

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

In the Matter of

Caremark Rx, LLC,

Zinc Health Services, LLC,

Express Scripts, Inc.,

Evernorth Health, Inc.,

Medco Health Services, Inc.,

Ascent Health Services LLC,

OptumRx, Inc.,

OptumRx Holdings, LLC, and

Emisar Pharma Services LLC,

Respondents.

Docket No. 9437

**COMPLAINT COUNSEL’S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT
OF ITS MOTION TO LIFT THE STAY**

Pursuant to Rule 3.22(d) of the Commission Rules of Practice, Complaint Counsel respectfully moves the Commission for leave to file the attached Reply in Support of Complaint Counsel’s Motion to Lift the Stay (Ex. A).

PUBLIC

Respondents' Opposition to Complaint Counsel's Motion to Lift the Stay states that Complaint Counsel "requested that the Commission set a hearing date without ever discussing the hearing date with Respondents." Respondents' Opp'n at 10. Complaint Counsel seeks leave to submit a brief Reply to correct the record. Leave is justified because at the time Complaint Counsel filed its initial Motion to Lift the Stay of Administrative Adjudication, it did not, and could not, anticipate the need to correct a material factual misrepresentation in Respondents' Opposition.

Dated: July 15, 2025

Respectfully submitted,

/s/ Rebecca L. Egeland

Rebecca L. Egeland

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-2990
Fax: (202) 326-3384
Email: regeland@ftc.gov

Counsel Supporting the Complaint

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

In the Matter of

Caremark Rx, LLC,

Zinc Health Services, LLC,

Express Scripts, Inc.,

Evernorth Health, Inc.,

Medco Health Services, Inc.,

Ascent Health Services LLC,

OptumRx, Inc.,

OptumRx Holdings, LLC, and

Emisar Pharma Services LLC,

Respondents.

Docket No. 9437

MEET AND CONFER STATEMENT

Complaint Counsel sought Respondents' consent to file a Reply, but Respondents did not indicate whether they consented or opposed as of the time of this filing.

Dated: July 15, 2025

Respectfully submitted,

/s/ Rebecca L. Egeland

Rebecca L. Egeland

Counsel Supporting the Complaint

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

In the Matter of

Caremark Rx, LLC,

Zinc Health Services, LLC,

Express Scripts, Inc.,

Evernorth Health, Inc.,

Medco Health Services, Inc.,

Ascent Health Services LLC,

OptumRx, Inc.,

OptumRx Holdings, LLC, and

Emisar Pharma Services LLC,

Respondents.

Docket No. 9437

[PROPOSED] ORDER

Upon consideration of Complaint Counsel's Motion for Leave to File a Reply in Support of its Motion to Lift the Stay,

IT IS HEREBY ORDERED that Complaint Counsel's Motion for Leave to File a Reply in Support of its Motion to Lift the Stay is **GRANTED**.

PUBLIC

By the Commission, Commissioner Holyoak recused.

Dated: _____

April J. Tabor,
Secretary

PUBLIC

EXHIBIT A

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

In the Matter of

Caremark Rx, LLC,
Zinc Health Services, LLC,
Express Scripts, Inc.,
Evernorth Health, Inc.,
Medco Health Services, Inc.,
Ascent Health Services LLC,
OptumRx, Inc.,
OptumRx Holdings, LLC, and
Emisar Pharma Services LLC,
Respondents.

Docket No. 9437

**COMPLAINT COUNSEL’S REPLY IN SUPPORT OF ITS MOTION TO LIFT THE
STAY**

On July 14, 2025, Respondents filed an Opposition to Complaint Counsel’s Motion to Lift the Stay. In their Opposition, Respondents wrongly assert that Complaint Counsel violated the stay order provision directing the parties to engage in good faith discussions on any proposed

PUBLIC

timing on when the stay would be lifted and the ultimate hearing date.¹ Respondents' Opp'n at 10. Complaint Counsel files this Reply to address Respondents' misrepresentation and correct the record.

