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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, INC.

Defendant.

2:12-CV-1699-KJM-JDP

STIPULATION AND ORDER REGARDING DISCOVERY ON RITE AID HDQTRS. CORP. AND THRIFTY PAYLESS, INC.

ECF No. 408

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

Plaintiff,

v.

RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, INC.

Defendant.

RECITALS

WHEREAS, on June 26, 2012, Plaintiff Loyd F. Schmuckley, Jr. (“Relator”) filed under seal a qui tam Complaint against Rite Aid Corporation, which prompted the Government to serve a False Claims Act Civil Investigative Demand (“CID”) on Rite Aid Corporation.

1 WHEREAS, Rite Aid Corporation subsequently answered the CID interrogatories and
2 produced documents responsive to the document requests.

3 WHEREAS, on September 21, 2017, Plaintiff-Intervenor State of California
4 (“California”) filed a Complaint-in-Intervention against Defendant Rite Aid Corporation.

5 WHEREAS, on September 28, 2017, Plaintiff Loyd F. Schmuckley, Jr. (“Relator,”
6 together with California, “Plaintiffs”) filed a First Amended Complaint against Defendant Rite
7 Aid Corporation.

8 WHEREAS, Plaintiffs and Rite Aid Corporation agreed to and the Court approved several
9 protective orders, namely, ECF Nos. 109, 136, and 185.

10 WHEREAS, Plaintiffs served discovery requests upon Rite Aid Corporation and Rite Aid
11 Corporation served original, amended, and supplemental responses thereto, including relevance-
12 and privilege logs.

13 WHEREAS, on June 12, 2020, Plaintiffs filed a Motion to Amend the Pleadings, relevant
14 here, to name additional Defendants Thrifty Payless, Inc. (“Thrifty”), and Rite Aid Hdqtrs. Corp.
15 (“Hdqtrs.,” and together with Thrifty and Rite Aid Corporation, collectively, “Defendants,” and
16 together with Plaintiffs, “the Parties”).

17 WHEREAS, on October 5, 2020, Plaintiffs and Rite Aid Corporation jointly proposed a
18 Stipulated Order re: Defendant’s Production of Electronically Stored Communications, which the
19 Court adopted on October 14, 2020, ECF No. 359.

20 WHEREAS, on April 7, 2021, the Court granted Plaintiffs’ Motion to Amend the
21 Pleadings, ECF No. 400.

22 WHEREAS, on April 28, 2021, Defendants jointly filed the Answer and Affirmative
23 Defenses of Rite Aid Corporation, Hdqtrs., and Thrifty to State of California’s First Amended
24 Complaint-in-Intervention.

25 WHEREAS, on April 28, 2021, Defendants jointly filed the Answer and Affirmative
26 Defenses of Defendants Rite Aid Corporation, Hdqtrs., and Thrifty to Relator’s Second Amended
27 Complaint.

28 WHEREAS, the Parties recognize the need to minimize litigation costs.

1 **STIPULATION**

2 THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL, THEREFORE
3 HEREBY STIPULATE AND AGREE TO THE FOLLOWING:

4 1. Government’s CID and Plaintiffs’ Discovery Requests. Plaintiffs need not serve
5 Thrifty and Hdqtrs. with any and all CID and prior discovery requests issued to Rite Aid
6 Corporation as of today’s date (“prior discovery requests”). All such CID and prior discovery
7 requests shall be deemed duly served on Thrifty and Hdqtrs.

8 2. Defendants’ CID Responses and Prior Discovery Responses. The responses of
9 Rite Aid Corporation to any and all such CID and prior discovery requests shall be deemed
10 responses by Rite Aid Corporation, Thrifty, and/or Hdqtrs.

11 a. Interrogatories and Requests for Admissions. With respect to prior
12 responses and verifications to the CID interrogatories, Plaintiffs’ special interrogatories,
13 and Plaintiffs’ requests for admissions that Rite Aid Corporation has provided or served as
14 of the filing date of this stipulation, Thrifty and Hdqtrs. shall be deemed to have answered
15 the CID interrogatories, Plaintiffs’ special interrogatories, and requests for admissions
16 through Rite Aid Corporation’s prior responses and verifications. Thrifty and Hdqtrs.
17 agree to be bound by all of Rite Aid Corporation’s substantive responses and verifications
18 thereto. Thrifty and Hdqtrs. are not aware of any further information in their possession,
19 custody, or control that would modify Rite Aid Corporation’s prior responses to the CID
20 interrogatories, Plaintiffs’ special interrogatories, and Plaintiffs’ requests for admission.

