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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 BRYON STAFFORD, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 RITE AID CORPORATION,

16 Defendant.

Lead Case No.: 17-CV-1340 TWR (JLB)  
(consolidated with No. 18-CV-152 TWR  
(JLB))

**ORDER (1) VACATING HEARING,  
AND (2) DENYING DEFENDANTS'  
MOTION TO STAY**

(ECF No. 230)

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19 Presently before the Court is the Motion to Stay Pending Resolution of Ninth Circuit  
20 Appeal in *Washington v. CVS Pharmacy, Inc.*, No. 21-16162 (9th Cir. filed July 12, 2021)  
21 (the “*Washington* appeal”) (“Mot.,” ECF No. 230), filed by Defendants Rite Aid  
22 Corporation and Rite Aid Hdqtrs. Corp., as well as Plaintiffs Bryon Stafford and Robert  
23 Josten’s Response in Opposition to the Motion (“Opp’n,” ECF No. 233), Defendants’  
24 Reply in Support of the Motion (“Reply,” ECF No. 238), and Plaintiffs’ Notice of  
25 Supplemental Authority. (See ECF No. 237-1 (Order, *County of Monmouth v. Rite Aid*  
26 *Corp.*, No. 20-cv-2024 (E.D. Pa. filed Oct. 19, 2022)) (the “*Monmouth* Order”). The Court  
27 **VACATES** the hearing scheduled for November 10, 2022, and takes the Motion under  
28 submission on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1).

1 Having carefully considered Defendant’s Motion, the *Washington* appeal, the Parties’  
2 arguments, and the relevant law, the Court **DENIES** Defendant’s Motion.

3 **BACKGROUND**

4 Plaintiff Bryon Stafford initiated this putative class action on June 30, 2017, alleging  
5 causes of action against Rite Aid Corporation for violations of the California Unfair  
6 Competition Law (“UCL”), violations of the California Consumer Legal Remedies Act  
7 (“CLRA”), unjust enrichment, and negligent misrepresentation. (*See generally* ECF No.  
8 1.) Specifically, Plaintiff alleged that, “[a]t bottom, this action concerns Rite Aid’s illegal  
9 practice of overcharging customers enrolled in public or private health care plans for  
10 generic prescription drugs by submitting to third-party payors claims for payment at prices  
11 that Rite Aid has knowingly and intentionally inflated about its ‘usual and customary’  
12 prices.” (*See id.* ¶ 8.)

13 Plaintiff Stafford amended his Complaint on July 28, 2017, (*see generally* ECF No.  
14 18), and Rite Aid Corporation moved to dismiss. (*See generally* ECF No. 19.) On  
15 December 19, 2017, the Honorable Anthony J. Battaglia granted Rite Aid Corporation’s  
16 motion to dismiss, dismissing without prejudice Plaintiff Stafford’s claims as time-barred.  
17 (*See generally* ECF No. 29.) Plaintiff Stafford filed a further amended complaint on  
18 January 9, 2018, adding allegations to support equitable tolling on the statute of limitations.  
19 (*See generally* ECF No. 30.) Defendant Rite Aid Corporation against moved to dismiss on  
20 January 23, 2018. (*See* ECF No. 32.)

21 Plaintiff Robert Josten also filed his own putative class action on January 23, 2018,  
22 alleging similar causes of action for negligent misrepresentation, unjust enrichment,  
23 violation of the unfair and unlawful prongs of the UCL, violation of the CLRA, and  
24 declaratory and injunctive relief. (*See generally* No. 18-CV-152, ECF No. 1.) Rite Aid  
25 Corporation moved to dismiss the *Josten* action on March 16, 2018. (*See generally* No.  
26 18-CV-152, ECF No. 15.)

27 On September 28, 2018, Judge Battaglia denied Rite Aid Corporation’s motion to  
28 dismiss the *Stafford* action, concluding that Plaintiff Stafford had adequately alleged his

1 causes of action. (*See generally* ECF No. 41.) Rite Aid Corporation subsequently  
2 answered Stafford’s Second Amended Complaint, (*see generally* ECF No. 42), and the  
3 case proceeded to discovery. (*See generally* Docket.) Rite Aid Corporation moved to  
4 compel arbitration as to Plaintiff Stafford on June 17, 2019. (*See generally* ECF No. 78.)

