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**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,

Docket No. 9437

Respondents.

**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

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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

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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
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 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:

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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>

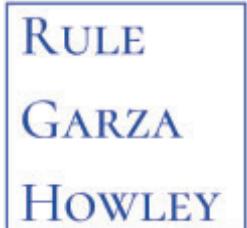
Cc Dan Howley <Howley@RuleGarza.com>; Margot Campbell <Campbell@RuleGarza.com>

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

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