

1 “Withdrawal of a motion has a practical effect as if the party had never brought the
2 motion.” *Caldwell-Baker Co. v. S. Ill. Railcar Co.*, 225 F. Supp. 2d 1243, 1259 (D. Kan. 2002);
3 *see also Davis v. United States*, No. 5:07-cv-00481-VAP-OP, 2010 WL 334502, at *2 (C.D. Cal.
4 Jan. 28, 2010) (“The effect of withdrawal of a motion is to leave the record as it stood prior to the
5 filing as though the motion had never been made”); *Remley v. Lockheed Martin Corp.*, No.
6 3:00-cv-02495-CRB, 2001 WL 681257, at *3 (N.D. Cal. June 4, 2001) (same). Here, it is
7 appropriate to grant defendant’s withdrawal of its renewed motion to stay, given that defendant
8 had requested a stay pending the *ACA International* decision, which has now been issued.

9 The court does not find it appropriate to grant defendant’s “request [for] a status
10 conference . . . on or before March 30, 2018 . . . so that the Court and parties may discuss the
11 *ACA International* decision’s impact on the management of this case, including potential
12 simplification of the issues and the timing of class certification.” (Doc. No. 121 at 3.) To the
13 extent that defendant wishes the court to consider the “potential simplification of the issues” in
14 this action, such arguments should be presented in the form of a motion to amend the scheduling
15 order in this action and should be addressed to the magistrate judge assigned to this action..
16 Nonetheless, to allow the parties sufficient time to assess the potential implications of the recent
17 *ACA International* decision on the pending motions and the scheduling of this case, the court will
18 continue the hearing on the motion for class certification and motion for summary judgment to
19 May 15, 2018. Deadlines for opposition and reply with respect to those motions are set in
20 accordance with Local Rule 230. As indicated above, if any party request further changes to the
21 scheduling order in this action (Doc. No. 43), the undersigned directs the parties to file a motion
22 to amend that order or to request a status conference before the assigned magistrate judge. *See*
23 Local Rule 302(c)(13).

24 CONCLUSION

25 Accordingly,

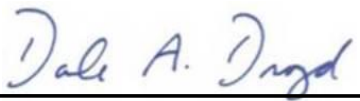
- 26 1. Defendant’s renewed motion to stay (Doc. No. 108) is withdrawn and terminated;
- 27 2. The hearing date for plaintiff’s motion for class certification (Doc. No. 98) and
28 defendant 3Seventy, Inc.’s motion for summary judgment (Doc. No. 101) is continued

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to May 15, 2018, with deadlines for any oppositions and replies to be set in accordance with Local Rule 230(c) in light of the new hearing date.

IT IS SO ORDERED.

Dated: March 22, 2018


UNITED STATES DISTRICT JUDGE