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12  
 13 UNITED STATES DISTRICT COURT

14 FOR THE EASTERN DISTRICT OF CALIFORNIA

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

22 STATE OF CALIFORNIA *ex rel.* LLOYD F.  
 23 SCHMUCKLEY, JR.,

24 Plaintiffs,

25 Vs.

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

27 Defendants.  
 28

Case No.: 2:12-cv-1699 KJM JDP

**JOINT STIPULATION TO AMEND  
 SCHEDULING ORDER; ORDER**

1 **RECITALS**

2 WHEREAS, the operative scheduling order requires that fact discovery be completed by  
3 December 3, 2021, *see* ECF No. 386.

4 WHEREAS, per ECF No. 128, “completed” in the context of the scheduling order means  
5 “that all discovery shall have been conducted so that all depositions have been taken and any  
6 disputes relative to discovery shall have been resolved by appropriate order if necessary and,  
7 where discovery has been ordered, the order has been obeyed.”

8 WHEREAS, on February 6, 2018, in its Rule 26(a) Initial Disclosures, Defendant Rite Aid  
9 Corporation identified then-known “individuals likely to have discoverable information that  
10 Defendant may use to support its defenses,” including, but not limited to, the following:

- 11 • Store managers, assistant store managers, shift supervisors, and pharmacy  
12 associates (including, but not limited to, pharmacy managers, pharmacy district  
13 managers, pharmacists, pharmacists overnight, lead pharmacy technicians,  
14 pharmacy technicians, pharmacy graduate interns, and pharmacy undergraduate  
15 interns) employed at Rite Aid stores with knowledge of the transactions listed in  
16 the appendix to the State’s Complaint.
- 17 • Other Rite Aid employees and/or contractors with knowledge of NexGen, the  
18 prescription dispensing and records processing system employed by Rite Aid  
19 stores, including dispensing, TAR submission, approval, code submission/override  
20 and documentation procedures.
- 21 • All persons listed in Plaintiffs’ Complaint(s), Initial Disclosures, Responses to  
22 Interrogatories, and/or other discovery served in this matter.
- 23 • Prescribers, and/or authorized individuals employed at prescribers’ offices, with  
24 knowledge of relevant medical records, diagnoses, and/or prescriptions which  
25 correspond to the Plaintiffs’ claims in this matter, as well as medical record  
26 retention procedures and policies.

27 WHEREAS, in its Rule 26(a) Initial Disclosures, Defendant Rite Aid Corporation stated  
28 that it was “presently unaware of many of the names and/or contact information for the categories

1 of persons identified above” and “reserve[d] the right to supplement and/or amend these initial  
2 disclosures, and/or otherwise make known such information to Plaintiffs during the discovery  
3 process or in writing.”

4 WHEREAS, in its Rule 26(a) Initial Disclosures, Defendant Rite Aid Corporation also  
5 “reserve[d] its right to supplement and/or amend [its Initial Disclosures] as additional information  
6 is discovered, in particular, the exact nature of Plaintiffs’ claims against it . . . .”

7 WHEREAS on May 27, 2020, Plaintiff State of California (“California”) wrote Rite Aid  
8 Corporation, asking that it supplement its initial disclosures to identify the names, addresses, and  
9 telephone numbers of pharmacy associates and former associates Rite Aid Corporation may rely  
10 on to support its defenses, including names of associates involved in dispensing the prescriptions  
11 associated with the 1,904 sample claims.

12 WHEREAS, the parties met and conferred, and on August 8, 2020, California propounded  
13 on Rite Aid Corporation a first set of interrogatories, which included, among others, Interrogatory  
14 Nos. 1-3, 5, which asked Rite Aid Corporation to identify for each sample claim: (i) the pharmacy  
15 associate(s) who dispensed the sample claim; (ii) the person(s) who reviewed and verified that the  
16 beneficiary had the Code 1 diagnosis restriction at the time of dispensing the sample claim drug;  
17 (iii) the persons who during the dispensing of the sample claim drug, documented the review and  
18 verification that the beneficiary had the Code 1 diagnosis restriction at the time of dispensing; and  
19 (iv) the person(s) who entered the “sub-clarification code, prior authorization code, and prior  
20 authorization number” in submitting the sample claim to Medi-Cal for adjudication.

