented to this Court's exercise of personal jurisdiction over it by signing the aforementioned provision in each Distribution Agreement. (See Chartier Decl., Exs. 2-7, 9-13.) Moreover, as noted above, the Distribution Agreements provided for service of process in accordance with California law via IFTA Arbitration Rules, and Petitioners served Respondent by Registered International Mail, in compliance with CCP § 415.40. (See Doc. No. 13.) As the Court finds that Petitioners have met their burden of demonstrating the sufficiency of service here, the Court DENIES Respondent's Motion to Quash Service of Process.[4]

---

[3] See, e.g., Doctor's Assocs., Inc. v. Stuart, 85 F.3d 975, 983 (2d Cir. 1996) ("A party who agrees to arbitrate in a particular jurisdiction consents not only to personal jurisdiction but also to venue of the courts within that jurisdiction."); PaineWebber Inc. v. Chase Manhattan Private Bank (Switzerland), 260 F.3d 453, 461 (5th Cir. 2001) ("An agreement to arbitrate is one such 'legal arrangement' by which a litigant may impliedly consent to personal jurisdiction."); St. Paul Fire and Marine Ins. Co. v. Courtney Enters, Inc., 270 F.3d 621, 624 (8th Cir. 2001) ("[I]f the court in the selected forum did not have personal jurisdiction to compel arbitration, the agreement to arbitrate would be effectively unenforceable, contrary to the strong national policy in favor of arbitration.").

[4] In connection with this Motion, Respondent requested that the Court take judicial notice of UAE Federal Law No. 11 of 1992, as amended by Federal Law No. 10 of 2014, and the "Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Status Table." (Doc. No. 21.) The Court DENIES this request as moot, as it did not need to reach the Rule 4 analysis in resolving the Motion.

III. MOTION TO CONFIRM AND MOTION TO VACATE OR MODIFY

A. LEGAL STANDARD

Section 9 of the FAA governs confirmation of arbitration awards:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

9 U.S.C. § 8. "Review of an arbitration award itself is 'both limited and highly deferential." DeMartini v. Johns, 693 F. App'x 534, 436 (9th Cir. June 7, 2017) (quoting Sheet Metal Workers' Int'l Ass'n v. Madison Indus., Inc., 84 F.3d 1186, 1190 (9th Cir. 1996)). A district court will set aside an arbitrator's decision "only in very unusual circumstances." First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 942 (1995).

Section 10 provides a district court may vacate an arbitration award under the following circumstances:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made.

9 U.S.C. § 10(a)(1) – (4). "The [] grounds [in § 10] afford an extremely limited review authority, a limitation that is designed to preserve due process but not to permit unnecessary public intrusion into private arbitration procedures." Kyocera Corp v. Prudential-Bache Trade Serv. Inc., 341 F.3d 987, 998 (9th Cir. 2003) (en banc). These grounds are "the exclusive means by which a court reviewing an arbitration award under the FAA may grant vacatur of a final arbitration award." Biller v. Toyota Motor Corp., 668 F.3d 655, 664 (9th Cir. 2012) (citing Kyocera, 341 F.3d 987 (9th Cir. 2003) and Hall St. Assoc., LLC v. Mattel, Inc., 552 U.S. 576 (2008)). An arbitrator exceeds her power not by merely interpreting or applying the governing law incorrectly, but when the award is "completely irrational, or exhibits a manifest disregard of law." Kyocera, 341 F.3d at 997. To vacate an arbitration award for manifest disregard of the law, "[i]t must be clear from the record that the arbitrators recognized the applicable law and then ignored it." Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co., 44 F.3d 826, 832 (9th Cir. 1995).

Section 11 provides that a district court may modify or correct an arbitration award under the following circumstances:

> (a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
>
> (b) where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted;
>
> (c) where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11(a) – (c).

These three provisions, §§ 9-11, "substantiat[e] a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway." Hall St. Assocs., 552 U.S. at 588. "Any other reading opens the door to the full-bore legal and evidentiary appeals that can 'rende[r] informal arbitration merely the prelude to a more cumbersome and time-consuming judicial review process … and bring arbitration theory to grief in post arbitration process." Id. "Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under the statute, which is unambiguous in this regard [and] a court must confirm an arbitration award unless it is vacated, modified, or corrected as prescribed in §§ 10 and 11." Bosack v. Soward, 586 F.3d 1096, 1102 (9th Cir. 2009) (citations omitted).

