

1 SCOTT EDWARD COLE, (Cal. State Bar No. 160744)
 2 MATTHEW R. BAINER (Cal. State Bar No. 220972)
 3 ROSA I. VIGIL (Cal. State Bar No. 251872)
 4 SCOTT COLE & ASSOCIATES, APC
 5 1970 Broadway, Ninth Floor
 6 Oakland, California 94612
 7 Telephone: (510) 891-9800
 8 Facsimile: (510) 891-7030
 9 Web: www.scalaw.com

10 Attorneys for Representative Plaintiff
 11 and the Plaintiff Class

12 JEFFREY D. WOHL (Cal. State Bar No. 96838)
 13 JOHN C. POST (Cal. State Bar No. 233236)
 14 RISHI N. SHARMA (Cal. State Bar No. 239034)
 15 REGAN HERALD (Cal. State Bar No. 251879)
 16 PAUL, HASTINGS, JANOFSKY & WALKER LLP
 17 55 Second Street, 24th Floor
 18 San Francisco, California 94105-3441
 19 Telephone: (415) 856-7000
 20 Facsimile: (415) 856-7100
 21 jeffwohl@paulhastings.com
 22 johnpost@paulhastings.com
 23 rishisharma@paulhastings.com
 24 reganherald@paulhastings.com

25 Attorneys for Defendant
 26 Rite Aid Corporation

27 UNITED STATES DISTRICT COURT
 28 NORTHERN DISTRICT OF CALIFORNIA

PRAG TIERNO, individually and on
 behalf of all others similarly-situated,

Plaintiffs,

vs.

RITE AID CORPORATION, and DOES
 1 through 25, inclusive,

Defendants.

No. C05-02520-TEH

**STIPULATION AND ~~PROPOSED~~ ORDER
 TO CHANGE BRIEFING HEARING AND
 BRIEFING DATES FOR PLAINTIFF'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT/SUMMARY ADJUDICATION
 OF ISSUES**

[Civ. L. R. 6-1, 6-2]

1 **STIPULATION**

2 Plaintiff Prag Tierno and defendant Rite Aid Corporation (“Rite Aid”), through their respective
3 counsel, stipulate as follows:

4 1. On January 12, 2009, plaintiff filed his Motion for Partial Summary Judgment/Summary
5 Adjudication of Issues (Docket No. 195) (the “Partial Summary Judgment Motion”), and noticed it for
6 hearing on February 23, 2009, at 10:00 a.m.

7 2. After the parties engaged in preliminary discussions about certain evidentiary issues
8 raised by the Partial Summary Judgment Motion, and due to the absence from the office of plaintiff’s
9 lead counsel while on vacation, the parties stipulated to a one-week postponement of the briefing and
10 hearing schedule on the motion, without prejudice to Rite Aid’s seeking further relief if it could not
11 resolve the evidentiary issues with plaintiff. The Court granted the parties’ stipulation, making the
12 current hearing date for the motion March 2, 2009. (*See* Docket No. 205.)

13 3. The parties have had further discussions about the evidentiary issues raised by the Partial
14 Summary Judgment Motion and now have reached the following agreement, which they ask the Court to
15 adopt by order approving this stipulation:

16 a. Rite Aid will not move to strike the 240 class member declarations and the Haber
17 declaration filed in support of the Partial Summary Judgment Motion on the
18 grounds that the names of the class members who gave the declarations and the
19 declarations were not disclosed or produced to Rite Aid prior to the filing of the
20 motion on January 12, 2009. However, Rite Aid reserves all other evidentiary
21 objections, if any, it can raise to the class member declarations and Haber
22 declaration.

23 b. In order to facilitate discovery that the parties anticipate they will want to take in
24 connection with the Partial Summary Judgment Motion, the hearing on the motion
25 will be continued to Monday, July 20, 2009, at 10:00 a.m. (or such later date that
26 is available for the Court), with Rite Aid’s opposition to the motion due on
27 Friday, May 22, 2009, and plaintiff’s reply due on Tuesday, June 30, 2009.

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- 1 c. Rite Aid will not seek leave to file a sur-reply in response to plaintiff's reply, but
2 reserves the right to raise at the hearing on the motion any objections or
3 arguments to any matters included in plaintiff's reply.
- 4 d. In light of this new scheduling for the Partial Summary Judgment Motion, the
5 parties do not believe that a case management conference on March 16, 2009, as
6 currently is scheduled, is necessary, and propose that it be vacated and reset after
7 the hearing on the motion on July 20, 2009.

8 Dated: January 23, 2009.

SCOTT EDWARD COLE
MATTHEW R. BAINER
ROSA I. VIGIL
SCOTT COLE & ASSOCIATES, APC

11 By: /s/ Scott Edward Cole

12 Scott Edward Cole
13 Attorneys for Representative Plaintiff
and the Plaintiff Class

14 Dated: January 23, 2009.

JEFFREY D. WOHL
JOHN C. POST
RISHI N. SHARMA
REGAN A.W. HERALD
PAUL, HASTINGS, JANOFSKY & WALKER LLP

17 By: /s/ Jeffrey D. Wohl

18 Jeffrey D. Wohl
19 Attorneys for Defendant
Rite Aid Corporation

ORDER

On the stipulation of the parties, and good cause appearing therefor,

IT IS ORDERED that the hearing on plaintiff Prag Tierno's Motion for Partial Summary Judgment/Summary Adjudication of Issues (Docket No. 195) is continued to Monday, July 20, 2009, at 10:00 a.m. The opposition to the motion will be due on Friday, May 22, 2009, and the reply in support of the motion will be due on Tuesday, June 30, 2009.

IT IS FURTHER ORDERED that the case management conference currently scheduled for Monday, March 16, 2009, is vacated and will be reset following the hearing on the motion.

Dated: January 26, 2009.

