

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

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.**

Docket No. 9437

**AGREEMENT CONTAINING CONSENT ORDER WITH RESPONDENTS
CAREMARK RX, L.L.C. AND ZINC HEALTH SERVICES, LLC**

The Federal Trade Commission (“Commission”) issued an administrative Complaint challenging certain methods of competition and acts and practices of Respondents Caremark Rx, L.L.C. and Zinc Health Services, LLC named above in the caption (collectively, “Respondent”). The Commission’s Bureau of Consumer Protection (“BCP”), Bureau of Competition (“BC”), and Respondent, through its duly authorized officers and attorneys, enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the Complaint against Respondent through a proposed Decision and Order to present to the Commission, which is also attached.

IT IS HEREBY AGREED by and between Respondent, BCP, and BC, that:

1. Respondent Caremark Rx, L.L.C. is a Delaware company with its principal place of business at One CVS Drive, Woonsocket, Rhode Island.
2. Zinc Health Services, LLC (“Zinc”) is a Delaware limited liability company with its principal place of business at One CVS Drive, Woonsocket, Rhode Island.

3. Respondent has been served with a copy of the administrative Complaint issued by the Commission charging it with violations of Section 5(a) of the Federal Trade Commission Act and has filed an answer to the Complaint.
4. Respondent neither admits nor denies any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction. The signing of this agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Complaint, or that the facts as alleged in the Complaint, other than jurisdictional facts and facts admitted to by Respondent in its answer to the Complaint, are true.
5. Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's Decision and Order contains a statement of findings of fact and conclusions of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement; and
 - d. Any claim under the Equal Access to Justice Act.
6. This Consent Agreement will not become part of the public record of the proceeding, unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, the Commission will place it, together with the proposed Decision and Order, an explanation of the provisions of the proposed Decision and Order, and any other information that helps interested persons understand the proposed Decision and Order, on the public record for receipt of comments for 30 days. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter.
7. This Consent Agreement contemplates that, if the Commission accepts the Consent Agreement, the Commission thereafter may withdraw its acceptance of this Consent Agreement and notify Respondent, in which event the Commission will take such action as it may consider appropriate. If the Commission does not subsequently withdraw such acceptance pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Respondent, issue the attached Decision and Order in disposition of the proceeding.
8. Respondent agrees that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Respondent waives any rights they may have to any other manner of service. *See* Rule 4.4.

9. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.
10. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
11. By signing this Consent Agreement, Respondent represents and warrants that:
 - a. It can fulfill all the terms of and accomplish the full relief contemplated by the Decision and Order; and
 - b. All parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the Decision and Order are parties to this Consent Agreement and are bound as if they had signed this Consent Agreement and were made parties to this proceeding, or are within the control of parties to this Consent Agreement and the Decision and Order.
12. Respondent agrees to comply with the terms of the proposed Decision and Order from the date that Respondent signs this Consent Agreement. Respondent understands that once the Commission has issued the Decision and Order, it will be required to file one or more compliance reports setting forth in detail the manner in which it has complied, has prepared to comply, is complying, and will comply with the Decision and Order. Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.
13. Within 7 days of the date of issuance of the Decision and Order as final, Respondent agrees to execute and file all documents necessary to voluntarily dismiss itself as a party, with prejudice, from the action styled *Express Scripts, Inc. et al. v. Federal Trade Commission et al.*, Case No. 4:24-cv-01549, pending in the United States District Court for the Eastern District of Missouri.
14. Counsel for BC and BCP agree that the Decision and Order settles and releases all claims by BC and BCP arising from the pending administrative action, Commission's Docket No. 9437, the Commission's investigation of Aetna Inc. relating to the Commission's Civil Investigative Demand to CVS Health Corporation in FTC File No. 2210114, dated August 29, 2022, and the Commission's investigation of Respondent relating to the Commission's Civil Investigative Demand to CVS Health Corporation in FTC File No. 2410005, dated December 8, 2023. However, the Decision and Order does not release or resolve (a) claims arising from business practices that Respondent implemented after the date of this Consent Agreement, (b) claims arising from business practices that the Commission did not have actual or constructive knowledge of as of the date of this Consent Agreement, or (c) claims arising from any agreement between Respondent and one or more of its competitors, should the Commission become aware of such an agreement. Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order.

15. Counsel for BC and BCP and Respondent agree and acknowledge that this Consent Agreement covers broad aspects of Respondent's business conduct beyond the conduct challenged in the Complaint. The Commission and Respondent agree and acknowledge that this Consent Agreement represents a global settlement that resolves the current concerns of the Commission, to the extent reflected in the Decision and Order, about Respondent's business practices.
16. Counsel for BC and BCP agree to take action to ensure that any future report from the Order to File a Special Report, FTC Matter No. 221200 (June 6, 2022) directed to Caremark Rx, L.L.C. , and from the Order to File a Special Report, FTC Matter No. 221200 (May 17, 2023) directed to Zinc, will include a statement that summarizes this Consent Agreement and Decision and Order, and will represent that any conduct by, or data of, Respondent described in any such report hereinafter issued by the Commission or its staff occurred or was collected prior to the date of this Consent Agreement and that the report therefore does not reflect Respondent's changes to its business methods, acts, and practices required by the Decision and Order.
17. Paragraphs 13-16 of this Consent Agreement will be effective and binding only upon the Commission's issuing the Decision and Order as final.

**CAREMARK RX, L.L.C. AND ZINC
HEALTH SERVICES, LLC**

By: _____
Edward DeVaney
Caremark Rx, L.L.C.

By: _____
Thomas Moffatt
Zinc Health Services, LLC

By: _____
Michael G. Cowie
Rani Habash
Dechert LLP

Date: _____

FEDERAL TRADE COMMISSION

By:

Director, Bureau of Consumer Protection

Director, Bureau of Competition

Date: _____