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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 further meet and confer regarding Rite Aid’s Eleventh Affirmative Defense
10 (Improper Defendant) set forth in Rite Aid’s First Amended Answer to Relator’s First Amended
11 Complaint [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 28, 2019, due to the continuance of the hearing on Defendant’s motion regarding
26 the sampling methodology and to allow the Parties adequate time to meet and confer, the Parties
27 jointly moved for an order allowing Plaintiffs until August 26, 2019 to either stipulate with

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 Defendant for an agreed-upon amendment to correct the naming of Defendant in this matter, or
2 to otherwise seek leave of the Court to amend their pleadings. ECF No. 224. The Court, finding
3 good cause, granted the motion. ECF No. 227.

4 Subsequently, the Parties is continuing to meet and confer regarding the issues involved
5 with Rite Aid's Eleventh Affirmative Defense (Improper Defendant), including California's
6 issuance of related document requests and 30(b)(6) deposition notice. The Parties in good faith
7 believe that more time is warranted to allow them to further meet and confer. Issues that the
8 parties will need to continue to discuss, and request more time to resolve, in connection with a
9 potential stipulation include:

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

21 Based on the above, the Parties therefore jointly submit that good cause exists to extend
22 deadlines for the Parties to complete the above meet-and-confer process, as follows:

Event	Deadline
Rite Aid Corporation's declaration under oath regarding relationship with/among subsidiaries and Written Responses/Objections to California's Requests for Production ("RFP") Set No. 7	Served by August 30, 2019

1	Rite Aid Corporation's production of documents responsive to RFP Set No. 7 (to the extent not withdrawn after Plaintiffs' review of Rite Aid Corporation declaration)	Completed by September 27, 2019
2		
3	Parties' stipulation, if agreed upon, to amend the named defendants with relation back (including removal of Rite Aid Corporation from pleadings)	Filed by October 18, 2019
4		
5	Plaintiffs' motion to amend the pleadings (if necessary following Parties' inability to stipulate)	Filed by November 1, 2019
6		
7	Defendant's opposition to motion to amend	Filed by December 6, 2019
8	Plaintiffs' reply re motion to amend	Filed by December 20, 2019
9	Hearing on Plaintiffs' motion to amend the pleadings	January 10, 2020, 10:00 a.m., Courtroom 3

10 The Parties maintain their respective positions and reservations of rights as set forth in
11 the Joint Statement while these discussions continue. ECF No. 188 at 3-4. The Parties also
12 maintain that no Party may claim prejudice based on the extended discussions in connection with
13 a motion to amend the pleadings under Rule 15(c).

14 Respectfully submitted,

15
16 Dated: 8/20/2019

XAVIER BECERRA
Attorney General of the State of California

17 By /s/ Emmanuel R. Salazar

18 Emmanuel R. Salazar
19 Deputy Attorney General
20 Attorneys for Plaintiff-Intervenor STATE OF CALIFORNIA

21 Dated: 8/20/2019

WATERS & KRAUS, LLP

22 By /s/ Wm. Paul Lawrence, II (authorized on 8/20/19)

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Dated: 8/20/2019

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RITE AID CORPORATION

1 **ORDER**

2 The Court, having considered the Parties' Joint Motion to Extend Time for Parties to
3 Meet and Confer re: Defendant's 11th Affirmative Defense (Improper Defendant), finds good
4 cause and ORDERS that the schedule for the Parties as follows:

5

Event	Deadline
Rite Aid Corporation's declaration under oath regarding relationship with/among subsidiaries and Written Responses/Objections to RFP Set No. 7	Served by August 30, 2019
Rite Aid Corporation's production of documents responsive to RFP Set No. 7 (to the extent not withdrawn after seeing declaration)	Completed by September 27, 2019
Parties' stipulation, if agreed upon, to amend the named defendants with relation back (including removal of Rite Aid Corporation from pleadings)	Filed by October 18, 2019
Plaintiffs' motion to amend the pleadings (if necessary)	Filed by November 1, 2019
Defendant's opposition to motion to amend	Filed by December 6, 2019
Plaintiffs' reply re motion to amend	Filed by December 20, 2019
Hearing on Plaintiffs' motion to amend the pleadings	January 17, 2020, 10:00 a.m., Courtroom 3

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17 IT IS SO ORDERED.

18 DATED: August 26, 2019.

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21 UNITED STATES DISTRICT JUDGE
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