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

15 UNITED STATES OF AMERICA, et al., <i>ex</i> <i>rel.</i> LOYD F. SCHMUCKLEY, JR.,	2:12-CV-1699 KJM JDP
16 Plaintiffs,	
17 v.	JOINT STIPULATION RE: THRIFTY PAYLESS, INC.'S DISCOVERY; PROPOSED ORDER
18 RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, 19 INC.	
20 Defendants.	
21 STATE OF CALIFORNIA <i>ex rel.</i> LOYD F. SCHMUCKLEY, JR.,	
22 Plaintiff,	
23 v.	
24 RITE AID CORPORATION, RITE AID HDQTRS. CORP., THRIFTY PAYLESS, 25 INC.	
26 Defendants.	

2:12-CV-1699 KJM JDP

**JOINT STIPULATION RE: THRIFTY
PAYLESS, INC.'S DISCOVERY;
PROPOSED ORDER**

1 **RECITALS**

2 WHEREAS, on November 9, 2022, Defendant Thrifty Payless, Inc. (“Thrifty”) served on
3 non-party Department of Health Care Services (“DHCS”) a Subpoena to Produce Documents,
4 Information or Objects or to Permit Inspection of Premises in a Civil Action (“Subpoena”), a true
5 and correct copy thereof is attached herein as Exhibit A.

6 WHEREAS, on November 9, 2022, Thrifty served on Plaintiff-Intervenor State of
7 California, as represented by the Office of the Attorney General, Division of Medi-Cal Fraud and
8 Elder Abuse (“DMFEA”), Interrogatories, Set Two, and Request for Production of Documents, Set
9 One, both of which contain requests similar to requests included in the Subpoena. A true and
10 correct copy thereof are attached herein as Exhibits B and C.

11 WHEREAS, on December 9, 2022, DMFEA served its objections to the Subpoena, a true
12 and correct copy thereof is attached herein as Exhibit D.

13 WHEREAS, on the mutually agreed upon date of December 30, 2022, DMFEA served its
14 objections to Thrifty’s Interrogatories, Set Two, and Requests for Production of Documents, Set
15 One, a true and correct copy thereof is attached herein as Exhibits E and F.

16 WHEREAS, on January 5, 2023, Defendants Thrifty, Rite Aid Corporation, and Rite Aid
17 Hdqtrs. Corp. (collectively, “Defendants”) wrote DMFEA regarding DMFEA’s December 30,
18 2022 objections, a true and correct copy thereof is attached herein as Exhibit G.

19 WHEREAS, on the mutually agreed upon date of January 9, 2022, DHCS served its
20 objections and responses to the Subpoena, generally indicating that it did not find responsive
21 documents, a true and correct copy thereof is attached herein as Exhibit H.

22 WHEREAS, on January 10, 2023, DMFEA supplemented its responses to Thrifty’s
23 Requests for Production of Documents, Set One, generally indicating that without waiving any
24 objections DHCS did not find any responsive documents, a true and correct copy thereof is attached
25 herein as Exhibit I.

26 WHEREAS, on January 17, 2023, Defendants filed a pre-motion conference brief before
27 The Honorable Jeremy D. Peterson regarding DMFEA’s objections and responses to Thrifty’s
28 Interrogatories, Set Two, and Requests for Production of Documents, Set One.

1 WHEREAS, on January 18, 2023, DMFEA, DHCS, and Defendants held a conference call
2 to discuss the discovery disputes arising from DMFEA’s objections and responses to Thrifty’s
3 Interrogatories, Set Two, and Requests for Production of Documents, Set One. During the call and
4 in subsequent correspondence, the following were exchanged:

- 5 • DMFEA and DHCS maintain that Defendants have violated Local Rule 251 and
6 the magistrate’s civil procedure rules for not adequately meeting and conferring
7 about the discovery dispute before including the issue in its pre-motion conference
8 brief.
- 9 • DHCS maintains that it has conducted a reasonable search to respond to the
10 Subpoena.
- 11 • DMFEA maintains that it has conducted a reasonable search to respond to Thrifty’s
12 Interrogatories, Set Two, and Requests for Production of Documents, Set One.
- 13 • Defendants request that DMFEA provide a verified statement detailing the steps
14 that DHCS conducted to search for documents responsive to Thrifty’s Request for
15 Production of Documents, Set One.
- 16 • DMFEA maintains that DHCS is not DMFEA’s client and DMFEA is not DHCS’s
17 attorneys.
- 18 • DMFEA maintains that the information obtained by DMFEA attorneys to inquire
19 about the search conducted by DHCS to respond to the subpoena (and for DMFEA
20 to respond to Thrifty’s Interrogatories, Set Two, and Requests for Production of
21 Documents, Set One) constitute attorney work product and DMFEA has no
22 intention of waiving its attorney work product, while Defendants maintain all rights
23 and objections regarding the privilege contentions of DMFEA.

24 WHEREAS, to avoid undue burden and expense in having DHCS supply further
25 information, to expedite and facilitate discovery, and to avoid motion practice, the parties are
26 entering into this stipulation in good faith.

1 **STIPULATION**

2 DEFENDANTS RITE AID CORPORATION, THRIFTY PAYLESS, INC., and RITE
3 AID HDQTRS. CORP. (“Defendants”), PLAINTIFF STATE OF CALIFORNIA as represented
4 in this Action by the Division of Medi-Cal Fraud and Elder Abuse under the Office of the
5 Attorney General (“DMFEA”), and third-party DEPARTMENT OF HEALTH CARE
6 SERVICES (“DHCS”), by and through their respective counsel, THEREFORE HEREBY
7 STIPULATE AND AGREE TO THE FOLLOWING:

8 1. Defendants agree that any information disclosed by DMFEA relating to the search
9 conducted by DHCS in connection with Thrifty’s Subpoena and Thrifty’s Interrogatories, Set Two,
10 and Requests for Production of Documents, Set One, would not constitute a waiver of any of
11 DMFEA’s and DHCS’s privileges, including attorney work product.

12 2. Subject to Defendant’s agreement in paragraph 1, DMFEA will provide a verified
13 statement of its understanding of the steps taken by DHCS in connection with the Subpoena and by
14 DMFEA in connection with Thrifty’s Interrogatories, Set Two, and Requests for Production of
15 Documents, Set One.

16 3. Notwithstanding paragraphs 1 and 2, this stipulation does not waive any legal
17 positions or objections maintained by Defendants, DHCS, and DMFEA.

18 4. Defendants agree to withdraw without prejudice the issues related to DMFEA’s
19 objections and responses to Thrifty’s Interrogatories, Set Two, and Requests for Production of
20 Documents, Set One, from the January 19, 2023 pre-motion conference hearing before The
21 Honorable Jeremy D. Peterson.

22 IT IS SO STIPULATED.

23 Respectfully submitted,

24 Dated: January 19, 2023

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

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CALIFORNIA

Dated: January 19, 2023

MORGAN, LEWIS & BOCKIUS LLP

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Dated: January 19, 2023

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~~PROPOSED~~ ORDER

The Court, having considered the JOINT STIPULATION RE: THRIFTY DISCOVERY, finds good cause and ORDERS THAT the JOINT STIPULATION RE: THRIFTY DISCOVERY is approved and FURTHER ORDERS THAT within one week of the issuance of this order the State of California shall provide the verified statement per the stipulation.

IT IS SO ORDERED.

Dated: January 23, 2023



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE