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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 ASP Franchising LLC,  
10 Plaintiff,

11 v.

12 Chandler Pools LLC, et al.,  
13 Defendants.  
14

No. CV-21-00335-PHX-JAT

**ORDER**

15 Pending before the Court are Plaintiff's Motion for Preliminary Injunction (Doc. 8)  
16 and a Stipulation to Withdraw Plaintiff's Motion for Preliminary Injunction and Stay  
17 Proceedings (Doc. 25). The Court now rules.

18 Plaintiff filed its Motion for Preliminary Injunction on February 25, 2021. (Doc. 8).  
19 The Court set an evidentiary hearing on the motion for April 2, 2021. (Doc. 20). Shortly  
20 thereafter, the parties filed the Stipulation to Withdraw Plaintiff's Motion for Preliminary  
21 Injunction and Stay Proceedings. (Doc. 25). In the stipulation, the parties state that they  
22 have agreed to mediate and arbitrate their disputes in compliance with the franchise  
23 agreements underlying this case. (*Id.* at 1). The parties request that the Court vacate the  
24 April 5, 2021 evidentiary hearing and stay proceedings in this case pursuant to 9 U.S.C.  
25 § 3.

26 Although 9 U.S.C. § 3 directs the Court, upon application by one of the parties, to  
27 grant a stay pending arbitration, "a district court may either stay the action or dismiss it  
28 outright when, as here, the court determines that all of the claims raised in the action are

1 subject to arbitration.” *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072, 1074 (9th  
2 Cir. 2014); *see Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988); *Kam-*  
3 *Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935,  
4 940 (9th Cir. 2009); *Shivkov v. Artex Risk Sols. Inc.*, No. CV-18-04514-PHX-SMM, 2019  
5 WL 8806260, at \*3 (D. Ariz. Aug. 5, 2019), *aff'd*, 974 F.3d 1051 (9th Cir. 2020). Because  
6 all of Plaintiff’s claims are subject to a binding agreement to mediate and arbitrate, the  
7 Court will deny the motion to stay and dismiss Plaintiff’s claims unless the parties can  
8 show cause why the case should not be dismissed without prejudice.

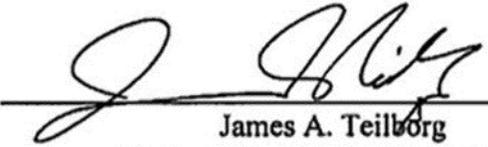
9 Accordingly,

10 **IT IS ORDERED** that the Stipulation to Withdraw the Motion for Preliminary  
11 Injunction and Stay Proceedings (Doc. 25) is **GRANTED IN PART AND DENIED IN**  
12 **PART** such that the Motion for Preliminary Injunction (Doc. 8) is deemed to be withdrawn  
13 and the parties request for the Court to stay further proceedings in this case is **DENIED**.

14 **IT IS FURTHER ORDERED** that the April 5, 2021 evidentiary hearing on  
15 Plaintiff’s Motion for Preliminary Injunction is **VACATED**.

16 **IT IS FURTHER ORDERED** that the Court shall dismiss the instant case without  
17 prejudice unless the parties can show cause by **April 13, 2021** as to why the case should  
18 not be dismissed. If the parties do not consent to the dismissal of the instant case, they must  
19 articulate what is left in this case for the Court to do.

20 Dated this 31st day of March, 2021.

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25 James A. Teilborg  
26 Senior United States District Judge  
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