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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Modus LLC,

10 Plaintiff,

11 v.

12 Encore Legal Solutions Incorporated,

13 Defendant.

No. CV-12-00699-PHX-JAT

ORDER

14 The parties have settled this case. (Doc. 168). Pending before the Court are the
15 parties' Joint Motion Requesting Court to Vacate or Withdraw December 17, 2013 Order
16 (Doc. 170) and Joint Motion for Dismissal with Prejudice (Doc. 171). Although the Court
17 grants the motion to dismiss without further comment, brief analysis is necessary
18 regarding the motion to vacate.

19 **I. Motion to Vacate**

20 The parties have jointly moved the Court to vacate or withdraw its December 17,
21 2013 Order ruling on Modus' Motion to Dismiss Second Amended Counterclaim and
22 Third-Party Complaint. (Doc. 170 at 2). This Order has been previously filed as Doc. 97
23 in this case and also published electronically. *See Modus LLC v. Encore Legal Solutions,*
24 *Inc.*, 2013 WL 6628125 (D. Ariz. Dec. 17, 2013). The sole argument offered in support
25 of the motion is that "[t]his Order potentially impacts the validity under Arizona law of
26 additional unrelated employment agreement [sic] entered between Encore and Epiq and
27 some of their employees. The parties request that the Court withdraw or vacate this Order
28 so it cannot be used in subsequent litigation against Encore or Epiq." (*Id.* at 3).

1 As an initial matter, because the Court's December 17, 2013 Order did not dispose
2 of all of the claims and parties in this case, *Modus*, 2013 WL 6628125, at *8, it was not a
3 final order. See *State of Cal. ex rel. Cal. Dep't of Toxic Substances Control v. Campbell*,
4 138 F.3d 772, 776 (9th Cir. 1998). Therefore, even if the Court could construe the
5 parties' motion as one for relief from a final judgment or order under Federal Rule of
6 Civil Procedure 60, such a motion would be procedurally improper.

7 Nor is it appropriate for the Court to apply the equitable remedy of vacatur
8 pursuant to settlement. "Judicial precedents are presumptively correct and valuable to the
9 legal community as a whole. They are not merely the property of private litigants and
10 should stand unless a court concludes that the public interest would be served by a
11 vacatur." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26-27 (1994)
12 (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 40
13 (1993)). Even the Court's decisions, which lack precedential value, are rendered as much
14 for the guidance of the public as they are for the determination of the parties' rights. The
15 Court cannot retroactively erase these decisions from the public domain absent a showing
16 of exceptional circumstances. See *Andrade v. United States*, 2009 WL 855629, at *1 (D.
17 Ariz. Mar. 27, 2009) (declining to vacate an order after settlement). The mere fact that
18 settling parties request vacatur is not sufficient evidence of exceptional circumstances.
19 See *U.S. Bancorp*, 513 U.S. at 29.

20 Accordingly, the Court will not vacate its December 17, 2013 Order.

21 **II. Conclusion**

22 For the foregoing reasons,

23 **IT IS ORDERED** denying the Joint Motion Requesting Court to Vacate or
24 Withdraw December 17, 2013 Order (Doc. 170).

25 **IT IS FURTHER ORDERED** granting the Joint Motion for Dismissal with
26 Prejudice (Doc. 171).

27 **IT IS FURTHER ORDERED** denying as moot the Motion for Sanctions Due to
28 Plaintiff's Spoliation of Evidence and Discovery Misconduct (Doc. 121).

1 **IT IS FURTHER ORDERED** denying as moot Modus, LLC's Motion for
2 Summary Judgment (Doc. 143).

3 **IT IS FURTHER ORDERED** denying as moot the Stipulation to File
4 Documents Under Seal (Doc. 145).

5 **IT IS FURTHER ORDERED** denying as moot the Unopposed Motion to file
6 Documents Under Seal (Doc. 158).

7 **IT IS FURTHER ORDERED** striking the documents lodged at Docs. 146, 147,
8 148, and 159. These documents shall remain under seal.

9 **IT IS FURTHER ORDERED** denying as moot Encore/Epiq's Motion for
10 Summary Adjudication as to Liability (Doc. 156).

11 **IT IS FURTHER ORDERED** dismissing with prejudice all claims,
12 counterclaims, and third-party claims in this case. Each party shall bear its own attorneys'
13 fees and costs.

14 Dated this 3rd day of September, 2014.

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20 James A. Teilborg
21 Senior United States District Judge
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