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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)	
In the Matter of)	
)	
Caremark Rx, LLC, <i>et al.</i> ,)	Docket No. 9437
)	
Respondents.)	
_____)	

ORDER #1 REGARDING NON-PARTY DISCOVERY

On September 12, 2025, non-party Kaiser Foundation Health Plan, Inc. filed a motion to further extend its time to move to quash or limit two subpoenas duces tecum served on it in this case by (1) Respondents Caremark Rx, LLC and Zinc Health Services, LLC (“Caremark”), and (2) Respondents Express Scripts, Inc., Evernorth Health, Inc., Medco Health Services, Inc., and Ascent Health Services LLC (“ESI”). In its motion, Kaiser stated that Caremark and ESI “do not oppose the requested relief.” Kaiser’s motion, which I granted, has had the effect of calling to my attention two matters that I address in this Order.

First, Respondent groups should make good faith efforts to avoid serving multiple subpoenas duces tecum on non-parties, such as Kaiser. I appreciate that individual Respondent group interests in discovery from non-parties may not necessarily align and, in consequence, the documents that individual Respondent groups may seek can differ. They should, nevertheless, be able to jointly serve a

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single subpoena duces tecum on the non-party, which sets forth the documents requested separately for each Respondent group joining in the subpoena. To the extent reasonably feasible, the joint subpoena duces tecum should also include a common set of definitions and instructions, but where individual Respondent group instructions are warranted, they should be separately identified.

Where Complaint Counsel also is interested in securing discovery from a non-party whom one or more Respondent groups seeks to serve with a subpoena duces tecum, Complaint Counsel should similarly join in the subpoena. Likewise, if Complaint Counsel seeks to serve a subpoena duces tecum on a non-party, each Respondent group should have the opportunity to join the subpoena.

Jointly served subpoenas duces tecum will: (a) be enforceable by each party joining in the subpoena to the same extent as if the party had served the subpoena individually; (b) permit, but not require, joint meet and confer sessions regarding such matters as production deadline and subpoena scope or interpretation.

Multiple subpoenas duces tecum to a non-party should, therefore, be the exception, not the rule. To accomplish that, I **DIRECT** that the parties confer on any non-party subpoena duces tecum they intend to serve.

Second, if a motion directed to a joint subpoena duces tecum is contemplated—for example, a motion to extend the time for compliance, or to move to quash, limit, or enforce—each party joining in the subpoena must have the opportunity, before any such motion is made, to participate in any required meet-

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and-confer process. Accordingly, I further **DIRECT** the parties to notify each joining party once it appears that a motion relating to the subpoena is likely.

Notification is **not** required, although it may well be warranted, as soon as discussions to extend the deadline for compliance, or to limit or otherwise clarify the scope of the subpoena, begin. However, once motion proceedings are likely, notification is necessary to assure that the motion appropriately represents the extent to which it is unopposed, or opposed, by some, but not all, interested parties.

These procedures are designed to avoid undue burden on non-parties and to promote efficiency in securing discovery from them. If, however, any party seeks further discussion, they may submit their views on or before September 26, 2025. If there are multiple views, they should be submitted in a single filing. I will review any papers submitted and determine what, if any, further action needs to be taken.

ORDERED:A handwritten signature in cursive script, reading "Jay L. Himes", is written over a solid horizontal line.

Jay L. Himes
Administrative Law Judge

Date: September 16, 2025