1			
2			
3			
4			
5			
6			
7			
8	UNITED STATES DISTRICT COURT		
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
10			
11	UNITED STATES OF AMERICA, and the STATE OF CALIFORNIA, et al., ex rel. LLOYD	Case No.: 2:12-cv-1699 KJM JDP	
12	F. SCHMUCKLEY, JR.	STIPULATION REGARDING RITE	
13	Plaintiffs,	AID'S AGREEMENT TO ANSWER CALIFORNIA'S INTERROGATORY	
14	VS.	NO. 11; ORDER	
15	RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, INC.	ECF NO. 423	
16	Defendants.		
17			
18	STATE OF CALIFORNIA ex rel. LLOYD F. SCHMUCKLEY, JR.,		
19	Plaintiffs,		
20	Vs.		
21	RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, INC.		
22	Defendants.		
23	RECITA	LS	
24	WHEREAS, Plaintiff-in-Intervention State of California ("California") and Defendants		
25	Rite Aid Corporation, Rite Aid Hdqtrs. Corp. and Thrifty Payless, Inc. ("Rite Aid") (collectively,		
26	"Parties") wish to enter into this Stipulation in order to resolve their dispute regarding Rite Aid's		
27	response to California's Interrogatory No. 11.		
28			

WHEREAS, on April 8, 2021, California served "Plaintiff State of California's Rule 36 Requests for Admission to Defendant Rite Aid Corporation, Set No. 3" ("Requests for Admission"). A true and correct copy of the Requests for Admission is attached as **Exhibit "A."**

WHEREAS, California's Request for Admission No. 53 states: "Separately for each SAMPLE CLAIM: Admit that during the DISPENSING of the SAMPLE CLAIM RITE AID did not perform a CODE 1 REVIEW."

WHEREAS, for purposes of Request for Admission No. 53: "CODE 1 REVIEW" was defined as "the pharmacy's act(s) of verifying that the CODE 1 RESTRICTIONS have been met, e.g., the beneficiary has the required diagnosis, or meets the other conditions listed in the CDL. *See* CII & FACII, ¶¶ 89-93; FAA, ¶¶ 89-93."

WHEREAS, on April 8, 2021, California served "Plaintiff State of California's Rule 33 Interrogatories to Defendant Rite Aid Corporation, Set No. 2" ("Interrogatories") on Defendant Rite Aid Corporation. A true and correct copy of the Interrogatories is attached as **Exhibit "B."**

WHEREAS, California's Interrogatory No. 11 states: "If RITE AID's response to CALIFORNIA's Request for Admission No. 53 is anything other than an unqualified admission, IDENTIFY all facts, WITNESSES and DOCUMENTS that support RITE AID's response."

WHEREAS, on April 7, 2021, the Court granted California's Motion to Amend its Complaint-in-Intervention and deemed its First Amended Complaint to be filed naming additional Defendants Rite Aid Hdqtrs. Corp. and Thrifty Payless, Inc. (ECF 400).

WHEREAS, pursuant to the stipulated order entered by the Court on June 8, 2021 (ECF 409), Defendants Rite Aid Hdqtrs. Corp. and Thrifty Payless, Inc. agreed to respond to the above-referenced Requests for Admission and Interrogatories "jointly with Rite Aid Corporation on the response deadline(s) agreed to by the parties."

WHEREAS, on June 16, 2021 Defendants served responses to the above-referenced Requests for Admission and Interrogatories wherein they denied Request for Admission No. 53 for each of the 1,904 claims in Plaintiffs' court-approved statistical sample and objected to Interrogatory No. 11 on multiple grounds without providing a substantive response.

WHEREAS, after meeting and conferring, on August 24, 2021 the Parties participated in a pre-motion telephone conference with Judge Jeremy Peterson wherein Judge Peterson ordered the Parties to further meet and confer.

WHEREAS, on September 21, 2021, the Parties participated in a second pre-motion telephone conference with Judge Peterson wherein Judge Peterson ordered the Parties to further meet and confer, but granted permission for California to file a motion to compel Defendants to provide a further response to California's Interrogatory No. 11 if further meet and confer did not resolve the issue.

WHEREAS, pursuant to Judge Peterson's September 21, 2021 order, the Parties further met and conferred regarding the response to California's Interrogatory No. 11.

WHEREAS, the Parties each now voluntarily enter into this Stipulation as set forth below.

STIPULATION

NOW THEREFORE, the Parties, by and through their respective counsel, stipulate and agree as follows:

- By October 15, 2021, Defendants shall serve a supplemental response to California's
 Interrogatory No. 11 that, while not addressing each of the 1,904 sample claims
 individually, generally describes Defendants' bases for denying California's Request for
 Admission No. 53.
- 2. By November 24, 2021, Defendants shall serve another supplemental response to California's Interrogatory No. 11 that—on a claim-specific basis—identifies the facts, witnesses and documents that support Defendants' denial of California's Request for Admission No. 53. If Defendants are relying on the potential testimony of one or more witnesses to support their denial of Request for Admission No. 53, Defendants shall summarize the anticipated pertinent testimony of those witnesses.

IT IS SO STIPULATED.

Respectfully submitted,

ROB BONTA

1		Attorney General of the State of California	
2	Dated: October 13, 2021	By /s/ Kevin Davis	
3		Kevin C. Davis Deputy Attorney General	
4		Attorneys for Plaintiff-Intervenor STATE OF	
5		CALIFORNIA	
6		MORGAN, LEWIS & BOCKIUS LLP	
7		Worlding BEWild & Boothes BEI	
8			
9	Dated: October 13, 2021	By <u>/s/ Kevin Papay (authorized on 10/13/21)</u> Benjamin P. Smith	
10	Kevin M. Papay One Market, Spear Street Tower San Francisco, CA 94105-1596 Telephone: +1.415.442.1000	Kevin M. Papay One Market, Spear Street Tower San Francisco, CA 94105-1596	
11			
12			
13		E-mail: Kevin.Papay@morganlewis.com Attorneys for Defendants	
14		RITE AID CORPORATION, RITE AID	
15		HDQTRS. CORP., THRIFTY PAYLESS, INC.	
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
		Δ	

1	ORDER	
2	The parties' stipulation, ECF No. 423, is construed as a motion and granted.	
3		
4	IT IS SO ORDERED.	
5	\bigcap	
6	Dated: October 20, 2021	
7	JERÉMY D. PÉTERSON UNITED STATES MAGISTRATE JUDGE	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21 22		
- 1		
23 24		
24 25		
25 26		
20 27		
28		
_0		