

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Andrew N. Ferguson, Chairman  
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 DENYING STAY PENDING MOTION TO DISMISS

On August 27, 2025, on Complaint Counsel’s motion, the Commission lifted a stay that had previously been in place in this proceeding and scheduled an evidentiary hearing for April 8, 2026. *See* Order Lifting Stay of Administrative Adjudication (“Order Lifting Stay”). Respondents had opposed lifting the stay, asserting that they intended to file a motion to dismiss and that the Commission should maintain the stay while it decides the motion. The Commission found that Respondents’ possible filing of a motion to dismiss did not justify further staying the proceeding. *Id.* at 2. The Commission noted, however, that if and when Respondents filed their motion to dismiss, the Commission would consider Respondents’ arguments for a discovery stay, should they choose to request one, after full briefing. *Id.*

On August 29, 2025, Respondents moved to dismiss the Complaint. On September 2, 2025, they moved to stay discovery and suspend the evidentiary hearing date until after the

Commission renders its decision on the motion to dismiss and one or more of the parties moves to lift the stay. Respondents' Motion to Stay Discovery and Suspend the Evidentiary Hearing Date Pending the Commission's Resolution of Respondents' Motion to Dismiss at 2 ("Stay Motion"). Complaint Counsel opposed both the dismissal and stay motions.

As explained below, we decline to suspend discovery pending the Commission's decision on the motion to dismiss.

Rule 3.22(b) of the Commission's Rules of Practice provides that, unless the Commission orders otherwise, "[a] motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge." 16 C.F.R. § 3.22(b). Rule 3.22(b) was intended "to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions." 16 C.F.R. Parts 3 and 4: Rules of Practice, 74 Fed. Reg. 1804, 1810 (Jan. 13, 2009). As we have explained, the 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.'" Order Lifting Stay at 2 (quoting *In re LabMD, Inc.*, No. 9357, 2013 WL 6826948, at \*3 (F.T.C. Dec. 13, 2013)). Consistent with this, the Commission has on multiple occasions declined to stay discovery pending resolution of motions to dismiss. See *Ragingwire Data Ctrs., Inc.*, 169 F.T.C. 649, 649 (2020); *In re La. Real Estate Appraisers Bd.*, No. 9374, 2018 FTC Lexis 7, at \*3 (Jan. 12, 2018); *In re LabMD*, 2013 WL 6826948, at \*1-3; *N.C. Bd. of Dental Exam'rs*, 150 F.T.C. 851 (2010). Respondents cite no Commission case holding otherwise, and we are aware of none.<sup>1</sup> Nevertheless, Respondents argue that a stay is appropriate here. Their arguments are not persuasive.

Respondents assert that their motion to dismiss identifies numerous pleading deficiencies in the complaint and that threshold legal issues should be decided before allowing costly discovery. Stay Motion at 2-3. That argument is wholly unpersuasive. Motions to dismiss routinely raise threshold legal issues and argue that the complaint is deficient, and in issuing Rule 3.22(b) the Commission expressly acknowledged that the resolution of dispositive motions could determine the scope of the issues to be addressed at the hearing or obviate the need for a hearing altogether. 74 Fed. Reg. at 1810. That a motion to dismiss raises threshold issues is the norm and does not provide a basis to deviate from the rule. Indeed, if the presence of a "threshold legal issue" in a motion to dismiss were sufficient to warrant a stay, the Commission would be granting stays as a matter of course, effectively obviating Rule 3.22(b). To preserve the integrity and meaning of Rule 3.22(b), the Commission has rejected requests to stay discovery even where the motion to dismiss argued that the Commission lacked authority to bring the case at all. See *In re LabMD*, No. 9357, 2013 WL 6826948, at \*3.

Respondents argue that a stay is appropriate because of the high costs of discovery. As an initial matter, the Commission has noted that the costs of discovery are "routinely borne by litigants while dispositive motions are pending," and such costs "[g]enerally . . . do not outweigh

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<sup>1</sup> Respondents cite a handful of federal district court cases that stayed discovery pending a ruling on a motion to dismiss. Those cases are inapposite, as there is no analogue to Rule 3.22(b) in the Federal Rules of Civil Procedure.

the competing public interest in the efficient and expeditious resolution of litigated matters.” *Ragingwire Data Ctrs.*, 169 F.T.C. at 649 (internal quotations omitted).

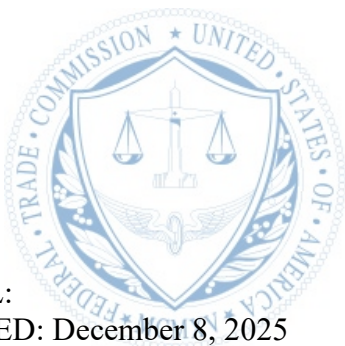
Respondents nonetheless claim that this case is special and discovery here is uniquely costly. They assert that the Commission’s typical administrative complaints concern more straightforward legal claims and target a small number of related entities, whereas the complaint here challenges separate conduct undertaken by multiple independent entities. Stay Motion at 4. This case is not as special as Respondents claim. First, it is not true that the Commission’s “typical” adjudications are simple or straightforward. Rather, the Commission has adjudicated numerous complex mergers and other antitrust matters, which Respondents themselves claim involve substantial, costly discovery. *See id.* at 4-5. Nor are we persuaded that a stay is warranted simply because the Commission has asserted claims against the three Respondent groups in one complaint. Had the Commission brought three separate complaints against the Respondent groups, each would be subject to the Commission’s default rule that discovery is not halted during the pendency of a dispositive motion. Respondents do not explain why combining the cases should change that outcome. Nor is it clear that a single complaint necessarily renders discovery more costly. To the contrary, one would expect consolidation to lead to at least some savings and efficiencies, as demonstrated by the fact that Respondents filed only one joint motion to dismiss and one joint stay request, rather than each preparing and submitting separate filings.

Respondents assert that, given the prior stay in this case, another stay will “merely maintain the status quo that has existed for almost five months,” Stay Motion at 2. However, the fact that this case has already been significantly delayed counsels against, not for, delaying it further. *See In re La. Real Estate Appraisers Bd.*, 2018 FTC Lexis 7, at \*3 (“[O]ur concern for expedition is heightened by the fact that, as previously requested by Respondent, the presiding Administrative Law Judge and the Commission have already stayed this proceeding and delayed commencement of the evidentiary hearing by four months.”). Respondents have not made a compelling case to depart from the Commission’s default rule that discovery is not stayed during the pendency of dispositive motions.

Accordingly,

**IT IS HEREBY ORDERED THAT Respondents’ Stay Motion is DENIED.**

By the Commission.



SEAL:  
ISSUED: December 8, 2025

April J. Tabor  
Secretary