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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA, et al., *ex*
rel. LOYD F. SCHMUCKLEY, JR.,

15 Plaintiffs,

16 v.

18 RITE AID CORPORATION,

19 Defendant.

20 STATE OF CALIFORNIA *ex rel.* LOYD F.
 21 SCHMUCKLEY, JR.,

22 Plaintiff,

23 v.

24 RITE AID CORPORATION,

25 Defendant.

2:12-CV-1699 KJM EFB

**PARTIES' JOINT MOTION TO
 EXTEND TIME FOR PARTIES TO
 MEET AND CONFER RE:
 DEFENDANT'S 11TH AFFIRMATIVE
 DEFENSE (IMPROPER DEFENDANT);
 ORDER**

Related to ECF No. 187, 188

1 **PARTIES’ JOINT MOTION TO EXTEND TIME FOR PARTIES TO MEET AND**
2 **CONFER RE: DEFENDANT’S 11TH AFFIRMATIVE**
3 **DEFENSE (IMPROPER DEFENDANT)**

4 **TO THE HONORABLE COURT:**

5 Plaintiff-Intervenor State of California (“California”), *Qui Tam* Plaintiff Loyd F.
6 Schmuckley, Jr. (“Relator,” together with California, “Plaintiffs”), and Defendant Rite Aid
7 Corporation (“Defendant” or “Rite Aid,” together with Plaintiffs, the “Parties”), by and through
8 their respective counsel of record, for good cause shown, hereby request this Court to extend
9 time for Parties to meet and confer regarding Rite Aid’s Eleventh Affirmative Defense (Improper
10 Defendant) set forth in Rite Aid’s First Amended Answer to Relator’s First Amended Complaint
11 [ECF NO. 146]¹.

12 On January 25, 2019, the Court ordered the Parties to submit a joint statement concerning
13 Rite Aid’s Eleventh Affirmative Defense (Improper Defendant). ECF No. 187.

14 On February 8, 2019, the Parties filed a joint statement setting forth their agreement that
15 more time is warranted to continue to address, and hopefully resolve, the issues and present them
16 to the Court at a more appropriate time. ECF No. 188 (“Joint Statement”). In the Joint
17 Statement, the Parties proposed to the Court that the Plaintiffs should have until July 15, 2019 to
18 either stipulate with Rite Aid for an agreed-upon amendment to correct the naming of Rite Aid in
19 this matter, or to otherwise seek leave of the Court to amend their pleadings to do so. *Id.* at 1.
20 Plaintiffs further agreed that they would not file a motion to add a new defendant during this
21 time until July 15, 2019, or earlier upon exhaustion of good-faith discussions. The Parties noted
22 that the proposed timeline factored in the scheduling relating to Rite Aid’s motion challenging
23 Plaintiffs’ sampling methodology and design, hearing of which the Court originally set for June
24 28, 2019. *Id.* at 1, n.2.

25 On June 18, 2019, the Court, on its own motion, moved the hearing date of Rite Aid’s
26 motion challenging Plaintiffs’ sampling methodology and design to July 12, 2019 and reset any
27 remaining filing deadlines. ECF No. 219.

28 ¹ The same affirmative defense is set forth by Defendant as the Thirteenth Affirmative
 Defense in its First Amended Answer to the State’s Complaint-in-Intervention [ECF No. 147].

1 After a June 26, 2019 conference call, considering that the Parties will need to prepare
2 and file on July 5, 2019 their remaining motion papers and prepare for the hearing set for July
3 12, 2019, the Parties in good faith believe that more time is warranted to allow them to further
4 meet and confer about Rite Aid's Eleventh Affirmative Defense (Improper Defendant). Issues
5 that the parties will need to continue to discuss, and request more time to resolve, in connection
6 with a potential stipulation include:

- 7 • whether the Parties will agree that pleadings in the case will be amended pursuant
8 to Federal Rule of Civil Procedure ("Rule") 15(c) to substitute Thrifty Payless,
9 Inc. d/b/a Rite Aid, a California Corporation, as the defendant in this action in the
10 place of Rite Aid Corporation, a Delaware Corporation;
- 11 • whether all of Rite Aid's prior discovery responses, representations, and
12 stipulations would bind any newly named defendant as if it had originally
13 appeared as the defendant in this action from the outset;
- 14 • whether the amendment shall relate back to the original pleadings for all
15 purposes, including applicable statutes of limitation; and
- 16 • how discovery requests to Rite Aid and/or any newly named defendant would be
17 addressed.

18 Based on the above, the Parties therefore jointly submit that good cause exists to extend
19 the deadline for the Parties to complete the above meet-and-confer process from July 15, 2019 to
20 August 26, 2019. The Parties maintain their respective positions and reservations of rights as set
21 forth in the Joint Statement while these discussions continue. ECF No. 188 at 3-4. The Parties
22 also maintain that no Party may claim prejudice based on the extended discussions in connection
23 with a motion to amend the pleadings under Rule 15(c).

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Respectfully submitted,

Dated:

XAVIER BECERRA
Attorney General of the State of California

By /s/ Emmanuel R. Salazar
Emmanuel R. Salazar
Deputy Attorney General
Attorneys for Plaintiff-Intervenor STATE OF CALIFORNIA

Dated:

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RITE AID CORPORATION

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ORDER

The Court, having considered the Parties' Joint Motion to Extend Time for Parties to Meet and Confer re: Defendant's 11th Affirmative Defense (Improper Defendant), finds good cause and ORDERS THAT Plaintiffs shall have until August 26, 2019 to either stipulate with Defendant for an agreed-upon amendment to correct the naming of Defendant in this matter, or to otherwise seek leave of the Court to amend their pleadings.

IT IS SO ORDERED.

DATED: July 8, 2019.


UNITED STATES DISTRICT JUDGE