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 8 STATE OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
 10 EASTERN DISTRICT OF CALIFORNIA

11
 12 UNITED STATES OF AMERICA and the
 13 STATES OF CALIFORNIA, *et al.*, *ex rel.*
 LOYD F. SCHMUCKLEY, JR.,

14 Plaintiffs,

15 v.

16 RITE AID CORPORATION,

17 Defendant.

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

20 Plaintiffs,

21 v.

22 RITE AID CORPORATION,

23 Defendant.

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

**PARTIES' JOINT MOTION TO
 MODIFY THE SCHEDULING ORDER
 TO PERMIT ADDITIONAL TIME TO
 CONDUCT DISCOVERY; ORDER**

Related to ECF No. 260

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1 **PARTIES’ JOINT MOTION TO MODIFY THE SCHEDULING ORDER TO PERMIT**
2 **ADDITIONAL TIME TO CONDUCT DISCOVERY**

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 modify the
8 scheduling order to permit additional time for the Parties to conduct discovery.

9 In late March, consistent with State and County public health orders related to the COVID-
10 19 pandemic, the California Attorney General’s Office issued a directive encouraging all attorneys
11 and staff to work remotely. Further, California’s attorneys in this matter are subject to public health
12 orders generally prohibiting travel outside of Sacramento County with limited exceptions.¹ Rite
13 Aid closed its corporate offices on March 17, 2020 pursuant to Pennsylvania stay at home orders
14 and has not yet reopened. The San Francisco and Philadelphia offices of Morgan, Lewis & Bockius
15 LLP, Rite Aid’s counsel in this matter, have been closed since March as well due to State and
16 County public health orders. Despite these obstacles, the Parties have continued to work together
17 to make progress on unresolved discovery matters.

18 I. Requests to Produce Documents

19 The Parties have made progress on a number of potential disputes regarding document
20 productions. However, the Parties require additional time to try to informally resolve other pending
21 issues or, if those efforts are unsuccessful, to seek and obtain Court adjudication. The Parties’
22 ongoing efforts to resolve these issues, examples of which are described below, have been impacted
23 by the ongoing COVID-19 pandemic and resulting limitations on the parties’ ability to efficiently
24 conduct discovery. In particular, the (continuing) closure of Rite Aid’s corporate offices has
25 significantly impaired Rite Aid’s ability to collect (and therefore analyze or produce) potentially
26 responsive documents.

27 ¹ Governor Newsom’s Executive Order N-33-20, issued March 19, 2020, ordered Californians to stay home or at
28 their place of residence with limited exceptions. Sacramento County Public Health Order 3-19-2020 imposed a
 general prohibition on travel with certain limited exceptions. These restrictions remain in place. See Sacramento
 County Public Health Order 5-26-2020.

1 Pursuant to the Court's May 19, 2020 order (ECF No. 313), Rite Aid anticipates that it will
2 complete its production of certain non-privileged Board Materials and submission of privileged
3 Board Materials for the Court's *in camera* review by June 22, 2020. Despite the continuing closure
4 of Rite Aid's corporate headquarters where the hard-copy materials at issue are maintained, Rite
5 Aid has taken steps to obtain these materials and intends to meet this deadline. Rite Aid also intends
6 to submit a declaration to the Court on June 22, 2020 supporting its privilege assertions for the
7 Board Materials submitted for *in camera* review. California will file a response to Rite Aid's
8 declarations by July 20, 2020. Depending on the scope of the parties' privilege claims and this
9 Court's determinations regarding the *in camera* submission, the Parties may need additional time
10 to resolve issues related to Rite Aid's production of Board Materials.

11 Relator and Rite Aid have met and conferred for several months to narrow the scope of
12 disputes relating to Rite Aid's written responses to Relator's RPD Set No. 2 and RPD Set No. 3.
13 As of May 4, 2020, the remaining disputes regarding Rite Aid's written responses to those sets
14 concern Rite Aid's written objections/responses to RFP nos. 14, 18, 19, 26 and 32 (Set No. 2) and
15 RFP nos. 45-54 (Set No. 3). The Parties are hopeful that they will be able to resolve these disputes.
16 However, Rite Aid is following up on several inquiries posed by Relator in an e-mail sent on May
17 4, 2020 regarding the scope and status of searches, as well as the time of productions. If the Parties
18 are not able to resolve the remaining disputes informally, Relator will need time to obtain a ruling
19 from the Court.

20 On March 13, 2020, just before shelter-in-place orders were issued, counsel for California
21 and counsel for Relator deposed Rite Aid's Director of Treasury Services, Jennifer Wagner-Parrish,
22 in Pennsylvania regarding certain Rite Aid financial records. Plaintiffs' deposition notice included
23 document requests, and the parties negotiated the scope of Rite Aid's production of documents in
24 response to several of those request in advance of the deposition. After the deposition, however,
25 counsel for California raised questions regarding the scope of those productions and has requested
26 additional records. The Parties are meeting and conferring in an effort to resolve the dispute, but
27 resolution is unlikely until Rite Aid's corporate offices reopen. If the meet and confer efforts prove
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1 to be unsuccessful, California will need time to file a motion to compel and/or a motion for
2 sanctions.

