

1 XAVIER BECERRA
 Attorney General of California
 2 VINCENT DICARLO
 Supervising Deputy Attorney General
 3 BERNICE L. LOUIE YEW, State Bar No. 114601
 Deputy Attorney General
 4 E-mail: Bernice.Yew@doj.ca.gov
 EMMANUEL R. SALAZAR, State Bar No. 240794
 5 Deputy Attorney General
 E-mail: Emmanuel.Salazar@doj.ca.gov
 6 2329 Gateway Oaks Drive, Suite 200
 Sacramento, CA 95833-4252
 7 Telephone: (916) 621-1835
 Fax: (916) 274-2929

8 *Attorneys for State of California*

9 *(Additional counsel listed on signature page)*

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 request to move by approximately two months the
8 filing dates relating to Plaintiffs’ motion to amend the pleadings. The motion, if granted, will
9 allow the Parties more time to complete discovery on documents Plaintiffs requested, i.e.,
10 California’s Request for Production of Documents (“RPD”), Set No. 7 and Relator’s RPD Set
11 Nos. 2 and 3, including the filing and hearing of any pending and potential discovery motions.
12 Moreover, the Parties request the additional time due to the Parties’ current constraints arising
13 out of the COVID-19 virus.

14 On January 25, 2019, the Court ordered the Parties to submit a joint statement concerning
15 Rite Aid’s Eleventh Affirmative Defense (Improper Defendant). ECF No. 187. On February 8,
16 2019, the Parties filed a joint statement in which they proposed to the Court that the Plaintiffs
17 should have until July 15, 2019 to either stipulate with Rite Aid for an agreed-upon amendment
18 to correct the naming of Rite Aid in this matter, or to otherwise seek leave of the Court to amend
19 their pleadings to do so. ECF No. 188 at 1.

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

1 On July 19, 2019, California propounded Request for Production of Documents, Set No.
2 7, and Relator propounded Request for Production of Documents, Set No. 2, both of which seek
3 documents relevant, in part, to Rite Aid’s purported “improper defendant” defense.

4 On November 5, 2019, in response to a motion to compel, the Court ordered Rite Aid to
5 provide a supplemental response and produce additional documents by November 25, 2019
6 responsive to various document requests, including California’s RPD, Set No. 7. ECF No. 258.

7 On November 8, 2019, the Court granted the Parties’ joint motion to extend time to
8 conduct discovery and meet and confer regarding Defendant’s Eleventh Affirmative Defense
9 (Improper Defendant). ECF No. 259. The Court ordered, among other things, that Rite Aid
10 produce privilege logs relating to California’s RPD, Set No. 7 by December 20, 2019, and that
11 the Parties complete the depositions of Rite Aid 30(b)(6) witnesses relating to Rite Aid’s
12 “improper defendant” defense by January 31, 2020. The Parties thereafter met and conferred on
13 the scheduling of depositions of Rite Aid’s 30(b)(6) witnesses, which they scheduled to take
14 place in Pennsylvania in January and February 2020.

15 On December 12, 2019, Relator propounded his RPD Set No. 3, seeking certain
16 additional financial documents from Rite Aid. Rite Aid timely served its responses to Relator’s
17 RFP Set No. 3 on January 13, 2020.

18 On December 19, 2019, the Court issued an order granting in part and denying in part
19 California’s motion for sanctions arising out of Rite Aid’s responses to California’s RPD Set No.
20 7. ECF No. 273. The Court ordered Rite Aid to produce by January 10, 2020 unredacted copies
21 of all financial statements previously produced in response to California’s RPD Nos. 30 and 31,
22 and to serve a supplemental discovery response.

23 On December 20, 2019, Rite Aid timely produced a privilege log pursuant to the Court’s
24 above-described November 8, 2019 order. Rite Aid also made a related, supplemental document
25 production at that time.

26 On January 8, 2020, California filed a motion for sanctions against Rite Aid for purported
27 violations of court orders ECF No. 258 and 260. After the February 26, 2020 hearing on this
28 motion, the Court ordered Rite Aid to submit a declaration supporting Rite Aid’s claims of

1 privilege by March 18, 2020, and for Plaintiffs to submit a response by April 8, 2020. ECF No.
2 290.

3 On January 10, 2020, pursuant to the Court's December 19, 2109 order (ECF No. 273),
4 Rite Aid produced additional documents in response to California's RPD Set No. 7, Relator's
5 RPD Set No. 2, as well as documents responsive to Relator's RPD Set No. 3.

