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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 JULIANA RECINO, *on behalf of herself*
12 *and all others similarly situated,*
13 **Plaintiff,**
14 v.
15 AYA HEALTHCARE, INC., et al.,
16 **Defendants.**

Case No. 23-cv-750-MMA-MSB

**ORDER GRANTING MOTION TO
COMPEL ARBITRATION AND
DISMISSING CASE**

[Doc. No. 7]

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19 Plaintiff Juliana Recino brings this putative class action against Defendants Aya
20 Healthcare, Inc. and Aya Healthcare Services, Inc. (collectively, “Defendants”). *See*
21 Doc. No. 1. On June 9, 2023, Defendants filed a motion to compel arbitration, or
22 alternatively, dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(6).
23 *See* Doc. No. 7. As the hearing on Defendants’ motion was originally scheduled for July
24 17, 2023, Plaintiff’s opposition or statement of non-opposition was due on July 3, 2023,
25 and Defendants’ reply, if any, was due on or before July 10, 2023. CivLR 7.1.e.2–3.

26 Plaintiff did not file an opposition by July 3, nor did Defendants file a reply on July
27 10. As the time for briefing the matter had closed, and in advance of the July 17 hearing,
28 on July 13, 2023, the Court took the motion under submission on the papers and without

1 oral argument pursuant to Civil Local Rule 7.1.d.1, as authorized by Federal Rule of Civil
2 Procedure 78. *See* Doc. No. 8.

3 Nearly two weeks later, on July 25, 2023, the parties filed a stipulation, wherein
4 they agreed that “Defendants’ motion to compel arbitration, originally noticed for July
5 17, 2023 presentment, shall remain off calendar and only be taken under submission
6 and/or heard once Plaintiff has received the arbitration-related data from Defendants and
7 filed her opposition, if necessary.” Doc. No. 9 at 3. In response to the filing, the Court
8 ordered the parties to file a joint status report providing an update on the exchange of
9 information and proposed deadlines for the lapsed briefing. Doc. No. 10.

10 On August 25, 2023, Defendants filed a status report. Doc. No. 11. Defendants
11 represented that the parties intended to stipulate to the entry of an order granting
12 Defendants’ motion to compel arbitration. *Id.* But Plaintiff did not sign the status report.
13 Consequently, the Court set a deadline either for the parties to file a stipulation or for
14 Plaintiff to file her opposition to the pending motion. Doc. No. 12.

15 On September 29, 2023, the parties filed a joint status report. Doc. No. 13.
16 According to the status report, which is signed by both Plaintiff and Defendants, Plaintiff
17 has agreed to forgo opposing Defendants’ motion to compel arbitration, and the parties
18 have stipulated to an order granting Defendants’ motion to compel arbitration. The Court
19 therefore **GRANTS** Defendants’ motion to compel arbitration and **COMPELS** Plaintiff
20 to arbitrate her claims against Defendants on an individual basis.

21 The parties also have purportedly agreed that “to the extent Defendants file a
22 motion to dismiss the matter, Plaintiff maintains the right to oppose any such motion, as
23 well as seek any and all other available remedies and forms of relief.” Doc. No. 13 at 3.

24 Defendants have already filed a motion to dismiss this case, both as a consequence
25 should the Court compel arbitration, *see* Doc. No. 7-1 at 20, and separately pursuant to
26 Federal Rule of Civil Procedure 12(b)(6), *see id.* at 21–25. To the extent Plaintiff wishes
27 to retain the right to oppose these requests, the Court has already advised the parties that
28 they do not have the authority to independently agree to such a proposition. *See* CivLR

1 7.2; Fed. R. Civ. P. 6(b). The Court has given Plaintiff ample opportunity to oppose the
2 motion, including the two separate bases for dismissal. The logical consequence of
3 assenting to arbitration and declining to oppose Defendants' motion in any manner is that
4 Plaintiff has waived her right to oppose these requests for dismissal. *See* CivLR 7.1.f.1.
5 In any event, pursuant to 9 U.S.C. § 3, because Defendants request dismissal, *see* Doc.
6 No. 7-1 at 20–21, neither party has requested a stay, and the parties have agreed that all
7 claims are subject to arbitration, *see, e.g., Johnmohammadi v. Bloomingdale's, Inc.*, 755
8 F.3d 1072, 1073–74 (9th Cir. 2014), the Court **DISMISSES** this action without
9 prejudice. Accordingly, there will be no forthcoming motion to dismiss to which
10 Plaintiff may oppose and the Court declines to enter an order recognizing that Plaintiff
11 has maintained any such right. The Court **DIRECTS** the Clerk of Court to enter
12 judgment and close this case.

13 **IT IS SO ORDERED.**

14 Dated: October 2, 2023

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16 HON. MICHAEL M. ANELLO
17 United States District Judge
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