21 WHEREAS, Rite Aid Corporation timely served written responses and objections to  
22 California’s first set of interrogatories on October 9, 2020, which, among other things, included  
23 Exhibits A to D, which identified the names, NexGen User IDs, job titles, and employment status  
24 of the more than 1700 unique pharmacy associates involved with the dispensing of the sample  
25 claims.

26 WHEREAS, the parties subsequently met and conferred regarding Rite Aid Corporation’s  
27 responses to the State’s interrogatories.  
28

1           WHEREAS, on February 4, 2021, upon hearing the motion to compel (ECF Nos. 379,  
2 387), the Court ordered Rite Aid Corporation to serve further responses to California's  
3 Interrogatory No. 1 by no later than March 5, 2021, and to serve further responses to California's  
4 Interrogatory Nos. 2-5 by no later than April 26, 2021. ECF No. 390.

5           WHEREAS, on March 5, 2021, Rite Aid Corporation timely served further responses to  
6 California's Interrogatory No. 1, which provided contact information for former pharmacy  
7 associates identified in Exhibits A to D to Rite Aid's original interrogatory responses.

8           WHEREAS, consistent with the Court's February 4, 2021 Order, Rite Aid reached out to  
9 all current pharmacists identified in the exhibits to its interrogatory responses as being involved  
10 with the dispensing of each sample claim, in an attempt to definitively confirm that the pharmacy  
11 associates it had previously identified performed the Code 1 reviews, documented the Code 1  
12 reviews, and/or entered the override codes when dispensing the sample claim drugs.

13           WHEREAS, on April 26, 2021, Rite Aid Corporation served further responses to  
14 California's Interrogatory Nos. 2-3, 5, which stated that of those who responded, due to the  
15 passage of time, "most pharmacy associates are unable to recall or confirm (one way or another)  
16 any particular actions that they (or their colleagues) took with respect to the dispensing of the  
17 sample claim drugs, which occurred from seven to fourteen years ago," but listed the names of  
18 any individuals whose names Rite Aid was able to obtain from pharmacists as having performed  
19 the Code 1 reviews, documented the Code 1 reviews, and/or entered the override codes when  
20 dispensing the sample claim drugs. This included 36 pharmacy associates involved with  
21 approximately 50 sample claims.

22           WHEREAS, on April 8, 2021, Relator served on Rite Aid Corporation Request for  
23 Production of Documents Set No. 4, which included Request No. 69 (requesting witness  
24 statements).

25           WHEREAS, on April 8, 2021, California served on Rite Aid Corporation, Requests for  
26 Admission, Set No. 3, which, among others, included Request No. 53, asking Rite Aid  
27 Corporation to admit for each of the 1,904 sample claims that it did not perform a Code 1 review  
28 during the dispensing of the sample claim. Further, on April 8, 2021, California served on Rite

1 Aid Corporation, Interrogatories, Set No. 1, which, among other things, included Interrogatory  
2 No. 11, asking Rite Aid to identify all facts, witnesses and documents that support Rite Aid's  
3 response that was not an unqualified admission. Further, California's Interrogatories, Set No. 1,  
4 included Interrogatory Nos. 16-23, asking Rite Aid Corporation to identify all facts, witnesses  
5 and documents that support Rite Aid Corporation's remaining affirmative defenses, as well as its  
6 denial of corporate scienter and contention that Code 1 requirements are not material to payment.

7 WHEREAS, on June 8, 2021, the Court approved the parties' stipulation that, among  
8 other things, Defendants Thrifty Payless Inc. and Rite Aid Hdqtrs. Corp. shall be deemed to have  
9 answered the Plaintiffs' special interrogatories through Rite Aid Corporation's prior responses  
10 and verifications and that Thrifty Payless, Inc. and Rite Aid Hdqtrs. Corp. agree to be bound by  
11 all of Rite Aid Corporation's substantive responses and verifications thereto. ECF No. 409.