6 On January 21, 2020, the Court granted the Parties' joint motion to amend the scheduling
7 order by striking the deadline to complete the deposition of Rite Aid's 30(b)(6) witness relating
8 to its "improper defendant" defense. ECF No. 282.

9 On March 13, 2020, Plaintiffs deposed Rite Aid's Director of Treasury Services.
10 Plaintiffs expect to request additional discovery from Rite Aid based on that deposition.

11 On March 16, 2020, the Court moved Rite Aid's deadline to submit documents for *in*
12 *camera* review and a supporting declaration to April 8, 2020. ECF No. 295.

13 On the same date, the Parties agreed to extend the upcoming deadlines relating to the
14 motion to amend pleadings, due to the above-described ongoing discovery efforts. With respect
15 to constraints arising out of the COVID-19 virus, the California Attorney General's Office is
16 currently implementing workplace restrictions while responding to mission-critical tasks. Rite
17 Aid is in the midst of work with the federal government regarding COVID-19 testing centers,
18 and Rite Aid's lead counsel is located in San Francisco and subject to workplace restrictions
19 resulting from the shelter-in-place orders announced for the Bay Area on March 16, 2020.

20 Based on the above, the Parties believe that more time is needed to complete discovery
21 relating to the issues surrounding Rite Aid's "improper defendant" defense, and resolution of any
22 pending and further discovery disputes. Moreover, more time is needed to allow the Parties to
23 manage current constraints arising out of the COVID-19 virus.

24 Accordingly, the Parties jointly submit that good cause exists to amend the scheduling
25 order, ECF No. 260, as follows:

26

Event	Current Deadline	Proposed Modified Date
27 Plaintiffs' motion to amend 28 the pleadings	File by April 3, 2020	File by June 12, 2020

1	Defendant's opposition to motion to amend	File by May 1, 2020	File by July 10, 2020
2	Plaintiffs' reply re motion to amend	File by May 15, 2020	File by July 24, 2020
3	Hearing on Plaintiffs' motion to amend the pleadings	TBD	TBD

5 The Parties are meeting and conferring regarding moving other dates in the scheduling
6 order, ECF No. 260. The Parties will apprise the Court about these other dates.

7 The Parties maintain their respective positions and reservations of rights as set forth in
8 the Joint Statement while these discussions and discovery efforts continue. ECF No. 188 at 3-4.
9 The Parties also maintain that no Party may claim prejudice based on the extended discussions in
10 connection with a motion to amend the pleadings.

11 Respectfully submitted,

12 Dated: 3/17/2020

XAVIER BECERRA
Attorney General of the State of California

13 By /s/ Emmanuel R. Salazar

14 Emmanuel R. Salazar
15 Deputy Attorney General
16 Attorneys for Plaintiff-Intervenor
17 STATE OF CALIFORNIA

18 Dated: 3/16/2020

WATERS & KRAUS, LLP

19 By */s/ Wm. Paul Lawrence, II (authorized on*
20 *3/16/2020)*

21 Wm. Paul Lawrence, II (admitted pro hac vice)
22 Washington D.C. Metro Office
23 37163 Mountville Road
24 Middleburg, VA 20117
25 Telephone: (540) 687-6999
26 Fax: (540) 687-5457
27 E-mail: plawrence@waterskraus.com
28 Attorneys for *Qui Tam* Plaintiff
LOYD F. SCHMUCKLEY, JR.

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Dated: 3/17/2020

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Kevin M. Papay (authorized on 3/17/2020)
Benjamin P. Smith
Kevin M. Papay
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: +1.415.442.1000
Fax: +1.415.442.1001
E-mail: Kevin.Papay@morganlewis.com
Attorneys for Defendant
RITE AID CORPORATION

1 **ORDER**

2 The Court, having considered the Parties' Joint Motion to Amend the Scheduling Order,
3 finds good cause and ORDERS that the schedule for the Parties as follows:

4

Event	Current Deadline	Proposed Modified Date
5 Plaintiffs' motion to amend the pleadings	File by April 3, 2020	File by June 12, 2020
6 Defendant's opposition to motion to amend	File by May 1, 2020	File by July 10, 2020
7 Plaintiffs' reply re motion to amend	File by May 15, 2020	File by July 24, 2020
8 Hearing on Plaintiffs' motion to amend the pleadings	TBD	TBD

9

10 All other dates in the currently effective scheduling order, ECF No. 260, remain the same.

11 IT IS SO ORDERED.

12 DATED: March 24, 2020.

13 
14 _____
15 CHIEF UNITED STATES DISTRICT JUDGE