3 On March 24, 2020, California propounded its RPD, Set No. 8, which contains 88 document
4 requests. Rite Aid served its objections and responses on May 22, 2020, which include a
5 combination of agreements to search for responsive documents, refusals to produce requested
6 documents, and assertions that it has no responsive documents. The Parties need additional time
7 to meet and confer over Rite Aid's responses and, if those efforts are unsuccessful, for California
8 to move to compel further responses.

9 Plaintiffs have requested internal and external communications in Rite Aid's possession
10 related to a number of different topics and previously served documents requests. The Parties have
11 engaged in an extended meet and confer effort regarding the scope of review for potentially
12 responsive electronic communications, or electronically stored information (ESI). This includes
13 ongoing negotiations regarding search terms, custodians, electronic sources, and a relevant time
14 period. The Parties need additional time to meet and confer regarding these issues, which have
15 been impaired by the (continuing) COVID-19 pandemic. Once the parties reach an agreement
16 regarding the scope of this review, Rite Aid will require substantial time—likely a few months,
17 depending on the scope of the review—to collect, review, and produce any responsive
18 communications. The production of these records may impact the scope of further discovery,
19 including depositions.

20 II. Depositions

21 As described above, Plaintiffs were able to conduct the deposition of Ms. Wagner-Parrish
22 in Pennsylvania on March 13, 2020 immediately prior to the onset of the COVID-19 restrictions.
23 However, the Parties have not been able to conduct any other depositions since that time.

24 On November 1, 2019, Counsel for California served a Rule 30(b)(6) deposition notice on
25 Rite Aid identifying ten topics. Rite Aid identified four Rule 30(b)(6) witnesses who would testify
26 to the ten identified topics. The Parties originally scheduled the depositions of Rite Aid's four Rule
27 30(b)(6) witnesses in Pennsylvania for four days in January and February of 2020. However, those
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1 depositions were taken off calendar pending Rite Aid's production of additional materials requested
2 by Plaintiffs. In addition, the Parties are waiting to reschedule the Rule 30(b)(6) depositions until
3 the applicable public health orders related to the COVID-19 pandemic more freely permit travel.²

4 In addition to Plaintiffs' deposition of Rite Aid's Rule 30(b)(6) witnesses, Plaintiffs intend
5 to depose individuals whose involvement in the facts and circumstances of the case is revealed
6 through Plaintiffs' review of the requested communications Rite Aid has agreed to produce.
7 Plaintiffs also intend to depose any witnesses Rite Aid discloses in any supplement to its Rule 26
8 initial disclosures.³

9 Rite Aid has not yet issued any deposition subpoenas, but intends to depose certain
10 witnesses from Plaintiffs, California's Department of Healthcare Services, and potentially other
11 third parties.

12 III. The Scheduling Order's Current Deadlines and Proposed Modified Dates

13 The current deadline for the Parties to complete all non-expert discovery is August 7, 2020.
14 This does not give the Parties enough time to complete the document productions and depositions
15 set forth above, or to resolve outstanding discovery disputes. The Parties therefore submit this joint
16 motion requesting the Court to find good cause and approve the below proposed schedule, as
17 follows:

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19 Event	Current Deadline [ECF 260]	Proposed Modified Date
20 Second Phase of Discovery Completed	August 7, 2020	June 4, 2021
21 Expert Disclosures (other than sampling methodology/design)	October 2, 2020	August 6, 2021
22 Rebuttal expert disclosures (other than sampling methodology/design)	November 13, 2020	September 10, 2021
23 Expert Discovery Completed	December 18, 2020	October 15, 2021
24 Last Day to Hear Dispositive	May 28, 2021 at 10:00	April 1, 2022

25 _____
26 ² If the applicable public health orders related to the COVID-19 pandemic make travelling to in-person depositions
impracticable for an extended period of time, the Parties acknowledge that they may have to conduct depositions
telephonically or through video-conference.

27 ³ Specifically, the Parties are meeting and conferring about discovery related to the Rite Aid pharmacy associates
28 who were involved in dispensing the prescriptions associated with the sample claims.

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4 Dated: June __, 2020

Respectfully Submitted,
XAVIER BECERRA
Attorney General of the State of California

5
6 /s/ Emmanuel R. Salazar

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16 Dated: June __, 2020

WATERS & KRAUS LLP

17 /s/ Wm. Paul Lawrence II (authorized June 5, 2020)

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26 LOYD F. SCHMUCKLEY, JR.

27 Dated: June __, 2020

MORGAN, LEWIS & BOCKIUS LLP

28 /s/ Benjamin P. Smith (authorized June 5, 2020)

Benjamin P. Smith
Attorneys for Defendant
RITE AID CORPORATION

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ORDER

The Court, having considered the Parties' Joint Motion to Modify the Scheduling Order to Permit More Time for Parties to Conduct Discovery, finds good cause and ORDERS that the schedule for the Parties is amended as follows:

Event	Current Deadline [ECF 260]	Modified Date
Second Phase of Discovery Completed	August 7, 2020	June 4, 2021
Expert Disclosures (other than sampling methodology/design)	October 2, 2020	August 6, 2021
Rebuttal expert disclosures (other than sampling methodology/design)	November 13, 2020	September 10, 2021
Expert Discovery Completed	December 18, 2020	October 15, 2021
Last Day to Hear Dispositive Motions	May 28, 2021 at 10:00 A.M. in Courtroom No. 3	April 15, 2022

IT IS SO ORDERED.

DATED: June 16, 2020.



CHIEF UNITED STATES DISTRICT JUDGE