12 WHEREAS, on June 16, 2021, Rite Aid Corporation denied Request for Admission No.  
13 53 for all sample claims and objected to California's Interrogatory Nos. 11, 16-23.

14 WHEREAS, on July 2, 2021, Defendants produced declarations from four pharmacy  
15 associates, all of whom had been identified in Exhibits A-D to Rite Aid's prior interrogatory  
16 responses, but three of whom were not specifically identified in the supplemental portion of Rite  
17 Aid's amended interrogatory responses.

18 WHEREAS, on July 29, 2021, Relator served Defendants with Relator's Interrogatories,  
19 Set One, which included Interrogatory Nos. 1-9, asking Defendants to identify all facts, witnesses  
20 and documents that support Defendants' affirmative defenses, as well as its denial of corporate  
21 scienter and contention that Code 1 requirements are not material to payment. Further, upon  
22 meet-and-confer discussions, Defendants agreed to timely and substantively respond to Relator's  
23 Interrogatories, Set No. 1.

24 WHEREAS, as of this filing, the parties completed 8 depositions and scheduled 5  
25 depositions of the 24 currently employed pharmacy associates that Defendants specifically  
26 identified in the supplemental portion of Rite Aid's amended responses to Interrogatory Nos. 2-3,  
27 5 or from whom Defendants supplied declarations.  
28

1           WHEREAS, as of this filing, the parties completed 10 depositions and scheduled 3  
2 depositions of the 15 formerly employed pharmacy associates that Defendants specifically  
3 identified in the supplemental portion of Rite Aid’s amended responses to Interrogatory Nos. 2-3,  
4 5.

5           WHEREAS, the parties anticipate completing depositions of the remaining pharmacy  
6 associates that Defendants specifically identified in the supplemental portion of Rite Aid’s  
7 amended responses to Interrogatory Nos. 2-3, 5 or from whom Defendants supplied declarations  
8 in November 2021.

9           WHEREAS, during meet-and-confer efforts, Defendants have reserved the right to  
10 identify a small number of additional pharmacy associates during fact discovery—including those  
11 identified in its original responses to Interrogatory Nos. 2-3, 5, but who were not specifically  
12 identified in the supplemental portion of Rite Aid’s amended responses to those requests—who  
13 are likely to be called as witnesses and/or submit written declarations.

14           WHEREAS, on October 21, 2021, the Court entered a stipulated order (ECF No. 424)  
15 regarding California’s Interrogatory No. 11, which included the following provisions:

16           1.       By October 15, 2021, Defendants shall serve a supplemental  
17 response to California’s Interrogatory No. 11 that, while not addressing each  
18 of the 1,904 sample claims individually, generally describes Defendants’  
19 bases for denying California’s Request for Admission No. 53.

20           2.       By November 24, 2021, Defendants shall serve another  
21 supplemental response to California’s Interrogatory No. 11 that—on a  
22 claim-specific basis—identifies the facts, witnesses and documents that  
23 support Defendants’ denial of California’s Request for Admission No. 53.

24           If Defendants are relying on the potential testimony of one or more  
25 witnesses to support their denial of Request for Admission No. 53,  
26 Defendants shall summarize the anticipated pertinent testimony of those  
27 witnesses.  
28

1 WHEREAS, Defendants served a supplemental response to California’s Interrogatory No.  
2 11 on October 15, 2021, consistent with the Court’s October 21, 2021 order.

3 WHEREAS, the parties are entering into this Stipulation in order to ensure that they can  
4 complete fact discovery by the deadline set in the Court’s scheduling order.

5 **STIPULATION**

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

8 The parties agree that Defendants shall disclose to Plaintiffs and identify all pharmacy  
9 associate witnesses whom Defendants may call as witnesses in support of any of their claims or  
10 defenses in this action, including any and all specific pharmacy associates from those listed in  
11 Exhibits A to D served in response to California’s Interrogatory No. 1, no later than December  
12 15, 2021.

