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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLACIDO VALDEZ,)	Case No. CV 14-09748 DDP (Ex)
)	
Plaintiff,)	ORDER RE MOTION TO COMPEL
)	ARBITRATION
v.)	
)	[Dkt. No. 8]
TERMINIX INTERNATIONAL)	
COMPANY LIMITED PARTNERSHIP,)	
a Delaware limited)	
partnership dba ANTIMITE)	
TERMITE AND PEST CONTROL,)	
)	
Defendants.)	
_____)	

Presently before the Court is Defendant's Motion to Dismiss or in the Alternative to Stay Civil Action and Compel Arbitration. (Dkt. No. 8.) Because procedural irregularities prevent the Court from fully considering Plaintiff's claims and Defendant's arguments, the Court adopts the following order vacating the Motion to Dismiss.

Plaintiff is Defendant's former employee. (Dkt. No. 1, Ex. A ("Complaint"), ¶ 6; Opp'n at 2:7.) Defendant alleges that the two parties entered into a valid arbitration agreement with a choice of law clause selecting Tennessee law, although both the existence of

1 an agreement and the validity of the choice of law provision are in
2 dispute. (Def.'s Mem. P.&.A and exhibits thereto; Opp'n at 2-3.)

3 Plaintiff filed a complaint in state court alleging that
4 Defendant has violated certain provisions of California labor law
5 by denying employees rest and meal breaks, failing to pay wages on
6 termination, and failing to provide and maintain accurate records.
7 Plaintiff sues under California's wage-and-hour statutes and,
8 additionally, sues under California's Unfair Competition Law.
9 (Compl. generally.) Defendant removed to federal court on December
10 19, 2014. (Dkt. No. 1.)

11 Plaintiff also alleges in his Opposition, and Defendant
12 agrees, that after the case was removed he filed a First Amended
13 Complaint in state court adding a claim on behalf of the state
14 pursuant to California's Private Attorneys General Act ("PAGA"),
15 Cal. Lab. Code § 2698 et seq. (Opp'n at 2:8-10; Reply at 3 n.2.)
16 However, neither party has put the first amended complaint on the
17 record in this federal action, either by direct filing or as an
18 exhibit to a motion.

19 Plaintiff argues that his PAGA claims, at least, are not
20 subject to arbitration, because California law prevents it. (Opp'n
21 at 4.) Defendant argues that (1) Tennessee rather than California
22 law applies, and (2) as a matter of federal law, Plaintiff's PAGA
23 claims do not defeat or limit the arbitration agreement, and
24 therefore dismissal or an order compelling arbitration is
25 appropriate on this record. (Reply at 3-5.)

26 The Court declines to resolve these complex questions on an
27 incomplete record. To do so would be to render an advisory
28 opinion. "[A] federal court has neither the power to render

1 advisory opinions nor to decide questions that cannot affect the
2 rights of litigants in the case before them. Its judgments must
3 resolve a real and substantial controversy admitting of specific
4 relief through a decree of a conclusive character, as distinguished
5 from an opinion advising what the law would be upon a hypothetical
6 state of facts." Preiser v. Newkirk, 422 U.S. 395, 401 (1975).

7 The Court therefore orders Plaintiff to file the correct
8 operative complaint with this Court, either by stipulation or, if
9 the parties are unable to agree, by motion. Any such stipulation
10 or motion for leave to file a first amended complaint shall be
11 filed no later than ten days after the date of this order. Failure
12 to file either a stipulation or a motion for leave to file a first
13 amended complaint within ten days may be deemed a waiver of
14 Plaintiff's PAGA claim or claims.

15 Because ruling on the issues of law surrounding the PAGA claim
16 appears to be critical to the resolution of this motion to dismiss,
17 the Court finds that it cannot proceed with the motion until the
18 appropriate operative complaint is filed in this federal action.
19 The Motion to Dismiss is VACATED, but Defendant is free to bring
20 the same or a similar motion if Plaintiff either files a first
21 amended complaint or allows the ten day deadline to pass without
22 filing a stipulation or motion.

23 Nothing in this order acts as a decision on the merits of any
24 claim or defense in this case.

25 IT IS SO ORDERED.

26
27 Dated: February 19, 2015



28 DEAN D. PREGERSON
United States District Judge