5 Meanwhile, Judge Battaglia granted Rite Aid Corporation’s motion to dismiss the  
6 *Josten* action for failure adequately to plead tolling of the statute of limitations on  
7 November 20, 2018. (*See generally* No. 18-CV-152, ECF No. 25.) Plaintiff Josten filed  
8 an amended complaint on December 11, 2018, (*see generally* No. 18-CV-152, ECF No.  
9 27), which Rite Aid Corporation moved to dismiss on December 21, 2018. (*See generally*  
10 No. 18-CV-152, ECF No. 28.) Judge Battaglia denied the motion on August 7, 2019,  
11 concluding that Plaintiff Josten had “appropriately allege[d] tolling” and that “Josten’s  
12 claims do not arise under The Medicare Act and are thus not subject to its exhaustion  
13 requirements.” (*See generally* No. 18-CV-152, ECF No. 38.)

14 At the Parties’ request, (*see* ECF No. 100; No. 18-CV-152, ECF No. 57), the *Stafford*  
15 and *Josten* actions were consolidated on October 24, 2019. (*See* ECF No. 101; No. 18-  
16 CV-152, ECF No. 58.) Rite Aid filed a motion to compel arbitration as to Plaintiff Josten  
17 on December 30, 2019. (*See generally* ECF No. 114.) Judge Battaglia denied the motion  
18 to compel arbitration as to Plaintiff Stafford on February 25, 2020, (*see* ECF No. 134), and  
19 granted the Parties’ joint motion to add Rite Aid Hdqtrs. Corp. as a Defendant on March 4,  
20 2020. (*See* ECF No. 138.) Plaintiffs filed their respective operative complaints on  
21 March 6, 2020. (*See* ECF Nos. 145 (“Stafford TAC”), 146 (“Josten SAC”).)

22 On March 24, 2020, Defendant Rite Aid Corporation appealed Judge Battaglia’s  
23 denial of its motion to compel arbitration as to Plaintiff Stafford. (*See* ECF No. 148.) The  
24 Parties then proceeded to discovery, (*see, e.g.*, ECF No. 152), and Defendant Rite Aid  
25 Hdqtrs. Corp. moved to compel arbitration as to Plaintiff Stafford, (*see* ECF No. 163), and  
26 Plaintiff Josten. (*See* ECF No. 166.) On June 10, 2020, Defendants moved *ex parte* to stay  
27 the consolidated actions in light of their then-pending appeal of the arbitration issue, (*see*

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1 ECF No. 183), which request Judge Battaglia granted on July 30, 2020. (*See* ECF No.  
2 196.)

3 These consolidated actions were then transferred to the undersigned on October 6,  
4 2020, (*see* ECF No. 201), at which time the Court denied without prejudice the pending  
5 motion to compel arbitration as to Plaintiff Josten. (*See* ECF No. 202.) On May 21, 2021,  
6 the Ninth Circuit affirmed Judge Battaglia’s denial of Defendant Rite Aid Corporation’s  
7 motion to compel arbitration as to Plaintiff Stafford. *See Stafford v. Rite Aid Corp.*, 998  
8 F.3d 862 (9th Cir. 2021). The Court therefore lifted the stay on July 20, 2021. (*See* ECF  
9 No. 209).

10 On August 3, 2021, however, the Parties jointly moved to stay these proceedings  
11 pending mediation. (*See* ECF No. 211.) These consolidated actions remained stayed  
12 pending mediation for over a year until the Court lifted the stay on September 1, 2022, (*see*  
13 ECF No. 227), following an “impasse” in the Parties’ settlement negotiations. (*See* ECF  
14 No. 226.) As intimated in the Parties’ August 31, 2022 Joint Status Report, the instant  
15 Motion followed on September 15, 2022. (*See generally* ECF No. 230.)

### 16 LEGAL STANDARD

17 The court’s power to stay proceedings is “incidental to the power inherent in every  
18 court to control the disposition of the cases on its docket with economy of time and effort  
19 for itself, for counsel, and for litigants.” *See Landis v. N. Am. Co.*, 299 U.S. 248, 254  
20 (1936). The court must consider three factors in determining whether to issue a stay: (1) the  
21 possible damage which may result from granting a stay; (2) the hardship or inequity which  
22 a party may suffer in being required to go forward; and (3) the orderly course of justice  
23 measured in terms of the simplifying or complicating of issues, proof, and questions of law  
24 which could be expected to result from a stay. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268  
25 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254–55). “The proponent of a stay bears the  
26 burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citation  
27 omitted). If the opposing party can show “even a fair possibility” of harm due to the stay,  
28 the party requesting the stay “must make out a clear case of hardship or inequity.” *See*

1 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) (quoting *Landis*, 299 U.S.  
2 at 255).

