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 RITE AID CORPORATION

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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and the
 STATES OF CALIFORNIA, *et al.*, *ex rel.*
 LOYD F. SCHMUCKLEY, JR.,

Plaintiffs,

v.

RITE AID CORPORATION,

Defendant.

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

Plaintiffs,

v.

RITE AID CORPORATION,

Defendant.

Case No. 2:12-cv-01699-KJM-EFB

**PARTIES' JOINT MOTION TO
 AMEND DEADLINES RELATED TO
 IN CAMERA REVIEW OF RITE AID
 BOARD MATERIALS; [PROPOSED]
 ORDER**

RELATED TO ECF NO. 294, 295

1 **PARTIES’ JOINT MOTION TO AMEND DEADLINES RELATED TO IN CAMERA**
2 **REVIEW OF RITE AID BOARD MATERIALS**

3 **TO THE HONORABLE COURT:**

4 Plaintiff-Intervenor State of California (“California”), *Qui Tam* Plaintiff Loyd F.
5 Schmuckley, Jr. (“Relator,” together with California, “Plaintiffs”), and Defendant Rite Aid
6 Corporation (“Defendant” or “Rite Aid,” together with Plaintiffs, the “Parties”), by and through
7 their respective counsel of record, for good cause shown, hereby request this Court to extend the
8 deadlines for (1) Rite Aid to submit for *in camera* review Rite Aid board agendas, minutes,
9 presentations, tabs, binders, and appendices (“Board Materials”) claimed to contain privileged
10 information, along with a supporting declaration, (2) Rite Aid to produce any Board Materials
11 determined by Rite Aid to not contain privileged information; and (3) California to file a response
12 to Rite Aid’s declaration, all as ordered by this Court on March 16, 2020 (ECF No. 295).

13 On March 11, 2020, the Parties filed a joint request for instructions regarding the *in*
14 *camera* review of Rite Aid’s Board Materials. ECF No. 294. The Parties’ joint request sought
15 clarification regarding the scope of Rite Aid’s *in camera* submission, as well as an extension until
16 April 8, 2020 for Rite Aid to conduct its privilege review of Board Materials that Rite Aid
17 contended were not within the scope of California’s Requests for Production and therefore had
18 not previously been reviewed for privilege or produced.

19 On March 16, 2020, the Court ordered Rite Aid to (1) submit for *in camera* review all
20 documents identified in Rite Aid’s December 20, 2019, January 10, 2020, and February 18, 2020
21 privilege logs; (2) submit for *in camera* review all Board Materials—including the tabs, binders,
22 and appendices referenced in the parties’ March 11, 2020 joint request—claimed to contain
23 privileged information; (3) submit supporting declarations explaining the basis for each assertion
24 of attorney-client privilege; (4) serve redacted versions of the supporting declarations on
25 California; and (5) produce Board Materials determined to not contain privileged information, all
26 by April 8, 2020. ECF No. 295. The Court also ordered California to file a response to Rite
27 Aid’s declaration(s) by April 29, 2020. ECF No. 295.

28 On or about March 17, 2020, Rite Aid’s headquarters closed for at least two weeks due to

1 the coronavirus (COVID-19) pandemic. On March 19, Rite Aid informed California that as a
 2 result of this closure, Rite Aid cannot access—and therefore cannot review for privilege or collect
 3 for potential production—a subset of Board Materials that are stored in hard-copy format at Rite
 4 Aid’s headquarters (the “Inaccessible Board Materials”). The Inaccessible Board Materials
 5 include, but are not limited to, Board Materials that correspond to five board meetings that are the
 6 subject of Rite Aid’s ordered *in camera* submission: April 2007, January 2010, April 2010, April
 7 2011, and June 2011. Rite Aid therefore asked California to stipulate to extend the deadline for
 8 Rite Aid to review and/or produce Board Materials for those five meetings by two weeks to April
 9 22, 2020, with the potential for a further extension if Rite Aid’s office closure continues beyond
 10 two weeks. On March 20, California agreed to Rite Aid’s requested extension.¹

11 Rite Aid does not believe that its current office closure will interfere with Rite Aid’s
 12 ability to complete its review, submission, and/or production of the majority of Board Materials at
 13 issue, only those corresponding to the five meetings identified above.

14 In light of these significant, unanticipated developments, the Parties jointly request the
 15 following modification of the deadlines in the Court’s March 16, 2020 order:

Event	Current Date (ECF No. 295)	Proposed Date
Rite Aid to submit for <i>in camera</i> review (with a supporting declaration) Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices claimed to contain privileged information, <i>except</i> for those corresponding to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 8, 2020 (same)

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 24 ¹ Because of Rite Aid corporate headquarters’ closure due to the COVID-19 pandemic, California
 25 learned on March 20, 2020, that Rite Aid’s pre-September 2011 board materials were not
 26 electronically stored but rather were kept in hard copies, which Rite Aid’s Morgan Lewis attorney
 27 manually reviewed to determine the board materials responsive to RPD Nos. 23-26 (which sought
 28 documents relating to pharmacy business in California). The Parties are continuing meet-and-
 confer discussions to resolve California’s concerns regarding this issue. Without waiving any
 right or claim, in light of Rite Aid corporate headquarters’ closure, California agrees to Rite Aid’s
 limited extension request herein.

1	Rite Aid to submit for <i>in camera</i> review (with a supporting declaration) Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices claimed to contain privileged information that correspond to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 22, 2020
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5	Rite Aid to produce any Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices determined by Rite Aid to not contain privileged information, <i>except</i> for those corresponding to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 8, 2020 (same)
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8	Rite Aid to produce any Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices determined by Rite Aid to not contain privileged information that correspond to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 22, 2020
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12	California to file a reply to Rite Aid's declarations	April 29, 2020	May 20, 2020

13 Respectfully Submitted,

14 Dated: March 26, 2020

XAVIER BECERRA
Attorney General of the State of California

16 /s/ Emmanuel R. Salazar (authorized on 3/24/2020)

17 Emmanuel R. Salazar
Deputy Attorney General
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STATE OF CALIFORNIA

22 Dated: March 26, 2020

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24 /s/ Wm. Paul Lawrence II (authorized on 3/24/2020)

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Dated: March 26, 2020

MORGAN, LEWIS & BOCKIUS LLP

/s/ Benjamin P. Smith
Benjamin P. Smith
Attorneys for Defendant
RITE AID CORPORATION

1 **[PROPOSED] ORDER**

2 The Court, having considered the Parties' Joint Motion To Amend Deadlines Related to In
3 Camera Review of Rite Aid Board Materials, finds good cause and ORDERS that the schedule
4 for the Parties as follows:

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Event	Current Date (ECF No. 295)	Modified Date
Rite Aid to submit for <i>in camera</i> review (with a supporting declaration) Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices claimed to contain privileged information, <i>except</i> for those corresponding to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 8, 2020
Rite Aid to submit for <i>in camera</i> review (with a supporting declaration) Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices claimed to contain privileged information that correspond to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 22, 2020
Rite Aid to produce any Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices determined by Rite Aid to not contain privileged information, <i>except</i> for those corresponding to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 8, 2020
Rite Aid to produce any Rite Aid board agendas, minutes, presentations, tabs, binders, and appendices determined by Rite Aid to not contain privileged information that correspond to the April 2007, January 2010, April 2010, April 2011, and June 2011 board meetings	April 8, 2020	April 22, 2020
California to file a reply to Rite Aid's declarations	April 29, 2020	May 20, 2020

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23 **IT IS SO ORDERED.**

24 Dated: March 27, 2020.

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26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE