

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.

DOCKET NO. 9437

ORDER LIFTING STAY OF ADMINISTRATIVE ADJUDICATION

On April 1, 2025, pursuant to the delegation of authority in Commission Rule 0.7(b), 16 C.F.R. § 0.7(b), and on joint motion from Complaint Counsel and Respondents, the General Counsel stayed this administrative proceeding due to a lack of Commissioners able to participate in the case. *See* Order Staying Administrative Adjudication (“April Order”). At that time, Chairman Ferguson and Commissioner Holyoak, the only two sitting Commissioners, were both recused from the matter. The April Order provided that the stay would remain in effect for a minimum of 105 days, after which it could be lifted by the Commission on motion by one or more of the parties. *Id.* The April Order required the parties to engage in good faith discussions on the proposed timing of the lifting of the stay, the ultimate hearing date, and the scheduling of fact depositions, but stated that the evidentiary hearing would be set 225 days from the date the stay is lifted. *Id.*

On July 7, 2025, Complaint Counsel moved to lift the stay. *See* Compl. Counsel’s Mot. to Lift Stay of Administrative Adjudication. Two Commissioners are now able to participate in the matter.¹ Complaint Counsel ask the Commission to resume the case because the rationale for the stay no longer applies and restarting the proceeding would avoid delay and comport with the Commission’s policy of expeditious adjudication. *Id.* at 2–3.

Respondents oppose lifting the stay. They assert that they will be filing a motion to dismiss the proceeding and that the stay should remain in place while the Commission decides that motion. Resp’ts’ Opp’n to Compl. Counsel’s Mot. to Lift Stay at 2 (July 14, 2025) (“Stay Opp’n”). Respondents argue that the claims in the complaint are novel and untested and that the current Commission, whose makeup differs from the Commission that voted out the complaint, should weigh in on the charges before Respondents are forced to bear the costs of discovery. *Id.* at 4–6.

We grant Complaint Counsel’s motion to lift the stay because the basis for the original stay no longer exists, and Respondents’ possible filing of a motion to dismiss does not justify further staying the proceeding.

The Commission’s Rules of Practice instruct that adjudications must “proceed with all reasonable expedition,” and unless the Commission orders otherwise, dispositive motions pending before the Commission do not stay proceedings before the Administrative Law Judge. 16 C.F.R. §§ 3.22(b), 3.41(b). These rules reflect the Commission’s judgment that ordinarily “the public interest in expediting our adjudicatory process supports allowing the proceedings before the Administrative Law Judge to continue notwithstanding the pendency of [dispositive] motions.” *In re LabMD, Inc.*, No. 9357, 2013 WL 6826948, at *3 (F.T.C. Dec. 13, 2013). Further, as the Commission has explained, discovery costs “are normal consequences of litigation, routinely borne by litigants while dispositive motions are pending” and “[g]enerally . . . do not outweigh the competing public interest in the efficient and expeditious resolution of litigated matters.” *Ragingwire Data Ctrs., Inc.*, 169 F.T.C. 649, 649, 2020 WL 91293 at *1 (2020) (internal quotations omitted).

We see no reason to deviate from the Commission’s Rules and ordinary practice in anticipation of a motion to dismiss that Respondents have not yet filed. Of course, Respondents are free to raise their arguments regarding the novelty of the claims in this case, and any other arguments they wish, if and when they file their dispositive motion. They are also free to seek a stay of discovery pending resolution of that motion, once it is actually pending. The Commission will consider those arguments when they are ripe and are fully briefed.

Respondents also suggest that the matter should be stayed pending the resolution of their Eighth Circuit appeal from the denial of a preliminary injunction in their collateral challenge to this proceeding. *See* Stay Opp’n at 2. Our rules are clear that, absent a Commission finding of

¹ Chairman Ferguson is no longer recused, and Commissioner Meador has been sworn in and added to the Commission lineup. *See* Statement of Chairman Andrew N. Ferguson (Apr. 3, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-pbm-statement.pdf. Commissioner Holyoak remains recused. *See* Statement on the Recusal of Commissioner Melissa Holyoak (Apr. 4, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-recusal-statement-re-pbm-litigation.pdf.

good cause, or direction by a court of competent jurisdiction, the pendency of a related collateral federal court action does not stay an administrative proceeding. 16 C.F.R. § 3.41(f). Respondents fail to explain on what basis the Commission could find good cause here, and we find none. We also note that both the district court and the Eighth Circuit have rejected Respondents' arguments that this proceeding should be preliminarily enjoined or stayed pending appeal. *See Order, Express Scripts, Inc. v. FTC*, No. 25-1383 (8th Cir. Mar. 20, 2025); *Express Scripts, Inc. v. FTC*, No. 4:24-CV-01549-MTS, 2025 WL 521812, at *1 (E.D. Mo. Feb. 18, 2025).

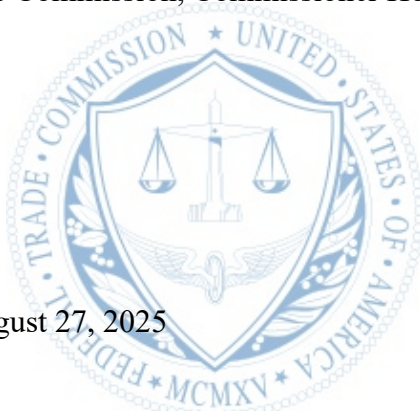
Finally, Respondents assert that Complaint Counsel failed to engage in good faith discussions regarding the hearing date as required by the April Order and should not be rewarded for that violation. Stay Opp'n at 10. Complaint Counsel respond² that when they conferred with Respondents regarding the date for lifting the stay, Respondents took the position that the stay should not be lifted at all before the resolution of their collateral challenge and their still-unfiled motion to dismiss. Rebecca Egeland, Decl. in Supp. of Compl. Counsel's Reply in Supp. of its Mot. to Lift Stay ¶¶ 5, 7. Complaint Counsel complied with the requirements of the April Order. In any case, no further negotiation between Complaint Counsel and Respondents on the hearing date is necessary, as the hearing date is set by the Commission, not the parties. *See* 16 C.F.R. §§ 3.11(b)(4), 3.21(c)(1), 3.41(b). We therefore deny Respondents' request to require Complaint Counsel to negotiate with Respondents regarding the hearing date.

Accordingly,

IT IS HEREBY ORDERED THAT Complaint Counsel's Motion to Lift the Stay of Administrative Adjudication is **GRANTED** and the stay of the adjudicative proceeding is lifted; and

IT IS FURTHER ORDERED THAT the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on April 8, 2026.

By the Commission, Commissioner Holyoak recused.



Joel Christie
Acting Secretary

SEAL:
ISSUED: August 27, 2025

² We grant Complaint Counsel's motion for leave to file a reply brief to address this assertion. *See* Compl. Counsel's Mot. for Leave to File a Reply in Supp. of its Mot. to Lift Stay (July 15, 2025). In the reply brief, Complaint Counsel observe that Respondents' opposition brief appears to exceed the word limit provided in Commission Rule of Practice 3.22(c). We decline to impose any sanction for this violation, and Complaint Counsel do not suggest that we do so. Respondents are admonished, however, to scrupulously observe the word limitations and other requirements of the Rules of Practice in future filings, absent leave of the Commission to deviate from them.