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 11 STATE OF CALIFORNIA

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 v.

19 RITE AID CORPORATION,

20 Defendant.

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

23 Plaintiffs,

24 v.

25 RITE AID CORPORATION,

26 Defendant.

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

**JOINT MOTION TO EXTEND
 COURT-ORDERED DISCOVERY
 DEADLINES; [~~PROPOSED~~] ORDER**

Related to ECF Nos. 359, 365, 373, 378

1 **1. Extension of Deadline for Rite Aid to Complete its Production of Custodial**
2 **Documents Covered by the Stipulated Order Re: Defendant’s Production of**
3 **Electronically Stored Communications.**

4 Plaintiff-Intervenor State of California (“California”), Relator Loyd F. Schmuckley, Jr.
5 and Defendant Rite Aid Corporation (“Rite Aid”) (together, the “Parties”) jointly move for an
6 order extending the deadline for Rite Aid to complete its production of custodial documents
7 covered by the Stipulated Order Re: Defendant’s Production of Electronically Stored
8 Communications (“ESI Agreement”). *See* ECF No. 359. The deadline is currently December 31,
9 2020. ECF No. 359. The Parties request that it be extended to February 26, 2021.

10 Grounds for Extension Request

11 Rite Aid has worked to collect, review, and produce responsive communications from the
12 Parties’ agreed list of Rite Aid custodians. Consistent with the terms of the Parties’ ESI
13 Agreement, Rite Aid has made rolling productions on October 30, 2020, November 30, 2020, and
14 December 23, 2020, and plans to make another production on December 31, 2020. In doing so,
15 Rite Aid expects to substantially complete its production of non-privileged responsive custodial
16 communications by December 31, 2020.

17 On December 21, 2020, pursuant to Section E of the ESI Agreement, Rite Aid informed
18 Plaintiffs’ counsel that, despite Rite Aid’s significant progress, it may not be able to complete its
19 production of *all* responsive custodial communications by December 31, 2020. For example, Rite
20 Aid is still actively working to collect and review some potentially responsive documents that
21 may exist in sources outside of our custodians’ e-mail collections. In addition, a number of
22 documents are subject to ongoing privilege review and privilege logging efforts, including
23 documents that ultimately may be determined to be non-privileged, and therefore will be
24 produced. In light of these considerations and California’s proposal to extend the case discovery
25 cutoff dates in the case scheduling order by six months,¹ the Parties request that the December

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¹ In the interest of allowing enough time to complete discovery, California’s consent to extend
27 this deadline by approximately two months is conditioned on the Court agreeing to extend the
28 discovery cutoff dates in the case scheduling order by six months, as requested by the Parties in a
29 separate stipulation that has been concurrently filed with Judge Mueller. If the Court does not
30 grant that six-month extension, then the Parties will meet and confer regarding a reasonable,

1 31, 2020 deadline in the ESI Agreement be extended to February 26, 2021. No previous
2 extensions have been requested for this deadline.

3 **2. Extension of Deadline for Rite Aid to Produce all Documents Responsive to**
4 **California RPD Nos. 69, 72, 75, 84, 88 and 121-123.**

5 The Parties further jointly move for an order extending the deadline for Rite Aid to
6 produce all documents responsive to California RPD Nos. 69, 72, 75, 84, 88 and 121-123. *See*
7 ECF No. 378. The deadline is currently December 31, 2020. ECF No. 378. The Parties request
8 that it be extended an additional two weeks to January 15, 2021.

9 Grounds for Extension Request

10 On November 9, 2020, the Parties jointly moved for a three-week extension to the original
11 deadline for Rite Aid to produce the above-referenced documents. ECF No. 375 (requesting an
12 extension of deadlines set in ECF No. 365). That request was based on an unanticipated power
13 outage at Rite Aid's corporate headquarters, which impeded the search for and collection of hard-
14 copy documents maintained at Rite Aid's corporate headquarters that may be responsive to the
15 above-referenced document requests. *See* ECF No. 375. The Court granted that motion and set
16 December 7, 2020 as the new deadline for Rite Aid to produce responsive documents. ECF No.
17 376.