As outlined in the Egeland Declaration, on June 23, 2025, Complaint Counsel reached out to Respondents to schedule a meet and confer about lifting the stay. In that email, Complaint Counsel explicitly invited Respondents "[p]er our agreement in the stay order. . . to meet and confer regarding the date on which a joint motion would request to lift the stay." Decl. ¶ 5; Decl. Ex. 1. During the discussions, the parties ultimately did not negotiate a specific date on which the Commission would lift the stay, because Respondents took the position that the stay should not be lifted at all until their yet-to-be filed motion to dismiss was resolved by the Commission. Decl. ¶ 7.

Complaint Counsel unquestionably acted in good faith and in accordance with the Commission Order and the parties' agreement. In any event, the lift-stay motion is now fully ripe for determination, and Complaint Counsel respectfully requests that the Commission lift the stay of the administrative adjudication.

¹ Respondents' Opposition also appears to exceed the page limitations provided in the Commission's Rules of Practice. 16 C.F.R. § 3.22(c) provides that "[m]emoranda in support of, or in opposition to, any other [non-dispositive] motion shall not exceed 2,500 words," including "headings, footnotes, and quotations," but Respondents' Opposition exceeds 2,800 words.

PUBLIC

Dated: July 15, 2025

Respectfully submitted,

/s/ Rebecca L. Egeland

Rebecca L. Egeland

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-2990
Fax: (202) 326-3384
Email: regeland@ftc.gov

Counsel Supporting the Complaint

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Melissa Holyoak
 Mark R. Meador

In the Matter of

Caremark Rx, LLC,

Zinc Health Services, LLC,

Express Scripts, Inc.,

Evernorth Health, Inc.,

Medco Health Services, Inc.,

Ascent Health Services LLC,

OptumRx, Inc.,

OptumRx Holdings, LLC, and

Emisar Pharma Services LLC,

Respondents.

Docket No. 9437

**DECLARATION IN SUPPORT OF COMPLAINT COUNSEL'S
REPLY IN SUPPORT OF ITS MOTION TO LIFT THE STAY**

1. I have personal knowledge of the facts set forth in this declaration.
2. My name is Rebecca Egeland. I am an attorney admitted to practice law in the District of Columbia. I am employed by the Federal Trade Commission and am Complaint Counsel in this action.
3. On March 31, 2025, Complaint Counsel and Respondents jointly moved the Commission to stay the Part 3 Adjudicative Proceeding, given there were no sitting Commissioners

PUBLIC

able to participate in the matter at the time. The parties' Proposed Order sought to stay the proceeding for a minimum of 105 days, after which the stay could be lifted by the Commission upon motion by one or more of the parties.

4. On April 1, 2025, the Commission, pursuant the authority delegated to the General Counsel by 16 C.F.R. § 0.7(b), entered the Order Staying Administrative Adjudication. The Order included the parties' proposed language that "[t]he parties will engage in good faith discussions on any proposed timing on when the stay would be lifted and the ultimate hearing date." Order at 2.
5. On June 23, 2025, a little over three weeks before the end of the minimum stay period, I reached out to counsel for Respondents to meet and confer about lifting the stay. In my email, I stated our hope the parties could agree to file a joint motion to lift the stay, given the availability of sitting Commissioners able to participate in the matter. I further stated, "Per our agreement in the stay order, we are willing to meet and confer regarding the date on which a joint motion would request to lift the stay." Decl. Ex. 1, at 1.
6. Exhibit 1 attached to this declaration is an accurate and complete copy of the original email discussed in paragraph 5.
7. On July 2 and July 3, Complaint Counsel and Respondents met and conferred via video conference. During these discussions, Respondents conveyed their position that the stay of the Part 3 proceeding should not be lifted while their collateral constitutional challenge was pending in the Eighth Circuit and until a not-yet-filed motion to dismiss was decided by the Commission. Respondents further stated their intent to oppose a motion by Complaint Counsel to lift the stay. Complaint Counsel stated our intention to file a motion on Monday, July 7 to lift the stay.

PUBLIC

8. On July 7, Complaint Counsel filed a Motion to Lift the Stay of Administrative Adjudication before the Commission.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 2025, in Washington, DC.