### 3 ANALYSIS

4 Rite Aid requests that the Court stay this action “until the resolution of the appeal in  
5 *Washington v. CVS Pharmacy, Inc.*, No. 21-16162 (9th Cir., filed July 9, 2021).” (*See Mot.*  
6 at 2.) According to Rite Aid, “[t]he *Washington* appeal is poised to resolve several  
7 questions that are critical for efficient discovery and resolution of discovery disputes, class  
8 certification, summary judgment and, if necessary, trial of this action” because, “[a]s in  
9 this case, *Washington* involves consumers asserting that the pharmacy violated a duty to  
10 not collect a copayment from them that exceeded its ‘usual and customary’ (“U&C”) price,  
11 which the consumers allege was the special discounted price offered to members of the  
12 pharmacy’s membership discount program.” (*See id.*) Plaintiffs respond that “[n]either  
13 the substance nor pendency of *Washington* impact proceedings in this action” because  
14 “Plaintiffs here are not proceeding on the same contract-based theories of liability as in  
15 *Washington*.” (*See Opp’n* at 1.)

16 The Court agrees with Plaintiffs. In *Washington*, the plaintiffs-appellants argue that  
17 the district court erred when it instructed the jury “as to third-party beneficiary status under  
18 the contracts between CVS and the pharmacy benefit managers” because the plaintiffs did  
19 not advance a breach-of-contract claim at trial. (*See ECF No. 230-2* (“Ex. A”) at 24.) Here,  
20 by contrast, Judge Battaglia has determined, (*see ECF No. 41* at 14 n.1), and reaffirmed,  
21 (*see ECF No. 134* at 6)—and the Ninth Circuit has affirmed, *see Stafford*, 998 F.3d at 867–  
22 68)—that Plaintiffs’ claims do not depend on the contracts between Defendants and their  
23 pharmacy benefit managers. Further, as the Honorable Mitchell S. Goldberg recently  
24 determined in *County of Monmouth v. Rite Aid Corporation*, “the issues on appeal [in  
25 *Washington*] are mostly evidentiary, and there is therefore no reason to stay discovery  
26 while the appeal proceeds.” (*See Monmouth Order* at 2.) Defendants have therefore failed  
27 to demonstrate that awaiting a decision from the Ninth Circuit in *Washington* will further  
28 the “orderly course of justice” by simplifying issues in these consolidated proceedings.

1 Indeed, *Stafford*—which was filed over five years ago, (*see generally* ECF No. 1)—  
2 is the second oldest case on the Court’s docket (*Josten* is the third). These consolidated  
3 actions have essentially been stayed since July 30, 2020, pending appeal and then  
4 mediation. (*See* ECF Nos. 196, 212.) As early as August 3, 2021, the Parties represented  
5 to the Court that “[t]he stay requested should not materially delay trial.” (*See, e.g.*, ECF  
6 No. 211 at 2.) The Court extended the stay pending mediation several times based on its  
7 understanding that the Parties were working diligently and in good faith toward settlement.  
8 (*See* ECF Nos. 219, 221, 223, 225; *see also, e.g.*, ECF No. 224 ¶ 4 (“Since the last joint  
9 status report was filed, the parties have made progress towards a potential resolution, and  
10 have agreed to continue discussions in the coming weeks.”).) The Court was therefore  
11 surprised when the Parties reported on August 31, 2022, that their settlement negotiations  
12 had failed, (*see* ECF No. 226), leaving these relatively ancient consolidated proceedings in  
13 their nascency and in the midst of discovery. Given these circumstances, all of the *Landis*  
14 factors—the possible damage from granting a stay, the hardship in requiring Defendants to  
15 go forward, and the orderly course of justice—weigh against the granting of a further stay  
16 in this action. *See, e.g., Reyes v. Educ. Credit Mgmt. Corp.*, No. 15-CV-00628-BAS-AGS,  
17 2017 WL 4640418, at \*5 (S.D. Cal. Oct. 17, 2017) (concluding that “the public interest  
18 does not warrant a stay of all proceedings given the length of time this case has been  
19 pending and the underlying allegations” where “[t]his case is over two and a half years  
20 old”). The Court therefore **DENIES** Defendants’ Motion.

### 21 CONCLUSION

22 In light of the foregoing, the Court **DENIES** Defendant’s Motion to Stay (ECF No.  
23 230). Accordingly, the Parties **SHALL CONTACT** Magistrate Judge Goddard’s

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1 chambers within three (3) court days of the electronic docketing of this Order to obtain an  
2 updated Scheduling Order.

3 **IT IS SO ORDERED.**

4 Dated: November 3, 2022

A handwritten signature in black ink that reads "Todd Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

5  
6 Honorable Todd W. Robinson  
United States District Judge

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