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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RYAN BISHOP, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BORAL INDUSTRIES, INC., a
California Corporation; BORAL
ROOFING, LLC, a Delaware Limited
Liability Corporation; and DOES 1 to 10,

Defendants.

Case No.: 3:18-cv-02701-BEN-MSB

**ORDER GRANTING DEFENDANT’S
MOTION TO COMPEL
ARBITRATION AND DISMISSING
PLAINTIFF’S FIRST AMENDED
COMPLAINT**

Before the Court is a Motion to Compel Arbitration submitted by Defendants Boral Industries, Inc. and Boral Roofing, LLC (collectively “Defendants”). ECF No. 20. The docket shows Plaintiff Ryan Bishop has not filed a response to the motion. For the following reasons, the Court **GRANTS** the Motion to Compel Arbitration. The Court also **DISMISSES** Plaintiff’s First Amended Complaint with prejudice.

I. BACKGROUND

On October 28, 2018, Plaintiff filed a complaint against Defendants in state court alleging Defendants engaged in unfair business practices by failing to (1) provide meal breaks, (2) provide rest breaks, (3) pay final wages, and (4) provide timely and accurate

1 wage statements. ECF No. 1, Exh. A ¶¶ 9-14. Plaintiff also sought to represent a class of
2 similarly situated persons. *Id.* at ¶¶ 20-27. Defendants removed the case to this Court on
3 November 29, 2018. ECF No. 1. Following a motion to dismiss that was granted in part,
4 Plaintiff filed a First Amended Complaint alleging the same underlying claims.

5 On February 19, 2020, Defendants filed this Motion to Compel Arbitration
6 pursuant to the Federal Arbitration Act (“FAA”). ECF No. 20; 9 U.S.C. § 1 *et seq.*
7 Defendants also requested the Court dismiss Plaintiff’s class claims with prejudice. ECF
8 No. 20, 17-18. Defendants argue Plaintiff is subject to a valid arbitration agreement that
9 encompasses the issues in dispute here, and that the arbitration agreement requires all
10 disputes be arbitrated individually. *Id.* at 8-17.

11 II. DISCUSSION

12 Local Rule 7.1(f)(3)(C) provides that failure to file an opposition when due can
13 constitute consent to the granting of a motion. On this basis alone the Court could grant
14 Defendants’ motion. However, because the Court also concludes dismissal is appropriate
15 it addresses the motion fully below.

16 Under the FAA, arbitration agreements “shall be valid, irrevocable, and
17 enforceable, save upon such grounds that exist at law or in equity for the revocation of a
18 contract.” 9 U.S.C. § 2. The FAA requires the Court to determine “(1) whether a valid
19 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the
20 dispute at issue.” *Kilgore v. KeyBank, Nat’l Ass’n*, 718 F.3d 1052, 1058 (9th Cir. 2013)
21 (en banc) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th
22 Cir. 2000)). “If the response is affirmative on both counts, then the Act requires the court
23 to enforce the arbitration agreement in accordance with its terms.” *Chiron Corp*, 207
24 F.3d at 1130. “[T]he party resisting arbitration bears the burden of proving that the
25 claims at issue are unsuitable for arbitration.” *Green Tree Fin. Corp. v. Randolph*, 531
26 U.S. 79, 91-92 (2000).

1 Defendants submit Plaintiff signed an arbitration agreement while applying to
2 work for Real Time Staffing Services, LLC, a staffing agency, which does business in
3 California as Select Staffing. ECF No. 20, 2. Select Staffing thereafter sent Plaintiff to
4 work at Defendants' facility. *Id.* Defendants argue the arbitration agreement applies to
5 them, as the arbitration agreement Plaintiff signed applies to "the Company," which is
6 broadly defined therein as "Select Staffing...and all related entities, including entities
7 where employees are sent to work." *Id.* at Ex. 1. The agreement covers "any dispute
8 between Ryan B Bishop and the Company relating to or arising out of the employment or
9 the termination of Ryan B Bishop," including "claims for breach of contract, fraud...
10 wages, salary, compensation, reimbursement, penalties, wrongful termination... and state
11 laws regarding unfair competition or unfair business practices." *Id.* Finally, the
12 arbitration agreement provides that "class action, collective action, and representative
13 action procedures shall not be asserted, nor will they apply, in any arbitration proceeding
14 pursuant to this Agreement." *Id.*

15 Defendants argue the agreement is valid under the FAA, Plaintiff's claims fall
16 within the scope of the agreement, and the agreement requires Plaintiff to arbitrate his
17 claims individually. ECF No. 20. The Court agrees. Defendant has sufficiently
18 demonstrated these points, and Plaintiff has not offered argument to rebut. Accordingly,
19 Plaintiff must arbitrate his claims and he must do so individually.

20 The Court must next determine whether staying the litigation pending arbitration is
21 appropriate. Here, the Court concludes dismissal is appropriate.

22 Where a dispute is subject to arbitration under the FAA, "the court in which such
23 suit is pending, upon being satisfied that the issue involved in such suit or proceeding is
24 referable to arbitration under such an agreement, shall on application of one of the parties
25 stay the trial of the action until such arbitration has been had in accordance with the terms
26 of the agreement." 9 U.S.C. § 3; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344
27 (2011) (courts are "required to stay litigation of arbitral claims pending arbitration of
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1 those claims ‘in accordance with the terms of the agreement’”). However, this duty is not
2 mandatory where, as here, the Court finds each of the claims before it are arbitrable. *See*
3 *Sparling v. Hoffman Const. Co., Inc.*, 864 F.2d 635, 637-38 (9th Cir. 1988) (finding that
4 although not requested, dismissal with prejudice for failure to state a claim was proper
5 where the trial court, on its own initiative, noted the inadequacy of a complaint because
6 all of the plaintiffs claims were subject to arbitration); *see also Salberg v. Massage Green*
7 *Int’l Franchise Corp.*, No. 15-CV-2805-GPC-WVG, 2016 WL 3667154 (S.D. Cal. Jul.
8 11 2016) (exercising the court’s discretion to dismiss where all of the plaintiff’s
9 individual claims were subject to arbitration).

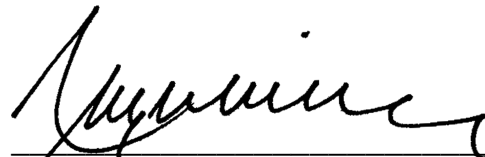
10 Staying these proceedings would serve little purpose, as the Court has found each
11 of Plaintiff’s claims arbitrable. *See Salberg*, 2016 WL 3667154, at *3. Moreover, the
12 valid arbitration clause applicable to all of Plaintiff’s claims renders him unable to amend
13 and possibly win relief, and therefore dismissal with prejudice is appropriate on the
14 Court’s initiative. *See Wong v. Bell*, 642 F.2d 359 (9th Cir. 1981).

15 **III. CONCLUSION**

16 For the foregoing reasons, the Court **GRANTS** Defendant’s Motion to Compel
17 Arbitration. The Court further **DISMISSES** Plaintiff’s First Amended Complaint **with**
18 **prejudice**.

19 **IT IS SO ORDERED.**

20 Dated: August 6, 2020

21 
22 **HON. ROGER T. BENITEZ**
23 United States District Judge
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