If the Court finds no basis to vacate, modify, or correct the arbitration award, the Court must confirm the award. 9 U.S.C. § 9; see also Hall St. Assocs., 552 U.S. at 582.

B. DISCUSSION

The Court next evaluates whether Respondent's Motion to Vacate provides any basis for declining to grant Petitioners' Motion to Confirm.[5] Respondent

[5] Petitioners' failure to comply with Local Rule 7-3 prior to filing the Motion to Confirm was harmless. As Petitioners point out in their Reply brief, the Motion to Confirm is a case initiating document not subject to Local Rule 7-3, and Respondent was not prejudiced by Petitioners' alleged failure to meet and confer. (See Doc. No. 22 at 7-8.) Curiously, Respondent's counsel did not consider himself bound by Local Rule 7-3 when he sought district court confirmation of an arbitration award in which his client had prevailed in another case in the Central District. (Doc. No. 22-3, Ex. B.) The Court additionally sees no basis for Respondent's request for monetary sanctions pursuant to Local Rule 83-7, (see Doc. No. 18 at 13-16), and DENIES this request.

makes its Motion on the grounds that vacatur of the Award is warranted because the Arbitrator (1) exceeded her powers; (2) refused to grant a stay or continuance to hear all the evidence; and (3) failed to issue a mutual, final, and definite Award before the filing of Petitioners' Motion to Confirm. (Doc. No. 25 at 2.) Alternatively, Respondent asks the Court to modify the Award to reflect "a quantification of Petitioners' mitigation efforts and the calculation of credits due and owing to [Respondent] as a result of such efforts," and to limit the scope of the Award solely to the eleven motion pictures at issue in the Arbitration. (Id. at 33.)

1. The Arbitrator Did Not Exceed Her Powers (9 U.S.C. § 10(a)(4))

"Arbitrators exceed their powers … not when they merely interpret or apply the governing law incorrectly, but when the award is completely irrational, or exhibits a manifest disregard of law. An arbitrator does not exceed its authority if the decision is a plausible interpretation of the arbitration contract." U.S. Life Ins. Co. v. Superior Nat. Ins. Co., 591 F.3d 1167, 1177 (9th Cir. 2010) (internal citations omitted). The Ninth Circuit has adopted the Eighth Circuit's "completely irrational standard," which is "extremely narrow and is satisfied only where the arbitration decision fails to draw its essence from the agreement." See Comedy Club, Inc. v. Improv West Associates, 553 F.3d 1277, 1288 (9th Cir. 2009) (citing Hoffman v. Cargill Inc., 236 F.3d 458, 461-62 (8th Cir. 2001)).

Here, Respondent contends the Arbitrator acted in excess of her powers and in manifest disregard of the law by failing to apply its "affirmative claims for offset/setoff, which were, and are, directly related to the claims adjudicated, and the damages awarded," (id. at 16-18), and "re-writing" the parties' agreement to award pre- and post- judgment interest (id. at 23-26). According to Respondent,

because the Arbitrator exceeded her powers, the Award is not a "mutual, final, and definite" ruling on this matter. (Id. at 19.)

Upon review of the Interim Award and Final Arbitration Award, the Court is not persuaded that the Arbitrator acted in excess of her powers under the standard set forth above. The Arbitrator considered Respondent's arguments regarding offsets and setoffs, and acknowledged Respondent's citation of statutory and case law regarding its claims or affirmative defense for offset, but found Respondent's arguments inapplicable "in these circumstances where the Agreements specifically provide to the contrary." (Interim Award at 9.) Thus, Respondent has failed to demonstrate that the Arbitrator's decision did not "draw its essence from the agreement," see Comedy Club, Inc., 553 F.3d at 1288, as the Arbitrator considered its arguments in light of the Agreements at issue and then rejected them.