18 At the time of the Parties' November 9, 2020 motion, Rite Aid believed that the power
19 outage at its corporate headquarters would be resolved with sufficient time to locate, collect,
20 review, and produce any responsive documents covered by the Court's order by December 7,
21 2020. By December 3, 2020, however, power at Rite Aid's corporate headquarters still had not
22 been restored, and Rite Aid's efforts to locate and collect these documents were unsuccessful due
23 to the continuing power outage. *See* ECF No. 377-1. The Parties therefore jointly moved for—
24 and the Court granted—an additional 24-day extension for Rite Aid to produce the above-
25 referenced documents. *See* ECF No. 378.

26
27 alternative deadline for Rite Aid to complete its production of custodial documents covered by
28 the ESI Agreement.

1 Contrary to Rite Aid’s belief at the time of the December 3, 2020 motion, the power
2 outage at its corporate headquarters was not resolved by December 11, 2020. Instead, the power
3 outage was only just recently resolved on or shortly before December 21, 2020. With power
4 finally restored, Rite Aid can now search for, collect, review, and produce the above-referenced
5 documents, but—especially with staffing limitations attributable to the intervening holidays—
6 Rite Aid does not have sufficient time to complete its collection, review, and production of these
7 documents by December 31, 2020.² The Parties therefore jointly request an additional two-week
8 extension of this deadline from December 31, 2020 to January 15, 2021.

9 **3. Extension of Deadline for California to provide Supplemental Responses to Rite**
10 **Aid’s Interrogatories 3-5, 7-9 and 13.**

11 The Parties further jointly move for an order extending the deadline for California to
12 provide supplemental responses to Rite Aid’s Interrogatories 3-5, 7-9, and 13. *See* ECF No. 365
13 and 373. The deadline is currently January 15, 2021. ECF No. 373. The Parties request that it be
14 extended an additional two weeks to January 29, 2021.

15 Grounds for Extension Request

16 The Court originally ordered California to provide supplemental responses by December
17 31, 2020. ECF No. 365. Subsequently, the Court extended the date to January 15, 2021 pursuant
18 to a stipulated request by the Parties. ECF No. 373.

19 The Parties have worked cooperatively to comply with the Court’s October 16, 2020
20 Order. On October 19, 2020, California provided Rite Aid with a list identifying the prescription
21 records associated with the sample claims that California claims were illegible, incomplete, or
22 difficult to read. In preparing the list, California discovered that the affected prescription records
23 included a higher percentage of the sample claims than California had estimated at the hearing.
24 Due to this, the Parties jointly moved on October 26, 2020 for reciprocal two-week extensions for
25 Rite Aid to produce the requested prescription records and for the State to provide supplemental

26 _____
27 ² Rite Aid appreciates California’s cooperation and the Court’s patience in granting the multiple
28 extensions of this deadline. This unexpected, prolonged power outage has proved to be a far
more prolonged problem than Rite Aid ever could have anticipated.

1 responses to Rite Aid's Interrogatories 3-5, 7-9 and 13. ECF No. 372. The Court granted the
2 request. ECF No. 373. On November 25, 2020, Rite Aid produced new copies of the
3 prescription records identified in California's list. On December 2, 2020, to facilitate California's
4 efficient review of these records, Rite Aid re-produced an overlay production of the prescription
5 records sequenced by sample claim numbers as identified in California's list.

6 California has worked to prepare supplemental responses to Rite Aid's Interrogatories, but
7 has discovered that the review process for the 1,904 sample claims has been more time
8 consuming than expected due to pandemic-related restrictions and staff capacity. The review
9 involves, among other things, carefully scrutinizing numerous pharmacy business and other
10 records related to each sample claim and documenting its findings from the review. Nevertheless,
11 California is making good progress and, at its current pace, will begin rolling out supplemental
12 responses for a substantial portion by next week and is on track to complete its review and serve
13 supplemental responses for all 1,904 sample claims by no later than January 29, 2021.