21 b. Document Requests. With respect to prior responses and related
22 productions related to the CID document requests and Plaintiffs’ document requests that
23 Rite Aid Corporation has provided or served as of the filing date of this stipulation,
24 including relevance logs and privilege logs, Thrifty and Hdqtrs. shall be deemed to have
25 answered the CID document requests and Plaintiffs’ document requests with Rite Aid
26 Corporation’s such prior responses, related productions, relevance logs, privilege logs,
27 and certificates of completion. Thrifty and Hdqtrs. agree to be bound by all of Rite Aid
28 Corporation’s prior substantive responses and certifications of completion related thereto

1 and that all of Rite Aid Corporation’s prior substantive responses, related productions,
2 relevance logs, privilege logs, and certifications of completion are equally and fully
3 applicable to each of them. Thrifty and Hdqtrs. are not currently aware of any information
4 in their possession, custody, or control to modify Rite Aid Corporation’s prior responses
5 and certifications of completion related to the CID document requests and Plaintiffs’
6 document requests. Thrifty and Hdqtrs. are not aware of any further documents in their
7 possession, custody, or control that are potentially responsive to the CID document
8 requests and Plaintiffs’ document requests.

9 c. Purpose. The Parties recognize that this Stipulation is intended to conserve
10 litigation time and resources by making it unnecessary for Plaintiffs to reissue to Thrifty
11 and Hdqtrs the CID and prior discovery requests served upon Rite Aid Corporation. The
12 Parties agree that this Stipulation, in and of itself, will not be used as substantive evidence
13 supporting vicarious corporate liability (such as “alter ego” liability) or contradicting the
14 “improper defendant” defense. The Parties agree that Rite Aid Corporation’s, and through
15 this Stipulation Thrifty’s and Hdqtrs.’s, substantive responses, or documents produced
16 responsive, to the CID and prior discovery requests, may be used as evidence in this
17 action against any or all of the Defendants.

18 3. Pending Discovery. With respect to Plaintiffs’ discovery requests for which Rite
19 Aid Corporation has not served any response as of the filing date of this stipulation, Thrifty and
20 Hdqtrs. agree to submit responses thereto jointly with Rite Aid Corporation on the response
21 deadline(s) agreed to by the parties.

22 5. Protective Orders. Thrifty and Hdqtrs. agree to be bound by all protective orders
23 issued in this case.

24 6. ESI Production Agreement. Thrifty and Hdqtrs. agree to be bound by the
25 Stipulated Order re: Defendant’s Production of Electronically Stored Communications, ECF No.
26 359, and stipulate that all responsive documents within the scope of ECF No. 359 that are within
27 the possession, custody, or control of Thrifty or Hdqtrs. have been produced by Rite Aid
28 Corporation as of the filing date of this stipulation. Thrifty and Hdqtrs. are not aware of any

1 further documents in their possession, custody, or control that fall within the scope of ECF No.
2 359.

3 7. Objections. Thrifty and Hdqtrs. join all discovery objections made by Rite Aid
4 Corporation. The stipulation herein does not waive any such objections.

5 8. Unless expressly otherwise stated, this Stipulation does not modify any
6 requirements under the Federal Rules of Civil Procedure, Federal Rules of Evidence, or Local
7 Rules.

8 IT IS SO STIPULATED.

9
10 Dated: June 4, 2021

ROB BONTA
Attorney General of the State of California

11 By /s/ Emmanuel R. Salazar
12 Emmanuel R. Salazar
13 Deputy Attorney General
14 Attorneys for STATE OF CALIFORNIA

15 Dated: June 4, 2021

WATERS & KRAUS, LLP

16 By /s/ Wm. Paul Lawrence, II (as authorized on
17 6/4/2021)
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Dated: June 4, 2021

MORGAN, LEWIS & BOCKIUS LLP

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RITE AID CORPORATION, THRIFTY PAYLESS,
INC., AND RITE AID HDQTRS. CORP.


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ORDER

For good cause shown, it is hereby ordered that the above stipulation is approved.

IT IS SO ORDERED.

Dated: June 7, 2021



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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