Respondent has not demonstrated that the Arbitrator exceeded her authority in rejecting its argument regarding waiver and estoppel. Respondent's citation to its brief in support of its Motion to Modify and Correct the Final Ruling and Award (see Doc. No. 25 at 20) does not support this argument. "Arbitrators are not required to set forth their reasoning supporting an award" and may make their decisions "without explanation of their reasons and without a record of their proceedings." Bosack, 586 F.3d at 1104. "If they choose not to do so, it is all but impossible to determine whether they acted with manifest disregard for the law." Id. (quoting Dawahare v. Spencer, 201 F.3d 666, 669 (6th Cir. 2000)). Again, it is apparent from the Interim Award that the Arbitrator did consider Respondent's arguments regarding waiver, estoppel, and forfeiture, and then rejected them. (See Doc. No. 25-4 at 20-21.) Even assuming the Arbitrator incorrectly applied

section 431.70 of the California Code of Civil Procedure to the proceedings in this case, this would be insufficient for the Court to find that she acted in excess of her powers. "Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under the statute, which is unambiguous in this regard." Kyocera, 341 F.3d at 994.

For the above reasons, the Court finds that Respondent has not shown that the Arbitrator exceeded her powers in issuing the Interim Award and the Arbitration Award. Respondent has not provided any other basis to support its contention that the Arbitrator failed to provide a "mutual, final, and definite" ruling on this matter. The Ninth Circuit has adopted the Eighth Circuit's holding that "an interim award may be deemed final … if the award states it is final, and if the arbitrator intended the award to be final." Bosack, 586 F.3d at 1103 (citing Legion Ins. Co. v. VCW, Inc., 198 F.3d 718, 720 (8th Cir. 1999)). Here, the Arbitrator titled the Arbitration Award as a "Final Ruling and Award" that fully adopted her findings in the Interim Award. (See Doc. No. 25-3.) The Court therefore sees no reason not to find that the Arbitration Award is indeed a "mutual, final, and definite award upon the subject matter submitted" within the meaning of 9 U.S.C. § 10(a)(4).

2. Respondent Was Not Denied a Fundamentally Fair Hearing (9 U.S.C. § 10(a)(3))

"Arbitrators need provide only a fundamentally fair hearing." Morgan Keegan & Co., Inc. v. Grant, No. CV 09-07369 SJO (FFMx), 2010 WL 11549681, at *11 (C.D. Cal. June 30, 2010) (citing Weber v. Merrill Lynch Pierce Fenner & Smith, Inc., 455 F. Supp. 2d 545, 553 (N.D. Texas 2006). "An arbitrator's ruling on procedural issues will not be overturned … unless it had the effect of denying the parties a fundamentally fair hearing, or was otherwise an unreasonable decision that prejudiced the rights of a party." Certain Underwriters at Lloyd's London v.

Argonaut Ins. Co., 264 F. Supp. 2d 926, 942 (N.D. Cal. 2003) (quoting Compania Chilena De Navegacion Interoceanica, S.A. v. Norton, Lilly & Co., Inc., 652 F. Supp. 1512, 1515 (S.D.N.Y. 1987). If there is evidence that disadvantages a party in violation of its right to submit and rebut evidence, the arbitrator's ruling may be vacated for misconduct within the meaning of 9 U.S.C. § 10(a)(3). See id.

Respondent alleges the Arbitrator denied it a fair hearing by (1) refusing to allow it to present evidence on the issue of attorney's fees and expenses (Doc. No. 25 at 21-23); (2) refusing to stay the Arbitration pending Respondent's separate arbitration proceedings for its offset/setoff claims (id. at 27); and (3) choosing to "ignore" the evidence regarding the censorship riders (id. at 32).