14 * * *

15 For the reasons stated above, the Parties move to amend the deadlines in the Court's
16 Orders, ECF No. 359, 365, 373 and 378, as follows:

Event	Current Deadline	Amended Deadline
Barring unforeseen circumstances, Rite Aid agrees to complete its production of custodial documents covered by the Stipulated Order Re: Defendant's Production of Electronically Stored Communications. Rite Aid will inform Plaintiffs ten days before this deadline if Rite Aid anticipates that it will not be able to complete its productions, so the Parties can agree on a reasonable timeline for Rite Aid to complete any outstanding productions.	December 31, 2020 (ECF No. 359)	February 26, 2021
Rite Aid shall produce all documents responsive to California	December 31, 2020 (ECF No. 378)	January 15, 2021

1 2 3 4 5	RPD Nos. 69, 72, 75, 84, 88, and 121-123, subject to California's qualification that RPD Nos. 69, 72, 75, 84 seek only documents that "actually discuss, reflect, or documents" delegations or authorizations.		
6 7 8	California shall provide supplemental responses to Rite Aid's Interrogatories 3-5, 7-9, and 13	January 15, 2021 (ECF No. 373)	January 29, 2021

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Dated: December 30, 2020

Respectfully Submitted,

XAVIER BECERRA
Attorney General of the State of California

/s/ Kevin Davis

Kevin C. Davis
Deputy Attorney General
Attorneys for Plaintiff-Intervenor
STATE OF CALIFORNIA

Dated: December 30, 2020

WATERS & KRAUS LLP

/s/ Wm. Paul Lawrence (auth. December 29, 2020)

Wm. Paul Lawrence II (*Pro Hac Vice*)
Waters & Krause LLP
Attorneys for *Qui Tam* Plaintiff
LOYD F. SCHMUCKLEY, JR.

Dated: December 30, 2020

MORGAN, LEWIS & BOCKIUS LLP

/s/ Kevin Papay (auth. December 29, 2020)

Kevin M. Papay
Attorneys for Defendant
RITE AID CORPORATION

1 **[PROPOSED] ORDER**

2 Upon consideration of Plaintiff-Intervenor State of California (“California”) and
3 Defendant Rite Aid Corporation’s (“Rite Aid”) Joint Motion to Extend Court-Ordered Discovery
4 Deadlines, and finding good cause, IT IS ORDERED that the deadlines in ECF Nos. 359, 365,
5 373 and 378 are amended as follows:

6

Event	Current Deadline	Amended Deadline
7 Barring unforeseen circumstances, 8 Rite Aid agrees to complete its 9 production of custodial documents 10 covered by the Stipulated Order Re: 11 Defendant’s Production of 12 Electronically Stored 13 Communications. Rite Aid will 14 inform Plaintiffs ten days before 15 this deadline if Rite Aid anticipates 16 that it will not be able to complete 17 its productions, so the Parties can 18 agree on a reasonable timeline for 19 Rite Aid to complete any 20 outstanding productions.	December 31, 2020 (ECF No. 359)	February 26, 2021
16 Rite Aid shall produce all 17 documents responsive to California 18 RPD Nos. 69, 72, 75, 84, 88, and 19 121-123, subject to California’s 20 qualification that RPD Nos. 69, 72, 21 75, 84 seek only documents that 22 “actually discuss, reflect, or 23 documents” delegations or 24 authorizations.	December 31, 2020 (ECF No. 378)	January 15, 2021
22 California shall provide 23 supplemental responses to Rite 24 Aid’s Interrogatories 3-5, 7-9, and 13	January 15, 2021 (ECF No. 373)	January 29, 2021

25 IT IS SO ORDERED.

26 DATED: January 6, 2021.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE