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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **KASSIA RODRIGUEZ,**

6 **Plaintiff,**

7 **v.**

8 **MILAN INSTITUTE, et al.,**

9 **Defendants.**

**1:15-cv-1669-LJO-SAB**

**MEMORANDUM DECISION AND ORDER  
RE DEFENDANTS' MOTION TO COMPEL  
ARBITRATION (Doc. 4)**

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11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 Before the Court is Defendants'<sup>1</sup> motion to compel arbitration of Plaintiff Kassia Rodriguez's  
13 employment claims under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. Doc. 4. Defendants  
14 argue that Plaintiff must submit her claims to arbitration pursuant to her employment contract and,  
15 accordingly, the Court should dismiss this case. *See id.* at 1.

16 Plaintiff does not dispute that she must submit her claims to arbitration. *See* Doc. 12 at 2. Citing  
17 9 U.S.C. § 3 ("§ 3"), Plaintiff argues, however, that this case should be stayed pending the outcome of  
18 the arbitration, not dismissed. *Id.*

19 Accordingly, the only issue before the Court is whether to stay or dismiss this case. The Court  
20 took the matter under submission on the papers. *See* Doc. 14. For the following reasons, the Court  
21 **GRANTS** Defendants' motion to compel arbitration and **DISMISSES WITH PREJUDICE** this case.

22 **II. DISCUSSION**

23 Section 3 of the FAA "provides for a stay pending compliance with a contractual arbitration  
24

25 <sup>1</sup> Defendants are Milan Institute, Milan Institute of Cosmetology, Gary Yasuda, Shahrooz Roohparvar, and Erika Lopez.

1 clause.” *Martin Marietta Aluminum, Inc. v. Gen. Elec. Co.*, 568 F.2d 143, 147 (9th Cir. 1978). Because  
2 “a request for a stay [under § 3] is not mandatory,” courts have discretion to stay claims when they are  
3 subject to arbitration. *Id.* But when claims are subject to arbitration, they are subject to dismissal under  
4 Fed. R. Civ. P. 12(b)(6). *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th  
5 Cir. 2004); *see Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (“This court  
6 held [in *Martin Marietta*] that 9 U.S.C. section 3 gives a court authority . . . to grant a stay pending  
7 arbitration, but . . . the provision did not limit the court’s authority to grant a dismissal in this case  
8 [under Fed. R. Civ. P. 12(b)(6)].”).

9 There is no dispute that Plaintiff’s claims are subject to arbitration. *See* Doc. 12 at 3. The Court  
10 declines to exercise its discretion to stay this case. Instead, the Court DISMISSES WITH PREJUDICE  
11 this case. *See Lewis v. UBS Fin. Servs., Inc.*, 818 F. Supp. 2d 1161, 1169 (N.D. Cal. 2011) (finding  
12 dismissal with prejudice appropriate when claims are subject to arbitration); *Morgan v. Xerox Corp.*, No.  
13 2:13-cv-408-TLN-AC, 2013 WL 2151656, at \*7 (E.D. Cal. May 16, 2013) (same).

### 14 **III. CONCLUSION AND ORDER**

15 For the foregoing reasons, the Court GRANTS Defendants’ motion to compel arbitration of  
16 Plaintiff’s claims (Doc. 4), and DISMISSES WITH PREJUDICE this case. The Clerk of Court is  
17 directed to CLOSE this case.

18  
19 IT IS SO ORDERED.

20 Dated: **January 20, 2016**

**/s/ Lawrence J. O’Neill**  
UNITED STATES DISTRICT JUDGE