On all issues, the Court again agrees with Petitioners. As to attorneys' fees and expenses, paragraph eleven of each Distribution Agreements provides that "the prevailing party in any arbitration or other legal proceeding brought hereto shall be entitled to recover all of its reasonable attorney's fees and expenses hereto." (See Chartier Decl, Exs. 2-7, 8-13.) IFTA Rule 8.2 provides, in relevant part, that "[t]he Arbitrator shall exercise all powers granted to commercial Arbitrators under the laws of the State of California, USA," and that "[a]ll arbitrations shall be conducted under, shall be subject to and shall be enforceable by the laws of the State of California." (Id., Ex. 8.) This rule does not compel an IFTA Arbitrator to require that Petitioners file a noticed motion for attorney's fees. Under section 1282.2(c) of the California Code of Civil Procedure, the Arbitrator "shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of hearing procedure and shall exercise all powers relating to the conduct of the hearing." Cal. Code Civ. Pro § 1282.2(c). Furthermore, the California Court of Appeal has interpreted the California Arbitration Act as

providing arbitrators with "considerable discretion in deciding what testimony to hear." Schlessinger v. Rosenfeld, Meyer & Susman, 40 Cal. App. 4th 1096, 1106 n.12 (1995) (citing Cal. Code Civ. Pro §§ 1282.2(c) & (d)). The Arbitrator thus had the discretion and authority to consider Petitioners' attorneys' fees request, what evidence was necessary for her to decide this request, and whether Respondent was entitled as a matter of right to see Petitioners' unredacted billing statements. In her discretion and upon her in camera review of Petitioners' unredacted billing statements, she determined that the attorneys' fees request was reasonable and observed that "Respondent has not provided any statutory or case authority showing a requirement that [Petitioners] submit unredacted invoices to the Respondent." (Doc. No. 25-3 at 8.) The Arbitrator found as follows: "Since the Arbitrator makes the decision about reasonableness, and the Arbitrator has been provided with the unredacted invoices, the Arbitrator is able to make the determination." (Id.) The Court thus rejects Respondent's argument that the Arbitrator's failure to require Petitioners to file a noticed motion for attorney's fees denied them a fair hearing. (See Doc. No. 30 at 14-15.)

Regarding the Arbitrator's refusal to stay the Arbitration pending Respondent's separate arbitration proceedings, the Court sees no connection between Respondent's right to a fundamentally fair hearing on the matters at issue in this case and any separate arbitration proceeding. The Arbitrator considered Respondent's Motion to Stay before she issued the Arbitration Award on December 6, 2017, but denied it, finding that "[t]he claims relate to separate arguments and separate fact patterns" and that "the Agreement between the parties specifically precludes offsets from other agreements." (Doc. No. 25-3 at 7.) Aside from its conclusory assertions that the Arbitrator's decision "substantially prejudiced" its rights, Respondent offers no specific argument as to why the

Arbitrator's decision "substantially prejudiced its rights." The Arbitrator acknowledged that there could be "some redundancy" in the separate arbitration of the setoff/offset claims. (Id.) Nevertheless, she determined that "[t]he claims relate to separate agreements and separate fact patterns," and denied Respondent's Motion to Stay. (See id.) There is no evidence that she deprived Respondent of its right to submit evidence – only that she considered and rejected its arguments on the Motion to Stay.

Respondent therefore has failed to demonstrate that the Arbitrator did not provide it with a fundamentally fair hearing.

3. Respondent Has Failed to Demonstrate Evident Partiality (9 U.S.C. § 10(a)(2))

To show that an arbitrator evinced "evident partiality," a party "either must establish specific facts indicating actual bias toward or against [it]" or show that the arbitrator "failed to disclose to the parties information that creates a '[a] reasonable impression of bias.'" Lagstein v. Certain Underwriters at Lloyd's, London, 607 F.3d 634, 646 (9th Cir. 2010) (citing Woods v. Saturn Distribution Corp., 78 F.3d 424, 427 (9th Cir. 1996) and Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 144 (1968). "The appearance of impropriety, standing alone, is insufficient." Sheet Metal Workers Intern. Ass'n Local Union No. 420 v. Kinney Air Conditioning Co., 756 F.2d 742, 746 (9th Cir. 1985).

Respondent claims the Arbitration Award "[t]aken as a whole" reflects the Arbitrator's evident partiality against it. (Doc. No. 25 at 31-33.) In support of this argument, Respondent reiterates its previous points regarding pre-and post-judgment interest, offsets, and cites to its closing arbitration brief. (See id.)

