

PUBLIC

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

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 OPPOSITION TO ESI’S MOTION FOR LEAVE TO
FILE REPLY IN SUPPORT OF THEIR MOTION TO COMPEL TESTIMONY**

While Complaint Counsel does not wish to burden the Court with additional briefing, we feel compelled to note our opposition to Express Scripts’ (ESI’s) Motion for Leave to File a Reply so we are not “deemed to have consented to the granting of relief asked for in the motion.” 16 C.F.R. § 3.22(d).

First, ESI plainly does not meet the standard in FTC Rule 3.22(d) that replies discuss “recent important developments or controlling authority that could not have been raised earlier in the party’s principal brief.” *Id.* Complaint Counsel’s citation to a public press release issued by the Bureau of Competition two years ago is not a recent important development. *See* ESI’s Motion for Leave to File a Reply (citing page 6 of Complaint Counsel’s Opposition to ESI’s

PUBLIC

Motion to Compel). Nor does ESI's reply cite any cases that were not already cited in ESI's initial motion or Complaint Counsel's opposition.

Second, ESI failed to provide sufficient notice of their filing. *See* Exhibit A. Emailing counsel outside of business hours and demanding a response within two hours is not "an effort in good faith" to meet and confer. *See* Conference Statement, ESI's Motion for Leave to File a Reply.

Dated: January 12, 2026

Respectfully submitted,

/s/ Rebecca L. Egeland

Rebecca L. Egeland

Andrew Kennedy

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

Counsel Supporting the Complaint

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2026, 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-110
Washington, DC 20580
OALJ@ftc.gov

*Secretary of the Commission
Clerk of the Court*

Administrative Law Judge

I certify that no portion of the filing was drafted by generative artificial intelligence ("AI") (such as ChatGPT, Microsoft Copilot, Harvey.AI, or Google Gemini). 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

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

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

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

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

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

*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
Telephone: (202) 326-2990
Fax: (202) 326-3384
Email: regeland@ftc.gov

Counsel Supporting the Complaint

PUBLIC

Exhibit A



Dkt. 9437 - Motion for leave to file reply

From Justin T. Heipp <Heipp@RuleGarza.com>

Date Fri 1/9/2026 5:58 PM

To Egeland, Rebecca <regeland@ftc.gov>; Diaz, Derek <ddiaz@ftc.gov>; Kennedy, Andrew <akennedy1@ftc.gov>

Cc Dan Howley <Howley@RuleGarza.com>; Margot Campbell <Campbell@RuleGarza.com>

Beckey, Derek, Andrew –

We plan to seek leave to file a short reply to your opposition to our motion to compel that was filed yesterday. Your opposition stated for the first time your view that the manufacturers' conduct "contributed to the harm in this case," and it mischaracterized a number of arguments from our motion. We expect that you will oppose our motion for leave and will represent as much in the motion. Please let me know if that is not the case.

We plan to file the motion for leave and the reply tonight. Please let me know by 8pm if you do not oppose the motion for leave.

Best,
Justin



Justin T. Heipp
Counsel

+1 202 843 9270 (Direct) | +1 314 704 7873 (Mobile)
Heipp@RuleGarza.com | www.rulegarza.com

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify Rule Garza Howley LLP immediately by return e-mail (including the original message in your reply) and by telephone (you may call us at 202-843-9280) and then delete and discard all copies of the e-mail. Thank you.
