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11 IN THE UNITED STATES DISTRICT COURT
 12 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 AMEND SCHEDULING ORDER; ORDER

Related to ECF No. 260

1 **PARTIES’ JOINT MOTION TO AMEND SCHEDULING ORDER**
2 **TO THE HONORABLE COURT:**

3 Plaintiff-Intervenor State of California (“California”), *Qui Tam* Plaintiff Loyd F.
4 Schmuckley, Jr. (“Relator,” together with California, “Plaintiffs”), and Defendant Rite Aid
5 Corporation (“Defendant” or “Rite Aid,” together with Plaintiffs, the “Parties”), by and through
6 their respective counsel of record, for good cause shown, hereby request this Court to amend the
7 scheduling order. Specifically, the Parties move to strike the stipulated and ordered January 31,
8 2020 deadline to complete the deposition(s) of Rite Aid 30(b)(6) witness(es) relating to Rite
9 Aid’s “improper defendant” defense. The motion, if granted, will allow the Parties more time to
10 complete discovery on documents Plaintiffs requested, i.e., California’s Request for Production
11 of Documents (“RPD”), Set No. 7 and Relator’s RPD Set Nos. 2 and 3, including the filing and
12 hearing of any pending and potential discovery motions.

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

15 On February 8, 2019, the Parties filed a joint statement setting forth their agreement that
16 more time was warranted to continue to address, and hopefully resolve, the issues and present
17 them to the Court at a more appropriate time. ECF No. 188 (“Joint Statement”). In the Joint
18 Statement, the Parties proposed to the Court that the Plaintiffs should have until July 15, 2019 to
19 either stipulate with Rite Aid for an agreed-upon amendment to correct the naming of Rite Aid in
20 this matter, or to otherwise seek leave of the Court to amend their pleadings to do so. *Id.* at 1.

21 On June 28, 2019, due to the continuance of the hearing on Defendant’s motion regarding
22 the sampling methodology and to allow the Parties adequate time to meet and confer, the Parties
23 jointly moved for an order allowing Plaintiffs until August 26, 2019 to either stipulate with
24 Defendant for an agreed-upon amendment to correct the naming of Defendant in this matter, or
25 to otherwise seek leave of the Court to amend their pleadings. ECF No. 224. The Court, finding
26 good cause, granted the motion. ECF No. 227.

27 Subsequently, the Parties continued to meet and confer regarding the issues involved with
28 Rite Aid’s Eleventh Affirmative Defense (Improper Defendant), including California’s issuance

1 of related document requests and a 30(b)(6) deposition notice. Issues that the parties discussed
2 in connection with a potential stipulation included:

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

14 In July 2019, California propounded Request for Production of Documents, Set No. 7,
15 and Relator propounded Request for Production of Documents, Set No. 2, both of which seek
16 documents relevant, in part, to Rite Aid’s purported “improper defendant” defense.

17 Following extensive but unsuccessful meet-and-confer efforts, on October 9, 2019,
18 California filed a motion to compel relating to its RPD Set No. 7. ECF No. 249. On November
19 5, 2019, the Court ordered Rite Aid to, in part, produce additional documents responsive to
20 California’s RPD Nos. 17-38 (Set No. 7) and provide a supplemental response to California’s
21 RPD Nos. 1, 2, 15, 16, and [17] to 38 that identifies which documents are responsive to each
22 request by no later than November 25, 2019. ECF No. 258.

23 On November 6, 2019, the Parties filed a joint motion to extend time for the parties to
24 conduct discovery and meet and confer re: Defendant’s 11th affirmative defense (improper
25 defendant). ECF No. 259. On November 8, 2019, the Court granted the motion, ECF No. 259,
26 and based on the Parties’ stipulation ordered among other things that Rite Aid produce privilege
27 logs relating to California’s RPD Set No. 7 by December 20, 2019 and that the Parties complete
28

1 the deposition(s) of Rite Aid 30(b)(6) witness(es) relating to Rite Aid’s “improper defendant”
2 defense by January 31, 2020.

3 Following Rite Aid’s November 25, 2019 production of documents, on November 27,
4 2019, California filed against Rite Aid a motion for sanctions arising out of its responses to
5 California’s RPD Set No. 7. ECF No. 261. On December 11, 2019, the Court heard the motion
6 for sanctions. On December 12, 2019, Relator propounded his RPD Set No. 3, seeking certain
7 financial documents from Rite Aid, whose responses thereto were due on January 13, 2020. Rite
8 Aid served its responses to Relator’s RFP Set No. 3 on January 13, 2020.