Respondent, however, fails to provide the requisite "specific facts" indicating the Arbitrator was actually biased towards it or that she failed to disclose information that creates a reasonable impression of bias. Moreover, as discussed above, it is evident from the Arbitration Award and the Interim Award that the Arbitrator considered the arguments and evidence presented by both sides regarding interest and offsets. That the Arbitrator ruled in favor of Petitioners on all these issues is insufficient to establish evident partiality. See Sheet Metal Workers, 756 F.2d at 746 ("Even repeated rulings against one party to the arbitration will not establish bias absent some evidence of improper motivation.") Here, there was no such evidence.

Thus, the Court finds there was no evident partiality in the Arbitration Ruling.

4. Modification or Correction (9 U.S.C. § 11)

"[A] court 'may' modify or correct an award when 'the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted." Valueselling Associates, LLC v. Temple, 520 F. App'x 593, 594 (May 30, 2013) (citing 9 U.S.C. § 11(b)). The district court may also modify or correct an arbitral award "[w]here there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award" or "where the award is imperfect in matter of form not affecting the merits of the controversy." 9 U.S.C. §§ 11(a), (c).

Respondent asks the Court to modify or correct the Arbitration Award in two respects: (1) "to provide a mechanism or procedures to be employed with respect to credits due Gulf [sic] arising from Petitioners' efforts to mitigate damages"; and

(2) "to reflect that the scope of the IFTA Award is limited solely to those films at issue in the Arbitration." (Doc. No. 5 at 29.)

Regarding the issue of mitigation of damages, the Court does not believe that Respondent's request falls within the scope of 9 U.S.C. § 11. The Arbitrator made clear findings in her Interim Ruling on Petitioners' mitigation of the damages resulting from Respondent's breach. (See Doc. No. 25-4 at 16.) She ruled that "the damages due to [Petitioners] by Respondent for non-payment of the 80% of the Guarantee for each of the Agreements should be reduced by any amounts up to the original Guarantee for each applicable Picture, received by [Petitioners] with respect to each of the Pictures pursuant to the replacement agreements for the Territories and Term previously licensed to Respondent." (Id.) This does not reflect any matter not submitted to the Arbitration, any evident material miscalculation, or any other imperfection contemplated by 9 U.S.C. § 11.

With respect to the scope of the Award, Petitioners direct the Court's attention to section 1 of Exhibit A in each of the Distribution Agreements. (Doc. No. 28 at 17.) This section provides that "[n]otwithstanding anything to the foregoing, in the event that this Agreement is terminated pursuant to [Respondent]'s breach, then [Petitioner] shall have the right, but not the obligation, to simultaneously terminate any and/or all other agreement(s) executed between [Respondent] and [Petitioner]." (Chartier Decl., Exs. 2-7, 8-13.) The Arbitrator addressed this provision in the Interim Ruling, under a section entitled "Claimants Have the Right to Cancel Other Agreements Between the Parties." (Doc. No. 25-4 at 21.) She observed that although "it appears that the right to cancel all other agreements can have a harsh impact on the breaching party," that the provision was not "simply a penalty" but also served to prevent distributors from selectively

breaching agreements and prevent producers from being required to stay in business with distributors who breach other agreements. (Id. at 21-22.) Based on her findings regarding the other issues in this case, the Arbitrator then determined that Petitioners were entitled to "terminate any and all other agreements" between them and Respondent unless Respondent pays the full Guarantees due and owing on the Agreements at issue in the Arbitration. (Id. at 22.) To the extent Respondent now argues that the Arbitrator's finding was "upon a matter not submitted to [her]," the Court disagrees -- the Arbitrator was interpreting and applying a provision in each of the Agreements under her jurisdiction. Again, the Court finds no basis to modify or correct her ruling on this provision.

As none of the grounds in 9 U.S.C. § 11 apply here, the Court will not modify or correct the Arbitration Award.

IV. CONCLUSION

For the reasons stated above, the Court DENIES Respondent's Motion to Quash. Furthermore, as the Court found no basis to vacate, modify, or correct the Arbitration Award within the meaning of 9 U.S.C. §§ 10-11, the Court DENIES Respondent's Motion to Vacate and GRANTS Petitioners' Motion to Confirm. See 9 U.S.C. § 9. Judgment shall be entered in Petitioners' favor.

IT IS SO ORDERED.

Dated: 4/17/18

Virginia A. Phillips
Chief United States District Judge