/s/ Rebecca L. Egeland
Rebecca L. Egeland

PUBLIC

EXHIBIT 1

From: [Egeland, Rebecca](#)
To: [CVSInsulinFTCMatter@wc.com](#); [CVSInsulin@lists.dechert.com](#); [RGH_InsulinLit_External@rulegarza.com](#); [Service-OptumRxInsulin@gibsondunn.com](#); [EMainigi@wc.com](#); [csinger@wc.com](#); [SPyser@wc.com](#); [KHoover@wc.com](#); [Mike.Cowie@dechert.com](#); [rani.habash@dechert.com](#); [Howley@RuleGarza.com](#); [Rule@RuleGarza.com](#); [Campbell@RuleGarza.com](#); [Heipp@RuleGarza.com](#); [Jennifer.Milici@wilmerhale.com](#); [Perry.Lange@wilmerhale.com](#); [john.otoole@wilmerhale.com](#); [SLiversidge@gibsondunn.com](#); [MJPerry@gibsondunn.com](#); [SHansell@gibsondunn.com](#); [MParrott@gibsondunn.com](#)
Cc: [Albert, Bradley Scott](#); [Peay, Lauren](#); [Black, Armine](#); [InsulinFile2210114](#)
Subject: Docket No. 9437 - In the Matter of Caremark Rx, LLC, et al.
Date: Monday, June 23, 2025 10:33:53 AM

Greetings, all – As we are about three weeks out from the end of the minimum stay period in the Part 3 adjudicative proceeding, we are reaching out about a motion to lift the stay.

Given there are now sitting Commissioners able to participate in the matter and that we are not aware of any dispute Respondents have over the lawfulness of any current sitting Commissioner, we are hopeful we can agree to jointly move to lift the stay. Please let us know by COB on Wednesday if you will agree to lift the stay in the Part 3 proceeding. Per our agreement in the stay order, we are willing to meet and confer regarding the date on which a joint motion would request to lift the stay.

Best,
Beckey

Rebecca L. Egeland
Attorney, Health Care Division
Federal Trade Commission
Phone: (202) 326-2990
Email: regeland@ftc.gov

PUBLIC**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2025, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Jay L. Himes
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-144
Washington, DC 20580
OALJ@ftc.gov

*Secretary of the Commission
Clerk of the Court*

Administrative Law Judge

I also certify that I caused the foregoing document to be served via email to:

Enu Mainigi
Craig D. Singer
Steven M. Pyser
WILLIAMS &
CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
emainigi@wc.com
csinger@wc.com
spyser@wc.com

Daniel J. Howley
Charles F. (Rick) Rule
Margot Campbell
Justin T. Heipp
RULE GARZA HOWLEY
901 7th Street NW, Suite 600
Washington, DC 20006
howley@rulegarza.com
rule@rulegarza.com
campbell@rulegarza.com
heipp@rulegarza.com

Samuel Liversidge
GIBSON, DUNN & CRUTCHER
LLP
333 South Grand Avenue
Los Angeles, CA 90071
SLiversidge@gibsondunn.com

Mike Cowie
Rani A. Habash
DECHERT LLP
1900 K Street NW
Washington, DC 20006
mike.cowie@dechert.com
rani.habash@dechert.com

Jennifer Milici
Perry A. Lange
John W. O'Toole
WILMERHALE
2100 Penn. Ave. NW
Washington, DC 20037
jennifer.milici@wilmerhale.com
perry.lange@wilmerhale.com
john.otoole@wilmerhale.com

Sophia A. Hansell
Michael J. Perry
Matthew C. Parrott
GIBSON, DUNN & CRUTCHER
LLP
1700 M Street NW
Washington, DC 20036
shansell@gibsondunn.com
mjperry@gibsondunn.com
mparrott@gibsondunn.com

*Counsel for Respondents
Caremark Rx LLC; Zinc
Health Services, LLC*

*Counsel for Respondents Express
Scripts, Inc.; Evernorth Health,
Inc.; Medco Health Services, Inc.;
Ascent Health Services LLC*

*Counsel for Respondents OptumRx,
Inc.; OptumRx Holdings, LLC;
Emisar Pharma Services LLC*

PUBLIC

/s/ Rebecca L. Egeland

Rebecca L. Egeland
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2290
regeland@ftc.gov

Counsel Supporting the Complaint