13 The parties agree that Defendants shall complete production of all documents responsive  
14 to Relator’s Request for Production of Documents No. 69 by no later than December 15, 2021.

15 The parties agree that—absent a finding of good cause by the Court—Defendants shall not  
16 call more than 50 total pharmacy associates as witnesses.

17 The parties agree that “call as a witness” also means to submit a declaration therefrom,  
18 except for declarations that are specifically prepared and submitted in support of or opposition to  
19 any dispositive motions.

20 The parties agree that conducting depositions of all pharmacy associates from those listed  
21 in Exhibits A to D served in response to California’s Interrogatory No. 1 will be unduly  
22 burdensome, costly, and will significantly prolong discovery in this matter well after the close of  
23 fact discovery. The parties therefore agree as follows: If Defendants submit declarations in  
24 support of or opposition to dispositive motions that are signed by pharmacy associates whom  
25 Defendants have not specifically identified as likely witnesses (as defined by this stipulation)  
26 (“Additional Declarants”), then Defendants agree to make each of those pharmacy associates  
27 available for a deposition on the earliest reasonable date, and the parties will agree on and submit  
28 a proposed schedule for the Court’s approval, that among other things, allows a reasonable time

1 for Plaintiffs to conduct the depositions of all Additional Declarants. Nothing in this provision  
2 waives or bars any party's right to move to exclude such declarations.

3 Defendants agree that for any pharmacy associate witnesses who are current employees  
4 and identified by Defendants after the date of this Stipulation, Plaintiffs may take their  
5 depositions on two-weeks' notice and may request that the witnesses produce records at the  
6 deposition on two-weeks' notice. To the extent that Defendant has agreed during meet and confer  
7 to produce certain records corresponding to each pharmacy associate witness who is a current  
8 employee, Defendants agree to make a good-faith effort to produce such records three business  
9 days prior to the dates of the depositions or—in the alternative—agree to make that witness  
10 available for deposition as soon as reasonably possible after such documents are able to be  
11 produced, even if such deposition must occur after the scheduled close of fact discovery.

12 The parties agree to amend the scheduling order as follows:

Event	Current Deadline	Proposed Modified Date
Close of Fact Discovery	December 3, 2021	March 4, 2022
Expert Disclosures (other than sampling methodology/design)	February 7, 2022	May 6, 2022
Rebuttal expert disclosures (other than sampling methodology/design)	March 10, 2022	June 10, 2022
Expert Discovery Completed	April 15, 2022	July 15, 2022
Last Day to Hear Dispositive Motions	October 7, 2022	January 13, 2023

20 Unless otherwise stated, nothing in this stipulation waives any of the parties' rights under  
21 the Federal Rules of Civil Procedure or Federal Rules of Evidence.

22 IT IS SO STIPULATED.

23 Respectfully submitted,

24 Dated: 10/25/2021

25 ROB BONTA  
Attorney General of the State of California

26 By /s/ Emmanuel R. Salazar

27 Emmanuel R. Salazar  
Deputy Attorney General  
28 Attorneys for Plaintiff-Intervenor STATE OF CALIFORNIA



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Dated: 10/25/2021

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1 **ORDER**

2 The court, having considered the parties joint stipulation to amend scheduling order (ECF  
3 No. 386), finds good cause and approves the parties' stipulation. The scheduling order is  
4 amended as follows:

5

Event	Current Deadline	New Deadline
6 Close of Fact Discovery	December 3, 2021	March 4, 2022
7 Expert Disclosures (other 8 than sampling methodology/design)	February 7, 2022	May 6, 2022
9 Rebuttal expert disclosures (other than sampling 10 methodology/design)	March 10, 2022	June 10, 2022
11 Expert Discovery Completed	April 15, 2022	July 15, 2022
12 Last Day to Hear Dispositive Motions	October 7, 2022	January 27, 2023

13 This order resolves ECF No. 425.

14 IT IS SO ORDERED.

15 DATED: October 28, 2021.

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CHIEF UNITED STATES DISTRICT JUDGE