9 In November and December 2019, the Parties met and conferred on the scheduling of
10 depositions of Rite Aid’s 30(b)(6) witnesses. Rite Aid offered dates for the various depositions
11 in November and December 2019, which were ultimately accepted and are currently scheduled
12 to take place in Harrisburg, Pennsylvania on January 29, 31, February 12 and 14, 2020.

13 On December 19, 2019, the Court issued an order granting in part and denying in part
14 California’s motion, ECF No. 273. The Court ordered Rite Aid to produce no later than January
15 10, 2020 unredacted copies of all financial statements previously produced in response to
16 California’s RPD Nos. 30 and 31 and a supplemental response identifying the specific discovery
17 request to which each document identified in paragraph 19 on ECF No. 265 is responsive.

18 On December 20, 2019, Rite Aid produced a privilege log pursuant to the Court’s
19 November 8, 2019 order. Rite Aid also made a related, supplemental document production at
20 that time. On January 8, 2020, California filed another motion for sanctions against Rite Aid
21 arising out of its December 20, 2019 production, the hearing of which is currently scheduled on
22 January 22, 2020. Rite Aid maintains that the motion is without basis and has asked the State to
23 withdraw the motion both because it is moot and the State failed to meet and confer (or obtain
24 any court order) regarding issues raised in the motion, including California’s request for *in*
25 *camera* review of documents that Rite Aid maintains are privileged (and were logged in Rite
26 Aid’s December 20, 2019 privilege log).

27 On January 10, 2020, Rite Aid produced additional documents in response to California’s
28 RPD Set No. 7, Relator’s RPD Set No. 2, and Relator’s RFP Set No. 3. California took more

1 than 4 hours to download the documents and would require additional time to input and process
2 into California's electronic document repository. As of the date of this filing, California and
3 Relator are in the process of analyzing these productions. Based on the above, the Parties
4 believe that more time is needed to complete discovery relating to California's RPD Set No. 7
5 and Relator RPD Set Nos. 2 and 3, including the review and analysis of documents Rite Aid
6 produced on December 20, 2019 and January 10, 2020, and resolution of any pending and further
7 discovery disputes, e.g., ECF No. 275 (motion seeking, in part, in camera review of withheld
8 documents responsive to California's RPD Nos. 23-26). Accordingly, the Parties jointly submit
9 that good cause exists to amend the scheduling order, ECF No. 260, where the Court strikes the
10 stipulated and currently ordered January 31, 2020 deadline to complete deposition(s) of Rite
11 Aid's 30(b)(6) witness(es) relating to Rite Aid's improper defendant defense. This will allow the
12 Parties to flexibly schedule this and the other depositions now set for January and February 2020,
13 factoring in the time needed to analyze Rite Aid's latest discovery responses and document
14 productions, resolve any disagreements (through meet and confer, or, if necessary, motion
15 practice) regarding Rite Aid's privilege claims, and resolve any further dispute that may arise
16 relating to California's RPD Set No. 7 and Relator's RPD Set Nos. 2 and 3. All other dates in
17 the scheduling order, ECF No. 260, will remain the same.

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19
20 Respectfully submitted,

21 Dated: 1/15/2020

22 XAVIER BECERRA
Attorney General of the State of California

23 By /s/ Emmanuel R. Salazar

24 Emmanuel R. Salazar
25 Deputy Attorney General
Attorneys for Plaintiff-Intervenor STATE OF
26 CALIFORNIA
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Dated: 1/15/2020

WATERS & KRAUS, LLP

By /s/ Wm. Paul Lawrence, II (authorized on 1/15/2020)

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RITE AID CORPORATION

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ORDER

The Court, having considered the Parties' Joint Motion to Amend the Scheduling Order, finds good cause and ORDERS that the deadline for the Parties to complete deposition(s) of Rite Aid 30(b)(6) witnesses relating to Rite Aid's "improper defendant" defense is stricken. The Parties are ordered to meet and confer on the dates to complete these depositions within the confines of the current scheduling order, ECF No. 260. All other dates in the currently effective scheduling order, ECF No. 260, remain the same.

IT IS SO ORDERED.

DATED: January 21, 2020.



CHIEF UNITED STATES DISTRICT JUDGE